(2005) 07 GUJ CK 0092

In the Gujarat High Court

Case No : Special Civil Application No. 735 of 1999

Messrs Nitdip Textile Processors Pvt. Ltd. and Another APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 25-07-2005

Acts Referred:

Central Excise Rules, 1944 — Rule 8(1)
Constitution of India, 1950 — Article 14
Finance Act, 1998 — Section 86, 87, 88, 89, 90(1)
Income Tax Act, 1961 — Section 132, 132A

Citation : (2005) 07 GUJ CK 0092

Hon'ble Judges : G.S. Singhvi, J;Anant S. Dave, J

Bench : Division Bench

Advocate : Paresh M. Dave and Uday Joshi, for the Appellant; J.S. Yadav and Purvish Malkan, for the Respondent

Final Decision : Allowed

Judgement

G.S. Singhvi, J.—In these petitions, the petitioners have prayed for striking down the words ''Son or before 31st day of March, 1998'' occurring in Section 87(m)(ii)(b) of the Finance Act, 1998 (for short ''the 1998 Act''). They have further prayed for issuance of a direction to respondent No. 2 to give them benefit of Kar Vivad Samadhan Scheme, 1998 (for short ''the Scheme'') in respect of tax arrears under the indirect tax enactments for which show cause notices or demand notices were issued after 31.3.1998. In some of the petitions, the petitioners have also prayed for quashing the orders vide which the competent authority rejected the declaration filed u/s 88 of the 1998 Act.

2. The factual matrix of the case lie in a narrow compass. The petitioners are engaged in different business activities and are paying duties and taxes under various statutes. Each of the petitioner received show cause notice issued by the competent authority after 31.3.1998 for recovery of the arrears of duties/taxes which became due on or before 31.3.1998. Each of them applied for availing benefit under the Scheme introduced by the 1998 Act, but the concerned

authority either refused to accept the declaration or rejected the same on the ground that their cases are not covered by the definition of the expression ''Stax arrear'' appearing in Section 87 (m)(ii)(b) of the 1998 Act.

3. The petitioners have challenged the aforementioned provision mainly on the ground of discrimination. They have averred that the distinction made by the Legislature between the assessees of direct and indirect taxes is wholly irrational, arbitrary and violative of the doctrine of equality enshrined in Article 14 of the Constitution of India. The case of the petitioners is that all the assessees of direct as well as indirect taxes who were liable to pay tax, duties etc. as on 31.3.1998 constitute one class and they cannot be classified into two groups for the purpose of grant of benefit under the Scheme. They have relied on the memorandum contained in the Bill introduced in the Parliament which led to the enactment of the 1998 Act and the speech of the Finance Minister to show that object of the Scheme is to reduce the pending litigation and recover the arrears of taxes and duties etc. and pleaded that denial of benefit under the Scheme to them only on the ground that show cause notices were issued after 31.3.1998 not only defeats the purpose of legislation, but also results in violation of their fundamental right to equality.

4. The stand taken by the respondents is that the assessees of direct taxes constitute a distinct class vis-a-vis the assessees of indirect taxes and those belonging to the latter category cannot complain of discrimination simply because some of them are not eligible to claim benefit under the Scheme. It is the case of the respondents that the Scheme is applicable only to those assessees of indirect tax upon whom a demand notices or show cause notices were issued on or before 31.3.1998, and those to whom such notices have been issued after that date cannot plead breach of equality clause. In paragraphs 17 to 21 of the counter affidavit filed by Shri K.C. Mamgain, Commissioner of Central Excise, Ahmedabad in Special Civil Application No. 735 of 1999, the following justification has been offered for differentiating the assessees of indirect taxes:

17. I say that the scheme is neither discriminatory nor violative of fundamental rights. The Scheme seeks to address the twin problem of large number of tax disputes and mounting tax arrears defying realisation. I say that the scheme is open to such assessees who have disputes pending as well as tax arrears linked to those disputes. I say that this is well defined category and a reasonable classification tailored to achieve the twin objectives of this scheme.

18. I say that the Government has carved out the classification of assessees which is founded on an intelligible differentia which distinguishes those that are grouped together from others and that differentia has a rational relation to the object sought to be achieved by the Act, namely to reduce litigation and earn revenue for the Government.

19. I say that article 14 does not forbid reasonable classification of persons,

objects and transactions by the legislature for the purpose of attaining specific ends. I say that the classification is based on some real and substantial distinction bearing a just and reasonable relation to the object sought to be achieved by the legislature.

20. I further say that the legislature understands and correctly appreciates the needs of its own people, its law are directed to problems made manifest by experience and its discrimination are based on adequate grounds. I say that while framing the scheme, the Government has taken into consideration matters of common knowledge, matters of common report, the history of the times and has also assumed every state of facts which can be conceived existing at the time of legislation.

21. I further say that there is another rule of equal importance in that laws relating to economic activities should be viewed with greater latitude that laws touching civil rights such as freedom of speech, religion etc. I say that the legislature should be allowed some play in the joints because it has to deal with complex problems which do not admit of solution through any doctrinaire or straight-jacket formula and this is particularly true in case of legislation dealing with economic matters, where having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the legislature.

5. Learned Counsel for the petitioners argued that by restricting the benefit of the Scheme only to those assessees of indirect taxes to whom notices were issued before 31.3.1998, the respondents have introduced an artificial classification among otherwise similarly situated persons and, therefore, Section 87(m)(ii)(b) is liable to be declared as violative of Article 14 and struck down. Shri Dave strongly relied on the judgments of the Supreme Court in Government of India, represented by Secretary, Ministry of Finance and Others Vs. Dhanalakshmi Paper and Board Mills, Tiruchirapalli, and of the Delhi High Court in All India Federation of Tax Practitioners Vs. Union of India and Others, and argued that the distinctions sought to be made between the assessees to whom notices were issued before 31.3.1998 and to whom notices were issued after that date is wholly irrational and has no nexus with the purpose of the legislation. Learned counsel pointed out that in terms of Section 88(1), the declaration could be filed between 1.9.1998 and 31.1.1999 and argued that there can be no justification to deny the benefit of Scheme to those who may be in arrears of tax as on 31.3.1998, but to whom notices may have been issued after that date. Another argument of the learned counsel is that the cut-off date specified in Section 87(m)(ii)(b) is wholly arbitrary and illogical and the same is liable to be declared as unconstitutional because it defeats the very purpose of legislation, namely to reduce the arrears of litigation and recovery of taxes.

6. Learned counsel for the respondents argued that the petitioners to whom show cause notices were issued after 31.3.1998 in respect of the duties and taxes due as on 31.3.1998 cannot complain of discrimination because the two

groups of assessees constitute different classes. They emphasised that even though the object of the Scheme is to reduce the litigation and recover the arrears of taxes, it cannot be treated as anything except a concession given by the Government and in such matters the plea of discrimination is not available. Shri Malkan submitted that the Courts have always recognized the power of the legislature to make laws for one group of persons leaving out some others who may have apparent similarity with those covered by the legislation and the petitioners whose cases do not fall in the ambit of Section 87(m) cannot complain of discrimination or seek a mandamus for grant of benefit under the Scheme. He relied on the judgment of the Supreme Court in Union of India (UOI) Vs. Charak Pharmaceuticals (India) Ltd., and argued that the petitioners who do not fulfil the condition of eligibility contained in the Scheme cannot claim that they should be allowed to file declaration for availing benefit under the Scheme.

7. We have thoughtfully considered the respective arguments. Sections 86, 87(h), (j) and (m) and extracts of Section 88 of the Act which have bearing on the decision of these Special Civil Applications read as under:

SSec. 86 Short title and commencement. - (1) This Scheme may be called the Kar Vivad Samadhan Scheme, 1998.

(2) It shall come into force on the 1st day of September, 1998.

Sec. 87. Definitions.- In this Scheme, unless the context otherwise requires, -

(a)xxx

(b)xxx

(h) ''Sdirect tax enactment'' means the Wealth-tax Act, 1957 (27 of 1957) or the Gift-tax Act, 1958 (18 of 1958) or the income tax Act, 1961 (43 of 1961) or the Interest-tax Act, 1974 (45 of 1974) or the Expenditure-tax Act, 1987 (35 of 1987);

(j) ''Sindirect tax enactment'' means the Customs Act, 1962 (52 of 1962) or the Central Excise act, 1944 (1 of 1944) or the Customs Tariff Act, 1975 (51 of 1975) or the Central Excise Tariff Act, 1985 (5 of 1986) or the relevant Act and includes the rules or regulations made under such enactment;

(m) ''Stax arrear'' means,

(i) in relation to direct tax enactment, the amount of tax, penalty or interest determined on or before the 31st day of March, 1998 under that enactment in respect of an assessment year as modified consequence of giving effect to an appellate order but remaining unpaid on the date of declaration;

(ii) in relation to indirect tax enactment,

(a) the amount of duties (including drawback of duty, credit of duty or any amount representing duty), cesses, interest, fine or penalty determined as due or payable under that enactment as on the 31st day of March, 1998 but remaining unpaid as on the date of making a declaration u/s 88; or

(b) the amount of duties (including drawback of duty, credit of duty or any amount representing duty), cesses, interest, fine or penalty which constitutes the subject matter of a demand notice or a show cause notice issued on or before the 31st day of March, 1998 under that enactment but remaining unpaid on the date of making a declaration u/s 88,

but does not include any demand relating to erroneous refund and where a show cause notice is issued to the declarant in respect of seizure of goods and demand of duties, the tax arrear shall not include the duties on such seized goods where such duties on the seized goods have not been quantified.

8. Explanation. - Where a declarant has already paid either voluntarily or under protest, any amount of duties, cesses, interest, fine or penalty specified in this sub-clause, on or before the date of making a declaration by him u/s 88 which includes any deposit made by him pending any appeal or in pursuance of a court order in relation to such duties, cesses, interest, fine or penalty, such payment shall not be deemed to be the amount unpaid for the purposes of determining tax arrear under this sub-clause;

9. Sec. 88. Settlement of tax payable.-- Subject to the provisions of this Scheme, where any person makes, on or after the 1st day of September, 1998, but on or before the 31st day of December, 1998, a declaration to the designated authority in accordance with the provisions of Section 89 in respect of tax arrear, then, notwithstanding anything contained in any direct tax enactment or indirect tax enactment or any other provision of any law for the time being in force, the amount payable under this Scheme by the declarant shall be determined at the rates specified hereunder, namely:

(a) where the tax arrear is payable under the income tax Act, 1961 (43 of 1961),

(i) in the case of a declarant, being a company or a firm, at the rate of thirty-five percent of the disputed income;

(ii) in the case of a declarant, being a person other than a company or a firm, at the rate of thirty per cent of the disputed income;

(iii) in the case where tax arrear includes income tax, interest payable or penalty levied, at the rate of thirty-five percent of the disputed income for the persons referred to in clause (i) or thirty per cent of the disputed income for the person referred to in clause (ii);

(iv) in the case where tax arrear comprises only interest payable or penalty levied, at the rate of fifty per cent of the tax arrear;

(v) where the tax arrear includes the tax, interest or penalty determined in any assessment on the basis of search and seizure proceedings u/s 132 or Section 132A of the income tax Act, 1961 (43 of 1961),

(A) in the case of declarant, being a company or a firm, at the rate of forty-five percent of the disputed income;

(B) in the case of a declarant, being a person other than a company or a firm, at the rate of forty per cent of the disputed income;

10. By an Ordinance promulgated on 31.12.1998, the Government extended the last date for filing declaration up to 31.1.1999. As a result of this declaration in terms of Section 88 could be filed on or before 31.1.1999.

11. Article 14 of the Constitution declares that the State shall not deny to any person equality before the law or equal protection of the laws within the territory of India. This Article embodies the doctrine of equality and ensures to every citizen equality before law and equal protection of the laws. In abstract, the doctrine of equality may suggest that all the laws made by the State, its agencies and instrumentalities should be applied equally to all persons but by the process of judicial interpretation, the Courts have given real meaning and content to this doctrine and it must be treated as settled law that Constitutional Code of equality and equal opportunity does not mean that the same laws must be applied to all persons alike. Rather, it recognises that having regard to difference and disparities which exist among man and thing, they cannot all be treated alike by application of the same laws. The Courts have also evolved a subsidiary doctrine called the doctrine of reasonable classification for the purpose of upholding the legislative instrument and even administrative/executive policy decisions. The doctrine of classification recognises that the legislature may classify for the purpose of legislation but requires that the classification must be reasonable. It should ensure that persons or things similarly situated are similarly treated. A reasonable classification is one which includes all persons or things similarly situated with respect to the purpose of law. In other words, there should be no discrimination between one person or thing and another if having regard to the subject matter of the legislation their position is substantially the same. The test which has been evolved by the Courts for the purpose of judging the constitutionality of a legislation is that classification must be founded on an intelligible differentia which distinguishes certain persons or things that are grouped together from others and that differentia must have a rational relation to the object sought to be achieved by the legislation.

12. In The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others, , Chandrachud, J. (as his lordship then was) observed:

The fundamental guarantee is of equal protection of the laws and the doctrine of classification is only a subsidiary rule evolved by courts to give a practical content to that guarantee by accommodating it with the practical needs of the society and it should not be allowed to submerge and drown the precious guarantee of equality. The doctrine of classification should not be carried to a point where instead of being a useful servant, it becomes a dangerous master, for otherwise. The guarantee of equality will be submerged in class legislation masquerading as laws meant to govern well-marked classes characterised by different and distinct attainments. Overemphasis on the doctrine of classification or an anxious and sustained attempt to discover some basis for classification may gradually and imperceptibly deprive the guarantee of equality of its spacious content. That process would inevitably end in substituting the doctrine of classification for the doctrine of equality: the fundamental right to equality before the law and equal protection of the laws may be replaced by the overworked methodology of classification.

13. In the same judgment V.R. Krishna Iyer J. sounded the following note of caution:

Mini-classifications based on micro-distinctions are false to our egalitarian faith and and only substantial and straightforward classifications plainly promoting relevant goals can have constitutional validity. To overdo classification is to undo equality.

14. In the light of the above, we shall now consider whether definition of ''tax arrear'' contained in Section 87(m)(ii)(b) is arbitrary, irrational or violative of the doctrine of equality enshrined under Article 14 of the Constitution and whether the petitioners are entitled to avail benefit under the Scheme. A reading of the speech made by the Finance Minister and the objects set out in Memorandum to Finance (No. 2) Bill, 1998 shows that the Scheme was introduced with a view to ensure quick and voluntary settlement of tax dues outstanding as on 31.3.1998 under various direct as well as indirect tax enactments by offering waiver of a part of the arrears of taxes and interest and providing immunity against prosecution and imposing of penalty. The definition of `tax arrear'' contained in Section 87(m)(i) in the context of direct tax enactment also shows that the legislation was intended to give benefit of the Scheme to the assessee who were in arrears of tax as on 31.3.1998. The use of the words as on 31st day of March, 1998'' in Section 87(m)(ii) also shows that even in relation to indirect tax enactments, the benefit of the scheme was intended to be given to those against whom the amount of duties, cess, interest, fine or penalty were due or payable upto 31.3.1998. Viewed in this context it is quite illogical to exclude the persons like the petitioners from whom the amount of duties, cess, interest, fine, penalty etc. were due as on 31.3.1998 but to whom demand notices were issued after 31.3.1998. In our opinion, the distinction made between those who were in arrears of indirect taxes as on 31.3.1998 only on the basis of date of issuance of notice is wholly arbitrary and irrational. The classification sought to be made between those to whom demand notices or show cause notices may have been issued on or before 31st day of March, 1998 and those to whom such notices were issued after 31.3.1998 is per-se unreasonable and has no nexus with the purpose of legislation, namely to provide a quick and voluntary settlement of tax dues outstanding as on 31.3.1998.

15. The irrationality of the classification becomes more pronounced when the issue is examined in the backdrop of the fact that the scheme was made

applicable with effect from 1.9.1998, and in terms of Section 88 (amended) a declaration was required to be filed on or after 1st day of September, 1998 but on or before 31.1.1999. In our opinion, all persons who were in arrears of direct or indirect taxes as on 31.3.1998 constituted one class and no discrimination could have been made among them by introducing an artificial classification with reference to the date of demand notice or show cause notice. All of them should have been treated equally and made eligible for availing benefit under the Scheme subject to compliance of conditions contained in other provisions of the Scheme.

16. In Government of India and ors. Vs. Dhanalakshmi Paper and Board Mills (supra), the Supreme Court considered a somewhat similar question in the context of challenge to the cut-off date specified in Notification No. 35/64-C.E dated 1.3.1964 whereby benefit of concessional rate of duty was restricted to certain categories of assessees. The facts of that case were that the respondent decided to set-up a factory for the manufacture of paper and paper board and allied products. For this purpose it obtained lease of certain premises in June, 1963 and raised construction. Thereafter it obtained the necessary licence on 6.5.1964 and started production. The respondent claimed that duty in respect of the paper boards manufactured in the factory during the period from 7.5.1964 to June 1996 was payable at the concessional rate in terms of Notification dated 1st March, 1964 issued by the Government of India under rule 8(1) of the Central Excise Rules, 1944. The concerned authority denied the appellant''s claim on the ground that the factory did not come into existence on or before 9th day of November, 1963, the date mentioned in sub-clause (a) of Clause 3 appearing below Table 2 of the Notification. The respondent successfully invoked the jurisdiction of the High Court which struck down the cut-off date i.e. 9.11.1963 specified in the Notification. The appellant relied on the judgements of the Supreme Court in Union of India (UOI) and Another Vs. Parameswaran Match Works and Others, , Jagdish Pandey Vs. The Chancellor, University of Bihar and another (1968) 1 SCR 237, Uttar Pradesh Mahavidyalaya Tadarth Shikshak Niyamitikaran Abhiyan Samiti, Varanasi Vs. State of U.P. and Others, and Dr (Mrs) Sushma Sharma and Others Vs. State of Rajasthan and Others, and argued that the choice of date was beyond the pale of challenge. While rejecting the argument of the appellant, the Supreme Court observed:

In the present case also benefit of concessional rate was bestowed upon the entire group of assessees referred therein and by Clause (a) of Proviso (3) the group was divided into two classes without adopting any differentia having a rational relation to the object of the Notification, and the benefit to one class was withdrawn while retaining it in favour of the other. It must, therefore, be held that the impugned Clause (a) of the Proviso 3 of the Notification in question ultra vires and the benefit allowed by the notification is available to the entire group including the respondent.

17. In All India Federation of Tax Practitioners Vs. Union of India (supra), a

Division Bench of Delhi High Court struck down proviso to Section 92 of the Act and read down the distinction of tax arrears in Clause (m) of Section 87. The petitioner had challenged the entire scheme on the ground of violation of Article 14 and also on the ground that the same is ultra vires to the legislative power of the Union. It was argued that the scheme seeks to discriminate between an honest and dishonest assessee. The High Court partially upheld the challenge and declared proviso to Section 92 ultra-vires to Article 14. Paragraphs 22 to 26 of that judgement which contain discussion on this topic are extracted below:

22. The validity of classification has to be decided and judged in the light of the object sought to be achieved. The objective is two fold. While judging the validity of the classification we have to keep both the limbs of the object in view. The learned ASG has very rightly pointed out that allowing the benefit of the scheme to such litigating assessees from whom the Revenue has succeeded in effecting recovery even by adopting coercive methods or by making adjustments would have been destructive of the very objective sought to be achieved. It is immaterial whether the tax was paid voluntarily by the assessee or realised involuntarily by the Department resorting to coercive means of recovery or by making adjustment; the fact remains that the assessee ceases to be in arrears. By giving benefit of the scheme to such class of assessees the Revenue does not stand to gain anything rather it stand to lose inasmuch as what has been realised shall have to be refunded. In our opinion, the basis of classification adopted by the scheme to this extent is guided by the objective sought to be achieved by the legislation and therefore cannot be held to be arbitrary or unreasonable.

Whether the classification between the assessee litigating as appellant/petitioner and the assessee litigating as respondents was in defence can be said to be arbitrary or unreal''

23. To test the submission so made we would immediately give an example.

23.1 There are two assessees A and B identically situated in all respects in the matter of nature of income quantum of taxable income and the category of tax but they are situated at two different places, say X and Y respectively. Two assessing officers finalising their assessments at X and Y find their incomes and taxable incomes identical and levy an identical amount of tax on the two. Both file appeals before the Commissioner (Appeals). The legal plea raised by A before the Commissioner at X find favour with him and the appeal is allowed. The Commissioner at Y does not agree with the same plea raised by B as an appellant and dismisses the appeal. B prefers his appeal before the Income Tax Appellate Tribunal. In the case of A the Department comes up in appeal to the Tribunal. The appeals are pending on the date of coming into force of the Scheme.

23.2 The Tribunal would take the same view on the legal issue arising for decision in the two appeals and therefore the decision would be the same in both the appeals. B is covered by the scheme and may take benefit thereof where after his appeal shall not be decided by the Tribunal. A cannot take the benefit of the Scheme for he will not be treated as in arrears. The appeal preferred by the department shall be heard and decided on merits on account of proviso enacted to Section 92.

23.3 A and B both are litigating assessees. Both are in arrears of tax. From none of the two the Revenue has realised the amount of tax. The case of the two are ought to be distinguished solely by applying the distinguishing feature of who is the appellant. Here the distinction between the two becomes unreal and artificial and in any case arbitrary. In our opinion, both the cases should have been covered by the Scheme. In both the cases the legislature would achieve the twin object the litigation would come to an end and the arrears of tax will be realised in the same quantity from the two assessees. In fact, the Revenue should show more inclination in favour of the assessee A who in spite of having succeeded at one stage of the litigation is still prepared to give up his fight though by way of defence and is prepared to accept his liability to pay the tax which was quantified at one stage.

24. The learned ASG submitted that even here the distinction is well defined and intelligible. As against B, his having lost in the tax litigation, the amount of tax levied on income would be treated to be in arrears by the Revenue so long as it is not realised. In the case of A, his having succeeded in appeal before the Commissioner, the tax ceases to be in arrears and it would assume the character of arrears only on the appeal by the Tribunal being decided favourably to the Revenue. Therefore, where the department is the appellant, an assessee though litigating cannot be treated to be in arrears. We find it difficult to agree.

25. The abovesaid submission puts a narrow and too rigid a meaning on ''arrears'' which does not fit in the context. The term ''arrear'' means an amount or quantity which still needs to be paid. It refers to money that is owed. Wharton''s Law Lexicon (Fourteenth Edition) defines ''arrears'' to mean - '' Smoney unpaid at the due time; as sent behind;.... money in the hands of an accounting party''. It is true that ''tax arrears'' has been defined as the amount of tax, penalty or interest ''determined'' on or before 31.3.1998 under Clause (m) of Section 87. Still it cannot be denied in the illustration given herein above that at one point of time the tax was determined though such determination was reversed in appeal by the Commissioner (Appeals). The determination is sought to be restored in the appeal preferred by the Department before the Tribunal. Once the appeal is allowed, the determination would relate back to the date of original the same. Under the scheme of Income Tax Act, it is well known that a determination of liability to pay tax does not necessarily call for an order of adjudication. Take the cases of self assessment, payment of advance tax, deduction of tax at source and so on. Several provisions prescribe for penalty or interest which liability is incurred automatically and by operation of law even when an order of adjudication has not been made though there may be need for quantification which may be a mathematical exercise merely. The provision of

Section 90(1) throws light on this aspect. On declaration being made, the designated authority shall determine the amount payable by the declarant. The previous determination: which is sought to be restored in appeal by Department may be finalised by the designated authority.

26. In our opinion, no sub-classification can therefore, be made in the class of litigating assessees in arrears merely by reference to the fact whether they are prosecuting the litigation or defending themselves. In our opinion, once a liability to pay the tax was incurred and determined on or before 31.3.1998, the assessee would be treated to be in arrears inspite of his having succeeded at one stage of litigation if the Revenue has chosen to continue with litigation and there is no reason why the benefit of the Scheme should be denied to him. To this extent, the scheme is discriminatory and violative of Article 14 of the Constitution. All the assessees litigating and in arrears belong to one class. Any attempt at carrying out further classes by reference to who is the prosecutor/ appellant/applicant in the pending litigating is void as based on no intelligible differentia. It is arbitrary irrational and evasive. It will have no rational relation to the object sought to be achieved by the Act. The twin test laid down in R.K. Garg''s case would fail. On the other hand keeping them in one class would enable the twin objective of legislation being achieved ''(i) the reduction of litigation, and (ii) the realisation of revenue.

18. Before concluding we deem it proper to mention that the judgment of the Supreme Court in Union of India Vs. Charak Pharmaceuticals (supra) on which learned counsel for the respondents had heavily relied has no bearing on the decision of the issue raised in these petitions because in that case the Supreme Court was not called upon to decide the constitutionality of Section 87(m)(ii)(b) of the Act.

19. On the basis of above discussion we hold that Section 87(m)(ii)(b) is violative of Article 14 in so far as it seeks to deny the benefit of the Scheme to those who were in arrears of duties etc. as on 31.3.1998 but to whom notices were issued after 31.3.1998. However, we do not consider it necessary to strike down clause (h) and Section 87(m) (ii) and feel that ends of justice would be met by striking down the words ''on or before 31st day of March, 1998'' occurring in the said clause with a direction to the competent authority to entertain the declaration forms submitted by the petitioners and pass appropriate orders in accordance with law. In those cases where the declarations have been rejected, the competent authority shall review the impugned orders and pass fresh orders after considering the claim made by the petitioners on merits.

20. In the result, the Special Civil Applications are allowed. The words ''on or before 31st day of March, 1998'' occurring in Section 87(m)(ii)(b) of the Act are declared unconstitutional and struck down. The competent authority shall now entertain and decide the declarations made by the petitioners for availing benefit in terms of the scheme. The order passed by the competent authority in Special Civil Application No. 5692/99 and communications issued by the competent

authority in Special Civil Application Nos. 609/99, 1879/99 and 1988/99 are declared illegal and quashed with the direction that the claim made by the petitioners for grant of benefit under the Scheme shall be decided afresh.

21. A copy of this order be placed in each matter.

