(2015) 09 AHC CK 0096

In the Allahabad High Court

Case No : Civil Misc. Writ Petition (Tax) Nos. 442, 894, 895, 896, 897, 898 and 899 of 2012

Samrat Int Bhatta and Others — APPELLANT

Vs

Assistant Commissioner, Commercial Tax and Others — RESPONDENT

Date of Decision : 03-09-2015

Acts Referred:
- Central Sales Tax Act, 1956 — Section 14, 15, 5(1)(iv), 5(1)(iv)(a)
- Constitution of India, 1950 — Article 14, 220, 366
- Karnataka Sales Tax Act, 1957 — Section 17, 5(1)(iv), 5-B, 7
- Uttar Pradesh Trade Tax Act, 1948 — Section 7-D
- Uttar Pradesh Value Added Tax Act, 2008 — Section 13, 14, 24, 25, 26

Citation : (2015) 9 ADJ 385

Hon'ble Judges : Tarun Agarwala and Surya Prakash Kesarwani, JJ.

Bench : Division Bench

Advocate : Rakesh Ranjan Agarwal and Suyash Agarwal, for the Appellant

Judgement

Surya Prakash Kesarwani, J.—In this group of petitions, the petitioners have challenged the validity and legality of the order passed by the authority under Section 6 of the U.P. Value Added ax Act 2008 (hereinafter referred to as the Act) rejecting the petitioner''s application for compounding the tax for the assessment years 2007-08 and 2008-09. For facility, the fact of Writ Petition No. 442 of 2012 M/s. Samrat Int. Bhatta v. Assistant Commissioner, Commercial Tax, is taken into consideration. The facts involved in this bunch of writ petitions are almost similar. Briefly stated the facts are that the petitioners run a brick kilns and are engaged in the business of manufacture and sale of bricks. The U.P. Value Added Tax Act, 2008 (hereinafter referred to as the "Act") came into force w.e.f. 1.1.2008. It repealed the U.P. Trade Tax Act 1948. Chapter IV of the Act provides for assessment, payment, recovery and collection of tax. Section 26 under this Chapter provides for assessment of tax for an assessment year. Section 28 provides for assessment of tax after examination of records. Section 6 falling under Chapter II provides for an alternate method of assessment, termed as composition of tax liability.

2. For the sake of convenience the provisions of Section 6 , 26 and 28 of the Act are extracted below:

6. Composition of tax liability.--

(1) Notwithstanding anything contained in any other provision of this Act, but subject to other provisions of this section and the directions of the State Government, the assessing authority may agree to accept a composition money either in lump sum or at an agreed rate on his turnover of sale in lieu of tax that may be payable by a dealer in respect of such goods or class of goods and for such period as may be agreed upon:

Provided that in the case of a dealer not being a dealer executing works contract, who carries on exclusive business of re-sale of goods within the State after their purchase from a registered dealer within the State and whose turnover on sale of such goods, for any assessment year, does not exceed fifty lakh rupees or his turnover, is neither likely to exceed fifty lakh rupees nor his such turnover, for the assessment year preceding that assessment year, has not exceeded fifty lakh rupees, the State Government may notify a rate percent on sale of such goods. Different rates may be notified for different goods:

Provided further that any change in the rate of tax which may come into force after the date of such agreement shall have the effect of making a proportionate change in the lump sum or the rate agreed upon in relation to that part of the period of assessment during which the changed rate remains in force.

(2) Any dealer, who opts for payment of lump sum under this section, shall not be entitled to claim credit of input tax under Section 13 in respect of purchase of goods which are re-sold by him during the period in which he is liable to pay composition money under this section or in respect of purchase of goods which have been used, consumed or utilized in manufacture or processing of goods which are sold by him during such period and where the dealer has claimed credit of input tax in respect of any such goods, the same shall stand reversed and the dealer shall pay such amount of reverse input tax credit in accordance with the provisions of Section 14 .

(3) Any dealer who opts for payment of composition money under this section shall not issue any tax invoice and shall not realise any amount from the purchaser by way of tax or by giving it a different name or colour.

(4) A dealer who makes purchase of any goods from a dealer, who has opted for payment of composition money under this section, shall not be entitled to claim credit of input tax in respect of goods purchased from such dealer.

(5) Where the turnover of sales, in case of a dealer, who has opted to pay composition money under first proviso of sub-section 4 on and from the day the turnover exceeds Rs. fifty lakh.

26. Assessment of tax for an assessment year.--Subject to provisions of this Act,

in respect of every taxable dealer, for each assessment year, there shall be an assessment of tax payable by him and amount of input tax credit admissible to him:

Provided that where the dealer has carried on business during a part of the assessment year, such assessment shall be for such part of the assessment year:

Provided further that in case of person who being a dealer other than a registered dealer brings any taxable goods from outside the State, the assessing authority may make separate assessments for each receipt of such goods by the dealer

28. Assessment of tax after examination of Records.--

(1) In following types of cases or dealers, the assessing authority, after detailed examination of books, accounts and documents kept by the dealer in relation to his business and other relevant records, if any, and after making such inquiry as it may deem fit, subject to provision of sub-section (9), shall pass an assessment order for an assessment year in the manner provided in this section:

(a) in cases of such dealers as are specified or selected for tax audit by the Commissioner or any other officer, not below the rank of a Joint Commissioner, authorized by the Commissioner in this behalf; in such manner and within such time as may be prescribed.

(b) in case of a dealer falling in any of the categories below,

(i) dealer who has not submitted annual return of turnover and tax within the time prescribed or extended; or

(ii) dealer by whom tax return for one or more tax periods of the assessment year have not been submitted; or

(iii) dealer in whose case assessing authority has passed provisional assessment order under Section 25 in respect of one or more tax periods to the best of its judgment; or

(iv) dealer in whose case, on the basis of material available on records, if the assessing authority is satisfied that the turnover of sales or purchases or both, as the case may be, and amount of tax shown payable as disclosed by the dealer in annual return of turnover and tax are not worthy of credence or tax shown payable in the return has not been deposited by the dealer, or the amount of input tax credit claimed is wrong or the amount of tax payable shown is incorrect; or

(v) dealer who has prevented or obstructed an officer empowered to make audit, survey, inspection, search or seizure under the provisions of this Act; or

(2) Where after examination of books, accounts, documents and other records referred to in sub-section (1),--

(i) the assessing authority is satisfied about correctness of turnover of sale or purchase or both, as the case may be, disclosed by the dealer, it may assess the amount of tax payable by the dealer on such turnover and determine the amount of input tax credit admissible to the dealer or amount of reverse input tax credit payable by the dealer; and

(ii) where assessing authority is of the opinion that turnover of sale or purchase or both, as the case may be, disclosed by the dealer is not worthy of credence, it may determine to the best of its judgment the turnover of sale or purchase or both, as the case may be, and assess the tax payable on such turnover and determine admissible amount of input tax credit and reverse input tax credit payable by the dealer.

(3) Before making an assessment under sub-section (2), dealer shall-

(i) be required to furnish annual return of turnover and tax referred to in sub-section (7) of Section 24 , if he has not already submitted such return;

(ii) be given reasonable opportunity of being heard; and

(iii) be served with a notice to show-cause, where determination of turnover, input tax credit or reverse input tax credit, or assessment of tax, all or any one of them, as the case may be, are to be made to the best of the judgment of the assessing authority.

(4) The show-cause notice referred to in sub-section (3) shall contain all such reasons on which the assessing authority has formed its opinion about incorrectness of the turnover of sale or purchase or both, as the case may be, amount of tax, amount of input tax credit or amount of reverse input tax credit:

(5) Order of assessment shall be in writing and copy of assessment order alongwith prescribed notice of demand of the balance amount of tax, if any, to be deposited by the dealer, shall be served on the dealer.

(6) Dealer shall deposit amount of tax assessed in excess of amount of tax deposited by him for the assessment year, within a period of thirty days after the date of service of the assessment order and notice of demand.

(7) Where the amount of tax deposited by the dealer is found in excess of tax assessed, the same shall be refunded to the dealer according to the provisions of this Act.

(8) Assessing authority shall not be precluded from making assessment order under this section on the ground of passing of any provisional assessment order in respect of any tax period under Section 25 and such provisional assessment order, if any, shall stand merged in the assessment order passed under this section.

(9) Notwithstanding anything to the contrary in any other provision of this Act, where an unregistered dealer brings any taxable goods from outside the State

more than once during an assessment year, separate assessment relating to goods brought on each occasion may be made for the same assessment year.

(10) The provisions of this Act shall apply to each assessment order passed under sub-section (9) as they apply to an order passed under sub-section (2).

(11) Dealers under sub-section (9) shall not be required to furnish annual return of turnover and tax and in cases of such dealers assessment under sub-section (9) may be made even before the expiry of the assessment year.

(12) Provisions of sub-sections (5), (6) and (7) shall, mutatis mutandis, apply to every assessment order passed under any provisions of this Act.

3. Assessment of the petitioner was completed by the assessing authority under Section 28 of the Act for the A.Y. 2007-08 (From 1.1.2008 to 31.3.2008) against which the petitioner filed an appeal which was allowed in part and the tax liability was reduced.

4. Subsequently, the State Government announced a compounding scheme for brick kiln under Section 6 of the Act dated 9.6.2009 for the season 2007-08 (1.1.2008 to 31.9.2008) and for season 2008-09 (1.10.2008 to 30.9.2009) which was known as "Int Bhatta Samadhan Yojna" wherein the assessing authority was required to accept a composition money either in lump sum or on an agreed rate of the turnover of sales in lieu of tax that may be payable by the dealer.

5. The petitioners applied for compounding for the season 2007-08 (1.1.2008 to 30.9.2008). The assessing authority rejected the compounding application of the petitioner for the period 1.1.2008 to 31.3.2008 on the ground that regular assessment orders had already been passed. The compounding applications of the petitioners in Writ Petition No. 896 of 2012 and 897 of 2012 were initially accepted in ignorance of the assessment order and, therefore, the compounding orders were immediately rectified under Section 31 of the Act and the compounding applications were rejected. For the remaining period of the season i.e. from 1.4.2008 to 30.9.2008, the assessing authority issued a notice intimating the petitioner that the assessing authority was proposing to make an assessment. It was at this stage, the petitioner being aggrieved has filed the present Writ Petition challenging the orders rejecting the compounding applications as well as the earlier orders of regular assessment. They have also prayed that the compounding scheme be declared ultra vires.

6. Thus the issues that arises for consideration in this bunch of writ petitions are as under:

(I) Whether in the facts and circumstances of the case the writ petitions challenging constitutionality validity of the compounding scheme dated 9.6.2009 for the season 1.1.2008 to 30.9.2008 are maintainable?

(II) Whether under the facts and circumstances the compounding for part of the season i.e. 1.1.2008 to 31.3.2008 in respect of which regular assessment orders were already passed, can be accepted?

(III) Whether compounding applications for part of the season from 1.4.2008 to 30.9.2008 may be accepted despite the fact that the compounding under Section 6 of the Act was offered by the State Government for a fixed period from 1.1.2008 to 30.9.2008 and for a fixed lump sum amount for the said period/ season?

7. We have heard Sri Suyash Agarwal, the learned counsel for the petitioner and Sri C.B. Tripathi, the learned counsel for the State.

ISSUE NO. I

8. It is settled law that the validity of a provision can be challenged only on limited grounds, namely, that the provision infringes any of the fundamental or constitutional rights or it lacks legislative competence or the Rule is violative of any provision of the Act or beyond the Rule making power under which it has been enacted. Undisputedly, the compounding scheme dated 9.6.2009 has been framed by the State Government in exercise of powers conferred under Section 6 of the Act. Section 6(1) of the Act starts with a non obstante clause, but it is subject to other provisions of the same Section and the direction of the State Government. A plain reading of sub-Section 1 of Section 6 clearly indicates the following:

(i) It gives over riding effect over the other provisions of the Act.

(ii) It is subject to other provisions of Section 6 and the directions of the State Government.

(iii) The assessing authority may agree to accept the composition money either in lump sum or at an agreed rate on the turn over of sale in lieu of tax that may be payable by a dealer in respect of such goods or class of goods and for such period as may be agreed upon.

9. In the present case, we are not concerned with the 1st and 2nd proviso of sub-section (1) of Section 6 . The petitioners have neither pleaded nor argued nor demonstrated that the directions of the State Government in the impugned compounding scheme providing for compounding for the season from 1.1.2008 to 30.9.2008 is violative of any of the provisions of Section 6 of the Act or the Constitution of India. The impugned compounding scheme neither violates any fundamental or constitutional rights of the petitioners nor it lacks legislative competence nor it is violative of any of the provisions of the Act. Neither the scheme nor any of the provision of Section 6 of the Act provides for acceptance of compounding application for part of the season.

10. Under the circumstances, we do not find any unconstitutionality in the compounding scheme dated 9.6.2009. Apart from this, the relief sought by the petitioners to declare the compounding scheme dated 9.6.2009 to be ultra vires,

is not entertainable inasmuch as on one hand the petitioners have prayed for declaring the scheme to be ultra vires and on the other hand they prayed that benefit of the scheme be provided to them for part of the period. Law does not permit a person to approbate and reprobate simultaneously. Petitioner cannot accept and reject the same instrument i.e. the compounding scheme dated 9.6.2009. They cannot urge on one hand that the scheme is valid to obtain some advantage to which they could be entitled only on the footing that it is valid and then turn round and say that it is void. The impugned compounding scheme is in fact a policy decision of the State Government.

11. It is well-settled that the Courts, in exercise of their power of judicial review did not ordinarily interfere with the policy decisions of the executive unless the policy can be faulted on account of mala fide, unreasonableness, arbitrariness or unfairness etc. Petitioners have not argued that the policy i.e. the compounding scheme is hit by any of these grounds. If the policy cannot be faulted on any of these grounds, the policy cannot be said to be invalid. Courts cannot question the wisdom of the Government in taking a policy decision. Generally, policy cannot be tested in a Court of law. The Government is entitled to lay down its policy which cannot be subjected to judicial review except in the circumstances mentioned above. Reference in this regard may be had to the judgments of Hon''ble Supreme Court in the cases in Subhash Photographics and Others Vs. Union of India (UOI) and Others, , Delhi Science Forum and others Vs. Union of India and another, , Ekta Shakti Foundation Vs. Govt. of NCT of Delhi, , Krishnan Kakkanth Vs. Government of Kerala and ohters, , State of Rajasthan and Others Vs. Lata Arun, , State of Himachal Pradesh and Another Vs. Padam Devi and Others, , State of Himachal Pradesh and others etc. Vs. Ganesh Wood Products and others, etc., , M/s. Ugar Sugar Works Ltd. Vs. Delhi Administration and Others, , The State of Maharashtra and Another Vs. Lok Shikshan Sansatha and Others, ; M/s. Shri Sitaram Sugar Co. Ltd. and another Vs. Union of India and others, ; State of Punjab and Others Vs. Ram Lubhaya Bagga Etc. Etc., ; BALCO Employees Union (Regd.) Vs. Union of India and Others, ; Gyan Prakash Vs. Union of India (UOI) and Others, ; Ram Singh Vijay Pal Singh and Others Vs. State of U.P. and Others, , Delhi Development Authority, N.D. and Another Vs. Joint Action Committee, Allottee of SFS Flats and Others,).

12. In the case of Mycon Construction Ltd. Vs. State of Karnataka and Another, , following the law laid down in the case of State of Kerala and another Vs. Builders Association of India and others, , Hon''ble Supreme Court upheld the constitutional validity of sub-section 6 of Section 17 of the Karnataka Sales Tax Act, 1957 and observed as under:

15. Mr. Raju Ramachandaran, Senior Advocate appearing on behalf of some of the appellants placed before us the judgment of this Court in State of Kerala and another Vs. Builders Association of India and others, . We have carefully read the aforesaid judgment. Fairly Mr. Raju Ramachandaran submitted that he was unable to point out any distinction between the provisions of the Kerala Act and

the Karnataka Act which may have a bearing on the question of interpretation. We have also considered the matter and we are also of the view that so far as the scheme of composition of tax is concerned, the relevant provisions of both the Acts even if not identical, are vastly similar. On the question of the constitutional validity of sub-section 6 of Section 17 the same argument was advanced before this Court in the State of Kerala and another Vs. Builders Association of India and others, . In that case, the High Court had declared as unconstitutional sub-section (7) and (7A) of Section 7 upholding the contention that they sought to levy tax at the rate of 2% on the whole amount of the contract, or at a particular rate applied to the entire value of contract, and not merely upon the value of goods transferred in the course of execution of the works contract as contemplated under Sub-clause (b) of Clause (29-A) of Article 366 . The Court noticed that the goods which were transferred in the course of execution of works contract may be "declared goods", liable to be taxed under the Central Sales Tax Act, 1956. The goods so transferred may also be taxable under different Schedules to the Kerala Act which prescribe different rates. In such a situation levy of tax on entire value of the contract meant levy of tax contrary to the provisions of the Central Sales Tax Act and the Kerala General Sales Tax Act. It also meant including the nontaxable components of works contract e.g. labour and services etc. For all these reasons, the High Court held that the said sub-sections were clearly beyond the legislative competence of the State Legislature. This Court repelled the submission urged before it in the following words: (SCCp. 188, para 9)

The first feature to be noticed is that the alternate method of taxation provided by sub-section (7) or (7-A) of Section 7 is optional. The sub-section expressly provided that the method of taxation provided thereunder is applicable only to a contractor who elects to be governed by the said alternate method of taxation. There is no compulsion upon any contractor to opt for the method of taxation provided by sub-section (7) or sub-section (7-A). It is wholly within the choice and pleasure of the contractor. If he thinks it is beneficial for him to so opt, he will opt; otherwise, he will be governed by the normal method of taxation provided by Section 5(1)(iv) , sub-section (8) provides that the option to come under sub-section (7) or (7-A) has to be exercised by the contractor ''either by an express provision in the agreement for the contract or by an application to the assessing authority to permit him to pay the tax in accordance with any of the said sub-section''. In these circumstances, it is evident that a contractor who had not opted to this alternate method of taxation cannot complain against the said sub-sections, for he is in no way affected by them. Nor can the contractor who has opted to the said alternate method of taxation, complain. Having voluntarily, and with the full knowledge of the features of the alternate method of taxation, opted to be governed by it, a contractor cannot be heard to question the validity of the relevant sub-sections or the rules. Sub-sections (8), (11) and (12) of Section 7 are incidental and ancillary to sub-sections (7) and (7-A) and cannot equally be faulted. Secondly, it is true that the goods transferred in the course of execution of the works contract may be chargeable at different rates under different Schedules appended to the Kerala Act; it may also be that some of them may be ''declared goods'', the levy of tax upon which is subject to certain restrictions specified in Section 14 and 15 of the Central Sales Tax Act; it may also be that sale of some of the goods may also be subject to Central sales tax. It must yet be remembered that the method of taxation introduced by sub-sections (7) and (7-A) is in the nature of composition of tax payable under Section 5(1)(iv) . The impugned sub-sections have evolved a convenient, hassle-free and simple method of assessment just as the system of levy of entertainment tax on the gross collection capacity of the cinema theatres. By opting to this alternate method, the contactor saves himself the botheration of book-keeping, assessment, appeals and all that it means. It is not necessary to enquire and determine the extent or value of goods which have been transferred in the course of execution of a works contract, the rate applicable to them and so on. For example, under sub-section (7), the contractor pays two per cent of the total value of the contract by way of tax and he is done with all the above-mentioned botheration. The rate of two per cent prescribed by sub-section (7) is far lower than the rates in Schedules 1, 2 and 5 referred to in Section 5(1)(iv)(a) . In short, sub-section (7) and (7-A) evolve a rough and ready method of assessment of tax and leave it to the contractor either to opt for it or be governed by the normal method. It is only an alternate method of ascertaining the tax payable, which may be availed of by a contractor if he thinks it advantageous to him. It must be remembered that the analogous system of alternate method of taxation evolved by certain State Legislatures in the matter of levy of entertainment tax has been upheld by his Court in Venkateshwara Theatre Vs. State of Andhra Pradesh and Others, . The rough and ready method evolved by the impugned sub-section for ascertaining the tax payable under Section 5(1)(iv) of the Act cannot be said to be beyond the legislative competence of the State or violative of Clause (29-A) of Article 366 either. The Constitution does not preclude the legislature from evolving such alternate, simplified and hassle-fire method of assessment of tax payable, making it optional for the asses-see. The object of sub-sections (7) and (7-A) is the same as that of Section 5(1)(iv) ; it is only that they follow a different route to arrive at the same destination."

16. We are of the considered view that principles laid down by this Court in the aforesaid decision squarely apply to the facts of this case having regard to the similarity of the provisions in the two Acts. We therefore find ourselves in complete agreement with the High Court and hold that sub-section 6 of Section 17 of the Karnataka Sales Tax Act is constitutionally valid and the challenge on the ground of lack of legislative competence of the State Legislature must be repelled.

17. Learned Counsel then submitted that even while evolving a simplified method for assessment of tax, such as the scheme of composition in the instant case, they law cannot give an option to the assesses which is in the teeth of

constitutional provisions. This argument does not survive in view of the principles laid down by the Supreme Court in State of Kerala and another Vs. Builders Association of India and others, . He made a faint attempt to draw a distinction between the Kerala Act and the Karnataka Act by reference to the background in which the provisions were enacted. He submitted that under the Kerala Act the composition scheme was introduced by the amendments in the year 1991 and 1992. So far as State of Karnataka is concerned sub-section 6 of Section 17 which gave option to the assessees to pay tax at a fixed rate on the value of the goods, the property in which was transferred in the course of execution of works contract come into effect in the year 1988 and continued till the year 1996. The appellants had taken benefit of the said scheme of composition by exercising their option for assessment under the composition scheme. They had therefore opted for something different from what is sought to be given to them under the amended provision which levies tax not merely on the value of goods transferred but on the whole amount of the contract. He, therefore, submitted that having regard to the legislative background, amendment of sub-section 6 of Section 17 with retrospective effect by Act 7 of 1997 is clearly unconstitutional. The submission has no force. If the Legislature has legislative competence to enact a statute and the statute so enacted does not breach any constitutional provision, the same cannot be said to be unconstitutional merely because it is retrospective in operation. Moreover, in the instant case as explained in State of Kerala v. Builders Association of India (supra) the appellants had opted for assessment under the composition scheme. They were not compelled to exercise their option and otherwise they would have assessed in accordance with the provisions of the Act particularly Section 5-B thereof. To remove any hardship to the assessees by retrospective operation of the amended scheme of composition the State Government itself submitted that the appellants and other like them may be given option to opt for assessment under Section 5-B of the Act even if they had earlier opted for assessment under sub-section 6 of Section 17 . The High Court has in fact made such a direction. The appellants are therefore not prejudiced in any manner whatsoever.

13. In the case of Venkateshwara Theatre Vs. State of Andhra Pradesh and Others, , Hon''ble Supreme Court considered the applicability of Article 14 of the Constitution of India with reference to the compounding scheme under A.P. Entertainment Tax Act 1939 and held in para 20, 21 and 22 as under:

"20. Article 14 enjoins the State not to deny to any person equality before the law or the equal protection of the laws. The phrase "equality before the law" contains the declaration of equality of the civil rights of all persons within the territories of India. It is a basic principle of republicanism. The phrase "equal protection of laws" is adopted from the Fourteenth Amendment to U.S. Constitution. The right conferred by Article 14 postulates that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Since the State, in exercise of its Governmental power, has, of necessity, to make laws operating differently on different groups of persons within its territory to attain particular ends in giving effect to its policies, it is recognized that the State must possess the power of distinguishing and classifying persons or things to be subjected to such laws. It is, however, required that the classification must satisfy two conditions namely, (i) it is founded on an intelligible differentia which distinguishes those that are grouped together from others; and (ii) the differentia must have a rational relation to the object sought to be achieved by the Act. It is not the requirement that the classification should be scientifically perfect or logically complete. Classification would be justified if it is not palpably arbitrary. (See: In Re: The Special Courts Bill, 1978,). If there is equality and uniformity within each group, the law will not be condemned as discriminative, though due to some fortuitous circumstance arising out of a peculiar situation some included in a class get and advantage over others, so long as they are not singled out for special treatment. [See: Khandige Sham Bhat and Others Vs. The Agricultural Income Tax Officer,]

21. Since in the present case we are dealing with a taxation measure it is necessary to point out that in the field of taxation the decisions of this Court have permitted the legislature to exercise an extremely wide discretion in classifying items for tax purposes, so long as it refrains from clear and hostile discrimination against particular persons or classes. (See: East India Tobacco Co. Vs. State of Andhra Pradesh, , P.M. Ashwathanarayana Setty and Others Vs. State of Karnataka and Others, , Federation of Hotel and Restaurant Association of India, etc., Vs. Union of India (UOI) and Others, , Kerala Hotel and Restaurant Association and others Vs. State of Kerala and others, and Gannon Dunkerley and Co. and Others Vs. State of Rajasthan and Others,].

22. Reference, in this context, may also be made to the decision of the U.S. Supreme Court in San Antonio Independent School District v. Bodrigues, wherein Justice Stewart, speaking for the majority has observed:

"No scheme of taxation, whether the tax is imposed on property, income or purchases of goods and services, has yet been devised which is free of all discriminatory impact. In such a complex arena in which no perfect alternatives exist, the Court does well not to impose too rigorous a standard of scrutiny lest all local fiscal schemes become subjects of criticism under the Equal Protection Clause."

14. In view of the above discussion we do not find any illegality or unconstitutionality in the compounding scheme dated 9.6.2009. Under the circumstances, the relief sought by the petitioners to declare the aforesaid compounding scheme as ultra vires, is hereby rejected.

ISSUE NO. II

15. It is undisputed that regular assessment orders of the petitioners for the assessment year 2007-08 (1.1.2008 to 31.3.2008) were passed under Section 28 of the Act after affording opportunity of hearing to them. They participated in the assessment proceedings. Once the assessment orders have been passed, the

tax stood assessed and therefore the scheme itself would not be applicable.

16. By the said scheme the State Government issued directions under Section 6(1) of the Act that for the season 2007-08 (1.1.2008 to 30.9.2008) the lump sum amount may be accepted by the assessing authority depending upon the number of "PAYAS" of the brick kiln. The compounding money for the block period of 1.1.2008 to 30.9.2008 was fixed as under:

17. The directions given by the State Government under Section 6(1) of the Act by compounding scheme dated 9.6.2009 were as under:

18. Thus in view of the above discussions compounding under Section 6 of the Act would not be available in respect of completed regular assessment.

ISSUE NO. III

19. Coming to the 3rd issue, we find that the directions of the State Government to the Assessing Authorities for accepting lump sum amount in lieu of tax from a dealer depending upon the number of "PAYAS" of brick kilns, are for a fixed period/season of 1.1.2008 to 30.9.2008. The scheme does not provide for computation of lump sum amount for part of the season which may be accepted by the assessing authority. In the case of M/s. Sri Durga Brick Field, Gorakhpur v. State of U.P. and others, 1991 UPTC the Division Bench of this Court held that in case where option is exercised for payment of sales tax in a lump sum under Section 7-D , the demand is not based on the turn over but on agreement to pay tax in lump sum. The demand is not relatable to the actual turn over. In the case of M/s. Jai Sharma Int. Udyog, Allahabad v. Deputy Collector (Collection), Sales Tax, Allahabad and others, 1992 UPTC 1161, similar view was again taken.

20. It is settled law that in interpreting a taxing statute, equitable consideration are entirely out of place nor can a taxing statute be interpreted on any assumptions or presumptions. The Court must strictly construe the words of the statute and interpret them literally. It must interpret a taxing statute in the light of what is clearly expressed. It cannot imply anything which is not expressed, it cannot import provisions from the statutes so as to suffer any assumed deficiency.

21. Thus it is not open for the assessing authority either to bifurcate the period of the season or the lump sum amount under the scheme unless the assessing authority is permitted to do so under the scheme itself or under Section 6 of the Act. In the absence of any such direction or power, the assessing authority committed no error in rejecting the compounding application of the petitioners. In view of the above discussions, neither the petitioners have any right to claim for composition under the scheme dated 9.6.2009 for part of the season nor the assessing authority has power to accept the compounding applications of the petitioners for part of the season in the absence of any stipulation either in Section 6 of the Act or direction in the scheme and quantification of compounding amount for the period 1.4.2008 to 30.9.2008.

22. In the case of Lallooji and Sons, Allahabad v. State of U.P. and others, 2003 UPTC 900, the Division Bench of this Court considered the provisions of compounding under Section 7-D of the U.P. Trade Tax Act and held as under:

"10. In our opinion there is no merit in this petition. As stated in Section 7-D itself, the compounding scheme is subject to any direction of the State Government, which itself means that no one has a right to claim composition and this is subject to the decision of the State Government. In tax matters the Government has greater latitude to tax one category and not to tax other categories vide The Anant Mills Co. Ltd. Vs. State of Gujarat and Others, ; Malwa Bus Service (Private) Limited and Others Vs. State of Punjab and Others, ; Income Tax Officer, Shillong and Others Vs. R. Takin Roy Rymbai and Others, ; Amalgamated Tea Estate v. State of Kerala, 1975 UPTC 89 , etc. A taxing statute is not open to attack on the ground that it taxes some persons or objects and not others, East India Tobacco Co. Vs. State of Andhra Pradesh, . The State has a wide discretion in selecting the objects or persons that it will tax, and in order to tax something it is not bound to tax everything, Orient Weaving Mills (P) Ltd. Vs. The Union of India (UOI), ; State of M.P. v. Bhopal Sugar Industries, AIR 1974 SC 1179 . It can pick and choose objects, areas, persons, rates of tax, etc. V. Venugopala Ravi Varma Rajah Vs. Union of India and Another, ; Gopal Narain Vs. State of Uttar Pradesh and Another, ; Khyerbari Tea Co. Ltd. and Another Vs. The State of Assam, ; T.G. Venkataraman, etc. Vs. State of Madras and Another, , etc. There is no violation of natural justice in such cases. The very purpose of the composition scheme is to provide alternative mode of realization of tax other than regular assessment. It is not for the Court to enter into the realm of legislative or Government policy or to question the proprietary of the Tax.

(emphasis supplied by us)

23. Again the aforesaid provisions of Section 7-D of U.P. Trade Tax Act was considered by the Division Bench in the case of M/s. Jai Prakash Industries Ltd. v. State of U.P. and others, 2003 UPTC 1272 and held that it is only when both sides are agreeable then only an agreement of compensation can be entered into between the parties.

(emphasis supplied by us)

24. In the case of M/s. Bhadauria Oram Sewa Sansthan, Fatehpur v. Assistant Commissioner, Sales Tax, Allahabad and others, 2006 UPTC 538, the full Bench of this Court held that the amount payable under the compensation scheme is not relatable to any actual turnover but depends upon the agreement under the scheme at the option of the dealer.

25. In view of the above discussions, we are clearly of the view that the composition scheme under Section 6 of the Act dated 9.6.2009 could be opted by an asses-see/dealer for the season on terms and condition as provided by the scheme itself. The jurisdiction of the assessing authority is confined to accept

only such compounding applications which are in accordance with the direction of the scheme. He can neither travel beyond the directions of the scheme and the provisions of Section 6(1) of the Act nor has power either to bifurcate the period of the season or the lump sum amount unless it is so provided under the scheme. Option exercised by an assessee under Section 6(1) of the Act in respect of a compounding scheme results in an agreement which agreement can be entered only if both the parties are agreed. Under Article 220 of the Constitution of India, the Court cannot compel the State Government to enter into a composition agreement in conflict with or beyond the terms of the composition scheme.

26. In Writ Petition Nos. 896 of 2012, 897 of 2012 and 898 of 2012 the compounding application was allowed, but, subsequently a notice under Section 31 of the Act was issued by the assessing authority pursuant to which the order passed under Section 6 of the Act was recalled and the application of the petitioner was rejected. The petitioner has questioned the said order, on the ground, that the assessing authority had no power to recall the order since there was no mistake which was apparent on the face of the record. In support of his submissions, the learned counsel has placed reliance upon a decision of the Supreme Court in Deva Metal Powders Pvt. Ltd. Vs. Commissioner, Trade Tax, U.P., and M/s. Ram Prakash Vijai Kumar Pvt. Ltd. Saharanpur v. Deputy Commissioner (Executive), Sales Tax. Saharanpur, 1996 UPTC 998, wherein the Court observed that in the absence of any misrepresentation or suppression of material fact the rectification application could not be considered or allowed.

27. Having heard the learned counsel for the petitioner, we are of the opinion, that the assessing authority was justified in recalling the order under Section 31 of the Act. It is not necessary that a mistake could be rectified only in the case of misrepresentation or fraud. If there is an error, which is apparent from the record, the said error can be rectified under Section 31 of the Act. We have already held, that there cannot be two assessment orders. Since an assessment order had already been passed, under Section 28 of the Act, no fresh assessment order under the composition scheme could have been passed under Section 6 of the Act and this being an error apparent on the face of the record could be rectified under Section 31 of the Act.

28. We, therefore, hold that the compounding scheme dated 9.6.2009 is valid and the petitioners in whose cases regular assessment were already completed under Section 28 of the Act for assessment year 2007-08 (1.1.2008 to 31.3.2008) were not entitled to apply for compounding. The petitioners were also not entitled to opt for compounding for part of the season i.e. 1.4.2008 to 30.9.2008. In view of the above discussion, we do not find any merit in these writ petitions. All the writ petitions deserve to be dismissed and are hereby dismissed. No order as to costs.