IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 21744 of 2019

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE J.B.PARDIWALA

and
HONOURABLE MR. JUSTICE BHARGAV D. KARIA

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	NO
2	To be referred to the Reporter or not ?	NO
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

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MESSRS SYNPOL PRODUCTS PVT. LTD.
Versus
UNION OF INDIA

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Appearance:
AMAL PARESH DAVE(8961) for the Petitioner(s) No. 1,2,3,4
MR PARESH M DAVE(260) for the Petitioner(s) No. 1,2,3,4
MR ANKIT SHAH(6371) for the Respondent(s) No. 1,2,3,4

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CORAM: **HONOURABLE MR.JUSTICE J.B.PARDIWALA**
and
HONOURABLE MR. JUSTICE BHARGAV D. KARIA

Date : 27/02/2020

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)

1. By this petition under Article 226 of the Constitution of India, the petitioners have prayed for the following reliefs:

> *(A) That Your Lordships may be pleased to issue a writ of Certiorari or any other appropriate writ, direction or order, quashing and setting aside orders of the Designated Committee (Annexure"G") made under Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 thereby directing the Respondents, their servants and agents to treat the declarations /applications filed by the Petitioners under Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 as valid declarations;*
> *(B) That Your Lordships may be pleased to issue a Writ of Mandamus or any other appropriate writ, direction or order. directing the Respondents, their servants and agents to accept the declarations filed by the Petitioners, which are rejected vide orders submitted at Annexure"G" to the petition, and further directing the Respondents, their servants and agents to issue discharge certificates for all such declarations under Section 127(8) of the Finance Act, 2019;*
> *(C) Pending hearing and final disposal of the present petition, Your Lordships may be pleased to direct the Respondents herein to allow the Petitioners to deposit requisite amounts for each of the declarations, which are rejected vide orders submitted at Annexure-"G" to the petition and be further pleased to direct the Respondents, their servants and agents to accept such deposits under the Sabka Vishwas (Legacy Dispute Resolution) Scheme for discharge of tax dues under the Scheme:*
> *(D) An ex-parte ad-interim relief in terms of para 18(C) above may kindly be granted.*
> *(E) Any other further relief that may be deemed fit in the facts and circumstances of the case may also please be granted."*

2. This Court (Coram: Hon'ble Ms. Justice Harsha Devani and Hon'ble Ms. Justice Sangeeta K. Vishen) passed the following order on 19.12.2019, after issuing the notice to the respondents vide an order dated 16.12.2019:

> *"1. The question involved in this case is as to, whether the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 would also be applicable to cases involving confiscation and redemption fine?*
> *2. While clause (a) of sub-section (1) of section 129 of the scheme provides that the declarant shall not be liable to pay any further duty, interest or penalty with respect to the matter and time period covered in the declaration, and is silent about fine; the Central Board of Indirect Taxes and Customs has issued flyers and press notes stating that the benefits under the scheme are total waiver of interest, penalty and fine. The letters inviting the assessees to take the benefits of the scheme also state that the benefits under the scheme include total waiver of interest, penalty and fine; and immunity from prosecution. The applications of the petitioners and other similarly situated persons have not been accepted on the ground that the same involve confiscation and redemption fine.*
> *3. Since such issue can only be clarified by the respondent No.1 Union of India, the learned senior standing counsel is directed to ensure that necessary instructions are received from the respondent No.1 Secretary, Ministry of Finance, Department of Revenue on or before 23.12.2019.*
> *4. Stand over to 23.12.2019. On that date, the matter shall be taken up for hearing peremptorily and it is expected that the learned senior standing counsel will have the necessary instructions to assist the court in the matter.*
> *5. Registry to forthwith furnish a copy of this order to Mr. Ankit Shah, learned senior standing counsel appearing for the respondent Union of India."*

3. It appears that thereafter, the matter was heard by the Coordinate Bench (Coram: Hon'ble Ms. Justice Harsha Devani and Hon'ble Ms. Justice Sangeeta K. Vishen) at length on 24.12.2019 and following order was passed:

> *1. Being aggrieved by the order passed by the Designated Committee made under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 (hereinafter referred to as the "Scheme") rejecting the declarations made by the petitioners, the petitioners have invoked the writ jurisdiction of this court under article 226 of the Constitution of India.*
> *2. The petitioners, against whom orders-in-original have been made by the adjudicating authority confirming*

demand of duty, ordering recovery of interest, imposing penalty and ordering confiscation of goods and imposing fine in lieu of confiscation, against which appeals are pending before the appellate forum, submitted requisite declarations under the Scheme. Separate notices were served upon the petitioners by the Designated Committee calling upon them to show cause as to why the declarations should not be treated as void as the Scheme permits waiver of duty, interest and penalty, but not fine in lieu of confiscation.

3. After hearing the petitioners, the Designated Committee has held that the cases involving confiscation and redemption fine have not been covered under the Scheme and, therefore, the declarations cannot be accepted and no relief can be granted to the petitioners under the Scheme.

4. Mr. Paresh Dave, learned advocate for the petitioners submitted that the dispute involved in this case is, whether or not, waiver from payment of redemption fine is allowed under the Scheme. It was submitted that the Designated Committee has rejected the declarations made by the petitioners on the ground that no relief as regards confiscation and redemption fine has been allowed under the Scheme, and, therefore, the entire matter covered under the declarations cannot be accepted. It was submitted that the petitioners' submission has been that waiver of redemption fine is also allowed, and various FAQs, press releases and flyers published by the Government are relied upon in support of this submission. It was submitted that in the affidavit-in-reply by the Principal Commissioner, the stand adopted is that the Government has not granted any relief or immunity from confiscation and/or redemption fine under section 129 of the Finance Act, 2019 and that such relief or immunity is not covered under the Scheme. However, now by the letter dated 20th December, 2019 issued by the Ministry of Finance, a new case has been made out that waiver of fine was allowed under the Scheme but it was "fine" under section 9 of the Central Excise Act, 1944 and not redemption fine under section 34 of the Act. It was submitted that, therefore, it is now accepted by the respondents that waiver of fine is also allowed under the Scheme, though fine is not specifically referred to under section 129 thereof. It was submitted that in view of the stand taken by the Government and the clarification issued, two issues arise: (i) whether the Scheme would apply to a case involving "tax dues" and also confiscation/redemption fine; and if yes, what relief can be granted in such cases; and (ii) when waiver of "fine" is allowed under the Scheme, whether that fine is "redemption fine" or "fine" levied by the court of law under

section 9 of the Central Excise Act?

4.1 In respect of the first issue, it was submitted that the scheme would apply even in cases where confiscation and redemption fine are involved, because cases of redemption fine are not excluded from the Scheme. Reference was made to section 121(h) of the Finance Act which defines "declarant", to mean a person who is eligible to make a declaration and files such declaration under section 125. It was pointed out that section 125 of the Finance Act allows "all persons" to make a declaration except those covered under clauses (a) to (h) thereof and that there is no exclusion for cases involving confiscation and redemption fine.

4.2 It was further submitted that section 123 of the Finance Act defines "tax dues" to mean the total amount of duty being disputed in appeal /cross appeals. Clause (b) of the section refers to cases where a show cause notice is pending, and the amount of duty stated to be payable in the notice is tax due.

This qualifying condition is also satisfied in the present cases and the cutoff date of 30th June, 2019 is also not violated in the present cases. It was urged that since all qualifying conditions are satisfied and no exclusion of section 125 of the Finance Act is attracted, the declarations of the petitioners herein cannot be treated as void, and hence, ought not to have been rejected.

4.3 Next, it was submitted that section 129(1) of the Finance Act lays down under clause (a) that the declarant shall not be liable to pay any further duty, interest or penalty. It was submitted that since the declarations made by the petitioners are maintainable under the Scheme, this relief can certainly be granted to them. It was contended that under clause (b) of the section, immunity from prosecution is allowed. Such relief can also be granted to the petitioners because their declarations are maintainable under the Scheme. It was submitted that under section 129(1) and also clause (c) thereof, the discharge certificate is conclusive as to the "matter" and time period stated in the declaration, and no "matter" and time period covered by such declaration shall be reopened in any other proceeding. It was submitted that a declaration in Form SVLDRS 1 is for the "matter", that is to say, the adjudication order, the appeal and the tax dues in the nature of duty and penalty. Once such "matter" covered under the declaration is concluded and a discharge certificate for such declaration is issued under section 127(8) of the Finance Act, then such matter cannot be reopened in any other proceeding, because it is a complete conclusion of such matter on payment of amount in accordance with section 124 of the Finance Act. It was

contended that the relief admissible to a declarant who qualifies under the Scheme is complete discharge and conclusion of the "matter" covered under the declaration.

4.4 Alternatively, the learned counsel submitted that if no complete discharge is admissible, then discharge from liabilities like the balance duty, whole of the penalty and interest, and also immunity from prosecution is in any case admissible, if all qualifying conditions of the Scheme are satisfied and the declaration is not hit by any of the exclusions. It was submitted that in such a situation, the case for confiscation and redemption fine may continue in accordance with law while discharging the declarant from other liabilities of balance duty, interest, penalty and prosecution. However, this is not the objective of the Scheme and, therefore, a complete discharge has to be allowed in all cases involving confiscation and redemption fine also.

4.5 As regards the second issue, namely, whether the waiver of fine allowed under the Scheme is redemption fine or fine levied under section 9 of the Central Excise Act, it was submitted that it is now accepted by the revenue that waiver of fine is allowed under the Scheme, and therefore, the objection that section 129(1)(a) of the Finance Act does not refer to fine, no longer survives. It was submitted that the revenue's stand is in line with the clarifications in FAQs, press releases and flyers issued by the Board.

4.6 According to the learned counsel, the only question in this regard, therefore, is which is this "fine", which is to be waived under the Scheme. It was submitted that the "fine" that is to be waived has to be redemption fine, and it can never be imposed by the criminal court under section 9 of the Act. It was contended that ordinarily, a criminal case cannot be waived once instituted in the competent court of law. Therefore, the Government has issued Circular No.1072/05/2019-CX dated 25th September, 2019 laying down at para 2(ii) that the procedure laid down in Circular No.1009/16/2015-CX dated 23.10.2015 should be followed for withdrawal of prosecution after issuance of discharge certificate, if prosecution has already been launched. Vide para 10.2 of the other Circular dated 23.10.2015, it is provided that the appropriate Commissioner shall give direction to file an application through the Public Prosecutor to allow withdrawal of the prosecution. It was submitted that the procedure laid down for withdrawal of prosecution shows that a criminal case is to be withdrawn before its conclusion, that is, before it results in sentence of imprisonment or fine. It was submitted that the letter now issued on 20th December, 2019, is for waiver from fine under section 9 of the Act, but there is no question of waiver of such fine, which is not even ordered by the

criminal court. It was contended that the excise authorities cannot waive "fine" if imposed by a competent criminal court and, therefore, the immunity from prosecution can be allowed under the Scheme only when no prosecution is instituted, or the prosecution already instituted is pending. In either case, there is no question of waiver of "fine" under the Scheme, and, therefore, waiver of fine allowed under the Scheme can only be waiver of redemption fine.

4.7 It was submitted that if fine is imposed by the criminal court under section 9 of the Act, then such fine can never be waived under the Scheme because such cases stand excluded by virtue of section 125(1)(b) of the Finance Act. It was submitted that under the central excise law, the only fine is redemption fine and fine under section 9 of the Act is not under the central excise law. Therefore, when the respondents have now agreed that waiver of fine is allowed under the Scheme, such fine can only be redemption fine imposed or imposable under section 34 of the Central Excise Act.

4.8 Inviting attention to paragraph 2 of the letter dated 20th December, 2019, it was pointed out that the Ministry of Finance has linked imprisonment and fine, both being in the nature of punishment under section 9 of the Act. According to the Ministry, if immunity from one, that is, imprisonment is allowed under the Scheme, then waiver of fine follows. It was submitted that the same would be the position in respect of redemption fine, which is a liability clearly linked to short payment or non-payment of excise duty on the goods. It was pointed out that in the order-in-original annexed along with the petition, duty demand of Rs.17,79,479/- is confirmed for the goods detailed in Annexures A-1 to A-5 to the show cause notice, and it is also clear from clause (iii) that the goods detailed in Annexures A-1 to A-5 to the show cause notice are held to be liable for confiscation in view of short payment of Rs.17,79,479/- as excise duty. It was contended that interest under clause (2) and penalty under clause (4) are also clearly linked to the same duty demand on the same goods. It was submitted that the Scheme provides for payment of 30% of the duty demand of Rs.17,79,479/- with waiver of the rest of the duty, entire interest and penalty. When waiver from all such liabilities including even the short payment of duty is allowed under the Scheme, confiscation and redemption fine clearly cannot be left out, which are clearly linked to the subject matter of the declaration. It was submitted that in view of the Ministry's clarification dated 20th December, 2019 for waiving linked liabilities, the waiver of redemption fine has to be read under section 129(1)(c) of the Finance Act.

4.9 Reference was made to para 3(b) of the letter dated

20th December, 2019, to submit that the Ministry's stand is that a show cause notice involving redemption fine is excluded if it was not adjudicated and the redemption fine quantified under the adjudication order was not paid by the declarant before lodging the declaration. It was submitted that getting a notice pending on 30th June, 2019 to be adjudicated and paying redemption fine imposed under the order-in-original is a virtually impossible exercise for a declarant; and when section 123(b) specifically provides that a show cause notice received on or before the 30th June, 2019 can also be settled under the Scheme because the duty stated to be payable in such notice was "tax dues", such cases cannot be excluded from the Scheme only because such show cause notice may involve a possible liability of confiscation and redemption fine upon its adjudication. It was submitted that in case of a pending show cause notice also, the declarant can file a declaration under the Scheme and discharge its liabilities by paying 30%, or 50%, as the case may be, of the tax dues, that is, the amount of duty stated to be payable in such notice. In case of pending show cause notices, waiver of fine is allowed as regards possible confiscation, and therefore, waiver of fine can only be that of redemption fine.

4.10 Lastly, it was submitted that the stand of the respondents that waiver of fine imposable by the criminal court under section 9 of the Central Excise Act is allowed under the Scheme and not waiver of redemption fine, is ex-facie illegal and unjustified, and not borne out from the provisions of the Scheme. Therefore, the declarations involving "tax dues" along with other liabilities like interest, penalty and also redemption fine deserve to be accepted under the Scheme, and discharge certificates under section 127(8) of the Finance Act are required to be issued in all such cases on payment of the amount of 30% or 50% of the tax dues indicated in the declarations.

5. Opposing the petition, Mr. Ankit Shah, learned senior standing counsel for the respondents, submitted that if the petitioners are not entitled to relief available under section 124 of the Finance Act, their applications have to be rejected. Referring to section 129(9) of the Finance Act, it was submitted that the Scheme does not provide for waiver of fine and hence, final certificate of discharge cannot be issued in favour of the petitioners. It was submitted that the expression "fine" used in the press notes and flyers issued by the Government have to be read as fine under section 9 of the Central Excise Act, 1944. It was further submitted that the legality of the issue has to be decided on the basis of the language employed in the enacted piece of legislation, inasmuch as, the law is not governed by press notes but by the provisions of the Finance Act, 2019 and

the rules made thereunder. It was submitted that considering the Scheme as a whole, it is apparent that the legislature has not granted any relief or immunity insofar as confiscation and/or redemption fine is concerned.

5.1 Reference was made to the Board's letter dated 20th December, 2019, wherein it has been stated thus:

> *"2. The matter has been examined. 'Fine' and 'Redemption Fine' denote different things. Section 9 of the Central Excise Act, 1944 provides for the offences and penalties under the Act. The penalties for the offences under the Act may extend to seven years of imprisonment and fine. Needless to say that once the person is granted immunity from prosecution, he also gets waiver from such 'fine'. However, redemption fine is levied in lieu of confiscation Section 34 of the Act, whereby the party can 'redeem' the confiscated goods. Under the Scheme, no immunity (Section 129) or relief (Section 124) has been granted for redemption fine.*
>
> *3. A 'case' under the Scheme means 'a show cause notice, or one or more appeals arising out of such notice which is pending as on 30.06.2019' [Explanation to rule 3, SVLDRS Rules, 2019]. In the instant case, the SCNs also involve imposition of redemption fine. There are two scenarios that can emerge;*
>
> > *(a) The SCN involving redemption fine has been adjudicated. In this case, redemption fine has been imposed and quantified.*
> >
> > *(b) The SCN involving redemption fine is yet to be adjudicated. In other words, the redemption fine has not been imposed or quantified.*
> >
> > *The discharge certificate [Section 129] which is issued at the end of the proceedings under the Scheme is a full and final closure of the matter and time period stated therein. Therefore, the discharge certificate in such cases can only be issued after settlement of redemption fine. In scenario (a) above, it would be mean payment of redemption fine. In scenario (b) above, it would mean adjudication of show cause notice for imposition of redemption fine and payment thereof."*

5.2 It was submitted that, therefore, in cases involving imposition of redemption fine, the concerned persons are required to pay redemption fine and then avail the benefit of the Scheme and in case where a show cause notice has been issued involving redemption fine, the show cause

notice would be required to be adjudicated and after payment of redemption fine, the relief available under the Scheme can be availed of. It was, accordingly, submitted that since waiver of redemption fine is not contemplated under the Scheme, the Designated Committee was wholly justified in not accepting the declarations made by the petitioners.

6. Chapter V of the Finance Act, 2019 bears the heading "Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019". The Scheme is comprised of sections 120 to 135.

7. Clause (h) of section 121 of the Finance Act defines "declarant"to mean a person who is eligible to make a declaration and files such declaration under section 125. Section 125 of the Finance Act reads thus:

> *"Declaration under the Scheme*
>
> *125. (1) All persons shall be eligible to make a declaration under this Scheme except the following, namely:—*
>
> *(a) who have filed an appeal before the appellate forum and such appeal has been heard finally on or before the 30th day of June, 2019;*
>
> *(b) who have been convicted for any offence punishable under any provision of the indirect tax enactment for the matter for which he intends to file a declaration;*
>
> *(c) who have been issued a show cause notice, under indirect tax enactment and the final hearing has taken place on or before the 30th day of June, 2019;*
>
> *(d) who have been issued a show cause notice under indirect tax enactment for an erroneous refund or refund;*
>
> *(e)who have been subjected to an enquiry or investigation or audit and the amount of duty involved in the said enquiry or investigation or audit has not been quantified on or before the 30th day of June, 2019;*
>
> *(f) a person making a voluntary disclosure,—*
>
> *(i) after being subjected to any enquiry or investigation or audit; or*
>
> *(ii)having filed a return under the indirect tax enactment, wherein he has indicated an amount of duty as payable, but has not paid it;*
>
> *(g) who have filed an application in the Settlement Commission for settlement of a case;*
>
> *(h) persons seeking to make declarations with respect to excisable goods set forth in*

the Fourth Schedule to the Central Excise Act, 1944.

(2) A declaration under sub-section (1) shall be made in such electronic form as may be prescribed."

8. On a plain reading of clauses (a) to (h) of section 125 of the Finance Act, it is abundantly clear that persons whose cases involve confiscation and fine in lieu of confiscation are not placed in the categories of persons who are not eligible to make declarations under the Scheme. Thus, persons who have been ordered to pay fine in lieu of confiscation or to whom show cause notices proposing confiscation of goods have been issued, have not been declared to be ineligible to make a declaration under the Scheme.

9. Sub-section (1) section 129 of the Finance Act provides that every discharge certificate issued under section 126 thereof with respect to the amount payable under the Scheme shall be conclusive as to the matter and time period stated therein and (a) the declarant shall not be liable to pay any further duty, interest, or penalty with respect to the matter and time period covered in the declaration; (b) the declarant shall not be liable to be prosecuted under the indirect tax enactment with respect to the matter and time period covered in the declaration; and (c) no matter and time period covered by such declaration shall be reopened in any other proceeding under the indirect tax enactment. Thus, while clause (a) of subsection (1) of section 129 of the Finance Act provides that the declarant shall not be liable to pay further duty, interest or penalty, it does not expressly provide that the declarant shall not be liable to pay fine/redemption fine; which is why the present controversy has arisen. It may be noted that while under the Scheme no express provision has been made discharging the declarant from the liability to pay fine, the Directorate General of Taxpayer Service, Central Board of Indirect Taxes and Customs (hereinafter referred to as "the Board") has issued FAQs, flyers and press notes wherein it is specifically stated that the most attractive aspect of the Scheme is that it provides substantial relief in the tax dues for all categories of cases as well as full waiver of interest, fine and penalty. In all these cases, there would be no other liability of interest, fine or penalty. There is also complete amnesty from prosecution.

10. Thus, in terms of the FAQs, press notes and flyers issued by the Board, the Scheme provides substantial relief in the tax dues for all categories of cases as well as full waiver of interest, fine and penalty. Thus, having regard to the fact that: (i) section 125 of the Finance Act says that all persons shall be eligible to make declaration under the

Scheme except for the categories specifically enumerated therein; and (ii) under section 125 of the Finance Act, cases involving confiscation and fine in lieu of confiscation (redemption fine) are not excluded from the benefit of the Scheme, and (iii) according to the Board, the Scheme provides relief in tax dues for all categories of cases; prima facie it appears that the legislature did not have the intention of excluding cases involving confiscation and fine in lieu of confiscation from the purview of the Scheme.

11. It may be further noted that in the communication dated 20th December, 2019 of the Board, the contents whereof have been reproduced hereinabove, it has been stated that when a person gets immunity from prosecution, he also gets waiver of such fine for the offences under section 9 of the Central Excise Act, 1944. Thus, it is not the case of the Board that the Scheme does not provide for waiver of fine, but only that it does not provide for waiver of redemption fine. Testing the explanation put forth by the Board in the context of the relevant statutory provisions, section 9 of the Central Excise Act, 1944 specifies the categories of offences and the punishment thereunder, which may be punishable with imprisonment and fine or imprisonment or fine. Thus, the question of imposing fine arises only upon conviction for an offence specified in section 9 of the Central Excise Act. However, clause (b) of section 125 of the Finance Act, clearly excludes persons who have been convicted for any offence punishable under any provision of the indirect tax enactment for the matter for which he intends to file declaration. As a necessary corollary therefore, it follows that the legislature would not have contemplated waiver of fine under section 9 of the Central Excise Act, 1944. The only other fine envisaged under the Central Excise Act, 1944 is fine in lieu of confiscation/redemption fine. Under the circumstances, when the Board has issued FAQs, press notes and flyers stating that the Scheme grants waiver of interest, penalty and fine, it appears that the same would be relatable to redemption fine, inasmuch as, it is the only other fine contemplated under the Act. Besides, as noticed earlier, persons whose cases involve confiscation/ fine in lieu of confiscation are not placed in the categories of persons enumerated in section 125 of the Finance Act, who are not eligible to file declarations thereunder.

12. By the communication dated 20th December, 2019, the Board has stated that in case where redemption fine has been imposed and quantified, the discharge certificate can be issued only after settlement of redemption fine, namely payment of redemption fine. Therefore, it is not the case of the Board that declarations involving redemption fine cannot be accepted. This court, however, is prima facie of

the view that the stand of the Board that in case where redemption fine is imposed and quantified, discharge certificate can only be issued after settlement of redemption fine, is not in consonance with the Scheme which contemplates putting an end to the matter.

13. In the light of the above discussion, this court is of the view that the matter requires consideration. Hence issue Rule, returnable on 23rd January, 2020. This court is further of the view that a prima facie case has been made out for grant of interim relief inasmuch as if the interim relief as prayed for is not granted, the petitioners would not be in a position to file fresh declarations before the last day for filing declarations under the Scheme, which may either create an irreversible situation or unnecessary complications. However, if conditional interim relief is granted, the same would take care of the interests of the petitioners as well as the revenue. Accordingly, the impugned orders passed by the Designated Committee are hereby stayed. Since the last date for filing declarations under the Scheme is 31st December, 2019, the respondents are directed to permit the petitioners to file fresh declarations under the Scheme without payment of redemption fine, subject to the final outcome of the petition. Upon such declarations being submitted, the same shall be further processed by the Designated Committee, and shall not be turned down on the ground that the Scheme does not cover cases involving confiscation and redemption fine.

14. At this stage, Mr. Paresh Dave, learned advocate for the petitioners states that there are many persons similarly situated to the petitioners who have filed declarations which have been rejected by the Designated Committee but are not before the court and that if these persons come to the court, it would lead to multiplicity of proceedings before this court. It was, accordingly, urged that the benefit of the present order also be granted to the persons who have not approached this court.

15. Considering the fact that it is the case of the respondents in their affidavit-in-reply that out of approximately 450 applications received by the said Commissionerate, 22 applications, that is, five percent, pertain to confiscation and redemption fine; it appears that approximately five per cent of the declarants have matters involving confiscation and redemption fine. Having regard to the fact that if all similarly situated declarants were to approach this court, the same would needlessly lead to multiplicity of proceedings, the court is of the view that the benefit of this order may be granted to even those declarants who have not approached this court, subject to the declarants filing an undertaking before the Designated Committee that in case the outcome of the present petition

is against the petitioners, they would pay the redemption fine, failing which, the discharge certificate shall be revoked."

4. The learned advocate for the petitioners Mr. Paresh M. Dave submitted that the issue arising in this petition is with regard to the rejection of the declaration made by the petitioners by the Designated Committee formed under Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 (hereinafter referred to as the 'Scheme') on the ground that the cases of the petitioners involving confiscation and redemption fine are not covered under the Scheme, and therefore, the declarations filed by the petitioners cannot be accepted and no relief can be granted to the petitioners under the Scheme. It was submitted that, at the time of admission of the matter, this Court has passed the aforesaid order in detail on 24.12.2019 which covers all the arguments and contentions raised on behalf of the petitioners as well as the respondents, and thereafter, the Court has expressed the prima-facie opinion in favour of the petitioners. It is submitted that, the petitioners are reiterating all the arguments recorded in para-4 to 4.10 in the aforesaid order dated 24.12.2019.

5. In addition to the aforesaid submissions, it was submitted by the learned advocate for the petitioners that the Supreme Court in the case of ***K.P. Varghese v. Income-tax Officer, Ernakulam and others*** reported in ***AIR 1981 SC 1922*** has held that for interpretation of any statute marginal note to the sections as well as interpretation made by the authority is also relevant. Reliance was placed to the observations made by the Apex Court, which read thus:

"8. But the scope of sub-section (1) of section 52 is extremely restricted because it applies only where the transferee is a person directly or indirectly connected with the assessee and the object of the under-statement is to avoid or reduce the income-tax liability of the assessee to tax on capital gains. There may be cases where the consideration for the transfer is shown at a lesser figure than that actually received by the assessee but the transferee is not a person directly or indirectly connected with the assessee or the object of under-statement of

the consideration is unconnected with tax on capital gains. Such cases would not be within the reach of sub section (1) and the assessee, though dishonest, would escape the rigour of the provision enacted in that sub-section. Parliament therefore enacted sub-section (2) with a view to extending the coverage of the provision in sub-section (I) to other cases of under statement of consideration. This becomes clear if we have regard to the object and purpose of the introduction of sub-section (2) as appearing from travaux preparatoire relating to the enactment of that provision. It is a sound rule of construction of a statute firmly established in England as far back as 1584 when Heydon's case(1) was decided that"... for the sure and true interpretation of all statutes in general-four things are to be discerned and considered: (1) What was the common law before the making of the Act, (2) What was the mischief and defect for which the common law did not provide, (3) What remedy the Parliament hath resolved and appointed to cure the disease of the Commonwealth, and (4) The true reason of the remedy, and then the office of all the Judges is always to make such construction as shall suppress the mischief, and advance the remedy". In in re Mayfair Property Company(2) Lindley. M.R. in 1898 found the rule "as necessary now as it was when Lord Coke reported Heydon's case". The rule was reaffirmed by Earl of Halsbury in Eastman Photographic Material Company v. Comptroller General of Patents, Designs and Trade Marks(3) in the following words.

"My Lords, it appears to me that to construe the Statute in question, it is not only legitimate but highly convenient to refer both to the former Act and to the ascertained evils to which the former Act had given rise, and to the later Act which provided the remedy. These three being A compared I cannot doubt the conclusion."

This Rule being a Rule of construction has been repeatedly applied in India in interpreting statutory provisions. It would therefore be legitimate in interpreting sub-section (2) to consider that was the mischief and defect for which section 52 as it then stood did not provide and which was sought to be remedied by the enactment of sub-section (2) or in other words, what was the object and purpose of enacting that sub-section. Now in this connection the speech made by the Finance Minister while moving the amendment introducing sub-section (2) is extremely relevant, as it throws considerable light on the object and purpose of the enactment or sub-section (2). The Finance Minister explained the reason for introducing sub-section (2) in the following words:

"Today, particularly every transaction of the sale of property is for a much lower figure than what is actually received. The deed

of registration mentions a particular amount; the actual money that passes is considerably more. It is to deal with these classes of sales that this amendment has been drafted-It does not aim at perfectly bona fide transactions.. but essentially relates to the day-to-day occurrences that are happening before our eyes in regard to the transfer of property. I think, this is one of the key sections that should help us to defeat the free play of unaccounted money and cheating of the Government."

Now it is true that the speeches made by the Members of the Legislature on the floor of the House when a Bill for enacting a statutory provision is being debated are inadmissible for the purpose of interpreting the statutory provision but the speech made by the Mover of the Bill explaining the reason for the introduction of the Bill can certainly be referred t o for the purpose of ascertaining the mischief sought to be remedied by the legislation and the object and purpose for which the legislation is enacted. This is in accord with the recent trend in juristic thought not only in Western countries but also in India that interpretation of a statute being an exercise in the ascertainment of meaning, everything which is logically relevant should be admissible. In fact there are at least three decisions of this Court, one in Loka Shikshana Trust v. Commissioner of Income-Tax(1) the other in Indian Chamber of Commerce v. Commissioner of Income-tax(2) and the third in Additional Commissioner of Income-tax v. Surat Art Silk Cloth Manufacturers Association(3) where the speech made by the Finance Minister while introducing the exclusionary clause in section 2 clause (15) of the Act was relied upon by the Court for the purpose of ascertaining what was the reason for introducing that clause. The speech made by the Finance Minister while moving the amendment introducing sub- section (2) clearly states what were the circumstances in which sub-section (2) came to be passed, what was the mischief for which section 52 as it then stood did not provide and which was sought to be remedied by the enactment of sub-section (2) and why the enactment of sub-section (2) was found necessary. It is apparent from the speech of the Finance Minister that sub-section(2) was enacted for the purpose of reaching those cases where there was under- statement of consideration in respect of the transfer or to put it differently, the actual consideration received for the transfer was 'considerably more' than that declared or shown by the assessee, but which were not covered by sub- section (1) because the transferee was not directly or indirectly connected with the assessee. The object and purpose of sub-section (2), as explicated from the speech of the Finance Minister, was not to strike at honest and bonafide transactions where the consideration for the transfer was correctly 13: disclosed by the assessee but to bring within the net of taxation those transactions where the consideration in respect of the

transfer was shown at a lesser figure than that actually received by the assessee, so that they do not escape the charge of tax on capital gains by under-statement of the consideration. This was real object and purpose of the enactment of sub-section (2) and the interpretation of this sub-section must fall in line with the advancement of that object and purpose. We must therefore accept as the underlying assumption of sub-section (2) that there is under-statement of consideration in respect of the transfer and sub-section (2) applies only where the actual consideration received by the assessee is not disclosed and the consideration declared in respect of the transfer is shown at a lesser figure than that actually received.

9. This interpretation of sub-section (2) i strongly supported by A the marginal note to section 52 which reads 'Consideration for transfer in cases of under-statement'. It is undoubtedly true that the marginal note to a section cannot be referred to for the purpose of construing the section but it can certainly be relied upon as indicating the drift of the section or, to use the words of Collins MR in Bushel v. Hammond(l) to show what the section is dealing with. It cannot control the interpretation of the words of a section particularly when the language of the section is clear and unambiguous but, being part of the statute, it prima facie furnishes some clue as to the meaning and purpose of the section. Vide Bengal Immunty Company Limited v. State of Bihar(2) The marginal note to section 52. as it now stands, was originally a marginal note only to what is presently sub-section (I) and significantly enough, this marginal note remained unchanged even after the introduction of sub-section (2) suggesting clearly that it was meant by Parliament to apply to both sub-sections of section 52 and it must therefore be taken as indicating that, like sub- section (1), sub-section (2) is also intended to deal with cases where there is under-statement of the consideration in respect of the transfer.

10. But apart from these considerations, the placement of subsection (2) in section 52 does indicate in some small measure that Parliament intended that sub-section to apply only to cases where the consideration in respect of the transfer is under-stated by the assessee. It is not altogether without significance that the provision in sub- section (2) was enacted by Parliament not as a separate section, but as part of section 52 which, as it originally stood, dealt only with cases of under-statement of consideration. If Parliament intended sub-section (2) to cover all cases where the condition of 15% difference is satisfied, irrespective of whether there is understatement of consideration or not, it is reasonable to assume that Parliament would have enacted that provision as a separate section and

not pitch-forked it into section 52 with a total stranger under an inappropriate marginal note. Moreover there is inherent evidence in sub-section (2), which suggests that the thrust of that sub-section is directed against cases of under-statement of consideration. The crucial and important words in sub-section (2) are: "the full value of the consideration declared by the assessee", The word 'declared' is very eloquent and revealing. It clearly indicates that the focus of sub-section (2) is on the consideration declared or disclosed by the assessee as distinguished from the consideration actually received by him and it contemplates a case where the consideration received by the assessee in respect of the transfer is not truly declared or disclosed by him but is shown at a different figure. This or course is a very small factor and by itself of little consequence but alongwith the other factors which we have discussed above, it assumes same significance as throwing light on the true intent of sub-section (2).

11. There is also one other circumstance which strongly reinforces the view we are taking in regard to the construction of sub-section (2). Soon after the introduction of sub-section (2), the Central Board of Direct Taxes, in exercise of the power conferred under section 119 of the Act, issued a circular dated 7th July, 1964 explaining the scope and object of sub-section (2) in the following words:

"Section 13 of the Finance Act has introduced a new sub-section (2) in section 52 of the Income-tax Act with a view to countering evasion of tax on capital gains through the device of an under-statement of the full value of the consideration received or receivable on the transfer of a capital asset.

The provision existing in section 52 of the Income-tax Act before the amendment (which has now been remembered as sub-section (2) enables the computation of capital gains arising on transfer of a capital asset with . reference to its fair market value as on the date of its : transfer, ignoring the amount of the consideration shown by the assessee, only if the following two conditions are satisfied:

(a) the transferee is a person who is directly.

or indirectly connected with assessee, and

(b) the Income-tax officer has reason to believe that the transfer was effected with object of avoidance or reduction of the liability of assessee to tax of capital gains.

In view of these conditions, this provision has a limited operation and does not apply to other cases where the tax liability on capital gains arising on transfer of capital A assets between parties not connected with each other, is sought to be avoided

or reduced by an under-statement of the consideration paid for the transfer of the asset "

The circular also drew the attention of Income-tax Authorities to the assurance given by the Finance Minister in his speech that sub- B section (2) was not aimed at perfectly honest and bonafide transactions where the consideration in respect of the transfer was correctly disclosed or declared by the assessee, but was intended to deal only with cases where the consideration for the transfer was under-stated by the assessee and was shown at a lesser figure than that actually received by him. It appears that despite this circular, the Income-tax Authorities in several cases levied tax by invoking the provision in sub- section (2) even in cases where the transaction was perfectly, honest and bonafide and there was no under-statement of the consideration. This was quite contrary to the instructions issued in the circular which was binding on the Tax Department and the Central Board of Direct Taxes was, therefore, constrained to issue another circular on 14th January, 194 whereby the Central Board, after reiterating the assurance given by the Finance Minister in the course of his speech pointed out:

"It has come to the notice of the Board that in some cases the Income-tax officers have invoked the provisions of section 52(2) even when the transactions were bonafide. In this context reference is invited to the decision of the Supreme Court in Navnitlal C. Jhaveri v. R K Sen(1) and Ellerman Lines Ltd. v. Commissioner of Income-tax, West Bengal(2) wherein it was held that the circular issued by the Board would be binding on all officers and persons employed in the execution of the Income-tax Act. Thus, the Income-tax officers are bound to follow the instructions issued by the Board."

and instructed the Income-tax officers that "while completing the assessments they should keep in mind the assurance given by the Minister of Finance and the provisions of section 52(2) of the Income-tax Act may not be invoked in cases of bonafide transactions". These two circulars of the Central Board of Direct Taxes are, as we shall presently point out, binding on the Tax Department in administering or executing the provision enacted in sub-section (2), but quite apart from their binding character, they are clearly in the nature of contemporanea expositio furnishing legitimate aid in the construction of sub-section (2). The rule of construction by reference to contemporanea expositio is a well established rule for interpreting a statute by reference to the exposition it has received from contemporary authority, though it must give way where the language of the statute is plain and unambiguous. This rule has been succinctly

and felicitously expressed in Crawford on Statutory Construction (1940 ed) where it is stated in paragraph 219 that "administrative construction (i. e. contemporaneous construction placed by administrative or executive officers charged with executing a statute) generally should be clearly wrong before it is overturned; such a construction, commonly referred to as practical construction, although non-controlling, is nevertheless entitled to considerable weight; it is highly persuasive." The validity of this rule was also recognised in Baleshwar Bagarti v. Bhagirathi Dass(1) where Mookerjee, J. stated the rule in these terms:

"It is a well-settled principle of interpretation that courts in construing a statute will give much weight to the interpretation put upon it, at the time of its enactment and since, by those whose duty it has been to construe, execute and apply it."

and this statement of the rule was quoted with approval by this Court in Deshbandhu Guptu & Co. v. Delhi Stock Exchange Association Ltd.(2) It is clear from these two circulars that the Central Board of Direct Taxes, which is the highest authority entrusted with the execution of the provisions of the Act, understood sub section (2) as limited to cases where the consideration for the transfer has been under- stated by the assessee and this must be regarded as a strong circumstance supporting the construction which we are placing on that sub-section.

12. But the construction which is commending itself to us does not rest merely on the principle of contemporanea expositio. The two circulars of the Central Board of Direct Taxes to which we have just referred are legally binding on the Revenue and this binding character attaches to the two circulars even if they be found not in accordance with the correct interpretation of subsection (2) and they depart or deviate from such construction. It is now well-settled as a result of two decisions of this Court, one in Navnitlal C. Jhaveri v. RR. Sen(1) and the other in Ellerman Lines Ltd. v. Commissioner of Income-tax, West Bengal(2) that circulars issued by the Central Board of Direct Taxes under section 119 of the Act are binding (n all officers and persons employed in the execution of the Act even if they deviate from the provisions of the Act. The question which arose in Navnitlal C. Jhaveri's case (supra) was in regard to the constitutional validity of sections 2(6A) (e) and 12(1B) which were introduced in the Indian Income Tax Act 1922 by the Finance Act 1955 with effect from 1st April, 1955. These two sections provided that any payment made by a closely held company to its shareholder by a way of advance or loan to the extent to which the company possesses accumulated profits

shall be treated as dividend taxable under the Act and this would include any loan or advance made in any previous year relevant to any assessment year prior to the assessment year 1955-56, if such loan or advance remained outstanding on the first day of the previous year relevant to the assessment year 1955-56. The constitutional validity of these two sections was assailed on the ground that they imposed unreasonable restrictions on the fundamental right of the assessee under Article 19(1) (f) and (g) of the Constitution by taxing outstanding loans or advances of past years as dividend. The Revenue however relied on a circular issued by the Central Board of Revenue under section 5(8) of the Indian Income-tax Act 1922 which corresponded to section 119 of the Present Act and this circular provided that if any such outstanding loans or advances of past years were repaid on or before 30th June 1922, they would not be taken into account in determining the tax liability of the shareholders to whom such loans or advances were given. This circular was clearly contrary to the plain language of section 2(6A)(e) and section 121(B), but even so this Court held that it was binding on the Revenue and since "past transactions which would normally have attracted the stringent provisions of section 12(1B) as it was introduced in 1955, were substantially granted exemption from the operation of the said provisions by making it clear to all the companies and their shareholders that if the past loans were genuinely refunded to the companies they would not be taken into account under section 12(1B)" sections 2(6A) (e) and 12(1B) did not suffer from the vice of unconstitutionality. This decision was followed in Ellerman Lines case (supra) where referring to another circular issued by the Central Board of Revenue under section 5(8) of the Indian Income Tax Act 1922 on which reliance was placed on behalf of the assessee, this Court observed:

"Now, coming to the question as to the effect of instructions issued under section 5(8) of the Act, this J Court observed in Navnit Lal C. Jhaveri v. R. K. Shah Appellate Assistant Commissioner, Bombay.

"It is clear that a circular of the kind which was issued by the Board would be binding on all officers and persons employed in the execution of the Act under section 5(8) of the Act. This circular pointed out to all the officers that it was likely that some of the companies might have advanced loans to their shareholders as a result of genuine trans actions of loans, and the idea was not to affect such transactions and not to bring them within the mischief of the new provision.

The directions given in that circular clearly deviated from the provisions of the Act, yet this Court held that circular was

binding on the Income-tax officers."

The two circulars of the Central Board of Direct Taxes referred to above must therefore be held to be binding on the Revenue in the administration or implementation of sub- section (2) and this sub section must be read as applicable only to cases where there is under-statement of the consideration in respect of the transfer."

6. Referring to the above ratio of the decision, the learned advocate for the petitioners submitted that the interpretation made by the authority in the letter dated 20.12.2019 is contrary to the very object and purpose of the Scheme. It was also submitted that clarification issued by the competent authority dated 20.12.2019 produced along with the Further Affidavit filed on behalf of the respondent nos. 1 to 4 is also required to be quashed and set aside.

7. On the other hand, learned Standing Counsel Mr. Ankit Shah appearing for the respondents submitted that the letter dated 20.12.2019, wherein it is explained that the scheme does not envisage the cases involving confiscation and redemption fine, unless and until the same are paid by the assessee. He also referred to the submissions recorded in the aforesaid order dated 24.12.2019 in para-5 to 5.2 and relied upon the same.

8. Having heard the learned advocates for the respective parties and having gone through the material on record as well as the order dated 24.12.2019 passed by the Coordinate Bench of this Court while admitting the petition, we are of the opinion that, the Coordinate Bench of this Court has done

analysis in detail of the provisions of the Scheme in para 6 to 9 of the order dated 24.12.2019 and has also discussed the frequently asked questions (FAQs) and flyers issued by the Central Board of Indirect Taxes as well as the letter dated 20.12.2019 in para-10 to 12 to form a prima-facie opinion that when the Board has issued FAQs, press notes and flyers stating that the scheme grants waiver of interest, fine and penalty, then the scheme would be relatable to redemption fine also, because there is no other fine which is contemplated under the Act coupled with the fact that Section 125 of the Finance Act, 2019 does not exclude the categories of cases involving confiscation / fine in lieu of confiscation.

9.1. We may once again do analysis of the scheme in detail, so as to arrive at a final conclusion as to whether the Scheme would be applicable to the cases involving confiscation and redemption fine or not.

9.2. The Scheme was introduced by Chapter-V of the Finance Act, 2019 comprising of Sections 120 to 135. Relevant provisions of the Scheme are as under:

Definitions

Section 121. *In this Scheme, unless the context otherwise requires,-*

(a) xxxx

(b) xxxx

(c) "amount in arrears" means the amount of duty which is recoverable as arrears of duty under the indirect tax enactment, on account of –

(i) no appeal having been filed by the declarant against an order or an order in appeal before expiry of the period of time for filing appeal; or

(ii) an order in appeal relating to the declarant attaining finality; or

(iii) *the declarant having filed a return under the*

indirect tax enactment on or before the 30th day of June, 2019, wherein he has admitted a tax liability but not paid it;"

(h) *"declarant" means a person who is eligible to make a declaration and files such declaration under Section 125."*

(n) *"indirect tax enactment" means the enactments specified in Section 122;"*

Application of Scheme to indirect tax enactments

Section 122- This Scheme shall be applicable to the following enactments, namely-

(a) ….

(b) The following acts, namely-

(i)…

(vii) the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957);

(xviii) the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978);

(xxiii) the Finance Act, 2004 (22 of 2004);

(xxiv) the Finance Act, 2007 (17 of 2007);

(xxv) the Finance Act, 2015 (20 of 2015);

(xxvi) the Finance Act, 2016 (28 of 2016);

Tax dues

"123. For the purposes of the Scheme, "tax dues" means-

(a) where-

(i) a single appeal arising out of an order is pending as on the 30th day of June, 2019 before the appellate forum, the total amount of duty which is being disputed in the said appeal;

(ii) more than one appeal arising out of an order, one by the declarant and the other being a departmental appeal which are pending as on the 30th day of June, 2019 before the appellate forum, the sum of the amount of duty which is being disputed by the declarant in his appeal and the amount of duty being disputed in the departmental appeal:

Provided that nothing contained in the above clauses shall be applicable where such an appeal has been heard finally on or before the 30th day of June, 2019."

(b) *Where a show cause notice under any of the indirect tax enactment has been received by the declarant on or before the 30th day of June, 2019, then, the amount of duty stated to be payable by the declarant in the said notice.*

Relief available under the Scheme

124- (1) *Subject to the conditions specified in sub-section (2), the relief available to a declarant under this Scheme shall be calculated as follows:*

(a) *Where the tax dues are relatable to a show cause notice or one or more appeals arising out of such notice which is pending as on the 30th day of June, 2019, and if the*

amount of duty is-

(i) rupees fifty lakhs or less, then, seventy percent of the tax dues;

(ii) more than rupees fifty lakhs, then, fifty percent of the tax dues;"

Declaration under Scheme

125.(1) *All persons shall be eligible to make a declaration under this Scheme except the following, namely:-*

(a) who have filed an appeal before the appellate forum and such appeal has been heard finally on or before the 30th day of June, 2019."

Issue of statement by designated committee

127.(1) *Where the amount estimated to be payable by the declarant, as estimated by the designated committee, equals the amount declared by the declarant, then, the designated committee shall issue in electronic form, a statement, indicating the amount payable by the declarant, within a period of sixty days from the date of receipt of the said declaration.*

(8) On payment of the amount indicated in the statement of the designated committee and production of proof of withdrawal of appeal, wherever applicable, the designated committee shall issue a discharge certificate in electronic form, within thirty days of the said payment and production of proof.

"Issue of discharge certificate to be conclusive of matter and time period.

129 (1) *Every discharge certificate issued under section 126 with respect to the amount payable under this Scheme shall be conclusive as to the matter and time period stated therein, and-*

(a) the declarant shall not be liable to pay any further duty, interest, or penalty with respect to the matter and time period covered in the declaration;

(b) the declarant shall not be liable to be prosecuted under the indirect tax enactment with respect to the matter and time period covered in the declaration;

(c) no matter and time period covered by such declaration shall be reopened in any other proceeding under the indirect tax enactment."

9.3. The Central Board of Indirect Taxes and Customs issued flyers, wherein it is stated as under:

"Benefits under the Scheme

- *Total waiver of interest, penalty and fine*

- *Immunity from prosecution*
- *Cases pending in adjudication or appeal, a relief of 70% from the duty demand if it is Rs.50 Lakh or less and 50% if it is more than Rs.50 Lakh*
- *The same relief for cases under investigation and audit where the duty involved is quantified on or before 30th June, 2019*
- *In case of an amount in arrears, the relief offered is 60% of the confirmed duty amount if the same is Rs.50 Lakh or less and it is 40% in other cases.*
- *In cases of voluntary disclosure, the declarant will have to pay full amount of disclosed duty."*

9.4. The press note dated 22.08.2019 issued by the Ministry of Finance, Government of India, also stated as under:

"The two main components of the Scheme are dispute resolution and amnesty. *The dispute resolution component is aimed at liquidating the legacy cases of Central Excise and Service Tax that are submitted in GST and are pending in litigation at various forums. The amnesty component of the Scheme offers an opportunity to the taxpayers to pay the outstanding tax and be free of any other consequence under the law. The most attractive aspect of the Scheme is that it provides substantial relief in the tax dues for all categories as well as full waiver of interest, fine, penalty. In all these cases, there would be no other liability of interest, fine or penalty. There is also a competent amnesty from prosecution."*

9.5. In view of the above provisions of the Scheme r/w. flyers, FAQs and press note issued by the Board, the intent and purpose of the Scheme appears to reduce litigation by giving a window to the taxpayers to pay the tax and end the litigation. The object of the Scheme was to provide one time measure for putting an end to past disputes of central excise and service tax and to provide the opportunity of voluntary disclosure to non complying taxpayers. Section 121(c) of the Scheme defines the 'amount in arrears' which means the amount of duty which is recoverable as arrears of duty under the indirect tax

enactment, on account of adjudication by the competent authority or on account of admitted tax liability but not paid. Section 121 (h) of the Scheme provides that 'declarant' means a person who is eligible to make a declaration and files such declaration under Section 125.

9.6. Section 121(i) of the Scheme provides that 'declaration' means the declaration filed under Section 125. Section 122 of the Scheme provides the list of all indirect tax enactments to which the Scheme applies, whereas, Section 123 provides as to what would comprise of tax dues. More particularly, Section 123(b) provides that, where a show cause notice under any of the indirect tax enactment has been received by the declarant on or before the 30th day of June, 2019, then, the amount of duty stated to be payable by the declarant in the said notice would be tax dues. Section 124 provides for relief available under the Scheme with regard to payment of tax dues to the effect that where the tax dues are relatable to a show cause notice or one or more appeals arising out of such notice which is pending as on the 30th day of June, 2019, and if the amount of duty is rupees fifty lakhs or less, then, seventy percent of the tax dues would be waived and if the amount of duty is more than rupees fifty lakhs, then fifty percent of the tax dues would be waived subject to the conditions specified in sub-section (2) which prescribes for pre-deposit for taking into consideration the pre-deposit made by the taxpayers.

9.7. Section 125 of the Scheme provides for 'declaration under

scheme' and excludes certain categories of persons who are not eligible to make a declaration under the Scheme as per clauses-(a) to (h). On perusal of the clauses-(a) to (h) of sub-section 1 of Section 125 does not include the case involving confiscation / redemption fine. Thus, the show cause notice issued with regard to the confiscation / redemption fine under Section 34 of the Central Excise Act, 1944 would make such person eligible to file a declaration under the Scheme. Such persons cannot be not considered as ineligible under clauses (a) to (h) of sub-section 1 of Section 125 of the Scheme. The designated committee appointed under the Scheme has to verify the declaration made by the declarant under Section 125 of the Scheme and issue a statement under Section 127 of the Scheme stating that the amount estimated to be payable by the declarant, as estimated by the designated committee, equals the amount declared by the declarant. However, in the facts of the present case, the designated committee has rejected the declaration itself on the ground that the Scheme does not apply to the cases involving confiscation / redemption fine.

9.8. Section 129 (1) of the Scheme provides for issue of discharge certificate under Section 126 with respect to the amount payable under this Scheme shall be conclusive as to the matter and time period stated therein and provides immunity to the declarant from payment of any further duty, penalty or interest and prosecution and reopening of the matter in any other proceedings under the indirect tax

enactments. Clause (a) of sub-section 1 of Section 129 of the Scheme though provides that the declarant shall not be liable to pay any further duty, interest, or penalty, it does not expressly provide that the declarant shall not be liable to pay fine / redemption fine, and therefore, the controversy has arisen, as in the present proceedings, as to whether the Scheme is applicable to the cases involving confiscation / redemption fine or not.

9.9. Though, there is no express provision in the Scheme with regard to providing immunity from payment of fine, the respondent authorities have specifically stated in FAQs, press notes and flyers that the Scheme provides for full waiver of interest, fine and penalty. In the facts of the case, there in no other fine which is envisaged under the indirect tax enactment. At this juncture, the contention raised on behalf of the respondents that the fine would mean the fine to be levied by the competent Court under Section 9 of the Central Excise Act and not fine as referred to be the redemption fine under Section 34 of the Act cannot be accepted considering overall intent and object of the Scheme, and we therefore, concur with the prima-facie opinion of the Coordinate Bench expressed in para-10 of the order dated 24.12.2019 which reads thus:

"10. Thus, in terms of the FAQs, press notes and flyers issued by the Board, the Scheme provides substantial relief in the tax dues for all categories of cases as well as full waiver of interest, fine and penalty. Thus, having regard to the fact that: (i) section 125 of the Finance Act says that all persons shall be eligible to make declaration under the Scheme except for the categories specifically enumerated therein; and (ii) under section 125 of the Finance Act, cases involving confiscation and fine in lieu of confiscation (redemption fine) are not excluded from the benefit of the Scheme,

and (iii) according to the Board, the Scheme provides relief in tax dues for all categories of cases; prima facie it appears that the legislature did not have the intention of excluding cases involving confiscation and fine in lieu of confiscation from the purview of the Scheme."

9.10. With regard to the clarification issued by the respondent Board in communication dated 20.12.2019 is also contrary to the intent and object of the Scheme which is discussed at length in para-11 and 12 of the order dated 24.12.2019 passed by the Coordinate Bench of this Court, and we therefore concur on such prima-facie opinion. Para-11 and 12 of the order dated 24.12.2019 read thus:

"11. It may be further noted that in the communication dated 20th December, 2019 of the Board, the contents whereof have been reproduced hereinabove, it has been stated that when a person gets immunity from prosecution, he also gets waiver of such fine for the offences under section 9 of the Central Excise Act, 1944. Thus, it is not the case of the Board that the Scheme does not provide for waiver of fine, but only that it does not provide for waiver of redemption fine. Testing the explanation put forth by the Board in the context of the relevant statutory provisions, section 9 of the Central Excise Act, 1944 specifies the categories of offences and the punishment thereunder, which may be punishable with imprisonment and fine or imprisonment or fine. Thus, the question of imposing fine arises only upon conviction for an offence specified in section 9 of the Central Excise Act. However, clause (b) of section 125 of the Finance Act, clearly excludes persons who have been convicted for any offence punishable under any provision of the indirect tax enactment for the matter for which he intends to file declaration. As a necessary corollary therefore, it follows that the legislature would not have contemplated waiver of fine under section 9 of the Central Excise Act, 1944. The only other fine envisaged under the Central Excise Act, 1944 is fine in lieu of

confiscation/redemption fine. Under the circumstances, when the Board has issued FAQs, press notes and flyers stating that the Scheme grants waiver of interest, penalty and fine, it appears that the same would be relatable to redemption fine, inasmuch as, it is the only other fine contemplated under the Act. Besides, as noticed earlier, persons whose cases involve confiscation/ fine in lieu of confiscation are not placed in the categories of persons enumerated in section 125 of the Finance Act, who are not eligible to file declarations thereunder.

12. By the communication dated 20th December, 2019, the Board has stated that in case where redemption fine has been imposed and quantified, the discharge certificate can be issued only after settlement of redemption fine, namely payment of redemption fine. Therefore, it is not the case of the Board that declarations involving redemption fine cannot be accepted. This court, however, is prima facie of the view that the stand of the Board that in case where redemption fine is imposed and quantified, discharge certificate can only be issued after settlement of redemption fine, is not in consonance with the Scheme which contemplates putting an end to the matter. "

10. In view of the above facts and situation, when the respondents had issued show cause notice demanding excise duty together with confiscation of the goods in terms of Rule 25 (a) and (d) of the Central Excise Rules, 2002 and redemption fine in lieu of confiscation under Rule-25 as goods were not available for confiscation, it is clear that by issuing the show cause notice , the respondent has invoked Rule-25 of the Central Excise Rules, 2002 for levy of redemption fine in lieu of confiscation as goods which were sought to be confiscated were not available for confiscation. Therefore, the levy of the redemption fine equivalent to demand of central

excise duty under Rule-25 of the Central Excise Rules, 2002 would be an amount in arrears as defined in Section 121 (c) of the Scheme along with the amount of duty which is recoverable as arrears of duty under indirect tax enactment. Therefore, the test which is required to be applied to ascertain what is the amount in arrears as per the Scheme, it would include both the amount of duty as well as amount of redemption fine which is required to be recovered from the taxpayers. The amount of redemption fine cannot be treated separately then the amount of the duty under the Scheme. Therefore, the interpretation made by the Board in the communication dated 20.12.2019 in order to consider the declaration made by the declarant, the payment of redemption fine is prerequisite, is not tenable in law, because as per Section 125 of the Scheme a declarant cannot be made ineligible to file a declaration for non-payment of redemption fine. Moreover, the declarant is required to include redemption fine as part of the duty demanded, so as to calculate the amount in arrears as per Section 121 (c) of the Scheme.

11. The Supreme Court in the case of ***K.P. Varghese*** (supra) has laid down that the Rule of construction by reference to the principle of *'contemporanea exposition est optima et fortissima in lege'* which is a well established rule for interpreting a statute by reference to the exposition it has received from contemporary authority, though it must give way where the language of the statute is plain and unambiguous. Therefore, when the Central Board of Indirect Taxes has issued FAQs, press notes and flyers by way of

explaining the scheme providing waiver of interest, penalty and fine and immunity from prosecution, then case involving confiscation / redemption fine cannot be excluded under the Scheme, as such explanation by the Board provides legitimate aid in the constructions and interpretations of the provision of the Scheme.

12. In view of the foregoing reasons, the petition succeeds and is accordingly allowed. The declaration filed by the petitioners and other similarly situated persons are required to be considered by the designated committee without payment of redemption fine by the declarant. The impugned orders passed by the designated committee are therefore quashed and set aside. As observed by the Coordinate Bench of this court, the order passed in this petition would also apply to the similarly situated declarants who have not approached this Court, in order to reduce the multiplicity of proceedings. Accordingly, this order would apply to the cases of all the declarants involving confiscation / redemption fine. In such circumstances, the respondent authorities are directed to issue necessary discharge certificate under Section 129 of the Finance Act, 2019 to the petitioners subject to fulfillment of all other conditions as per the Scheme. Rule is made absolute to the aforesaid extent, with no order as to costs.

(J. B. PARDIWALA, J)

(BHARGAV D. KARIA, J)

Pradhyuman