(2000) 11 GUJ CK 0054

In the Gujarat High Court

Case No : Special Civil Application No''s. 4326, 5549, 5551 and 5554 to 5561 of 1999

Omkar S. Kanwar APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 14-11-2000

Acts Referred:
Constitution of India, 1950 — Article 14
Finance Act, 1998 — Section 87, 97, 97(1)

Citation : (2002) 254 ITR 337

Hon'ble Judges : D.M. Dharmadhikari, C.J;Anil R. Dave, J

Bench : Division Bench

Advocate : E. Hidayatullah, P.K. Ram and Vikram Nankani, for Trivedia and Gupta, for the Appellant; Mukesh R. Shah, for the Respondent

Final Decision : Dismissed

Judgement

D.M. Dharmadhikari, C.J.—The petitioners in this group of matters are all top executive officers working in different units of the company, Apollo Tyres Ltd. By these petitions under article 226 of the Constitution of India, a prayer is made to read down or interpret in favour of the petitioners the provisions of para. 2 of the Kar Vivad Samadhan Scheme (Removal of Difficulties) Order, 1998 issued by the Central Government in exercise of powers conferred by Section 97(1) of the Finance (No. 2) Act, 1998, promulgating Kar Vivad Samadhan Scheme, 1998 (hereinafter referred to as "KVS Scheme" and as the "order of 1998" issued thereunder).

2. The alternative prayer made by the petitioners is for declaring the impugned para. 2 of the Order of 1998, dated December 8, 1998, to be discriminatory and ultra vires article 14 of the Constitution of India.

3. The occasion to challenge the Order of 1998 issued under the Kar Vivad Samadhan Scheme arose on the following legal and factual developments.

4. The company Apollo Tyres Ltd. was assessed to duty, cess and penalties on various excisable articles under the provisions of the Central Excise Act of 1944.

5. The petitioners in the present group of cases as executives and managers were also proceeded against for imposition of penalty under the Central Excise Act and Rules 173(q) and 209A of the Central Excise Rules. The objectives of promulgating the KVS Scheme by the Finance (No. 2) Act of 1998, are contained in the Finance Minister''s Budget Speech of 1998, which is as under (see [1998] 231 ITR 67) :

"Litigation has been the bane of both direct and indirect taxes. A lot of energy of the Revenue Department is being frittered away in pursuing a large number of litigations pending at different levels for long periods of time. Considerable revenue also gets locked up in such disputes. Declogging the system will not only incentivise honest taxpayers, enable Government to realise its reasonable dues much earlier but coupled with administrative measures, would also make the system more user-friendly. I, therefore, propose to introduce a new Scheme called ''Samadhan''. The Scheme would apply to both direct taxes and indirect taxes and offer waiver of interest, penalty and immunity from prosecution on payment of arrears of direct tax at the current rates. In respect of indirect tax, where in recent years the adjustment of rates has been very sharp, an abatement of 50 per cent, of the duty would be available along with waiver of interest, penalty and immunity from prosecution." The object of the Scheme is purported to be--

(a) reducing litigation ;

(b) collecting Government revenues early, and

(c) de-clogging the system legal framework whereunder a lot of administrative energy is deployed in chasing tax arrears.

6. As is apparent from the objectives declared in the Budget Speech of the Finance Minister, the KVS Scheme was brought on the statute book to curtail litigation, to save litigation charges of the Department and to collect revenue within a reasonably short period.

7. A few relevant provisions of the KVS Scheme need to be noticed. Section 87(k) defines the words "a person" which includes both an "individual" and a "company" apart from other natural and legal persons described in other sub-clauses of Clause (k) of Section 87. Section 87(m) defines "tax arrears" and Sub-Clause (ii) of Section 87(m) deals with indirect tax enactments. Sub-clause (ii) (a) of Section 87 states that the amount of duties, cesses, interest, fine or penalty determined as due or payable under the enactment as on March 31, 1998, but remaining unpaid as on the date of making a declaration u/s 88 fall within the scheme. Section 88 contains procedure for making a declaration under the scheme with particulars in the said declaration to be furnished in accordance with Section 89 for taking benefit of the scheme. Section 90 of the scheme deals

with the time and manner of payment of tax arrears. Section 91 provides immunity from prosecution and imposition of penalty in certain cases in respect of matters covered in the declaration made u/s 88. Section 97 of the KVS Scheme under which the Order of 1998 came to be issued needs reproduction which contains provision conferring power on the Central Government to pass orders for removing difficulties in giving effect to the provisions of the scheme.

"97. Power to remove difficulties. --(1) If any difficulty arises in giving effect to the provisions of this Scheme, the Central Government may, by order, not inconsistent with the provisions of this Scheme, remove the difficulty :

Provided that no such order shall be made after the expiry of a period of two years from the date on which the provisions of this scheme come into force.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament."

8. In exercise of powers u/s 97, the Order of 1998 was issued to remove difficulties in implementation of the scheme. The explanatory memorandum annexed to the Order of 1998 is relevant for our purposes and provides an insight into the aim and object of the issuance of the Order of 1998. The explanatory memorandum reads thus (see [1999] 235 ITR 91):

"Explanatory memorandum :

Under the Kar Vivad Samadhan Scheme, 1998, announced as a part of the Union Budget, 1998, attention of the Government has been drawn to the difficulties being encountered in settlement of certain categories of cases of pending show-cause notices involving also certain co-noticees against whom penal action is proposed in the same case for the alleged involvement for the irregularities committed by the principal noticee."

9. In accordance with the objective mentioned in the explanatory memorandum quoted above in para. 2 of the Order of 1998 (quoted below) the benefit of the KVS Scheme by settlement of cases on 50 per cent, of payment of duties and penalties as against the main noticee, i.e., the company, is also extended to the co-noticees, i.e., chief executives, directors and managers, etc., but only at the stage of proceedings and in the circumstances mentioned in the said para. 2 of the Order of 1998. The relevant part including para. 2 of the Order of 1998 reads as under :

"1. (1) This order may be called the Kar Vivad Samadhan Scheme (Removal of Difficulties) Order, 1998.

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

2. Where a declaration to the designated authority has been made in respect of tax arrear in relation to indirect tax enactment for 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, but remaining unpaid, and pending determination on the date of making a declaration and, where, in respect of the same matter stated in the said declaration; a show-cause notice has also been issued to any other person and is pending adjudication on the date of making the declaration, then, no civil proceeding for imposition of fine or penalty shall be proceeded with against such other person and in such cases the settlement in favour of the declarant under Sub-section (1) of Section 90 shall be deemed to be full and final in respect of such other person also on whom a show-cause notice was issued on the same matter covered under the declaration."

10 .A few additional facts concerning liability towards tax and penalty of the company as the main noticee and its executives as co-noticees are also required to be stated in brief :

11. By show-cause notices, the petitioners were called upon to show cause why penalty should not be levied on them under Rule 173(q) and rule 209A of the Central Excise Rules, 1944. The company was also issued the same notice calling upon it to show cause why differential duties demanded thereunder should not to paid by the company in addition to the fines and penalties proposed therein. The petitioners filed replies to the show-cause notices. By common order dated June 10, 1998, the excise authority imposed penalties on the petitioners. Aggrieved by the order imposing penalties all the petitioners being executives of the company preferred appeals before the Customs, Excise and Gold Control Appellate Tribunal (CEGAT), Mumbai. The company has also preferred appeals against the orders imposing duty and penalty on it.

12. To get the benefit of the KVS Scheme and with a view to settle their excise cases on payment of 50 per cent, of the duties and penalties separate declarations were filed in each of the cases by the company as main noticee and its executives, i.e., the petitioners, as co-noticees. The petitioners as co-noticees during the pendency of their appeals against imposition of penalty paid 50 per cent. of the penalty arrears to obtain waiver of the remaining 50 per cent. of the arrears towards penalties. The above facts are not in dispute. What has however been stated now by the petitioners in these petitions is that such declarations were made and filed by the petitioners, i.e., executives of the company with deposit of 50 per cent. of dues towards penalty for waiving the remaining 50 per cent., under a legal misconception. On their behalf now it is being submitted that filing of declaration and payment of 50 per cent. of tax arrears, duties and penalties by the main noticee, i.e., the company, was sufficient, on a proper interpretation of the provisions of the scheme and the Order of 1998--to waive 50 per cent. of the duty and penalty against the company and dropping of all penalty proceedings and prosecutions against the co-noticees, i.e., executives of the company. On behalf of the petitioners, therefore, a letter was addressed to the designated authority on March 3, 1999, stating that the declarations filed by

them under the KVS Scheme and deposit of 50 per cent. penalty made by them individually in their cases being under a legal misconception was an action which is non est in law. It was prayed that as against the petitioners as co-noticees all the proceedings proposing imposition of penalty are liable to be dropped and the amounts deposited with the declaration is liable to be refunded as a result of settlement of case against the main noticee, i.e., the main company on a declaration filed with 50 per cent. of the tax arrears including penalty.

13. Learned counsel, Shri Arshad Hidayatullah, appearing for the petitioner, seeks extension of the benefit of the KVS Scheme to the co-noticees, i.e., the petitioners, by dropping all proceedings for imposition of penalty pending at the original or appellate stage on settlement of the case under the scheme as against the main noticee on the latter''s making a declaration with payment of 50 per cent. of the tax arrears.

14. The principal submission advanced is that keeping in view the aims and objects of the KVS Scheme, the words "civil proceedings" used in para. 2 of the Order of 1998 issued by the Central Government u/s 97(1) of the Finance (No. 2) Act should be read down to include within the words "even appellate proceedings" which are nothing but continuation of the original proceedings. Very heavy reliance is placed on the decision of the Supreme Court in the case of Mathew M. Thomas and Ors Vs. Commissioner of Income Tax, .

15. Learned counsel points out that the present petitioners in relation to their industrial units within the State of Kerala had approached the Kerala High Court for grant of similar relief of extension of the KVS Scheme to them as co-noticees with a settlement of case under the KVS Scheme with the main noticee. The Kerala High Court in its Division Bench by an unreported judgment in Original Petition No. 13806 of 1999 (with other group petitions), dated March 7, 2000-- since reported in Onkar S. Kanwar and Others Vs. Union of India and Others, , allowed the petitions and granted relief to the petitioners as co-noticees of the benefit of the KVS Scheme with the settlement of cases with the main noticee, i.e., the company. It is submitted that the Kerala High Court has also granted relief of directing refund of the amount deposited by the co-noticees under the scheme to them. Referring to the legal dictionary meaning of the word "proceeding", it is submitted that in the legal sense it includes not only the original proceedings but all proceedings in appeal or even in writ petition.

16. The alternative submission made by learned counsel on behalf of the petitioner is that if the expression "civil proceedings" used in the Order of 1998 is not read down to include in it all proceedings pending in appeal or writ petition-- the provisions contained in the order restricting its operation only to co-noticees who have been served with show-cause notices for imposition of penalties but not to the cases of co-noticees against whom penalties have been quantified and they are in appeal, would render the relevant provision of the order per se discriminatory and violative of Article 14 of the Constitution of India as it would treat differently co-noticees facing penalty proceedings at different stages of the

cases.

17. It is submitted that the Order of 1998 if not reasonably construed, as is sought to be done on-behalf of the petitioners, would have the effect of discriminating cases of co-noticees by extending the benefit of the scheme to cases where penalty under Rule 209A has remained unadjudicated and denying such benefit where notice for penalty under Rule 209A of the Rules has culminated into adjudication of penalty irrespective of the date on which the said notices for penalty have been issued. It is submitted that it is necessary to avoid such an absurd and anomalous consequence. For example, a notice issued prior in point of time for penalty under Rule 209A of the Rules which has remained unadjudicated for a longer time will get the benefit of the Order of 1998 as against co-noticees but in another case where show-cause notice for penalty under Rule 209A of the Rules was issued even though later in point of time would not get the benefit of the said Order of 1998 on account of culmination thereof into an adjudication order. It is submitted that such interpretation of the Order of 1998 would not only be discriminatory but would frustrate the main object of the scheme of reducing litigation and to make possible the recovery of tax arrears within a reasonable period. It is submitted that the only way to save the provisions contained in the Order of 1998 from unconstitutionality is to read them down so as to include for benefit of the scheme all co-noticees thereunder notwithstanding the fact that on show-cause notices issued against them, penalty has been imposed and the co-noticees are in appeal. Reliance is placed on the decision of the Supreme Court in the case of Vishundas Hundumal and Others Vs. State of Madhya Pradesh and Others, in support of this submission. It is stated that in the provisions of the Order of 1998 there has crept in unconsciously an unintentional discrimination through oversight and the said mistake in the provision can be cured only by reasonably construing the provision by reading it down in the manner suggested on behalf of the petitioners to include within the words "civil proceedings" proceedings also in appeal.

18. Shri M.R. Shah, learned counsel appearing for the Union of India, in opposing the petition and replying to the contentions advanced, invited attention of this court to the contents of Trade Notice No. 100 of 1998, dated December 11, 1998, issued by the Commissioner of Central Excise and Customs, Vadodara, on the subject of benefit of the KVS Scheme. It is pointed out that the stand of the Department on perusal of the Order of 1998, containing the KVS Scheme, is amply clear that on settlement of the case on 50 per cent, payment of tax arrears by the main noticee all proceedings for imposition of fine or penalty against the co-noticees pending at the show-cause notice stage alone shall lapse. The Order of 1998 nowhere manifests any intention to extend the benefit of the KVS Scheme, on settlement of the case with the main noticee, as against co-noticees where against the latter fine or penalty has already been determined by adjudication and the matter is pending in appeal. In such cases, the co-noticees have to file separate declarations and pay 50 per cent, of the tax arrears under the KVS Scheme for getting cases settled against them for the remaining 50 per

cent, of the arrears. The relevant part of the said trade notice dated December 11, 1998, which has been relied on for the purpose of making clear the stand of the Department reads as under :

"2. Under the Kar Vivad Samadhan Scheme, immunity had been provided only to the noticee or the person who came forward for settlement of the dispute by paying 50 per cent, of the amount. The Government had received representations that for the irregularities committed by the principal noticee, action is also proposed to certain co-noticees like directors, office bearers, suppliers, etc. It had been represented to the Government that since the co-noticees were not provided immunity as a result of settlement of the dispute against the principal noticee under the Kar Vivad Samadhan Scheme, it is discouraging even principal noticees to come forward for settlement. The Government have taken note of these representations, and for removal of difficulties, issued an order u/s 97(1) of the Finance (No. 2) Act, 1998, clarifying that no civil proceedings for imposition of fine or penalty shall be taken against the co-noticees where the principal noticee has got the case settled under the Samadhan Scheme. This however will not apply where fine, penalty has already been determined in adjudication appeal, etc. In such cases, each person will have to file the declaration.

3. In simple words, it means that if the principal noticee gets the case settled under the Kar Vivad Samadhan Scheme, it will provide immunity to all other co-noticees also where the show-cause notice is pending adjudication...

5. There could be cases in dispute where the Department as well as declarants are in appeal for certain amounts of duties in dispute--as determined by the adjudicating authority or an appellate authority. In such cases of cross appeals also, option will be available to the assessee to come forward for settlement of only his appeal or both his appeal as well as departmental appeal. If he does not want to settle the disputed amount in the departmental appeal and does not file a suitable declaration specifying the details including amount involved in such an appeal, departmental appeals will continue and will not be affected by Section 92 and the same would be heard by the appellate authorities/courts on merits.

6. In the last three months of operation of the Scheme, if in any case the assessee has filed a declaration covering his appeal only, he will also have the facility to file another declaration if he so desires in relation to the amount involved in any pending departmental appeal in that case. This declaration can be entertained and disputed amount settled in accordance with the provisions of this Scheme (i.e., paying up 50 per cent, of the duty amount in dispute).

7. All the Trade Associations/Chambers of Commerce and Members of Regional Advisory Committee are requested to publicise the contents of this Trade Notice among their Members/Constituents."

19. On behalf of the Union of India, learned counsel submits that in the Order of 1998 issued under the KVS Scheme for the purpose of removal of difficulties,

more than what is stated therein cannot be read by recourse to the principle of "reading down". It is submitted that the benefit of the KVS Scheme to the declarant who is the main noticee would also get extended to the co-noticees only if the proceedings are at the stage of show-cause notice against the latter. This is clear from the language used in para. 2 of the Order and the contents of the explanatory memorandum issued thereunder. In para. 2 of the Order, the language used to be taken note of is : "fine or penalty which constitutes the subject-matter of a demand notice or a show-cause notice issued on or before March 31, 1998, but remaining unpaid, and pending determination on the date of making a declaration and, where, in respect of the same matter stated in the said declaration, a show-cause notice has also been issued to any other person and is pending adjudication on the date of making the declaration, then no civil proceeding for imposition of fine or penalty shall be proceeded with against such other person." (underlining for highlighting the meaning)

20. In the explanatory memorandum the language used and highlighted on behalf of the Union of India is : "under the KVS Scheme ... attention of the Government has been drawn to the difficulties being encountered in settlement of certain categories of cases of pending show-cause notices involving also certain co-noticees against whom penal action is proposed in the same case for the alleged involvement for the irregularities committed by the principle noticee." (underlining by court).

21. Learned counsel for the Union of India submits that the above quoted portion of the Order of 1998 and the explanatory memorandum thereunder is absolutely clear in making the intention of the Central Government clear that action against co-noticees pending at the show-cause notice stage shall not be proceeded with if the case is settled under the KVS Scheme with the main noticee. The Order of 1998 does not cover the cases of co-noticees against whom penalties have been levied, i.e., where the amount is quantified and the co-noticees may be in appeal. On behalf of the Union of India, it is submitted that obviously the co-noticees against whom penalties and fines have been adjudicated and amounts quantified, have been kept out of the purview of the benefit of the KVS Scheme which is to be read and understood with the order of removal of difficulty issued thereunder because it was never intended that co-noticees who have or who might have given a separate declaration and paid 50 per cent, of tax arrears, should also get the benefit of wiping out of all their dues on settlement of cases against the main noticees. Such extension of benefit to co-noticees was never intended against whom the penalties have been quantified. The Scheme and the order envisage that some of the co-noticees might have paid 50 per cent, of tax arrears for settlement of cases against them under the scheme. The orders issued under the Scheme do not contemplate refund of penalties already deposited by co-noticees under the KVS Scheme under separate declarations filed by them. The aim and object of the scheme, is not in the least, to confer any benefit on the tax evaders. The Scheme has dual purposes to achieve firstly to ensure collection of tax dues within a reasonable period by encouraging

taxpayers to make voluntary payments of taxes and secondly save themselves from long drawn litigations which might involve them in coercive action and prosecution.

22. In his counter reply learned counsel for the petitioner reiterated his earlier submissions and submitted that qualification or non-quantification of penalties and fine is not a rational basis to discriminate between co-noticees facing penal proceedings at the show-cause notice stage and others who have suffered the proceedings by quantification of the amount and are at the appellate stage.

23. We have considered the rival contentions advanced by the two opposing counsel at the Bar. We have also carefully perused the relevant provisions of the KVS Scheme and the Order of 1998 issued thereunder by the Central Government. With utmost respect, we are unable to agree with the view expressed by the Division Bench of the Kerala High Court in similar cases of the petitioner. In our considered opinion, it is not possible to accept the contentions advanced by learned counsel on behalf of the petitioners that in the relevant part of the Order of 1998, the words "civil proceedings" should be interpreted on the principle of "reading down the provision" to include in them "proceedings at the appellate stage as well". We are also unable to accept the alternative submission that in the absence of the alleged reasonable interpretation of the provisions of the 1998 Order by reading it down, the provision would suffer from the vice of being discriminatory under article 14 of the Constitution of India. We have formed the above view for the reasons which follow.

24. The KVS Scheme of 1998 is part of an Act of the Legislature being the Finance (No. 2) Act of 1998. As we have noticed above, the main noticee, i.e., the company, falls in the definition of "person" u/s 87(k) of the scheme. Similarly, the co-noticees, i.e., directors and executives of the company, are also covered by the definition of "person" in Clause (k) mentioned above. Both the "persons" in relation to proceedings against them for tax and penalty have the right to make separate declarations u/s 88 for settlement of their tax liabilities and for wiping out the litigation and dues against them on payment of 50 per cent, of the tax arrears due against them individually.

25. In the definition clause the meaning given to the words "tax arrears" in Clause (m) of Section 87 is very important and requires to be noticed closely for the purpose of understanding the scope and effect of the Order of 1998.

26. Clause (m)(ii) of Section 87 reads :

"(m) ''tax arrear'' means,--

(i) in relation to direct tax enactment, the amount of tax, penalty or interest determined on or before the March 31, 1998, under that enactment in respect of an assessment year as modified in 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 March 31, 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 March 31, 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."

27. In relation to indirect tax enactment, Sub-clause (a) of Clause (ii) of Section 87(m) defines "tax arrears" to mean "the amount of duties, cesses, interest, fine or penalty determined as due or payable under the relevant enactment as on March 31, 1998, but remaining unpaid as on the date of making a declaration u/s 88". Sub-clause (a) of Clause (ii) thus refers to "tax arrears" of the above description due or payable at whatever stage of the proceedings under the concerned enactment. As distinguished from Clause (a) in Clause (b) of Sub-clause (ii) the "tax arrears" are explained to include the amount of duties, cesses, interest, fine or penalty which constitutes the subject-matter of a demand notice or a show-cause notice issued on or before March 31, 1998, under that enactment but remaining unpaid on the date of making a declaration u/s 88.

28. The underlined portion in Sub-clause (b) distinguishes it from Sub-clause (a). In Sub-clause (a) are covered "tax arrears" due on the specified date in relation to proceedings at any stage including appeal whereas Clause (b) speaks of tax arrears due on the relevant date when the proceedings are at stage of the demand notice or show-cause notice. On the settlement of tax arrears on the basis of declaration and payment of 50 per cent, of dues, the Scheme provides that any pending appeal of the declarant or reference or reply to show-cause notice before any authority, Tribunal or court shall be deemed to have been withdrawn in accordance with Section 90(4) of the Scheme. On such declaration and payment of 50 per cent, of dues, the pending appeals shall not be proceeded with against the declarant in accordance with Section 92 of the Scheme.

29. It is in the background of the above relevant provisions of the Scheme that the power of the Central Government contained in Section 97 to remove difficulties has to be understood for determining its scope and effect. Section 97 of the Scheme enables the Central Government by an order to remove difficulties which may arise in giving effect to the provisions of the Scheme. It is laid down in the said provision that such order for removing difficulties to be issued by the

Central Government, should not be inconsistent with the provisions of the Scheme. Every such order made by the Central Government is required to be laid before each House of Parliament. What is most important to be noted is that the Central Government has been empowered to only issue orders to ''remove difficulties'' in implementation of the provisions but it has no power to issue any order "inconsistent" with the main Scheme. In the light of the above discussed provisions defining tax arrears under Sub-clauses (a) and (b) of Clause (ii) of Section 87(m) what we have to ascertain is the nature of "doubt" which has been removed by the Central Government by issuing the Order of 1998. We have already quoted the explanatory memorandum annexed to the Order of 1998 issued u/s 97(1) of the Scheme. The said explanatory memorandum is very clear in stating that "difficulties are being encountered in settlement of certain categories of cases of pending show-cause notices involving also certain co-noticees against whom penal action is proposed in the same case for the alleged involvement in the irregularities committed by the principal noticee."

30. The explanatory memorandum quoted above clearly declares the reason and necessity for issuing the Order of 1998 for removal of difficulty. It appears that it was experienced by the authorities that settlement of cases against the main noticee at the show-cause notice stage was beset with difficulties because even if the case is settled on payment by the main noticee, the proposed penal action against the co-noticees has to continue. This difficulty arose in the matter of giving effect to settlement of tax arrears as defined and explained in Sub-clause (b) of Clause (ii) of Section 87(m) of the Scheme. We have already noticed that under Sub-clause (b) of Clause (ii), the "tax arrears" are defined to mean arrears which constitute the subject-matter of a demand notice or show-cause-notice. The explanatory memorandum to the Order of 1998 is clear enough to indicate that it was necessary to remove certain difficulties in the matter of settlement of tax arrears at the demand notice or show-cause notice stage such as referred to in Sub-clause (b) of Clause (ii) of Section 87(m). It is for the above limited purpose that the Order of 1998 in para. 2 limits the benefit of settlement of case under the Scheme to the main noticee as also to the co-noticees. Learned counsel appearing for the Department is very right in pointing out that in para. 2 of the Order of 1998, the language employed is clearly intended to give a restrictive meaning to the expression "civil proceeding" as to include in it only proceedings at the demand notice or show-cause notice stage. It cannot, on the dear language employed in para. 2 of the Order, be understood to mean even proceedings against the co-noticee pending at the appellate stage. It is necessary to mark the underlined portion in para. 2 of the Order of 1998 and the language employed :--"duties, cesses, interest, fine or penalty which constitutes the subject-matter of a demand notice or a show-cause notice issued on or before March 31, 1998."

31. On the same subject-matter the language used in another part of the Order is also significant. It reads : "a show-cause notice has also been issued to any other person and is pending adjudication on making a declaration then no civil

proceedings for imposition of fine or penalty shall be proceeded with against such other person and only in such cases the settlement in favour of the declarant under Sub-section (1) of Section 90 shall be deemed to be full and final in respect of such other person also on whom a show-cause notice was issued on the same matter covered under the declaration." (underlining to supply emphasis)

32. From the clear language of para. 2 of the Order, there is no manner of doubt that in implementing the provisions of the Scheme with regard to the tax arrears which formed the subject-matter of a demand notice or show-cause notice referable to Sub-clause (b) of Clause (ii) of Section 87(m), it was found necessary by the Central Government to issue an order of removal of difficulties. It was so necessitated because the main noticee facing proceedings at the show-cause notice or demand notice stage were not coming forward to settle their cases in the absence of any benefit of the Scheme to the co-noticees against whom proceedings for penal action or penalty were pending on the same subject-matter. Since the present provision was acting as a deterrent to the main noticees in settlement of case, it was found necessary by the Central Government to issue an order so as to remove the difficulties or doubts in implementation of the Scheme against the co-noticees facing proceedings at the show-cause notice or demand notice stage and to allow with the main noticee, settlement of cases also of the co-noticees. Thus, the relevant part of the Scheme and Order, as dealt with above, clearly includes within its ambit, proceedings against the main noticee and co-noticees pending at the demand notice or show-cause notice stage only and not at the appellate stage.

33. The Scheme is a parent legislation which is an Act of the Legislature. The Order of 1998 issued by the Central Government u/s 97 of the Finance (No. 2) Act of 1998 containing the Scheme is a piece of subordinate legislation. In the language of subordinate legislation something cannot be read which will not be consistent with the parent legislation. Section 97 enables the Central Government to issue orders for removal of difficulties, as expressly stated therein. The Central Government in exercise of its power u/s 97 can do nothing which would be inconsistent with the provisions of the main legislation, i.e., the Scheme. In the Scheme, the main noticee, i.e., the company, is a "person" and the co-noticee, i.e., the directors and executives are separate "persons" as defined in Clause (k) of Section 87. The two separate legal "persons" as defined in the Scheme have separate and independent right to make declaration and on payment of 50 per cent. of tax arrears to get settlement of their cases. The facts of the present case are that the present petitioners as co-noticees made a declaration in accordance with the Scheme and also paid 50 per cent. of the tax arrears with penalties, levied on them at the stage when they were in appeal. On such declaration the cases against the co-noticees pending including at the appellate stage are liable to be settled on payment of 50 per cent. of the tax arrears.

34. It cannot be assumed that the Central Government at the time of issuance of the order of removing difficulties u/s 97 was oblivious of the fact that a large number of co-noticees had made declaration and sought settlement on 50 per cent. payment of their cases which were pending at the appellate stage. The Central Government from the language employed in the order in para. 2 could never have intended that co-noticees, who had submitted declaration and paid 50 per cent. of the tax arrears would be totally exempted from tax, on settlement of case/cases against the main noticee. Such intention cannot be gathered from the relevant part of the scheme and para. 2 of the Order of 1998. In the present group of cases, not only do the co-noticees desire this court to read down the provisions contained in para. 2 of the Order of 1998 but after such reading down of the provisions, to direct settlement of their cases and even refund them the 50 per cent. tax arrears which they had deposited for settlement of cases individually against them. In order to obviate refund of tax arrears paid under the Scheme by the co-noticees for settlement of cases against them on their individual declarations, the Central Government, purposely, in its Order of 1998 restricted the extension of benefit of settlement of cases to the co-noticees with cases of main noticees but only if the former are at the demand notice or show-cause notice and not at the appellate stage. Learned counsel for the Department appears to be perfectly right in submitting that para. 2 of the Order of 1998 does not extend the benefit to the cases of co-noticees, where penalties have been quantified and/or appeals were preferred by the co-noticees. In cases before us, for settlement of the case under the Scheme the petitioners have submitted the declarations and have actually paid 50 per cent. of the tax arrears individually due against them. The above aspect of the matter was totally overlooked by the Division Bench of the Kerala High Court in the decision relied on on behalf of the petitioners. With respect, we are unable to agree with the view expressed by the High Court of Kerala in their decision Onkar S. Kanwar and Others Vs. Union of India and Others, .

35. Much argument was advanced on behalf of the petitioner on the interpretation of the expression "civil proceedings" used in para. 2 of the Order of 1998. What we find is that the word "civil" has been used in distinguishing the proceedings from "criminal" such as actions of prosecution under the tax law. The word "proceeding" in its wider legal meaning, as is sought to be urged on behalf of the petitioner, would definitely include proceedings even at the appellate stage or proceedings in the writ petition before any court or Tribunal. The word "proceedings" in the context in which it appears may have a wider legal meaning or a restrictive meaning depending upon the nature of the provision and the law in which it is used. In the present case, as we have discussed, in the light of the provisions of the Scheme, the word "proceedings" has been used in a restrictive sense to confine it to proceedings at the show-cause notice or demand notice stage and definitely not at the appellate stage. The word does not intend to include the proceedings at the appellate stage where the co-noticees have already made declaration and paid 50 per cent. of tax arrears for settlement of

their cases at the appellate stage. We cannot forget that what we are dealing with for interpretation is a provision in a subordinate legislation which has to be construed consistently with the main piece of legislation. The Central Government in exercise of its enabling provision u/s 97 of the Scheme have removed certain difficulties in implementation of the Scheme. With the assistance of the doctrine of "reading down", as a method of statutory interpretation, the court is not empowered to read more into the order of the Central Government and remove the alleged additional doubts and difficulties as experienced by the noticees and the co-noticees before us. The order of the Central Government has to be interpreted reasonably on its plain language and in consonance with the Scheme under which it has been issued. The doctrine of reading down, as one of the principles of interpretation of the statute, cannot be applied to add and read additional words into a statutory order as would transgress the limits of such order and the Scheme. The doctrine of reading down as a permissible means of the process of interpretation of statutes can be resorted to to give the statute reasonable meaning and to make it constitutionally valid but not for adding or supplementing any alleged unconscious omissions sought to be perceived in it.

36. At this stage, a reference may be made to the decision of the Supreme Court in the case of Mathew M. Thomas and Ors Vs. Commissioner of Income Tax, . In the case before the Supreme Court, the provisions that came up for consideration were those under Chapter XXC introduced in the Income Tax Act enabling the tax authorities to acquire the properties intended to be sold for apparent under-value. By Section 269RR, Chapter XX-A was made inapplicable to transfer of an immovable property after September 30, 1986. The Central Board of Direct Taxes issued a circular which stated that with a view to achieve earlier finalisation under the existing Chapter XX-A of the Income Tax Act, the Board has decided with effect from April 1, 1986, that acquisition proceedings u/s 269C will not be initiated in respect of an immovable property for which the apparent consideration is Rs. 5 lakhs or less and where acquisition proceedings have been initiated for issuance of a notice u/s 269D, the proceedings will be dropped if the apparent consideration of the immovable property is below Rs. 5 lakhs. The question that arose was whether the above circular of the Central Board of Direct Taxes would also be applicable where acquisition proceedings are over and the party is in appeal. It is in the above context that the Supreme Court held (page 694): "the circular was obviously with an object of achieving earlier finalisation of the proceedings under Chapter XX-A. The circular is undoubtedly a beneficial measure in order to bring to an end the uncertainty of litigious proceedings with reference to properties, the value of which does not exceed Rs. 5 lakhs. The language of the circular does not in any manner indicate that it will apply only to proceedings pending before the competent authority. The mere fact that reference is made to the initiation of the proceedings by notice u/s 269D does not limit the operation of the circular to proceedings immediately following such notice and culminating with the order of the competent authority. If proceedings

are pending before the Tribunal in appeal and before the High Court on further appeal, they are also acquisition proceedings of the same nature as they are only in continuation of the proceedings initiated by the competent authority."

37. The above observation of the Supreme Court in the case of Mathew M. Thomas and Ors Vs. Commissioner of Income Tax, , can have no assistance to the case of the co-noticees under the Scheme before us. The order of removing difficulties, as construed consistently with the provisions of the Scheme, requires a restrictive meaning to be given to the word "proceedings" to include in the expression only those proceedings against the co-noticees which are at show-cause notice stage and not at the appellate stage or where the penalties are quantified with right to co-noticees as "persons" defined in the Scheme to make separate declarations and seek payment on settlement of cases against them. The decision of Mathew M. Thomas and Ors Vs. Commissioner of Income Tax, , the Supreme Court, therefore, is distinguishable on the clear language contained in the relevant part of the Scheme and Order of 1998.

38. We are also not impressed by the alternative submissions made on behalf of the petitioners that if the Order of 1998 is not construed with the aid of the doctrine of reading down to include in the words "civil proceedings", the proceedings also at the appellate stage, it would be rendered discriminatory and violative of article 14 of the Constitution of India. In our considered opinion, for implementing the Scheme with the order of removal of difficulties, the co-noticees against whom the penalties have been quantified at the appellate stage and have made declaration and payment, constitute one separate class from those co-noticees who are facing proceedings at the show-cause notice stage against proposed penalty, irrespective of the stage of proceedings for recovery of tax and penalty against the main noticees. The two classes of co-noticees can reasonably be treated differently for the purpose of extending the benefit of the Scheme. As we have noticed above, the intention and object of the Scheme is not to help or reward the tax evaders or those who have not paid tax in rime. The purpose of the Scheme is to allow the Department to minimise litigation expenses and establishment charges and to make possible recovery of tax dues with reasonable speed. The ancillary object at the same time is to encourage the assessees, i.e., taxpayers to make voluntary disclosures concerning their tax liability and pay tax ungrudgingly and without delay with a view to shorten the litigation and to save them from coercive and/or penal action. The Legislature by the provisions of the Scheme and the order issued thereunder by the Central Government to remove difficulties, can justifiably treat differently the co-noticees (with the main noticees) facing proceedings for tax recovery and penalty at the show-cause notice stage and those co-noticees against whom penalties have been quantified and they have individually gone in appeal and are desirous of submitting declarations with payment of 50 per cent. of arrears individually for settlement of their cases. We do not find that such classification of co-noticees for different treatment under the Section who are facing proceedings for tax recovery at the original stage and appellate stage is in any manner unreasonable

or discriminatory because we find that such classification has nexus and reasonable connection with the object of the scheme to collect revenue within a reasonable period and to curtail litigation with consequential benefit to the taxpayers to some extent.

39. For the detailed reasons stated above, we find no merit in these petitions and the connected group of petitions. They are all accordingly dismissed but in the circumstances without any order as to costs.

