Supreme Court of India
Commercial Tax Officer, ... vs Binani Cement Ltd. & Anr on 19 February, 1947
Author: .....J.
Bench: H.L. Dattu, S.A. Bobde

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.336 OF 2003

COMMERCIAL TAX OFFICER, RAJASTHAN		..Appellant(s)

Versus

M/S. BINANI CEMENTS LTD. & ANR.		..Respondent(s)

J U D G M E N T

H.L. DATTU, J.

1. The Revenue is in appeal before us against the impugned judgment and order passed by the High Court of Rajasthan at Jodhpur in S.B. Sales Tax Revision Petition No.582 of 1999, dated 02.07.2001 whereby and whereunder the High Court has dismissed the revision petition filed by the Revenue and upheld the case of the respondent-assessee.

2. The respondent-assessee is a new industrial unit manufacturing cement situated within Panchayat Samiti, Pindwara, Rajasthan. It is an admitted fact that it started its commercial production on 27.05.1997. It is also not disputed that the respondent-assessee has fixed capital investment (for short, "the FCI") exceeding Rs.500/- Crores and employs more than 250 employees.

3. The core issue arises out of the respondent-assessee's application for grant of eligibility certificate for exemption from payment of Central Sales Tax and Rajasthan Sales Tax to the State Level Screening Committee, Jaipur under the "Sales Tax New Incentive Scheme for Industries, 1989" (for short "the Scheme").

4. For convenience of discussion, we would first notice the relevant scheme and certain provisions and thereafter proceed towards analysis of the facts in the instant case. The Scheme for exemption from payment of sales tax was notified by the State of Rajasthan in exercise of its powers under sub-section(2) of Section 4 of the Rajasthan Sales Tax Act, 1954 (for short, "the Act"). The scheme exempts certain industrial units from payment of tax on the sale of goods manufactured by them within the State. It specifies and categorizes the districts, types of units, the extent of exemption from tax (in percentage), the maximum exemption available in terms of percentage of fixed capital investment (FCI) and the maximum time limit for availing such exemption from tax. By introducing a deeming clause, the scheme is deemed to have come into operation with effect from 05.03.1987 and to remain in force upto 31.03.1992. An amendment to the aforesaid notification was brought in by issuing notification – S. No.763: F.4(35) FD/ Gr.IV/87-38, dated 06.07.1989 and was made operative/effective with effect from 05.03.1987 and to remain in force upto 31.03.1995. Yet another amendment was introduced by the State Government by issuing notification No.763: F.4(35)FD/Gr.IV/87-38 dated 06.07.1989. Once again by introducing a deeming clause, the notification was made operative with effect from 05.03.1987 and to remain in force upto 31.03.1997. The State Government has issued another subsequent notification amending the earlier notification in exercise of its power under Section 4(2) of the Act in 763: F.4(35)FD/Gr.IV/87-38, dated 06.07.1989 which is deemed to have come into operation with effect from 05.03.1987 and to remain in force upto 31.03.1998. Clause 1 of the scheme notification provides for its operation. Clause 2 is the dictionary clause which provides for meaning of the expressions like "New Industrial Unit", "Sick Industrial Unit", "Eligible Fixed Capital Investment" etc. For the purpose of this case, we require to notice the definitions of New Industrial Unit, Eligible Fixed Capital Investment, Prestigious Unit and Very Prestigious Unit.

5. Clause 2(a) defines the meaning of the expression 'New Industrial Unit' to mean an industrial unit which commences commercial production during the operative period of the scheme. The definition provides an exclusion of certain industries from the purview of New Industrial Unit. They are industrial units established by transferring or shifting or dismantling an existing industry and an industrial unit established on the site of an existing unit manufacturing similar goods. Explanation I and II appended to the notification need not be noticed by us, since the same is not necessary for the purpose of disposal of this appeal.

6. It is neither in dispute nor could be disputed by the revenue that the respondent is not a 'New Industrial Unit'.

7. Clause 2(e) defines eligible fixed capital investment (FCI) to mean investment made in land, new buildings, new plant and machinery and imported second hand machinery from outside the country and installation expenditure capitalized for plant and machinery and installation capitalized for plant and machinery's capitalized interest during construction not exceeding 5% of the total fixed capital investment; and technical know-how fees or drawing fees paid in lump-sum to foreign collaborators or foreign suppliers as approved by Government of India or paid to laboratories recognized by the State Government or Central Government and Rail Sidings, rolling stock, racks and railway engines, owned by the unit.

8. Clause 2(i) defines 'Prestigious Unit'. The same is as under:-

> "Prestigious Unit" means a "new industrial unit" first established in any Panchayat Samiti of the State during the period of this Scheme in which investment in fixed capital exceeds Rs.10/- cores with a minimum permanent employment of 250 persons or a "new industrial unit" having a fixed capital investment exceeding Rs.25.00 crores and with a minimum permanent employment of 250 persons or a new electronic industrial unit having fixed capital investment exceeding Rs.25/- crores'.

9. The definition is in three parts. The first part speaks of a 'New Industrial Unit' first established in any Panchayat Samiti of the State. The establishment is of the unit during the period of the Scheme. The investment in fixed capital must exceed Rs.10/- crores and lastly the industrial unit has minimum permanent employment of 250 persons. In the second limb, the necessity of establishing the 'New Industrial Unit' in Panchayat Samiti is done away with. The unit should have capital investment exceeding Rs.25/- crores and should have minimum permanent employment of 250 persons. The third limb of this definition applies only to Electronic Industrial Unit having fixed capital investment exceeding Rs.25/- crores.

10. Clause 2(ii) defines the expression "Very Prestigious Unit" as under:

> "Very Prestigious Unit" means a new industrial unit established in any Panchayat Samiti of the State during the period of this Scheme in which investment in fixed capital is Rs.100/- crores or more. However, the progressive investment of the amount of project cost as appraised by the financial institutions shall be considered as investment made by a new unit, and as soon as such investment reaches or crosses the point of Rs.100/- crores during the operative period of the Scheme, the unit shall acquire the status of a Very Prestigious Unit for the purpose of claiming enhanced proportionate benefits under this Scheme".

11. The 'Very Prestigious Unit' means a new industrial unit established in any Panchayat Samiti in the State during the operative period of the Scheme and the other important requirement is the investment in such industrial unit must be Rs.100/- crores or more. The second limb of the definition clause provides for a new industrial unit to acquire the status of Very Prestigious Unit. The project cost as appraised by the financial institution shall be considered as investment made by a new unit. The progressive investment of the amount of project cost as soon as it reaches or crosses the point of Rs.100/- crores during the operation of the Scheme, the industrial unit shall acquire the status of a Very Prestigious Unit in order to claim enhanced proportionate benefits under the Scheme.

12. Clause 2(k) provides for constitution of Screening Committee for the purpose of consideration and to grant Eligibility Certificate under the New Incentive Scheme both for small and medium and also large scale industrial units to avail benefit under the New Incentive Scheme. The note appended to this sub-clause speaks of Small Scale Units, Medium Scale Units and Large Scale Units. Small

Scale Units means a unit of which investment in plant and machinery does not exceed Rs.60/- Lakhs, a Medium Scale Unit means a unit of which the project cost does not exceed Rs. Five Crores and Large Scale Unit means a unit of which the project cost exceeds Rs. Five Crores.

13. Clause 3 of the notification speaks of applicability of the Scheme. By this clause, the State Government has made the Scheme applicable to (a) new industrial units, (b) industrial units going in for expansion or diversification and (c) sick units.

14. Clause 4 of the Scheme provides for exemption from Payment of Sales Tax as per parameters mentioned in Annexure 'C' to the said notification. This clause also envisages that the industrial unit which is granted an eligibility certificate by the Screening Committee is alone exempted to claim benefit of this notification.

15. Annexure 'C' provides for the quantum of sales tax exemption under the Scheme. Para C therein is relevant for the purpose of this case, therefore, omitting what is not necessary is extracted hereunder:-

ANNEXURE 'C' QUANTUM OF SALES TAX EXEMPTION UNDER THE NEW INCENTIVE SCHEME |Item |Type of Units |Extent of the |Maximum |Maximum time | |No. | |percentage of |exemption in |limit for | | | |exemption from |terms of |availing | | | |tax |percentage of |exemption from| | | | |fixed capital |tax | | | | |investment | | | | | |(FCI) | | |1. |New Units (Other |75% of total tax|100% of FCI in|Seven years | | |than the units |liability |case of medium| | | |mentioned at | |and large | | | |items 1A to 1F) | |scale units | | | | |and 125% of | | | | |FCI in case of| | | | |small scale | | | | | |units | | |1A. |Leather based New|90% of total tax|100% of FCI in|Seven years | | |Unit |liability |case of medium| | | | |and large | | | | |scale units | | | | |and 125% of | | | | |FCI in case of| | | | |SSI units | | |1B. |New Units in |90% of total tax|100% of FCI |Nine years. | | |Ceramic, Glass, |liability for | | | | |Electronics and |first three | | | | |Telecommuni-catio|years, 80% for | | | | |ns industry |next three years| | | | |having a FCI |and 75% for the | | | | |between Rs.5 |remaining | | | | |crores and Rs.25 |period. | | | | |crores | | | | |1C. |New Units in |100% of total |100% of FCI |Eleven years. | | |Ceramic, Glass, |tax liability | | | | |Electronics, and |for the first | | | | |Telecommuni-catio|four years, 90% | | | | |ns industry |for the next | | | | |having a FCI of |four years and | | | | |Rs.25 crores or |75% for the | | | | |more |remaining | | | | | |period. | | | |1D |New labour |75% of total tax|145% of FCI in|Seven years. | | |intensive units |liability |case of SSI | | | |as defined in the| |units and 120%| | | |Capital | |of FCI in case| | | |Investment | |of medium and | | | |Subsidy Scheme, | |large scale | | | |1990 | |units. | | |1E. |New Cement units |75%, 50% & 25% |125% of FCI in|Seven years. | | |except in Tribal |of total tax |case of small | | | |Sub-Plan area. |liability in |scale units | | | | |case of small, |subject to an | | | | |medium and large|overall limit | | | | |scale units |of Rs.1.00 | | | | |respectively |crore and 100%| | | | |of FCI in case| | | | |of medium and | | | | | |large scale | | | | | |units. | | |1F. |Large scale |25% of total tax|100% of FCI |Seven years. | | |granite and |liability | | | | |marble units. | | | | |2. |Units (Other than|75% of total tax|100% of |Seven years | | |(a) cement unit |liability |additional FCI| | | |except in Tribal | | | | | |Sub-Plan area and| | | | | |(b) large scale | | | | | |granite and | | | | | |marble units | | | | | |going in for | | | | | |expansion or | | | | | |diversification. | | | | |2A. |Leather based |75% of total tax|100% of |Seven years | | |units going in |liability |additional FCI| | | |for expansion or | | | | | |diversificat-ion | | | |

|3. |Sick Units |50% of total tax|100% of FCI in|Seven years | | | |liability |case of medium| | | | | |and large | | | | | |scale units & | | | | | |125% of FCI in| | | | | |case of small | | | | | |scale units. | | |4. |New Units |75% of total tax|100% of FCI |Nine years | | |producing |liability | | | | |pollution control| | | | | |equipments/ | | | | | |Pioneering units/| | | | | |Prestigious | | | | | |units. | | | | |5. |New Very |90% of total tax|100% of FCI |Eleven years | | |Prestigious units|liability | | | | |(Other than | | | | | |cement units | | | | | |except in Tribal | | | | | |Sub-plan Area) | | | | |6. |100% Export |100% of total |100% of FCI |Nine years | | |Oriented |tax liability | | | | |Prestigious/ | | | | | |Pioneering units | | | | |7. |100% Export |100% of total |100% of FCI |Eleven years | | |Oriented Very |tax liability | | | | |Prestigious Units| | | |

16. As we have observed earlier, Annexure-C has five columns. The second column speaks of type of units, the third column speaks of the extent of percentage of exemption from tax, the fourth column provides for the maximum exemption in terms of percentage of FCI and the fifth and the last column provides the maximum time limit for availing exemption from tax. Prior to issuance of notification dated 13.12.1996, Annexure 'C' was primarily confined to 'New Units'. After the introduction of notification dated 13.12.1996, the exclusion is made to the expression 'New Units' by specifically including certain type of industrial units by inserting items 1A to 1F. Item 1E specifically talks of New Cement Units except in Tribal Sub-Plan area. The extent of percentage of exemption from tax under Item 1E depends on the type of unit or the industry. If it is a small scale unit, the extent of exemption is 75%, if it is medium scale, the extent of exemption is 50%, and if it is large scale unit, the extent of percentage of exemption from tax is 25%. The maximum time limit for availing exemption from tax is restricted to seven years. Item 4 speaks of New Units producing pollution control equipments, pioneering units and prestigious units. The extent of the percentage of exemption from tax is 75% of total liability and the maximum time limit for availing exemption from tax is 9 years from the date of commercial production. Item 5 relates to New Very Prestigious Units other than cement units except in Tribal Sub-plan Area and the total percentage of exemption from tax is 90% of total tax liability and the maximum time limit for availing exemption from tax is eleven years.

17. Reverting to state the facts, the respondent-assessee had applied to the State Level Screening Committee for claiming benefit of exemption at 75% under the Scheme. The Committee rejected the claim of the respondent- assessee and observed that since the respondent-assessee is a large scale unit covered under the specific provision of Item 1E of Annexure 'C', it is entitled to 25% exemption, by its order dated 15.01.1998.

18. Being aggrieved by the said order, the respondent-assessee filed appeal before Rajasthan Tax Board, Ajmer (for short, 'the Board') in respect of the calculation of eligible FCI as well as the exemption under the Scheme. The Board while remanding the matter to the State Level Screening Committee held that the respondent-assessee is entitled to 75% tax exemption by holding the respondent-unit as Prestigious Unit under the Scheme.

19. The revenue being aggrieved by the decision of the Board, filed Tax Revision Petition before the High Court under Section 86(2) of the Act. The High Court dismissed the revision petition filed by the revenue and upheld the decision of the Board by holding that the respondent-unit is a

Prestigious Unit and therefore, entitled to 75% tax exemption under the Scheme.

20. Aggrieved by the order so passed by the High Court, the Revenue is before us in this appeal.

21. We have heard learned counsel for the parties to the lis and perused the documents on record as well as the order(s) passed by the authorities and the High Court, respectively.

22. Shri Rohington Nariman, learned senior counsel appearing for the appellant submits that the case pleaded by respondent-unit right from the beginning of filing the application before the State Level Screening Committee was that the new unit had made an investment of more than Rs.500/- crores by way of fixed capital assets and therefore they should be placed under the category of 'Prestigious Unit' and accordingly be granted eligibility certificate to claim 75% of exemption from tax for the maximum time limit provided under the Scheme. In aid of this submission, the learned senior counsel would draw our attention to the application and the accompanying affidavit filed by the respondent-new unit before the State Level Screening Committee. He would further contend that the respondent-unit before all the authorities below including the High Court had adopted the stand that the fixed capital investment excluding investment made before 05.03.1987 was more than Rs.532/- crores and therefore the respondent-unit is a Prestigious Unit entitled to an exemption of 75% of total tax liability. It is further contended that the respondent-new unit being New Cement Unit and further being large scale unit though can avail the benefit of the incentive scheme under 1E of Annexure 'C' which provides for exemption upto 25% of total liabilities, it cannot avail the benefit of exemption at the rate of 75% under Item 4 as Prestigious Unit. He would further submit that benefit to cement industry is confined to the extent envisaged under the Item 1E of Annexure-C as the said item is a specific provision relating to cement industry and thus would prevail over other provisions which are general in character in terms of reference to new cement unit. Alternatively, it is contended that the respondent-unit being new cement unit, it may fall under `New Very Prestigious Unit', however Item 5 of Annexure `C' speaks of the New Very Prestigious Units other than cement units except those located in Sub-Plan area, respondent-unit may not be entitled to avail the benefit of the Scheme.

23. Per contra, learned counsel, Shri Sudhir Gupta would justify the reasoning and the conclusion reached by the High Court while rejecting the revenue's revision petition and thereby confirming the view expressed by the Board. He would, inter alia, submit that Item 1E is only an exception to the general rule envisaged in Item 1 and not an exception to the other Items in the Annexure-C, i.e., Items 2 to 7 as it is not intended to govern the entire field of exemptions made available to the cement industry so as to deny the benefits to a unit even if it falls under another Item envisaging better incentives. He would further submit that since new cement unit is specifically excluded from application of Item 1 (new units generally), Item 2 (expanding/diversifying unit) and Item 5 (very prestigious unit) but not Item 4 (prestigious units), Item 6 (export oriented prestigious/pioneering unit) and Item 7 (export oriented very prestigious units), it falls that the intention behind such express exclusion is such that but for the said exclusion, cement industries would be included in the said entries. He would strenuously submit that since the tax exemption clauses are made with a beneficent object, i.e., to encourage investment in specified rural/semi-urban areas, their construction must be liberal such as to confer the most beneficial meaning to the provisions.

24. The facts which are not in dispute are that the respondent-assessee (hereinafter referred to as 'the Company') established a new cement unit within Panchayat Samiti, Pindwara and commenced commercial production some time in the year 1997. It engaged itself in the manufacture of cement. The total capital investment – (FCI) in the new industrial unit claimed by the Company was Rupees 53252.87 Lakhs (Rs.532.52/- crores)

25. The Company had applied for grant of Eligibility Certificate for exemption from payment of Central Sales Tax and Rajasthan Sales Tax before the State Level Screening Committee, Jaipur, under the Scheme. However, the Screening Committee accepted only Rs.5553.72 Lakhs (Rs.55.32 crores) as FCI eligible for availing the benefits under the Scheme. On the aforesaid basis the State Level Screening Committee certified that the company is entitled to avail exemption of tax to the extent of 25% of the tax liability by treating the same to be a Large Scale Industry. In the appeal, the Board took the view since the Company had invested more than Rs.25 crores and has employed more than 250 workmen, it has the status of `New Prestigious Unit' and thus, falls within the definition of a Prestigious Unit and should be governed by Item 4 of Annexure `C' being entitled to avail 75% of total tax liability. This view, as we have already observed, is accepted by the High Court, while dismissing the tax revision petition filed by the revenue.

26. At the outset, we would observe that the High Court has erred in reaching its conclusion by holding that (a) the respondent-company would fall into all the three categories of industries referred to in the Scheme, that is to say it is a new unit which is a 'Large Scale Unit', a "Prestigious New Unit" and also a "Very Prestigious Unit"; (b) the classification of a new unit, viz. small scale, medium scale and large scale under item 1E on the basis of scale of investment does not denude a new industrial unit of any type of the special status of "Pioneer", "Prestigious" and "Very Prestigious" unit under items 4 and 5 to also exclude operation of General entry; and (c) the special entry would not exclude the applicability of general entry in context of the Scheme so as to exclude the operation of items 4, 6 and 7. Thereby implying that though there exists an overlap between the general and special provision, the general provision would also be sustained and the two would co-exist.

27. Before we deal with the fact situation in the present appeal, we reiterate the settled legal position in law, that is, if in a Statutory Rule or Statutory Notification, there are two expressions used, one in General Terms and the other in special words, under the rules of interpretation, it has to be understood that the special words were not meant to be included in the general expression. Alternatively, it can be said that where a Statute contains both a General Provision as well as specific provision, the later must prevail.

28. We are mindful of the principle that the Court should examine every word of a statute in its context and must use context in its widest sense. We are also in acquaintance with observations of this Court in Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd., 1987 SCR (2) 1 where Chinnappa Reddy, J. noting the importance of the context in which every word is used in the matter of interpretation of statutes held thus:

> "Interpretation must depend on the text and the context. They are the basis of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute- maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place."

29. It is well established that when a general law and a special law dealing with some aspect dealt with by the general law are in question, the rule adopted and applied is one of harmonious construction whereby the general law, to the extent dealt with by the special law, is impliedly repealed. This principle finds its origins in the latin maxim of generalia specialibus non derogant, i.e., general law yields to special law should they operate in the same field on same subject. (Vepa P. Sarathi, Interpretation of Statutes, 5th Ed., Eastern Book Company; N. S. Bindra's Interpretation of Statutes, 8th Ed., The Law Book Company; Craies on Statute Law, S.G.G.Edkar, 7th Ed., Sweet & Maxwell; Justice G.P. Singh, Principles of Statutory Interpretation, 13th Ed., LexisNexis; Craies on Legislation, Daniel Greenberg, 9th Ed., Thomson Sweet & Maxwell, Maxwell on Interpretation of Statutes, 12th Ed., Lexis Nexis)

30. Generally, the principle has found vast application in cases of there being two statutes: general or specific with the latter treating the common subject matter more specifically or minutely than the former. Corpus Juris Secundum, 82 C.J.S. Statutes § 482 states that when construing a general and a specific statute pertaining to the same topic, it is necessary to consider the statutes as consistent with one another and such statutes therefore should be harmonized, if possible, with the objective of giving effect to a consistent legislative policy. On the other hand, where a general statute and a specific statute relating to the same subject matter cannot be reconciled, the special or specific statute ordinarily will control. The provision more specifically directed to the matter at issue prevails as an exception to or qualification of the provision which is more general in nature, provided that the specific or special statute clearly includes the matter in controversy. (Edmond v. U.S., 520 U.S. 651, Warden, Lewisburg Penitentiary v. Marrero, 417 U.S. 653)

31. The maxim generalia specialibus non derogant is dealt with in Volume 44 (1) of the 4th ed. of Halsbury's Laws of England at paragraph 1300 as follows:

> "The principle descends clearly from decisions of the House of Lords in Seward v. Owner of "The Vera Cruz", (1884) 10 App Cas 59 and the Privy Council in Barker v

> Edger, [1898] AC 748 and has been affirmed and put into effect on many occasions.... If Parliament has considered all the circumstances of, and made special provision for, a particular case, the presumption is that a subsequent enactment of a purely general character would not have been intended to interfere with that provision; and therefore, if such an enactment, although inconsistent in substance, is capable of reasonable and sensible application without extending to the case in question, it is prima facie to be construed as not so extending. The special provision stands as an exceptional proviso upon the general. If, however, it appears from a consideration of the general enactment in the light of admissible circumstances that Parliament's true intention was to establish thereby a rule of universal application, then the special provision must give way to the general."

32. The question in Seward v. Owner of the "Vera Cruz", (1884) 10 App Cas 59 was whether Section 7 of the Admiralty Court Act of 1861, which gave jurisdiction to that Court over "any claim for damage done by any ship" also gave jurisdiction over claims for loss of life which would otherwise come under the Fatal Accidents Act, 1846. It was held that the general words of Section 7 of the Admiralty Court Act did not exclude the applicability of the Fatal Accidents Act and therefore, the Admiralty Court had no jurisdiction to entertain a claim for damages for loss of life.

33. The adoption of the aforesaid rule in application of principle of harmonious construction has been explained by Kasliwal J. while expressing his partial dissent to the majority judgment in St. Stephen's College v. University of Delhi, (1992) 1 SCC 558 as follows:

> "140. ...The golden rule of interpretation is that words should be read in the ordinary, natural and grammatical meaning and the principle of harmonious construction merely applies the rule that where there is a general provision of law dealing with a subject, and a special provision dealing with the same subject, the special prevails over the general. If it is not constructed in that way the result would be that the special provision would be wholly defeated. The House of Lords observed in Warburton v. Loveland, (1824-34) All ER Rep 589 as under:
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> "No rule of construction can require that when the words of one part of statute convey a clear meaning ... it shall be necessary to introduce another part of statute which speaks with less perspicuity, and of which the words may be capable of such construction, as by possibility to diminish the efficacy of the first part." (Anandji Haridas and Co. (P) Ltd. v. S.P. Kasture, (1968) 1 SCR 661, Patna Improvement Trust v. Lakshmi Devi, 1963 Supp (2) SCR 812, Ethiopian Airlines v. Ganesh Narain Saboo, (2011) 8 SCC 539, Usmanbhai Dawoodbhai Memon v. State of Gujarat, (1988) 2 SCC 271, South India Corpn. (P) Ltd. v. Secy., Board of Revenue, Trivandrum, (1964) 4 SCR 280, Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth, (1984) 4 SCC 27)

34. In J.K. Cotton Spinning & Weaving Mills Co. Ltd. v. State of U.P., (1961) 3 SCR 185, this Court has clarified that not only does this rule of construction resolve the conflicts between the general

provision in one statute and the special provision in another, it also finds utility in resolving a conflict between general and special provisions in the same legislative instrument too and observed that:

> "9. ...We reach the same result by applying another well known rule of construction that general provisions yield to special provisions. The learned Attorney-General seemed to suggest that while this rule of construction is applicable to resolve the conflict between the general provision in one Act and the special provision in another Act, the rule cannot apply in resolving a conflict between general and special provisions in the same legislative instrument. This suggestion does not find support in either principle or authority. The rule that general provisions should yield to specific provisions is not an arbitrary principle made by lawyers and Judges but springs from the common understanding of men and women that when the same person gives two directions one covering a large number of matters in general and another to only some of them his intention is that these latter directions should prevail as regards these while as regards all the rest the earlier direction should have effect. In Pretty v. Solly (quoted in Craies on Statute Law at p.m. 206, 6th Edn.) Romilly, M.R., mentioned the rule thus:
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> "The rule is, that whenever there is a particular enactment and a general enactment in the same statute and the latter, taken in its most comprehensive sense, would overrule the former, the particular enactment must be operative, and the general enactment must be taken to affect only the other parts of the statute to which it may properly apply." The rule has been applied as between different provisions of the same statute in numerous cases some of which only need be mentioned: De Winton v. Brecon, Churchill v. Crease, United States v. Chase and Carroll v. Greenwich Ins. Co.
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> 10. Applying this rule of construction that in cases of conflict between a specific provision and a general provision the specific provision prevails over the general provision and the general provision applies only to such cases which are not covered by the special provision, we must hold that clause 5(a) has no application in a case where the special provisions of clause 23 are applicable."

35. Lord Cooke of Thorndon pointed out, however, in Effort Shipping Co Ltd. v. Linden Management, SA [1998] AC 605 that the maxim is not a technical rule peculiar to English statutory interpretation, rather it "represents simple common sense and ordinary usage". Bennion, Statutory Interpretation, 5th ed. (2008), p. 1155 states that it is based, like other linguistic canons of construction, "on the rules of logic, grammar, syntax and punctuation, and the use of language as a medium of communication generally. As Lord Wilberforce observed in Associated Minerals Consolidated Ltd v Wyong Shire Council [1975] AC 538, 554, that it is still a matter of legislative intention, which the courts endeavour to extract from all available indications.

36. In Waverly Jute Mills Co. Ltd. v. Raymon & Co. (India) (P) Ltd., (1963) 3 SCR 209 and Union of India v. India Fisheries (P) Ltd., AIR 1966 SC 35 this Court has observed that when there is an apparent conflict between two independent provisions of law, the special provision must prevail. In CCE v. Jayant Oil Mills (P) Ltd., (1989) 3 SCC 343 this Court has accepted the aforesaid rule as "the basic rule of construction" that is to say "a more specific item should be preferred to one less so." In Sarabjit Rick Singh v. Union of India, (2008) 2 SCC 417 this Court has in fact followed the aforesaid precedents thus:

> "58. The Act is a special statute. It shall, therefore, prevail over the provisions of a general statute like the Code of Criminal Procedure."

37. This Court has noticed the application of the said rule in construction of taxing statutes along with the proposition that the provisions must be given the most beneficial interpretation in CIT v. Shahzada Nand & Sons, (1966) 3 SCR 379:

> "10. ...The classic statement of Rowlatt, J., in Cape Brandy Syndicate v. IRC, (1921) 1 KB 64, 71 still holds the field. It reads:
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> "In a Taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used." To this may be added a rider: in a case of reasonable doubt, the construction most beneficial to the subject is to be adopted. But even so, the fundamental rule of construction is the same for all statutes, whether fiscal or otherwise. "The underlying principle is that the meaning and intention of a statute must be collected from the plain and unambiguous expression used therein rather than from any notions which may be entertained by the court as to what is just or expedient." The expressed intention must guide the court. Another rule of construction which is relevant to the present enquiry is expressed in the maxim, generalia specialibus non derogant, which means that when there is a conflict between a general and a special provision, the latter shall prevail. The said principle has been stated in Craies on Statute Law, 5th Edn., at p. 205, thus:
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> "The rule is, that whenever there is a particular enactment and a general enactment in the same statute, and the latter, taken in its most comprehensive sense, would overrule the former, the particular enactment must be operative, and the general enactment must be taken to affect only the other parts of the statute to which it may properly apply." ...When the words of a section are clear, but its scope is sought to be curtailed by construction, the approach suggested by Lord Coke in Heydon case, (1584) 3 Rep 7b, yield better results:
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> "To arrive at the real meaning, it is always necessary to get an exact conception of the aim, scope, and object of the whole Act: to consider, according to Lord Coke: (1) What was the law before the Act was passed; (2) What was the mischief or defect for which

the law had not provided; (3) What remedy Parliament has appointed; and (4) The reason of the remedy."" (emphasis supplied)

38. In LIC v. D.J. Bahadur, (1981) 1 SCC 315 this Court was confronted with the question as to whether the LIC Act is a special legislation or a general legislation and while considering the rule in discussion, this Court observed thus:

> "49. ...the legal maxim generalia specialibus non derogant is ordinarily attracted where there is a conflict between a special and a general statute and an argument of implied repeal is raised. Craies states the law correctly:
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> "The general rule, that prior statutes are held to be repealed by implication by subsequent statutes if the two are repugnant, is said not to apply if the prior enactment is special and the subsequent enactment is general, the rule of law being, as stated by Lord Selbourne in Sewards v. Vera Cruz, 'that where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so. There is a well-known rule which has application to this case, which is that a subsequent general Act does not affect a prior special Act by implication. That this is the law cannot be doubted, and the cases on the subject will be found collected in the third edition of Maxwell is generalia specialibus non derogant — i.e. general provisions will not abrogate special provisions.' When the legislature has given its attention to a separate subject and made provision for it, the presumption is that a subsequent general enactment is not intended to interfere with the special provision unless it manifests that intention very clearly. Each enactment must be construed in that respect according to its own subject-matter and its own terms."

39. In Ashoka Marketing Ltd. v. Punjab National Bank, (1990) 4 SCC 406 this Court has placed reliance upon Bennion, Statutory Interpretation (supra) and J.K. Cotton Spinning & Weaving Mills case (supra), amongst others, and explaining the rationale of this rule has reiterated the law as under:

> "52. In U.P. State Electricity Board v. Hari Shanker Jain this Court has observed:
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> "In passing a special Act, Parliament devotes its entire consideration to a particular subject. When a general Act is subsequently passed, it is logical to presume that Parliament has not repealed or modified the former special Act unless it appears that the special Act again received consideration from Parliament."
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> 53. In Life Insurance Corporation v. D.J. Bahadur Krishna Iyer, J. has pointed out :

> "In determining whether a statute is a special or a general one, the focus must be on the principal subject matter plus the particular perspective. For certain purposes, an Act may be general and for certain other purpose it may be special and we cannot blur distinctions when dealing with finer points of law.""

40. In U.P. SEB v. Hari Shankar Jain, (1978) 4 SCC 16, this Court has concluded that if Section 79(c) of the Electricity Supply Act generally provides for the making of regulations providing for the conditions of service of the employees of the Board, it can only be regarded as a general provision which must yield to the special provisions of the Industrial Employment (Standing Orders) Act in respect of matters covered by the latter Act, and observed that:

> "9. The reason for the rule that a general provision should yield to a specific provision is this: In passing a special Act, Parliament devotes its entire consideration to a particular subject. When a general Act is subsequently passed, it is logical to presume that Parliament has not repealed or modified the former Special Act unless it appears that the Special Act again received consideration from Parliament. Vide London and Blackwall Railway v. Limehouse District Board of Works, and Thorpe v. Adams.

41. In Gobind Sugar Mills Ltd. v. State of Bihar, (1999) 7 SCC 76 this Court has observed that while determining the question whether a statute is a general or a special one, focus must be on the principal subject- matter coupled with a particular perspective with reference to the intendment of the Act. With this basic principle in mind, the provisions must be examined to find out whether it is possible to construe harmoniously the two provisions. If it is not possible then an effort will have to be made to ascertain whether the legislature had intended to accord a special treatment vis-à-vis the general entries and a further endeavour will have to be made to find out whether the specific provision excludes the applicability of the general ones. Once we come to the conclusion that intention of the legislation is to exclude the general provision then the rule "general provision should yield to special provision" is squarely attracted.

42. Having noticed the aforesaid, it could be concluded that the rule of statutory construction that the specific governs the general is not an absolute rule but is merely a strong indication of statutory meaning that can be overcome by textual indications that point in the other direction. This rule is particularly applicable where the legislature has enacted comprehensive scheme and has deliberately targeted specific problems with specific solutions. A subject specific provision relating to a specific, defined and descriptable subject is regarded as an exception to and would prevail over a general provision relating to a broad subject.

43. In the instant case, the item 1E is subject specific provision introduced by an amendment in 1996 to the Scheme. The said amendment removed "new cement industries" from the non-eligible Annexure-B and placed it into Annexure-C amongst the eligible industries. It classified the cement units for eligibility of tax exemption into three categories: small, medium and large. The said categories are comprehensive whereby small and medium cement units have been prescribed to have maximum FCIs of Rs.60/- lakhs and Rs.5/- crores, respectively and large to be over the FCI of Rs.5/- crores. The maximum ceiling for large cement units has been purposefully left open and

thereby reflects that the intention clearly is to provide for an all-inclusive provision for new cement units so as to avoid any ambiguity in determination of appropriate provision for applicability to new cement units to seek exemption.

44. It leaves no doubt that what is specific has to be seen in contradistinction with the other items/entries. The provision more specific than the other on the same subject would prevail. Here it is subject specific item and therefore as against items 1, 4, 6 and 7, which deal with units of all industries and not only cement, item 1E restricted to only cement units would be a specific and special entry and thus would override the general provision.

45. The proposition put forth by the respondent-Company that the construction which is most beneficial to the assessee must be applied and adopted fails to impress upon us its application in this case. Howsoever, it is true that the canons of construction must be applied to extract most beneficial re-conciliation of provisions. In case of fiscal statute dealing with exemption, it would require interpretation benefiting the assessee. But here the introduction of the subject specific entry vide amendment into general scheme of exemption speaks volumes in respect of intention of the legislature to restrict the benefit to cement industries as available only under Item 1E, which categorically classified them into three as per their FCI. The specific entries being mutually exclusive have been placed so systematically arranged and classified in the Scheme. The construction of provisions must not be divorced from the object of introduction of subject specific provision while retaining other generalized provision that now specifically exclude the new cement industries, which could otherwise fall into its ambit, lest such interpretation would be not ab absurdo (i.e., interpretation avoiding absurd results).

46. Therefore, in our considered view the respondent-Company would only be eligible for grant of exemption under Item 1E as a large new cement unit in accordance with its FCI being above Rs.5/- crores. In light of the aforesaid, we are of the considered opinion that the judgment and order passed by the High Court ought to be set aside and the appeals of the Revenue requires to be allowed.

47. In the result, the appeal is allowed and the judgment and order passed by the High Court is set aside. No order as to costs.

.....J.

[H.L. DATTU] .....J.

[S.A. BOBDE] NEW DELHI, FEBRUARY 19, 2014.