R

06/01/09

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dated this the 2nd day of January, 2009

BEFORE:

THE HON'BLE MR JUSTICE D V SHYLENDRA KUMAR

Writ Petition No. 9689 of 2006 [T-KST],

C/w

Writ Petition Nos. 14926 of 2006 [T-RES],
15084 of 2006 [T-RES], 67 of 2007 [T-KST],
69 of 2007 [T-KST], 483 of 2007 [T-RES],
1617 of 2007 [T-RES], 1694 of 2007 [T-RES],
1982 of 2007 [T-RES], 2630 of 2007 [T-RES],
3396 of 2007 [T-RES], 3854 of 2007 [T-RES],
4439 of 2007 [T-RES], 6349 of 2007 [T-RES],
6531 of 2007 [T-RES], 6739 of 2007 [T-RES],
6801 of 2007 [T-RES], 10328 of 2007 [T-RES],
11065 of 2007 [T-RES], 11255 of 2007 [T-RES],
11412 of 2007 [T-RES], 14111 of 2007 [T-RES],
14112 of 2007 [T-RES], 14175 of 2007 [T- RES],
14230 of 2007 [T- RES], 15178 of 2007 [T- RES],
17008 of 2007 [T- RES], 17097 of 2007 [T- RES],
17489 of 2007 [T- RES], 18340 of 2007 [T- RES],
20604 of 2007 [T- RES], 2466 of 2008 [T- RES],
3208 of 2008 [T- RES], 3979 of 2008 [T- RES],
8201 of 2008 [T- RES], 12006 of 2007 [T- RES],
11511 of 2008 [T- RES], 12266 of 2008 [T- RES],
19519 of 2007 [T- RES], 9073 of 2007 [T- RES],
18531 of 2007 [T- RES], 15517 of 2008 [T-RES]

In WP No. 9689 of 2006

BETWEEN

M/S PHILIPS ELECTRONICS INDIA LTD
NO.109/3, PANTHRAPALYA
MYSORE ROAD, BANGALORE 560 039
REPTD. BY ITS MANAGER - CORPORATE FISCAL
SHRI.S.VANUVAMALAI
52 YRS., S/O LATE SHRI.Y.SHANKAR
SADASHIVAM. ... PETITIONER

[By Sri. G. Rabinathan and Sri. Thirumalesh, Advs.]

AND :

1 STATE OF KARNATAKA
REPTD. BY PRINCIPAL SECRETARY TO
GOVERNMENT, FINANCE DEPARTMENT,
GOVERNMENT OF KARNATAKA
VIDHANA SOUDHA
BANGALORE 560 001

2 COMMISSIONER OF COMMERCIAL
TAXES KARNATAKA
VANIJYA THERIGE KARYALAYA
GANDHINAGAR
BANGALORE 560 009

3 JOINT COMMISSIONER OF
COMMERCIAL TAXES (ADMN) DVO
BANGALORE DIVISION,
SRINIVASA COMPLEX
SESHADRIPURAM
BANGALORE 560 020

4 ASST COMMISSIONER OF COMMERCIAL TAXES
LOCAL VAT OFFICER 160
LAKSHMI COMPLEX
SESHADRIPURAM
BANGALORE 560 020 ... RESPONDENTS

[By Sri. K.M. Shivayogiswamy, HCGP]

THIS PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH SUB-SECTION (1) OF SEC.72 KVAT ACT, 2003 AS ULTRA VIRES THE POWERS OF STATE LEGISLATURE UNDER ENTRY NO.54 OF LIST II OF SEVENTH SCHEDULE TO CONSTITUTION OF INDIA IN SO FAR AS THE PETITIONER IS CONCERNED AND ETC.,

In WP No. 14926 of 2006

BETWEEN

M/S BRIGADE ENTERPRISES (P) LTD.,
REPRESENTED BY ITS
GENERAL MANAGER-FINANCE &
COMPANY SECRETARY
SRI A.ANIL KUMAR
PENTHOUSE, BRIGADE TOWERS, NO.135
BRIGADE ROAD,
BANGALORE 560025 ... PETITIONER

[By Sri. R.V. Prasad, Adv.]

AND :

1 THE STATE OF KARNATAKA
REPRESENTED BY ITS
FINANCE SECRTARY
VIDHANA SOUDHA
BANGALORE 560001

2 THE ASSISTANT COMMISSIONER OF
COMMERCIAL TAXES
L.V.O-010
BANGALORE 560 009 ... RESPONDENTS

[By Sri. K.M. Shivayogiswamy, HCGP]

THIS PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE ORDER OF PENALTY AND THE CONSEQUENTIAL NOTICE OF DEMAND, BOTH DATED 28.07.2006, PASSED BY THE R2 IN THE CASE OF THE PETITIONER UNDER SECTION 72[1] OF THE ACT VIDE ANX-C & D, PERTAINING TO THE MONTH OF MAY 2006 AND ETC.,

In WP No. 15084 of 2006

BETWEEN

M/S ACCEL FRONTLINE LTD
NO 18/1, CUNNINGHAM ROAD
BANGALORE, REP BY ITS ACCOUNTS
EXECUTIVE, SHRI RANJITH KUMAR
AGED ABOUT 33 YRS
S/O SHRI MUKUNDAN NAIR ... PETITIONER

[By Sri. G. Rabinathan & Sri. M. Thirumalesh, Advs.]

AND :

1 STATE OF KARNATAKA
REPTD BY PRL SECRETARY TO GOVT
FINANCE DEPARTMENT,
GOVERNMENT OF KARNATAKA,
VIDHANA SOUDHA
BANGALORE 1

2 COMMISSIONER OF COMMERCIAL
TAXES KARNATAKA,
VANIJYA THERIGE KARYALAYA
GANDHINAGAR, BANGALORE 9

3 ASST COMMISIONER OF
COMMERCIAL TAXES
LOCAL VAT OFFICER 130
ABHAYA COMPLEX
SESHADRIPURAM,
BANGALORE 20 ... RESPONDENTS

[By Sri. K.M. Shivayogiswamy, HCGP for R1 & R2]

THIS PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH SUB-SECTION (1) OF SECTION 72 OF KVAT ACT, 2003 AS ULTRA VIRES THE POWERS OF STATE LEGISLATURE UNDER ENTRY NO.54 OF LIST II OF SEVENTH SCHEDULE TO CONSTITUTION OF INDIA AND ETC.,

In WP No. 67 of 2007

BETWEEN

M/S RATHAN ENTERPRISES
NO.99 1ST MAIN ROAD
KAMAKSHIPALYA
MAGADI ROAD BANGALORE 79
REP. BY ITS SOLE PROPRIETRIX
SMT K CHANDRAKALA
AGED ABOUT 39 YRS
W/O SRI RATHANLAL ... PETITIONER

[By Sri. B.P. Gandhi, Adv.]

AND :

1 STATE OF KARNATAKA
BY CHIEF SECRETARY
VIDHANA SOUDHA
DR AMBEDKAR VEEDHI
BANGALORE 1

2 THE ASSISTANT COMMISSIONER
OF COMMERCIAL TAXES
LOCAL VAT OFFICER 130
DVO-II
ABHAYA COMPLEX PLATFORM ROAD
SESHADRIPURA
BANGALORE 20 ... RESPONDENTS

[By Sri. K.M. Shivayogiswamy, HCGP]

THIS PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO DECLARE SECTION 72[1] OF THE KARNATAKA VALUE ADDED TAX ACT, 2003 AS BEING CONSTITUTIONALLY VOID BEING VIOLATIVE OF ARTICLE 14, 19 265 300A OF THE CONSTITUTION OF INDIA AND DEHORS THE POWERS UNDER ENTRY 54 LIST II TO THE CONSTITUTION IN SO FAR AS PETITIONERS IS CONCERNED AND ETC.,

In WP No. 69 of 2007

BETWEEN

M/S RATHAN ENTERPRISES
NO.99 1ST MAIN ROAD
KAMAKSHIPALYA MAGADI ROAD
BANGALORE 79
REP. BY ITS SOLE PRORPIETRIX
SMT K CHANDRAKALA
AGED ABOUT 39 YRS
W/O SRI RATHANLAL ... PETITIONER

[By Sri. B.P. Gandhi, Adv.]

AND :

1 STATE OF KARNATAKA
BY CHIEF SECRETARY
VIDHANA SOUDHA
DR AMBEDKAR VEEDHI
BANGALORE 1

2 THE ASSISTANT COMMISSIONER
OF COMMERCIAL TAXES
LOCAL VAT OFFICER 130
DVO-II ABHAY COMPLEX
PLATFORM ROAD SESHADRIPURA
BANGALORE 20 ... RESPONDENTS

[By Sri. K.M. Shivayogiswamy, HCGP]

THIS PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO DECLARE SECTION 72(1) OF THE KARNATAKA VALUE ADDED TAX ACT, 2003, AS BEING CONSTITUTIONALLY VOID BEING VIOLATIVE OF ARTICLE 14,19,265, 300A OF THE CONSTITUTION OF INDIA AND DEHORS THE POWERS UNDER ENTRY 54 LIST II TO THE CONSTITUTION IN SO FAR AS PETITIONER IS CONCERNED AND ETC.,

In WP No. 483 of 2007

BETWEEN

CICB CHEMICON PRIVATE LTD
(A COMPANY INCORPORATED
UNDER THE COMPANIES ACT,
1956 WITH REGISTERED OFFICE
AT THE ADDRESS HEREIN SHOWN
& REP. BY ITS DIRECTOR IN CHARGE
OF FINANCE AND ADMINISTRATION,
MR.DEEPAK D.KINI) NO.239,
3RD MAIN, MAHALAKSHKMIPURAM LAYOUT,
B'LORE ... PETITIONER

[By Sri. C.R. Pandit, Adv.]

AND :

1 STATE OF KARNATAKA REP BY THE SECRETARY
FINANCE DEPARTMENT
GOVERNMENT OF KARNATAKA
BANGALORE

2 ASST COMMISSIONER OF COMMERCIAL TAXES
LVO-040, DVO-II, BANGALORE
LIC BUILDING, MALLESWARAM,
BANGALORE-560 003

3 JOINT COMMISSIONER OF
COMMERCIAL TAXES (APPEALS)
D.V.O.-II & IV
BANGALORE-560 003 ... RESPONDENTS

[By Sri. K.M. Shivayogiswamy, HCGP]

THIS PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE IMPUGNED ORDER DT. 29.5.2006 VIDE ANNEX.P. IN SO FAR AS IT RELATES TO THE DISMISSAL OF PETITIONER'S APPEALS VAT.AP.596 AND 597/2005-06 FOR THE MONTHS OF JUNE 2005 AND JULY 2005 RESPECTIVELY AND ETC.,

In WP No. 1617 of 2007

BETWEEN

M/S VISHAL CONCRETE WORKS
NO.208, SWISS COMPLEX
RACE COURSE ROAD,
BANGALORE-560 001
REPRESENTED BY ITS
GENERAL MANAGER
SRI.NARAYANDAS JAJU
AGED 47 YEARS. ... PETITIONER

[By Sri. Atul. K. Alur, Adv.]

AND :

1 STATE OF KARNATAKA
BY ITS CHIEF SECRETARY
DEPARTMENT OF FINANCE
VIDHANA SOUDHA
DR.AMBEDKAR VEEDHI
BANGALORE-560 001

2 THE ASSISTANT COMMISSIONER
OF COMMERCIAL TAXES
LOCAL VAT OFFICE-160
LAXMI COMPLEX
SESHADRIPRAM IST MAIN ROAD
BANGALORE-20 ... RESPONDENTS

[By Sri. K.M. Shivayogiswamy, HCGP]

THIS PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO DECLARE SECTION 72(1) OF THE KARNATAKA VALUE ADDED TAX ACT, 2003 AS BEING CONSTITUTIONALLY VOID BEING VIOLATIVE OF ARTICLE 14,19,265, 300A OF THE CONSTITUTION OF INDIA AND DEHORS THE POWERS UNDER ENTRY 54 LIST II TO THE CONSTITUTION IN SO FAR AS PETITIONER IS CONCERNED AND ETC.,

In WP No. 1694 of 2007

BETWEEN

M/S SUGAM UDYOG
NO.418/19 4TH FLOOR
B WING MITTAL TOWERS
21(6) M.G.ROAD
BANGALORE 560 001
REP. BY ITS PROPRIETOR
MR HANUMAN SINGH LUNIA,
AGED 52 YRS
S/O MR KANHAIAH LAL LUNIA ... PETITIONER

[By Sri. H.S. Hayath Khan Naushad, Adv.]

AND :

1 STATE OF KARNATAKA
REP. BY PRINCIPAL SECRETARY TO GOVT.,
FINANCE DEPT.,
GOVERNMENT OF KARNATAKA
VIDHANA SOUDHA
BANGALORE 560 001

2 COMMISSIONER OF COMMERCIAL
TAXES KARNATAKA
VANIJYA THERIGE KARYALAYA
GANDHINAGAR
BANGALORE 560 009

3 ASST COMMISSIONER OF COMMERCIAL TAXES
LOCAL VAT OFFICER 010
VANIJYA THERIGE KARAYALAYA
GANDHINAGAR
BANGALORE 560 009 ... RESPONDENTS

[By Sri. K.M. Shivayogiswamy, HCGP]

THIS PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH SUB-SECTION (1) OF SECTION 72 OF KVAT ACT, 2003 AS ULTRA VIRES THE POWERS OF STATE LEGISLATIRE UNDER ENTRY NO.54 OF LIST II OF SEVENTH SCHEDULE TO CONSTITUTION OF INDIA AND ETC.,

In WP No. 1982 of 2007

BETWEEN

M/S DDM TECH ENGINEERING
REPRESENTED BY ITS PROPRIETOR,
SRI A.V. DEVASSY,
AGED ABOUT 51 YEARS,
S/O VARGHEES
HOBLLA REDDY BUILDING,
3RD CROSS,SINGAYANAPALYA,
WHITE FIELD ROAD, MAHADEVAPURA
POST, B-48, OLD ADD;-V2(B)NGEF ANCILLARY
MAHADEVAPURA(POST),
WHITE FIELD RD, B'LORE ... PETITIONER

[By Sri. C. Basavaiah, Adv.]

AND :

1 THE STATE OF KARNATAKA
REP BY PRINCIPAL SECRETARY
TO THE GOVERNMENT,FINANCE DEPARTMENT
GOVERNMENT OF KARNATAKA,
VIDHANA SOUDHA,
BANGALORE 560 001

2 THE COMMISSIONER OF COMMERCIAL TAXES
KARNATAKA, VANIJYA THERIGE KARYALAYA,
GANDHINAGAR,
BANGALORE 560 009

3 THE JOINT COMMISSIONER OF COMMERCIAL TAXES
(ADMINISTRATION)DVO,
BANGALORE DIVISION, SRINIVASA COMPLEX,
SHESHADRIPURAM,
BANGALORE 560 020

4 THE ASSISTANT COMMISSIONER OF COMMERCIAL
TAXES,LVO 150,LAKSHMI COMPLEX
BASEMENT,
SHESHADRIPURAM,
BANGALORE 560 020

5 THE COMMERCIAL TAX OFFICER
DM DIVISION-1 DVO,
BANGALORE DIVISION,
SRINIVASA COMPLEX,
SHESHADRIPURAM,
BANGALORE 20. ... RESPONDENTS

[Sri. K.M. Shivayogiswamy, HCGP]

THIS PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH SUB-SECTION (1) OF SECTION 72 OF KVAT ACT, 2003 AS ULTRA VIRUS THE POWERS OF STATE LEGISLATURE UNDER ENTRY NO.54 OF LIST II OF SEVENTH SCHEDULE TO CONSTITUTION OF INDIA IN SO FAR AS THE PETITIONER IS CONCERNED AND ETC.,

In WP No. 2630 of 2007

BETWEEN

M/S ELITE AUTOMOBILES PVT LTD
NO.101 BARTON CENTRE
M.G.ROAD
BANGALORE 1
REP. BY ITS MANAGING DIRECTOR
MR GURJIT SINGH
AGED ABOUT 52 YRS ... PETITIONER

[By Sri. H.S. Hayath Khan Naushad]

AND :

1 STATE OF KARNATAKA
REP BY PRINCIPAL SECY
TO GOVERNMENT. FINANCE DEPT.,
GOVERNMENT OF KARNATAKA
VIDHANA SOUDHA
BANGALORE 1

2 COMMISSIONER OF COMMERCIAL TAXES
KARNATAKA, VANIJYA THERIGE KARYALAYA
GANDHINAGAR
BANGALORE 9

3 ASST COMMISSIONER OF
COMMERCIAL TAXES
LOCAL VAT OFFICER 30
VANIJYA THERIGE KARYALAYA
GANDHINAGAR
BANGALORE 9

4 DEPUTY COMMISSIONER OF
COMMERCIAL TAXES
DEBT MANAGEMENT 11
DIVISIONAL VAT OFFICE 1
VANIJYA THERIGE KARYALAYA
GANDHINAGAR
BANGALORE 9 ... RESPONDENTS

[By Sri. K.M. Shivayogiswamy, HCGP]

THIS PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH SUB-SECTION (1) OF SECTION 72 OF KVAT ACT 2003, AS ULTRA IRES THE POWERS OF STATE LEGISLATURE UNDER ENTRY NO.54 OF LIST II OF SEVENTH SCHEDULE TO CONSTITUTION OF INDIA AND ETC.,

In WP No. 3396 of 2007

BETWEEN

M/S COZY ENTERPRISES
NO.20, STADIUM SHOPPING
COMPLEX, STATION ROAD
BIJAPUR, REP BY ITS PROPRIETOR
S.Q.T. AIRANI,
AGED ABOUT 58 YEARS. ... PETITIONER

[By Sri. H.B.V. Patil and Shalini Patil, Adv.]

AND :

1 THE STATE OF KARNATAKA
REP BY ITS FINANCE SECY
VIDHANA SOUDHA
BANGALORE - 560001.

2 LOCLA VAT OFFICER - 440
BIJAPUR. ... RESPONDENTS

[By Sri. K.M. Shivayogiswamy, HCGP]

THIS PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO DECLARE THAT SECTION 72(1) OF THE ACT, IS ARBITRARY AND CONSEQUENTLY THE SAID PROVISION REQUIRED TO BE STRUCK DOWN AND TO DECLARE SECTION 72(1) OF THE ACT AS ULTRAVIRES THE POWERS OF THE STATE LEGISLATURE PROVIDED UNDER ENTRY NO.54 OF THE LIST II OF THE SEVENTH SCHEDULE APPENDED TO THE CONSTITUTION OF INDIA IN SO FAR AS THE PETITIONER IS CONCERNED AND ETC.,

In WP No. 3854 of 2007

BETWEEN

M/S ANCHOR ELECTRICALS PVT LTD
A COMPANY INCORPORATED UNDER THE
PROVISIONS OF COMPANIES ACT, 1956,
HAVING ITS BRANCH OFFICE AT NO 196/2,II MAIN
ANANTH RAMAIAH COMPOUND
MYSORE ROAD, BANGALORE 560 018
REPBY ITS ACCOUNTS MANAGER
SHRI K SHIVAKUMAR. ... PETITIONER

[By Sri. Atul. K. Alur, Adv.]

AND :

1 STATE OF KARNATAKA
REP BY PRINCIPAL
SECRETARY TO GOVERNMENT
FINANCE DEPARTMENT, GOVERNMENT OF
KARNATKA, VIDHANA SOUDHA
BANGALORE 560 001

2 COMMISSIONER OF COMMERCIAL TAXES
KARNATAKA, VANIJYA THERIGE
KARYALAYA, GANDHINAGAR
BANGALORE 560 009

3 THE ASST COMMISISONER OF COMMERCIAL
TAXES, LVO 070, DVO 3
6 FLOOR, VANIJYA THERIGE KARYALAYA
GANDHINAGAR,
BANGALORE 9 ... RESPONDENTS

[By Sri. K.M. Shivayogiswamy, HCGP]

THIS PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH SUB-SECTION (1) OF SECTION 72 OF KVAT ACT, 2003 AS ULTRA VIRES THE POWERS OF STATE LEGISLATURE UNDER ENTRY NO.54 OF LIST II OF SEVENTH SCHEDULE TO CONSTITUTION OF INDIA IN SO FAR AS THE PETITIONER IS CONCERNED AND ETC.,

In WP No. 4439 of 2007

BETWEEN

M/S S P L LIMITED
NO.438/A, VIDYASAGAR
THANISANDRA MAIN ROAD
BANGALORE-560045
REPRESENTED BY ITS DEPOT INCHARGE
MR.SUNIL SEN, AGED ABOUT 30 YEARS
S/O MR.K.R. SEN ... PETITIONER

[By Sri. H.S. Hayath Khan Naushad, Adv.]

AND :

1 STATE OF KARNATAKA
REPRESENTED BY PRINCIPAL SECRETARY TO
GOVERNMENT, FINANCE DEPARTMENT
GOVERNMENT OF KARNATAKA
VIDHANA SOUDHA
BANGALORE-560001

2 COMMISSIONER OF COMMERCIAL
TAXES KARNATAKA
VANIJYA THERIGE KARYALAYA
GANDHINAGAR
BANGALORE-560009

3 ASST COMMISSIONER OF COMMERCIAL TAXES
LOCAL VAT OFFICER 010
VANIJYA THERIGE KARYALAYA
GANDHINAGAR
BANGALORE-560009 ... RESPONDENTS

[By Sri. K.M. Shivayogiswamy, Adv.]

THIS PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH SUB-SECTION [1] OF SECTION 72 OF KVAT ACT, 2003 AS ULTRA VIRES THEH POWERS OF STATE LEGISLATURE UNDER ENTRY NO. 54 OF LIST II OF SEVENTH SCHEDULE TO CONSTITUTION OF INDIA AND ETC.,

In WP No. 6349 of 2007

BETWEEN

M/S ALFRED HERBRET LTD
REP. BY ITS GENERAL MANAGER-FINANCE
SRI G SUNDARESAN
AGED ABOUT 59 YRS
R/AT POST BOX NO.4805
WHITE FIELD ROAD MAHADEVAPURA
BANGALORE 560 048 ... PETITIONER

[By Sri. M.N. Shankare Gowda, Adv.]

AND :

1 STATE OF KARNATAKA
REP. BY ITS PRL.SECRETARY
VIDHANA SOUDHA
BANGALORE 560 001

2 JOINT COMMISSIONER OF COMMERCIAL
TAXES DVO - BANGALORE DIVISION
BANGALORE

3 DEPUTY COMMISSIONER OF COMMERCIAL
TAXES (ADMN), LVO-160
BANGALORE DIVISION, SRINIVASA COMPLEX
SESHADRIPURAM, BANGALORE-560 020.

4 ASST COMMISSIONER OF COMMERCIAL TAXES
LOCAL VAT OFFICER 160
BANGALORE-560 020. ... RESPONDENTS

[By Sri. K.M. Shivayogiswamy, HCGP]

THIS PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH SUB-SECTION(1) OF SECTION 72 OF KVAT ACT, 2003 AS ULTRA VIRES THE POWERS OF THE STATE LEGISLATURE UNDER ENTRY NO 54 OF LIST II OF SEVENTH SCHEDULE TO CONSTITUTION OF INDIA IN SO FAR AS THE PETITIONER IS CONCERNED AND ETC.,

In WP No. 6531 of 2007

BETWEEN

M/S. PHILIPS ELECTRONICS INDIA LTD.,
NO. 109/3, PANTHRAPALYA,
MYSORE ROAD,
BANGALORE -560 039,
REP. BY ITS MANAGER - CORPORATE FISCAL,
SHRI. S. VANUVAMALAI,
AGED ABOUT 52 YEARS,
S/O LATE SHRI. Y. SHANKAR SADASHIVAM. ... PETITIONER

[By Sri. G. Rabinathan and Sri. M. Thirumalesh, Adv.]

AND :

1. STATE OF KARNATAKA,
REP. BY PRINCIPAL SECRETARY
TO GOVERNMENT,
FINANCE DEPARTMENT,
GOVT. OF KARNATAKA,
VIDHANA SOUDHA,
BANGALORE – 560 001.

2. COMMISSIONER OF COMMERCIAL
TAXES KARNATAKA,
VANIJYA THERIGE KARYALAYA,
GANDHINAGAR,
BANGALORE – 560 009.

3. JOINT COMMISSIONER OF COMMERCIAL
TAXES (ADMN.), DVO,
BANGALORE DIVISION,
SRINIVASA COMPLEX,
SESHADRIPURAM,
BANGALORE – 560 020.

4. ASST. COMMISSIONER OF
COMMERCIAL TAXES,
LOCAL VAT OFFICER 160,
LAKSHMI COMPLEX,
SESHADRIPURAM,
BANGALORE – 560 020. ... RESPONDENTS

[By Sri. K.M. Shivayogiswamy, Adv.]

THIS PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH SUB-SECTION (1) OF SECTION 72 OF KVAT ACT, 2003 TO THE EXTENT IT PRESCRIBES LEVY OF PENALTY OF 10% OF THE AMOUNT OF TAX DUE AS ULTRA VIRES THE POWERS OF STATE LEGISLATURE UNDER ENTRY NO. 54 OF LIST II OF SEVENTH SCHEDULE TO CONSTITUTION OF INDIA IN SO FAR AS THE PETITIONER IS CONCERNED AND ETC.,

In WP No. 6739 of 2007

BETWEEN

M/S NEW SHASTRI SAGAR
ANANDA RAO CIRCLE,
SHESHADRI RAOD,
BANGALORE 9,
REPRESENTED BY ITS PARTNER,
SHRI ANAND SHASTRI. ... PETITIONER

[By Sri. Atul K. Alur, Adv.]

AND :

1 STATE OF KARNATAKA
REP BY PRL SECRETARY TO GOVT
FINANCE DEPARTMENT, GOVERNMENT OF
KARNATAKA, VIDHANA SOUDHA,
BANGALORE 1.

2 COMMISSIONER OF COMMERCIAL TAXES
KARNATAKA, VANIJYA THERIGE
KARYALAYA,
GANDHINAGAR,
BANGALORE 9.

3 THE ASST COMMISSIONER OF
COMMERCIAL TAXES,
LVO -020, DIVISIONAL VAT OFFICE-1
VANIJYA THERIGE KARYALAYA
GANDHINAGAR,
BANGALORE 560 009. ... RESPONDENTS

[By Sri. K.M. Shivayogiswamy, HCGP]

THIS PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH SUB-SECTION (1) OF SECTION 72 OF KVAT ACT, 2003 AS ULLTRA VIRES THE POWERS OF STATE LEGISLATURE UNDER ENTRY NO.54 OF LIST II OF SEVENTH SCHEDULE TO CONSTITUTION OF INDIA IS SO FAR AS PETITIONER IS CONCERNED AND ETC.,

In WP No. 6801 of 2007

BETWEEN

M/S NEW SHASTRI SAGAR
ANANDA RAO CIRCLE
SHESHADRI ROAD, GANDHINAGAR
BANGALORE - 560009
REP BY ITS PARTNER
SHRI ANAND SHASTRI. ... PETITIONER

[By Sri. Atul K. Alur, Adv.]

AND :

1 STATE OF KARNATAKA
REP BY PRINCIPAL SECY TO GOVT
FINANCE DEPARTMENT
GOVERNMENT OF KARNATAKA
VIDHANA SOUDHA
BANGALORE - 560001.

2 COMMISSIONER OF COMMERCIAL
TAXES KARNATAKA
VANIJYA THERIGE KARYALAYA
GANDHINAGAR
BANGALORE - 560009

3 THE ASST COMMISSIONER
OF COMMERCIAL TAXES
LVO - 020, DIVISIONAL VAT OFFICE -1
VANIJYA THERIGE KARYALAYA
GANDHINAGAR
BANGALORE - 560009. ... RESPONDENTS

[By Sri. K.M. Shivayogiswamy, HCGP]

THIS PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH SUB-SECTION (1) OF SECTION 72 OF KVAT ACT, 2003 AS ULLTRA VIRES THE POWERS OF STATE LEGISLATURE UNDER ENTRY NO.54 OF LIST II OF SEVENTH SCHEDULE TO CONSTITUTION OF INDIA IS SO FAR AS PETITIONER IS CONCERNED AND ETC.,

In WP No. 10328 of 2007

BETWEEN

M/S HARISH AGENCIES
NO 329/3, ATTIGUPPE
VIJAYANAGAR, BANGALORE 560 040
REP BY ITS PARTNER SRI M HARISH ... PETITIONER

[By Sri. N. Nagaraju, Adv. for
M/s. Ennal Associates, Advs.]

AND :

1 THE ASST. COMMISSIONER
OF COMMERCIAL TAXES
LVO 070, DVO 3
BANGALORE

2 THE STATE OF KARNATAKA
REP BY THE PRINCIPAL SECRETARY
FINANCE DEPARTMENT
VIDHANA SOUDHA
BANGALORE 1 ... RESPONDENTS

[By Sri. K.M. Shivayogiswamy, HCGP]

THIS PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO STRIKE DOWN SECTION 72(1) OF K.V.A.T. ACT 2003 WHICH IS AGAINST THE PRINCIPLES OF NATURAL JUSTICE, AS VOID AND UNCONSTITUTIONAL AND ETC.,

In WP No. 11065 of 2007

BETWEEN

M/S ANCHOR ELECTRICALS PVT LTD
A COMPANY INCORPORATED UNDER THE
PROVISIONS OF COMPANIES ACT, 1956,
HAVING ITS BRANCH OFFICE AT NO 196/2, II MAIN
ANANTH RAMAIAH COMPOUND, MYSORE ROAD
BANGALORE 560 018
REP BY ITS ACCOUNTS MANAGER
SHRI K SHIVAKUMAR ... PETITIONER

[By Sri. Atul. K. Alur, Adv.]

AND :

1 STATE OF KARNATAKA
REPRESENTED BY PRINCIPAL SECRETARY TO
GOVERNMENT, FINANCE DEPARTMENT
GOVERNMENT OF KARNATAKA
VIDHANA SOUDHA
BANGALORE 560 001

2 COMMISSIONER OF COMMERCIAL TAXES
KARNATAKA, VANIJYA THERIGE KARYALAYA
GANDHINAGAR
BANGALORE 560 009

3 THE ASST COMMISSIONER OF COMMERCIAL
TAXES, LVO 070, DVO 3, 6 FLOOR
VANIJYA THERIGE KARYALAYA
GANDHINAGAR,
BANGALORE 560 009 ... RESPONDENTS

[By Sri. K.M. Shivayogiswamy, Adv.]

THIS PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH SUB-SECTION (1) OF SECTION 72 OF KVAT ACT, 2003 AS ULTRA VIRES THE POWERS OF STATE LEGISLATURE UNDER ENTRY NO.54 OF LIST II OF SEVENTH SCHEDULE TO CONSTITUTION OF INDIA IS SO FAR AS THE PETITIONER IS CONCERNED AND ETC.,

In WP No. 11255 of 2007

BETWEEN

M/S KRISHNA INNOVATION
KRISHNA SUDHAMA HOUSE
PANYOOR ROAD UCHILA
UDUPI 117 PROPRIETRIC
SMT UMA K SHETTY
W/O KRISHNA Y SHETTY
AGED ABOUT 50 YRS ... PETITIONER

[By Sri. G. Saragan, Sr. Cl. for Vani. H. Adv.]

AND :

1 THE ASSISTANT COMMISSIONER
OF COMMERICAL TAXES
LVO 280
UDUPI

2 THE ASSISTANT COMMISSIONER OF COMMERCIAL
TAXES DEBT MANAGEMENT WING
DVO MANGALORE

3 THE COMMISSIONER OF COMMERCIAL
TAXES , VANIJYA THERIGE KARYALAYA
GANDHINAGAR I MAIN
BANGALORE 9

4 THE STATE OF KAKRNAKATA
DEPT. OF FINANCE
BY ITS SECRETARY
VIDHANA SOUDHA
AMBEDKAR VEEDHI
BANGALORE 1 ... RESPONDENTS

[By Sri. K.M. Shivayogiswamy, HCGP]

THIS PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO DECLARE SECTION 72 OF THE KARNATAKA VALUE ADDED TAX ACT. 2003 AS UNCONSTITUTIONAL AND VIOLATIVE OF PRINCIPLES OF NATURAL JUSTICE, IN SO FAR AS THE PETITIONER IS CONCERNED AND ETC.,

In WP No. 11412 of 2007

BETWEEN

CORPORATION BANK
A B SHETTY CIRCLE
PANDESWAR,
MANGALORE-575 001
(BY ITS CHIEF MANAGER
SRI ANATHARAYA PAI 54 YEARS) ... PETITIONER

[By Sri. G. Saragan, Sr.Cl. for
Sri. T.N. Keshavamurthy, Adv.]

AND :

1 THE STATE OF KARNATAKA
REPRESENTED BY ITS PRINCIPAL
SECRETARY TO GOVERNMENT
FINANCE DEPARTMENT
VIDHANA SOUDHA
BANGALORE

2 THE ASSISTANT COMMISSIONER
OF COMMERCIAL
TAXES, 270, MANGALORE ... RESPONDENTS

[By Sri. K.M. Shivayogiswamy, HCGP]

THIS PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH SUB-SECTION (1) OF SECTION 72 OF KVAT ACT, 2003 TO THE EXTENT IT PRESCRIBES LEVY OF PENALTY OF 10% OF THE AMOUNT OF TAX DUE AS ULTRA VIRES THE POWERS OF STATE LEGISLATURE UNDER ENTRY NO.54 OF LIST II OF SEVENTH SCHEDULE TO CONSTITUTION OF INDIA IN SO FAR AS THE PETITIONER IS CONCERNED AND ETC.,

In WP No. 14111 of 2007

BETWEEN

SRI BALAKRISHNA SHETTY
S/O. K.B. SHETTY
AGED ABOUT 53 YEARS
PWD CONTRACTOR
R/AT SHESHARAM COMPOUND
KIDIYOOR POST,
UDUPI - 574 117. ... PETITIONER

[By Sri. G. Saragan, Sr.Cl. for Vani. H. Adv.]

AND :

1 THE ASSISTANT COMMISSIONER
OF COMMERCIAL TAXES
L.V.O. 280, UDUPI.

2 THE ASSISTANT COMMISSIONER OF
COMMERCIAL TAXES
DEBT MANAGEMENT WING
D.V.O. MANGALORE.

3 THE COMMISSIONER OF
COMMERCIAL TAXES,
VANIJYA THERIGE KARYALAYA
GANDHINAGAR, I MAIN
BANGALORE - 560 009

4 THE STATE OF KARNATAKA
DEPT OF FINANCE
BY ITS SECRETARY
VIDHANA SOUDHA
AMBEDKAR VEEDHI
BANGALORE-560 001. ... RESPONDENTS

[By Sri. K.M. Shivayogiswamy, HCGP]

THIS PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO DECLARE SECTION 72 OF THE KARNATAKA VALUE ADDED TAX ACT, 2003, AS UNCONSTITUTIONAL AND VIOLATIVE OF PRINCIPLES OF NATURAL JUSTICE, IN SO FAR AS THE PEITTONER IS CONCERNED AND ETC.,

In WP No. 14112 of 2007

BETWEEN

SRI HAMNABBA MOIDEEN
S/O LATE MOHIDIN HAZI
AGED ABOUT 57 YEARS
CONTRACTOR,
R/AT RASHEEDA COTTAGE
JUMMA MASJID ROAD,
I CROSS PADUBIDRI,
UDUPI ... PETITIONER

[By Sri. G. Saragan, Sr.Cl. for Vani. H., Adv.]

AND :

1 THE ASSISTANT COMMISSIONER
OF COMMERCIAL TAXES
LVO 280
UDUPI

2 THE COMMISSIONER OF
COMMERCIAL TAXES
VANIJYA THERIGE KARYALAYA
GANDHINAGAR, I MAIN
BANGALORE 560 009

3 THE STATE OF KARNATAKA
DEPARTMENT OF FINANCE
BY ITS SECRETARY
VIDHANA SOUDHA
AMBEDKAR VEEDHI
BANGALORE 560 001 ... RESPONDENTS

[By Sri. K.M. Shivayogiswamy, HCGP]

THIS PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO DECLARE SECTION 72 OF THE KARNATAKA VALUE ADDED TAX ACT, 2003 AS UNCONSTITUTIONAL AND VIOLATIVE OF PRINCIPLES OF NATURAL JUSTICE, IN SO FAR AS THE PETITIONER IS CONCERNED AND ETC.,

In WP No. 14175 of 2007

BETWEEN

SHRI K VITTAL SHETTY
S/O. B MONAPPA SHETTY
AGED 73 YEARS
P.W.D. CONTRACTOR
SANTHEKATTE, KALLIANPUR
DIST UDUPI. ... PETITIONER

[By Sri. Atul. K. Alur, Adv.]

AND :

1 STATE OF KARNATAKA
REP BY PRINCIPAL SECRETARY TO GOVERNMENT
FINANCE DEPARTMENT
GOVERNMENT OF KARNATAKA
VIDHANA SOUDHA
BANGALORE-560001

2 COMMISSIONER OF COMMERCIAL
TAXES KARNATAKA
VANIJYA THERIGE KARYALAYA
GANDHINAGAR
BANGALORE-560009

3 THE ASST COMMISSIONER OF COMMERCIAL TAXES
LVO -280
UDUPI.

4 THE ASSISTANT COMMISSIONER OF COMMERCIAL
TAXES, DEBT MANAGEMENT
MAIDAN ROAD
MANGALORE - 575001. ... RESPONDENTS

[By Sri. K.M. Shivayogiswamy, HCGP]

THIS PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH SUB-SECTION (1) OF SECTION 72 OF KVAT ACT, 2003 AS ULTRA VIRES THE POWERS OF STATE LEGISLATURE UNDER ENTRY NO.54 OF LIST II OF SEVENTH SCHEDULE TO CONSTITUTION OF INDIA IN SO FAR AS THE PETITIONER IS CONCERNED AND ETC.,

In WP No. 14230 of 2007

BETWEEN

SHRI HARI SHETTY
S/O K VITTAL SHETTY
AGED ABOUT 35 YRS
PWD CONTRACTOR
SANTHEKATTE KALLIANPUR
DIST UDUPI ... PETITIONER

[By Sri. Atul. K. Alur, Adv.]

AND :

1 STATE OF KARNATAKA
REP. BY PRINCIPAL SECRETARY TO
GOVERNMENT , FINANCE DEPT.,
GOVERNMENT OF KARNATAKA
VIDHANA SOUDHA
BANGALORE 560001

2 COMMISSIONER OF COMMERCIAL TAXES KARNATAKA
VANIJYA THERIGE KARYALAYA
GANDHINAGAR
BANGALORE 560009

3 THE ASST COMMISSIONER
OF COMMERCIAL TAXES
LVO 280
UDUPI

4 THE ASST COMMISSIONER
OF COMMERCIAL TAXES
DEBT MANAGEMENT
MAIDAN ROAD
MANGALORE 1 ... RESPONDENTS

[By Sri. K.M. Shivayogiswamy, HCGP]

THIS PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH SUB-SECTION (1) OF SECTION 72 OF KVAT ACT 2003, AS ULTRA VIRES THE POWERS OF STATE LEGISLATURE UNDER ENTRY NO.54 OF LIST II OF SEVENTY SCHEDULE TO CONSTITUTION OF INDIA IN SO FAR AS THE PETITIONER IS CONCERNED AND ETC.,

In WP No. 15178 of 2007

BETWEEN

SMT ARUNA SURESH BHAT
PROPRIETORIX OF M/S TELE POINT
W/O B.S.SURESH KUMAR
AGED ABOUT 36 RYS
RA/T NO.13-3-22, A-5
GROUND FLOOR
PANDURANGA TOWERS UDUPI 117 ... PETITIONER

[By Sri. G. Saragan, Sr.Cl. for Vani. H. Adv.]

AND :

1 THE ASSISTANT COMMISSIONER
OF COMMERCIAL TAXES
L V O 280
UDUPI

2 THE COMMERCIAL TAX OFFICER
DEBT MANAGEMENT WING
D V O MANGALORE

3 THE COMMISSIONER OF COMMERCIAL
TAXES , VANIJYA THERIGE KARYALAYA
GANDHINAGAR I MAIN
BANGALORE 560 009

4 THE STATE OF KARNATAKA
DEPT. OF FINANCE
BY ITS SECRETARY
VIDHANA SOUDHA
AMBEDKAR VEEDHI
BANGALORE 560 001 ... RESPONDENTS

[By Sri. K.M. Shivayogiswamy, HCGP]

THIS PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO DECLARE SECTION 72 OF THE KARNATAKA VALUE ADDED TAX ACT, 2003 AS UNCONSTITUTIONAL AND VIOLATIVE OF PRINCIPLES OF NATURAL JUSTICE, IN SO FAR AS THE PETITIONER IS CONCERNED AND ETC.,

In WP No. 17008 of 2007

BETWEEN

M/S DIGITAL WORLD
SONY EXCLUSIVE
2-4-14-A-29
RAJA TOWERS
NEAR CITY BUS STAND
DIST UDUPI (REP. BY ITS
PROPRIETOR SMT AKSHATHA PAI) ... PETITIONER

[By Sri. Atul. K. Alur, Adv.]

AND :

1 STATE OF KARNATAKA
REP. BY PRINCIPAL SECRETARY TO
GOVERNMENT , FINANCE DEPT.,
GOVERNMENT OF KARNATAKA
VIDHANA SOUDHA
BANGALORE 1

2 THE ASST COMMISSIONER
OF COMMERCIAL TAXES
LVO 280
UDUPI

3 THE DEPUTY COMMISSIONER
OF COMMERCIAL TAXES
DEBT MANAGEMENT DVO
MAIDAN ROAD
MANGALORE 1 ... RESPONDENTS

[By Sri. K.M. Shivayogiswamy, HCGP]

THIS PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH SUB-SECTION (1) OF SECTION 72 OF KVAT ACT, 2003 AS ULTRA VIRES THE POWERS OF STATE LEGISLATURE UNDER ENTRY NO.54 OF LIST II OF SEVENTH SCHEDULE TO CONSTITUTION OF INDIA IN SO FAR AS THE PETITIONER IS CONCERNED AND ETC.,

In WP No. 17097 of 2007

BETWEEN

SRI VINITH S AMIN AGE 43 YEARS
S/O S.K.AMIN,CONTRACTOR,
R/O.13-1-24, RADHA COMPLEX,
AJJARKAD,UDUPI DISTRICT. ... PETITIONER

[By Sri. Atul K. Alur, Adv.]

AND :

1 STATE OF KARNATAKA
REP BY PRINCIPAL SECRETARY
TO GOVERNMENT,FINANCE DEPARTMENT,
GOVERNMENT OF KARNATAKA,
VIDHANA SOUDHA,BANGALAORE-1.

2 COMMISSIONER OF COMMERCIAL
TAXES KARNATAKA,
VANIJYA THERIGE KARYALAYA
GANDHINAGAR,BANGALORE-9.

3 THE ASSISTANT COMMISSIONER
OF COMMERCIAL TAXES,LVO-280,
UDUPI.

4 THE DEPUTY COMMISSIONER
OF COMMERCIAL TAXES,
DEBT MANAGEMENT,
MAIDAN ROAD,MANGALORE-1. ... RESPONDENTS

[By Sri. K.M. Shivayogiswamy, HCGP]

THIS PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH SUB-SECTION (1) OF SECTION 72 OF KVAT ACT, 2003 AS ULTRA VIRES THE POWERS OF STATE LEGISLATURE UNDER ENTRY NO. 54 OF LIST II OF SEVENTH SCHEDULE TO CONSTITUTION OF INDIA IN SO FAR AS THE PETITIONER IS CONCERNED AND ETC.,

In WP No. 17489 of 2007

BETWEEN

SRI RAGHAVA SHETTIGAR
S/O BHEEM SHETTIGAR
AGED ABOUT 53 YERAS,
CONTRACTOR,
R/A SUDARSHAN HOUSE.
ACHUTHA NAGAR HERGA,
UDUPI 574 117. ... PETITIONER

[By Sri. Saragan, Sr.Cl. for Vani. H., Adv.]

AND :

1 THE ASSISTANT COMMISSIONER
OF COMMERCIAL TAXES
DEBT MANAGEMENT WING,
D.V.O. MANGALORE.

2 THE ASSISTANT COMMISSIONER
OF COMMERCIAL TAXES
LVO 280,
UDUPI.

3 THE COMMISSIONER OF COMEMRCIAL
TAXES, VANIJYA THERIGE KARYALAYA,
GANDHINAGAR, I MAIN,
BANGALORE 9.

4 THE STATE OF KARNATAKA
DEPARTMENT OF FINANCE,
BY ITS SECRETARY,
VIDHANA SOUDHA,AMBEDKAR VEDHI.
BANGALORE 1.

5 BANK OF BARODA
UDUPI BRANCH,
UDUPI
REPRESENTED BY ITS MANAGER. ... RESPONDENTS

[By Sri. K.M. Shivayogiswamy, HCGP;
R5 – deleted vide order dt. 20.2.2008]

THIS PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO DECLARE SECTION 72, OF THE KARNATAKA VALUE ADDED TAX ACT, 2003, AS UNCONSTITUTIONAL AND VIOLATIVE OF PRINCIPLES OF NATURAL JUSTICE, IN SO FOR AS THE PETITIONER IS CONCERNED AND ETC.,

In WP No. 18340 of 2007

BETWEEN

KALPA ENGINEERING
NO 326,9TH CROSS,4TH PHASE,
PEENYA INDUSTRIAL AREA,
BANGALORE. REP.BY SRI.M.RAJENDRA PRASAD
S/O S.MALLESHAPPA,
AGED 40 YEARS, ... PETITIONER

[By Sri. A. Satyanarayan, Adv.]

AND :

1 THE DEPUTY COMMISSIONER
OF COMMERCIAL TAXES
ADUIT 8,OODI DVOI BANGALORE-20.

2 THE DEPUTY COMMISSIONER
OF COMMERCIAL TAXES
ADUIT 1,LDU,DVO,BANGALORE-01.

3 STATE OF KARNATAKA
REP.BY FINANCE SECRETARY,
VIDHANA SOUDHA,
BANGALORE-01

4 COMMISSIONER OF COMMERCIAL TAXES
VTK GANDHINAGAR,1ST MAIN,
BANGALORE-09. ... RESPONDENTS

[By Sri. K.M. Shivayogiswamy, HCGP]

THIS PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE IMPUGNED ORDER PASSED ON 29.9.07 U/S 39(1) OF THE KAVT 2003 FOR THE 3 MONTHS I.E, APRIL MAY AND JUNE 2005 MARKED AS ANN-D, DEMAND NOTICE DT.29.9.07. VIDE ANN-E, F, & G AND OBLIGE, GIVING LIBERTY TO THE R4, TO AMEND THE PENAL PROVISION 72(2) SUITABLY MARKED AS ANN-H AND ETC.,

In WP No. 20604 of 2007

BETWEEN

HENKEL INDIA LIMITED
NO.1, NETKALLAPPA ENCLAVE,
7TH CROSS, MYSORE ROAD,
GUDDADAHALLI
BANGALORE 26,
(REP. BY SRI.MANOHARAN,DIRECTOR,HINDU
AGED ABOUT 31 YEARS). ... PETITIONER

[By Sri. A. Satyanarayan, Adv.]

AND :

1 THE ASSISTANT COMMISSIONER
OF COMMERCIAL TAXES
(LVO-070),
DVO 3. 6TH FLOOR,
VTK GANDHINAGAR,
BANGALORE 9.

2 STATE OF KARNATAKA
REP. BY FINANCE SECRETARY,
VIDHANA SOUDHA,
BANGALORE 1.

3 COMMR OF COMRL TAXES
VTK IST MAIN, GANDHINAGAR,
BANGALORE 9. ... RESPONDENTS

[By Sri. K.M. Shivayogiswamy, HCGP]

THIS PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE IMPUGNED PROVISIONS OF SECTION 72(2) AND THE CONSEQUENTIAL ORDER DT. 25.5.2007 PASSED BY THE 1ST RESPONDENT MARKED AS ANNEXURE-B, SO FAR AS PETITIONER IS CONCERNED AND ETC.,

In WP No. 2466 of 2008

BETWEEN

M/S VIKRAM RESINS AND POLYMERS
98, KALENA AGRAHARA, BEGUR HOBLI
NATIONAL PARK ROAD, BANGALORE-76
REP BY SRI PRAKASH H RUPANI
S/O LATE H A ROOPANI
AGED ABOUT 57 YEARS ... PETITIONER

[By Sri. A. Satyanarayan, Adv.]

AND :

1 THE DEPUTY COMMISSIONER
OF COMMERCIAL TAXES
AUDIT-II
DVO-I, VTK GANDHINAGAR
BANGALORE-9

2 STATE OF KARNATAKA
REP.BY FINANCE SECRETARY
VIDHANA SOUDHA
BANGALORE-01

3 COMR. OF COMRL. TAXES
VTK, GANDHINAGAR
BANGALORE-9 ... RESPONDENTS

[By Sri. K.M. Shivayogiswamy, HCGP]

THIS PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE IMPUGNED PROVISION U/S. 72(2) VIDE ANNEX.B. AND CONSEQUENTIAL LIABILITY IN ANNEX.A1 AND A2 AS PER SECTION 39(1) AND 72(2) OF THE KVAT ACT, 2003 VIDE ORDER DT. 31.1.2008 VIDE ANNEX.A. AND THE CONSEQUENTIAL DEMAND NOTICE DT. 7.2.2008 IN VAT FORM 180 MARKED AS ANNEX.A1 AND A2 FOR THE TWO YEARS 2005-06 AND 2006-07 GIVING LIBERTY TO R2 AND R3 TO AMEND THE PENAL PROVISION 72(2) SUITABLY MARKED AS ANNEX.B AND ETC.,

In WP No. 3208 of 2008

BETWEEN

M/S ZETA TECHNOLOGIES
S S BUILDING
NAGARAJA ESTATE
PADUBIDRI-574111
REP BY ITS PROPRIETOR
SRI VIVEK B S ... PETITIONER

[By Sri. Atul. K. Alur, Adv.]

AND :

1 STATE OF KARNATAKA
REP BY PRINCIPAL SECRETARY TO GOVT
FINANCE DEPT.
GOVERNMENT OF KARNATAKA
VIDHANA SOUDHA
BANGALORE-560001

2 THE ASST COMMISSIONER
OF COMMERCIAL TAXES
LVO-280, UDUPI

3 THE DEPUTY COMMISSIONER OF
COMMERCIAL TAXES
DEBT MANAGEMENT DVO
MAIDAN ROAD
MANGALORE-575001 ... RESPONDENTS

[By Sri. K.M. Shivayogiswamy, HCGP]

THIS PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH SUB-SECTION (1) OF SECTON 72 OF KVAT ACT, 2003 AS ULTRA VIRES THE POWERS OF STATE LEGISLTURE UNDER ENTRY NO.54 OF LIST II OF SEVENTH SCHEDULE TO CONSTITUTION OF INDIA IN SO FAR AS THE PETITIONER IS CONCERNED AND ETC.,

In WP No. 3979 of 2008

BETWEEN

M/S TILE ITALIA MOSAICS PVT LTD
REP BY ITS MD SRI.SHASHIDHAR PATIL
AGED ABOUT 53 YEARS
NO.37, BRAHMANANDA COURT
LALBAGH ROAD
BANGALORE-27 ... PETITIONER

[By Sri. N.M. Shankare Gowda, Adv.]

AND :

1 STATE OF KARNATAKA
REP BY PRINCIPAL SECRETARY
TO GOVERNMENT OF KARNATAKA
VIDHANA SOUDHA
BANGALORE-1

2 THE COMMISSIONER OF COMMERCIAL
TAXES IN KARNATAKA
VANIJYA THERIGE KARYALAYA
GANDHINAGAR
BANGALORE-9

3 JOINT COMMISSIONER OF
COMMERCIAL TAXES(ADMN)
DVO-1, 5TH FLOOR, VANIJYA THERIGE
KARYALAYA, GANDHINAGAR
BANGALORE-9

4 ASST COMMISSIONER OF COMMERCIAL TAXES
(AUDIT 13)DVO-I
5TH FLOOR, VANIJYA THERIGE KARYALAYA
GANDHINAGAR
BANGALORE-9 ... RESPONDENTS

[By Sri. K.M. Shivayogiswamy, HCGP]

THIS PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH SUB-SECTION (1) OF SECTION 72 OF KVAT ACT, 2003 AS ULTRA VIRES THE POWERS OF THE STATE LEGISLATURE UNDER ENTRY NO.54 OF LIST II OF SEVENTH SCHEDULE TO CONSTITUTION OF INDIA SO FAR AS THE PETITIONER IS CONCERNED AND ETC.,

In WP No. 8201 of 2008

BETWEEN

M/S R M P INFOTECT PVT LTD
A COMPANY INCORPORATED UNDER THE
PROVISIONS OF COMPANIES ACT, 1956,
HAVING ITS BRANCH OFFICE AT 737,
2 FLOOR, 9 MAIN, 3 STAGE
3 BLOCK, BASAVESHWARANAGAR
BANGALORE 79, REP BY ITS DIRECTOR
SHRI DHAVAL J CHANDAN ... PETITIONER

[By Sri. Atul. K. Alur, Adv.]

AND :

1 STATE OF KARNATAKA
REPRESENTED BY PRINCIPAL SECRETARY
TO GOVERNMENT , FINANCE DEPARTMENT
GOVERNMENT OF KARNATAKA
VIDHANA SOUDHA
BANGALORE 1

2 THE ASST COMMISSIONER OF COMMERCIAL TAXES
LVO 070, DVO 2, KARNATAKA
SMALL SCALE INDUSTRIES
ASSOCIATION BUILDINGS, NO 2/106
17 CROSS, MAGADI CHORD ROAD
VIJAYANAGAR,
BANGALORE 40 ... RESPONDENTS

[By Sri. K.M. Shivayogiswamy, HCGP]

THIS PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH SUB-SECTION(1) OF SECTION 72 OF KVAT ACT, 2003 AS ULTRA VIRES THE POWERS OF STATE LEGISLATURE UNDER ENTRY NO.54 OF LIST II OF SEVENTH SCHEDULE TO CONSTITUTION OF INDIA IN SO FAR AS THE PETITIONER IS CONCERNED AND ETC.,

In WP No. 12006 of 2007

BETWEEN

M/S ZICOM ELECTRONIC SECURITY SYSTEMS LTD
B-01, FREMONT TERRACES, LOWER GROUND
FLOOR, NO.3850, 4TH CROSS, HAL 2ND STAGE
INDIRANAGAR, BANGALORE-38. REPRESENTED
BY ITS BUSINESS MANAGER, SRI.VIJAY ANAND
AGED ABOUT 35 YEARS,
S/O SRI D JOHNNY WALKER ... PETITIONER

[By Sri. G. Saragan, Sr.Cl. for A. Nagaraja Naidu, Adv.]

AND :

1 STATE OF KARNATAKA
REPRESENTED BY PRINCIPAL SECRETARY TO
GOVERNMENT
FINANCE DEPARTMENT
GOVERNMENT OF KARNATAKA
VIDHANA SOUDHA, BANGALORE-560 001

2 THE COMMISSIONER OF COMMERCIAL TAXES
KARNATAKA VANIJYA THERIGE KARYALAYA
GANDHINAGAR
BANGALORE-560 009

3 THE ASST COMMISSIONER OF COMMERCIAL TAXES
LOCAL VAT OFFICER -045 DVO-4
B D A COMPLEX, INDIRANAGAR
BANGALORE-560 038 ... RESPONDENTS

[By Sri. K.M. Shivayogiswamy, HCGP]

THIS PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH CLAUSE (a) AND (b) OF SUB-SECTION (1) OF SECTION 72 OF KVAT ACT, 2003 AS ULTRA VIRES THE POWERS OF STATE LEGISLATURE UNDER ENTRY NO.54 OF LIST II OF SEVENTH SCHEDULE TO CONSTITUTION OF INDIA AND ETC.,

In WP No. 11511 of 2008

BETWEEN

MRS RATHNA M SALIAN
PROP; KIRAN ICE CREAM,
AGED ABOUT 45 YEARS,
YERMAL BADA,
UDUPI 576 115, ... PETITIONER

[By Sri. Atul. K. Alur, Adv.]

AND :

1 STATE OF KARNATAKA
REPERSENTED BY PRINCIPAL SECRETARY
TO GOVERNMENT, FINANCE DEPARTMENT,
GOVERNMENT OF KARNATAKA,
VIDHANA SOUDHA,
BANGALORE 1.

2 THE ASST COMMISSONER
OF COMMERCIAL TAXES
LVO 280,
UDUPI ,

3 THE ASST COMMISSONER
OF COMMERCIAL TAXES
(ENFORCEMENT),
UDUPI,

4 COMMERCIAL TAX OFFICER
III, CIRCLE, (TRANSITION),
UDUPI, ... RESPONDENTS

[By Sri. K.M. Shivayogiswamy, HCGP]

THIS PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH SUB-SECTION (1) OF SECTION 72 OF KVAT ACT, 2003 AS ULTRA VIRES THE POWERS OF STATE LEGISLATURE UNDER ENTRY NO. 54 OF LIST II OF SEVENTH SCHEDULE TO CONSTITUTION OF INDIA IN SO FAR AS THE PETITIONER IS CONCERNED AND ETC.,

In WP No. 12266 of 2008

BETWEEN

CETHAR VESSELS LTD
NO.4, DINDIGUL ROAD, TIRUCHIRAPALLI
620 001, DISTRICT TIRUCHIRAPALLI
TAMILNADU STATE (REPRESENTED BY I TS
JUNIOR EXECUTIVE (LEGAL)AND POWER OF
ATTORNEY HOLDER SRI. F.HENRY SAGAYARAJ,
AGED ABOUT 27 YEARS, ... PETITIONER

[By Sri. E.R. Indra Kumar, Sr.Cl. for E.I. Sanmathi, Adv.]

AND :

1 STATE OF KARNATAKA
BY ITS SECRETARY,
DEPARTMENT OF FINANCE,
GOVERNMENT OF KARNATKA,
VIDHANA SOUDHA,
BANGALORE.

2 ASSISTANT COMMISSIONER OF COMMERCIAL TAXES
LVO 360, VAGESH NAGAR,
IST CROSS, MEDLERI ROAD,
RANEBENNUR. ... RESPONDENTS

[By Sri. K.M. Shivayogiswamy, HCGP]

THIS PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE ORDER PASSED BY THE R2 ASSISTANT COMMISSIONER OF COMMERICIAL TAXES IN THE PETITIONER'S CASE UNDER SECTION 72(1) (a) & (b) OF THE KARNATAKA VALUE ADDED TAZ ACT, 2003, DT. 22.7.2008 VIDE ANX-C RELATING TO THE TAX PERIOD OF FEBRUARY 2008 IN SO FAR AS THE SAME RELATES TO LEVY OF PENALTY UNDER SECTION 72(1)(b) OF THE SAID ACT AND ALSO TO QUASH THE CONSEQUENTIAL DEMAND NOTICE IN FORM VAT 180 DT. 22.7.2008 ISSUED IN THE PETITIONER'S CASE VIDE ANX-D BY THE R2 IN RESPECT OF THE PENALTY LEVIED UNDER THE SAID PROVISION AND ETC.,

In WP No. 19519 of 2007

BETWEEN

SRI P BABU S/O P KUMARAN
AGED ABOUT 46 YEARS
PROP: SHASHWATH ENTERPRISES
PWD CONTRACTOR, KUKKIKATTE,
DIST.UDUPI. ... PETITIONER

[By Sri. Atul. K. Alur, Adv.]

AND :

1 STATE OF KARNATAKA
REP.BY PRINCIPAL SECRETARY TO GOVERNMENT
FINANCE DEPARTMENT,
GOVERNMENT OF KARNATAKA,
VIDHANA SOUDHA,
BANGALORE-560 001.

2 THE ASSISTANT COMMISSIONER OF
COMMERCIAL TAXES,
LVO-280, UDUPI.

3 THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES
DEBT MANAGEMENT,
MAIDAN ROAD,
MANGALORE-575 001. ... RESPONDENTS

[By Sri. K.M. Shivayogiswamy, HCGP]

THIS PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH SUB-SECTION (1) OF SECTION 72 OF KVAT ACT, 2003 AS ULTRA VIRES THE POWERS OF STATE LEGISLATURE UNDER ENTRY NO.54 OF LIST II OF SEVENTH SCHEDULE TO CONSTITUTION OF INDIA IN SO FAR AS THE PETITIONER IS CONCERNED AND ETC.,

In WP No. 9073 of 2007

BETWEEN

B SHESHAPPA KUNDAR
P.W.D. CONTRACTOR,
SRINIDHI, GUNDIBAIL,
UDUPI,
REPRESENTED BY ITS PROPRIETOR
SHRI SHESHAPPA KUNDAR,
AGED ABOUT 46 YEARS ... PETITIONER

[By Sri. Atul. K. Alur, Adv.]

AND :

1 STATE OF KARNATAKA
REPRESENTED BY PRINCIPAL SECRETARY
TO GOVERNMENT
FINANCE DEPARTMENT
GOVERNMENT OF KARNATAKA
VIDHANA SOUDHA
BANGALORE-560 001

2 COMMISSIONER OF COMMERCIAL
TAXES KARNATAKA
VANIJYA THERIGE KARYALAYA
GANDHINAGAR
BANGALORE-560 009

3 THE ASST COMMISSIONER
OF COMMERCIAL TAXES
LVO-280
UR ROW COMPLEX,
UDUPI-576 101

4 THE ASST COMMISSIONER
OF COMMERCIAL TAXES
DEBT MANAGEMENT
MAIDAN ROAD,
MANGALORE-575 001 ... RESPONDENTS

[By Sri. K.M. Shivayogiswamy, HCGP]

THIS PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH SUB-SECTION (1) OF SECTION 72 OF KVAT ACT, 2003 AS ULTR VIRES THE POWERS OF STATE LEGISLATURE UNDER ENTRY NO.54 OF LIST II OF SEVENTH SCHEDULE TO CONSITUTION OF INDIA IN SO FAR AS THE PETITIONER IS CONCERNED AND ETC.,

In WP No. 18531 of 2007

BETWEEN

M/S NAYAK ENTERPRISES
MARKET ROAD, PARKALA
UDUPI - 574 117, REP BY ITS PROPRIETOR
SRI RAMDAS NAYAK, S/O. LATE
VENKATESH NAYAK,
AGED ABOUT 49 YEARS ... PETITIONER

[By Sri. G. Saragan, Sr.Cl. for Smt. Vani. H., Adv.]

AND :

1 THE ASSISTANT COMMISSIONER
OF COMMERCIAL TAXES
L.V.O. 280
UDUPI.

2 THE DEPUTY COMMISSIONER
OF COMMERCIAL TAXES
DEBT MANAGEMENT WING
D.V.O. MANGALORE.

3 THE COMMISSIONER OF COMMERCIAL TAXES
VANIJYA THERIGE KARYALAYA
GANDHINAGAR, I MAIN
BANGALORE - 560009.

4 THE STATE OF KARNATAKA
DEPT OF FINANCE
BY ITS SECRETARY
VIDHANA SOUDHA
AMBEDKAR VEEDHI
BANGALORE - 560001.

5 CORPORATION BANK
MANIPAL BRANCH
MANIPAL
REP.BY ITS MANAGER. ... RESPONDENTS

[By Sri. K.M. Shivayogiswamy, HCGP]

THIS PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO DECLARE SECTION 72 OF THE KARNATAKA VALUE ADDED TAX ACT, 2003 AS UNCONSTITUIONAL AND VIOLATIVE OF PRINCIPLES OF NATURAL JUSTICE, IN SO FOR AS THE PETITIONER IS CONCERNED AND ETC.,

In WP No. 15517 of 2008

BETWEEN

M/S SKY GOURMET CATERING PVT LTD
BOVIPALYA VILLAGE,
NAVATHANA AGRAHARA
NEAR MS ENGINEERING COLLEGE
SADANAHALLI POST,
DEVANAHALLI TALUK
BANGALORE NORTH-562 110,

OLD ADDRESS:-
CHALLAGATTA,
YAMALUR POST,
BWSSB ROAD,
BANGALORE - 560 087.

REPRESENTED BY ITS
AUTHORISED SIGNATORY
SRI.V.ARUNACHALAM,
S/O SRI.VISHWANATH IYER,
AGED ABOUT 53 YEARS. ... PETITIONER

[By Sri. K.S. Ramabadran, Adv.]

AND :

1 THE ASSISTANT COMMISSIONER
OF COMMERCIAL TAXES
LVO-015, VTK-2, KORAMANGALA
BANGALORE-560047

2 THE COMMISSIONER OF COMMERCIAL
TAXES INKARNATAKA
VANIJYA THERIGE KARYALAYA
I MAIN ROAD, GANDHINAGAR
BANGALORE-560009

3 THE STATE OF KARNATAKA
DEPARTMENT OF FINANCE
BY ITS SECRETARY
VIDHANA SOUDHA
DR. AMBEDKAR VEEDHI
BANGALORE-560001 ... RESPONDENTS

[By Sri. K.M. Shivayogiswamy, HCGP]

THIS PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO HOLD OF SUB SECTION (1) OF SECTION 72 OF KARNATAKA VALUE ADDED TAX, 2003 AS UNCONSTITUTIONAL UNDER ACT 14 AND 19(1)(g) AND ALSO ULTRAVIRES THE POWERS OF STATE LEGISLATURE UNDER ENTRY 54 OF THE LIST II OF SEVENTH SCHEDULE TO THE CONSTITUTION OF INDIA AND ETC.,

THESE PETITIONS, HAVING HEARD AND RESERVED FOR ORDERS, COMING ON FOR PRONOUNCEMENT OF ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Writ petitioners are all persons who are dealers as the expression occurs in Section 2(12) of the Karnataka Value Added Tax Act, 2003 [for short, the Act] and also dealers who are registered under Section 22 of the Act.

2. Petitioners have a common grievance and complaint against the validity of the penalty orders, which penalty has been imposed on the petitioners under the provisions of sub-section (1) of Section 72 of the Act. Such penalty is levied on the petitioners either for their failure to file returns of the turnover, which is a periodic return to be filed every month, in terms of Section 35 of the Act or for their failure to have paid the tax, which they have collected and which had become payable within the permitted time, as stipulated in sub-section (1) of Section 35 of the Act.

3. Writ petitioners are complaining that the quantum of penalty levied on them under the provisions of sub-section (1) of Section 72 of the Act, has assumed an oppressive

proportion; that it has virtually turned out to be confiscatory in nature of a part of their income; that in the guise of levying the penalty for either a delayed filing of return or a delayed payment of tax on the return so filed i.e. for their failure to comply with the twin requirements of filing of return and paying tax within the stipulated periods, the penalty levied is unreasonably high; that it has assumed a disproportionate level; that levying penalty is harsh, as the penalty is levied irrespective of the cause for the delay; that the orders are also bad for not taking into consideration the genuine explanation which the petitioners had offered; that the penalties are levied notwithstanding the absence of a failure on the part of the petitioners in securing compliance with the requirements of Section 35 of the Act; that while the orders levying such penalties are *per se* bad, legislative provisions under which the authorities are enabled to levy and collect such a penalty i.e. the provisions of sub-section (1) of Section 72 of the Act, which achieves such result of levying penalty unreasonably and at disproportionate levels, is a provision which is violative of Articles 14 and 19(1)(g) of the Constitution of India; that in the guise of making a provision for ensuring compliance with the levy and collection of tax on the sale of goods, a subject within the domain of the State legislature under Entry 54 of List II of the seventh schedule to the Constitution of India, what is actually collected as penalty is something which goes beyond even the scope of the main subject matter of Entry 54 of List-II; that such penalties partake the character of not only levying tax on income, but also leading to disproportionate levels as to throw out the petitioners from their very business and interfering with the rights of the petitioners to have their trade and business of their choice guaranteed under Article 19(1)(g) of the Constitution of India.

4. Each of the petitioners has questioned not only the legality of the orders under which the penalty is levied

under sub-section (1) of Section 72 of the Act and has sought for quashing the same, but also has sought for a writ in the nature of declaration to declare that the provisions of sub-section (1) of Section 72 of the Act is unconstitutional, being violative of Articles 14 and 19 of the Constitution of India and also going beyond the legislative competence of the state legislature to make laws with reference to Entry 54 of List-II of the seventh schedule to the Constitution and for consequential writ of certiorari to quash the penalty orders and the consequential demand notices.

5. In all the above writ petitions, while the differing facts in each of the petitioners' case are narrated, several permutations and combinations of the basic grounds, as indicated above, are urged in support of the writ petitions praying for the relief of declaration that the provisions of sub-section (1) of Section 72 of the Act are unconstitutional and the consequential relief of quashing the penalty orders.

6. Relevant statutory provisions of the Act read as under:

2. *Definitions*

(12) ***'Dealer'*** *means any person who carries on the business of buying, selling, supplying or distributing goods, directly or otherwise, whether for cash or for deferred payment, or for commission, remuneration or other valuable consideration, and includes-*

(a) an industrial, commercial or trading undertaking of the Government, the Central Government, a State Government of any State other than the State of Karnataka, a statutory body, a local authority, company, a Hindu undivided family, an Aliyasanthana Family, a partnership firm, a society, a club or an association which carries on such business;

(b) a casual trader, a person who has, whether as principal, agent or in any other capacity, carries on occasional transactions of a business nature involving the buying, selling, supply or distribution of goods in the State, whether for cash or for deferred payment, or for commission,

remuneration or other valuable consideration;

(c) *a commission agent, a broker or del credere agent or an auctioneer or any other mercantile agent by whatever name called, who carries on the business of buying, selling, supplying or distributing goods on behalf of any principal;*

(d) *a non-resident dealer or an agent of a non-resident dealer, a local branch of a firm or company or association situated outside the State;*

(e) *a person who sells goods produced by him by manufacture or otherwise;*

(f) *a person engaged in the business of transfer otherwise than in pursuance of a contract of property in any goods for cash deferred payment or other valuable consideration.*

(g) *a person engaged in the business of transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;*

(h) *a person engaged in the business of delivery of goods on hire purchase* *or any system of payment by installments;*

(i) a person engaged in the business of transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;

Explanations.- *(1) A society (including a cooperative society), club or firm or an association which, whether or not in the course of business, buys, sells, supplies goods or distributes goods from or to its members for cash, or for deferred payment or for commission, remuneration or other valuable consideration, shall be deemed to be a dealer for the purposes of this Act.*

(2) The Central Government or a State Government or a local authority or a statutory body which whether or not, in the course of business, buys, sells, supplies or distributes goods, directly or otherwise, for cash or deferred payment or for commission, remuneration or other valuable consideration shall be deemed to be a dealer for the purposes of this Act.

(3) In respect of the transfer of the right to use feature films, the person who transfers such right to the exhibitor and from whom the exhibitor derives the right to make such use shall be deemed to be the dealer under this clause.

(4) (a) An agriculturist who sells exclusively agricultural produce grown on land cultivated by him personally or a person who is exclusively engaged in poultry farming and sells the products of such poultry farm shall not be deemed to be a dealer within the meaning of this clause;

(b) Where the agriculturist is a company and is selling pepper, cardamom, rubber, timber, wood, raw cashew or coffee grown on land cultivated by it personally, directly or otherwise, such company, shall be deemed to be a dealer in respect of turnovers relating to sales of such produce.

*(27) **'Registered dealer'** means a dealer registered under this Act.*

*(28) **'Return'** means any return including a revised return prescribed or otherwise required to be furnished by or under this Act.*

3. Levy of tax.-

(1) The tax shall be levied on every sale of goods in the State by a registered dealer or a dealer liable to be registered, in accordance with the provisions of this Act.

(2) The tax shall also be levied, and paid by every registered dealer or a dealer liable to be registered, on the sale of taxable goods to him, for use in the course of his business, by a person who is not registered under this Act.

9. *Collection of tax by registered dealers, Governments and statutory authorities.-*

(1) Every registered dealer liable to pay tax under the Act shall collect such tax at the rate or rates at which he is liable to pay tax, and the tax collected shall be accounted for under the provisions of this Act and rules made thereunder.

(2) The Central Government, a State Government, a statutory body or a local authority shall, in respect of any taxable sale of goods effected by them, collect by way of tax any amount which a registered dealer effecting such sale would have collected by way of tax under this Act, issue a tax invoice, pay the tax so collected into the Government Treasury or any designated bank and furnish monthly returns, as specified under Section 35, to the prescribed authority.

25. *Registration.-*

(1) The form of application to register under Section 22 or 23, the time and manner of making application, and the fee, payable shall be as may be prescribed.

(2) On receipt of an application to register under Section 22 or 23, the prescribed authority shall register any such dealer and grant him a certificate of registration, if he is satisfied that the applicant is a

bona fide dealer and that he complies with the requirements of this Act, with effect from the first day of the month following the month in which such application is made or from such earlier date as may be mutually agreed.

(3) *The prescribed authority may refuse to grant a certificate of registration to the applicant for any good and sufficient reasons to be recorded in writing, after allowing the applicant to show cause in writing against such refusal.*

(4) *In respect of the Central Government, any State Government, any statutory body or any local authority liable to collect tax under sub-section (2) of Section 9, the Commissioner may authorise issue of a certificate of registration to such body in the manner as may be prescribed.*

35. *Returns.-*

(1) *Subject to sub-sections (2) to (4), every registered dealer, and the Central Government, a State Government, a statutory body and a local authority liable to pay tax collected under sub-section (2) of Section 9, shall furnish a return in such form and manner, including electronic methods, and shall pay the tax due on such return within twenty days after the end of the preceding month or any other tax period as may be prescribed.*

(2) The tax on any sale or purchase of goods declared in a return furnished shall become payable at the expiry of the period specified in sub-section (1) without requiring issue of a notice for payment of such tax.

(3) Subject to such terms and conditions as may be specified, the prescribed authority may require any registered dealer.-

(a) to furnish a return for such periods, or

(b) to furnish separate branch returns where the registered dealer has more than one place of business.

(4) If any dealer having furnished a return under this Act, other than a return furnished under sub-section (3) of Section 38, discovers any omission or incorrect statement therein, other than as a result of an inspection or receipt of any other information or evidence by the prescribed authority, he shall furnish a revised return within six months from the end of the relevant tax period except when such revised return is on issue of a debit note under Section 30, subject to sub-section (2) of Section 72.

36. Interest in case of failure to furnish returns or to pay tax declared on returns or other amounts payable.-

(1) Every dealer shall be liable to pay simple interest on any amount of tax which should have been declared on a return, but which has been omitted from it, unless that omission is corrected within three months of the omission subject to sub-section (2) of Section 72, and such interest is payable from the date the tax should have been declared, and the dealer shall declare his liability to pay that interest in such form and manner as may be prescribed.

(2) If a dealer required to furnish a return under this Act.-

(a) fails to pay any amount of tax or additional tax declared on the return, or

(b) furnishes a revised return more than three months after tax became payable, declaring additional tax, but fails to pay any interest declared to be payable under sub-section (1), or

(c) fails to declare any tax or interest which should have been declared, or

(d) fails to make a return,

such dealer shall be liable to pay interest in respect of the tax and additional tax payable as declared by him or the tax payable and interest payable under sub-

section (1) for the period for which he has failed to furnish a return.

(3) Where any other amount is payable under this Act is not paid within the period specified in Section 42, interest shall be payable on such amount from such period.

(4) The interest shall also be payable under this Section during any period during which recovery of any tax or other amount payable under the Act is stayed by an order of any authority or Court in any appeal or other proceedings disputing such tax or amount.

37. *Rate of interest.-*

(1) The rate of simple interest payable under Section 36 shall be one and a quarter per cent per month.-

(a) from the date the tax had become payable to the date of its payment or to the date of any assessment under this Act, whichever is earlier; and

(b) from the date on which any amount payable under this Act was due.

(2) For the purpose of this Section interest in respect of parts of a month shall be computed proportionately and month shall mean any period of thirty days.

40. Period of limitation for assessment.-

(1) An assessment under Section 38 or re-assessment under Section 39 of an amount of tax due for any prescribed tax period shall not be made after the following time limits.-

(a) five years after the end of the prescribed tax period; or

(b) three years after evidence of facts, sufficient in the opinion of the prescribed authority to justify making of the re-assessment, comes to its knowledge,

whichever is later.

(2) If any tax is fraudulently evaded attracting punishment under Section 79, an assessment may be made as if in sub-section (1), reference to five years was a reference to ten years.

(3) In computing the period of limitation specified for assessment or re-assessment, as the case may be under this Act, the period taken for disposal of any appeal against an assessment or other proceeding by the appellate authority, a tribunal or competent court shall not be taken into account in computing such period for assessment or reassessment as the case may be.

55. *Penalty in case of under-valuation of goods.-*

(1) Where, in respect of goods liable to tax under this Act carried in a goods vehicle or boat, ship or similar vessel, or held in stock by any dealer or on his behalf by any other person, or held in the custody of any transporter, the prescribed authority, or any officer empowered under Section 53, has reason to believe that the value shown in the document accompanying the goods in transit or in the purchase invoice is lower than the prevailing market price or Maximum Retail Price, by a difference of thirty per cent or more, and such difference is not on account of any discount or margin allowed in accordance with the regular trade practice of the seller or any special discount or margin allowed by the seller or the goods being sold by the seller after manufacture to the trade mark or brand holder, such authority or officers, for reasons to be recorded in writing and after allowing the person or dealer a reasonable opportunity of being heard, may impose a penalty of a sum not exceeding twice the amount of the tax due on such goods.

71. *Penalties relating to registration.-*

(1) A dealer who, without reasonable cause, fails to apply for registration within the time prescribed in sub-sections (1) or (5) to (9) of Section 22 shall be liable to a

penalty of two thousand rupees in addition to the interest chargeable on the tax payable at the rate provided under Section 37.

(2) *A dealer who fails to report to the prescribed authority a change in circumstances as required by Section 28 shall be liable to a penalty not exceeding five thousand rupees.*

(3) *The power to levy the penalties shall be vested in the registering authority as prescribed.*

72. *Penalties relating to returns.-*

(1) *A dealer who fails to furnish a return or who fails to pay the tax due on any return furnished as required under Section 35 shall be liable to a penalty of fifty rupees for each day of default in addition to a further penalty of a sum of ten per cent of the amount of tax due, together with any tax or interest due.*

(2) *A dealer who for any prescribed tax period furnishes a return which understates his liability to tax or overstates his entitlement to a tax credit by more than five per cent of his actual liability to tax, shall after being given the opportunity of showing cause in writing against the imposition of a penalty, be liable to a penalty equal to ten per cent of the amount of such tax under or overstated.*

(3) *A dealer who furnishes a return which is incomplete or incorrect in any material particular, shall be liable to a penalty fifty rupees for each day the return remains incomplete or incorrect.*

(4) *In any case where a dealer who has failed to furnish a return has been issued with an assessment showing less than his actual liability to tax and he pays such tax as assessed, such dealer, after being given the opportunity of showing cause in writing against the imposition of a penalty, shall be liable to a penalty of ten per cent of the amount of the tax under-assessed.*

(5) *The power to levy the above penalties shall be vested in the prescribed authority to which returns are required to be furnished or the prescribed authority making an assessment or re-assessment.*

73. *Penalties in relation to unauthorised collection of tax.-*

(1) *If any dealer, not being registered under this Act, collects any amount by way of tax or purporting to be by way of tax under this Act, he shall be liable to remit to the prescribed authority such amount, whether or not that amount would be payable under the provisions of this Act, and also liable to a penalty of an amount not exceeding the amount so collected, after being given the opportunity of*

showing cause in writing against repayment of the tax and the imposition of such penalty.

(2) *The power to levy the above penalty shall be vested in the assessing authority as prescribed.*

74. *Penalties relating to the keeping of records:-*

(1) *Any dealer who fails to keep and maintain proper records, in accordance with Sections 31 or by order of the prescribed authority shall be liable to a penalty not exceeding five thousand rupees and, in addition, a further penalty not exceeding two hundred rupees per day for so long as the failure continues after being given an opportunity to show cause against such imposition of penalty.*

(2) *Any dealer who fails to retain records and accounts in accordance with Sections 32 and 33, after being given the opportunity of showing cause in writing against the imposition of a penalty, shall be liable to a penalty of ten thousand rupees.*

(3) *The power to levy the above penalty shall be vested in the officer authorised under Section 52.*

75. *Penalties relating to production of records and furnishing of information.-*

Any dealer or person who on demand by the prescribed authority fails to produce any records or furnish any information in accordance with the requirements of this Act, after being given the opportunity of showing cause in writing against the imposition of a penalty, shall be liable to a penalty not exceeding five thousand rupees and, in addition, two hundred rupees per day for so as long as the failure continues.

76. Penalties relating to tax invoices, bills of sale, credit notes and debit notes.-

(1) A registered dealer who.-

(a) fails to provide a tax invoice as required by sub-section (1) of Section 29 or a credit or debit note as required by sub-section (1) or sub-section (2) of Section 30, or

(b) provides a tax invoice otherwise than in accordance with the provisions of Section 29 or a credit or a debit note as provided in Section 30,

shall be liable to a penalty of two thousand rupees or an amount equivalent to the tax payable on the transaction, whichever is higher for such offence which is the first during a financial year and if the offence committed is not the first offence during a financial year, a *penalty of five thousand rupees or an amount equivalent to the tax payable on the transaction, whichever is higher.*

(2) *A registered dealer who fails to issue a bill of sale has required by sub-section (1) of Section 29 shall be liable to a penalty of one thousand rupees for such offence which is the first during a financial year and if the offence committed is not the first offence during a financial year, a penalty of two thousand rupees.*

(3) *The power to levy the penalty under this section shall be vested in the officer authorised under Section 52.*

77. *Penalties relating to seals and to unaccounted stocks.-*

(1) *Any person who removes, or in any way tampers with, a seal attached under the provisions of clause (f) of sub-section (1) of Section 52, and sub-section (4) of Section 53, shall be liable on conviction by a Court, not inferior to that of a Magistrate of the First Class, to a fine of not less than five thousand rupees but not exceeding twenty five thousand rupees and imprisonment for a period not exceeding one year.*

(2) *Any person or dealer who is found to be in possession of unaccounted stocks of any taxable goods under the provisions of clause (j) of sub-section (1) of Section 52, after being given the opportunity of*

showing cause in writing against the imposition of a penalty, shall be liable to a penalty which shall not be less than the amount of tax leviable or one thousand rupees whichever is higher but which shall not exceed double the amount of tax leviable of five thousand rupees whichever is higher.

(3) *The power to levy the penalty under sub-section (2) shall be vested in the officer authorised under Section 52.*

78. *Offences against officers.* -

Any person who obstructs, hinders, molests or assaults an authorised officer or any other public servant assisting him in the performance of his duties under this Act, or does anything which is likely to prevent or obstruct any search or production of evidence, shall be liable on conviction by a Court, not inferior to that of a Magistrate of the First Class, to a fine of not less than five thousand rupees but not exceeding twenty five thousand rupees or to imprisonment for a period not exceeding one year or both.

79. *Fraudulent evasion of tax.*-

Without prejudice to the provisions of Sections 71 to 77, if any person is knowingly concerned, in or in the taking of steps with a view to the fraudulent evasion of tax by him or any other person, he shall be liable to a fine of one lakh rupees or

> *double the amount of the tax evaded, whichever is the greater or to imprisonment for a minimum term of six months but not exceeding five years, or to both.*

7. Frequent legislative changes brought about in the provisions of sub-section (1) of Section 72 of the Act are pointed out to urge that there is no clear or cogent legislative policy in not only the initial enactment of the provisions of sub-section (1) of Section 72 of the Act but also the manner in which the Section has been subjected to legislative surgery; that a power which is considered to be a power which is ancillary and incidental to the levy of tax on sale of goods attributable to Entry 54 of List-II of 7th schedule to the Constitution, has been grossly abused, transgressing the limit of the very power and therefore the provisions of sub-section (1) of Section 72 of the Act have rendered themselves as unconstitutional.

8. It is pointed out that sub-section (1) of Section 72 of the Act, as it stood in the parent Act underwent the first amendment by Act No 6 of 2005, with effect from 1-4-2005;

that in the very financial year, the statutory provision, which is one providing for levy of penalty for timely non-compliance, a power considered to be ancillary and incidental to the power of levy of tax on the sale of goods, is amended every year, as if it was an annual fiscal exercise; that the second amendment to Section 72 was carried out by Act No 4 of 2006 with effect from 1-4-2006; that the third amendment followed in the year 2007 by Act No 6 of 2007 and the latest amendment being by Act No 5 of 2008, a part of which has been made operative retrospectively from 1-4-2007 itself, whereas the rest of the amendment to Section 72 is made effective from 1-8-2008. As such, the frequent legislative changes in a provision providing for levy of penalty, a power ancillary and incidental to the main power levying tax on the transactions of sale of goods, and collection of tax by the state government on the transaction of sale or purchase of goods, has lead to a chaotic situation and the amendments having been effected without any rationale or justification, has only resulted in arbitrariness rendering sub-section (1) of Section 72 of the Act unconstitutional on the touchstone of Article 14 of the Constitution of India also.

9. Writ petitions have been admitted by issue of Rule and the respondents were called upon to defend the validity of the legislation. The state and its officers functioning under the provisions of the Act, have entered appearance through Sri K M Shivayogiswamy, learned government pleader and responded to the averments and the grounds urged in WP No 19519 of 2007, by filing statement of objections in this case on behalf of the second respondent-commissioner of commercial taxes in Karnataka, defending not only the action of levy of penalty under sub-section (1) of Section 72 of the Act but also urging that the statutory provisions supporting the levy of penalty as not either unconstitutional on the touchstone of Articles 14 and 19 of the Constitution of India or can be said to be unconstitutional for want of legislative competence on the

part of the state legislature in enacting such a provision. The distinguishing features between the Act and the Karnataka Sales Tax Act, 1957 [KST Act] are sought to be highlighted; that under the KST Act, while the levy of sale tax was predominantly a single point levy, under the present enactment, it is uniformly a multiple levy with the goods sold, suffering tax at every transaction of the sale effected within the State; that the concept of deduction of input tax from out of the output tax, which has resulted in the net tax is liability on the dealer; that such a scheme provides a rebate to the dealer, and that it ensures that the dealer can always pass on the tax liability to the purchaser/consumer; that the provisions of sub-section (1) of Section 72 of the Act have a definite legislative policy; that it is specifically designed to discourage not only the intended delayed filing of the return or delayed payment of tax on the return filed by the dealer, but also to discourage any possible letharginess or inaction on the part of the dealer, who have collected the tax amount, which is an amount collected on behalf of the State, being not remitted within the stipulated time limits; that the information contained in the monthly returns filed by the dealers is of vital importance for the assessing authorities not only in arriving at the actual liability of the dealer but also in cross-verification of the liability, the dealers who figure as persons having transaction with the registered dealers and also on the subsequent dealers/purchasers; that a delay in filing the return and further delay in remitting the admitted tax collected even as per the return is detrimental to the interest of the state and the penalty provisions are made to discourage such tendencies on the part of the registered dealers who promptly collect tax from the purchasers but do not remit the amount to the state with the same promptness; that it was also the legislative policy to deliberately discontinue the practice of the assessing authorities, in choosing some dealers for levy of penalty when violations in terms of Section 35 are present, but not resorting to levy of penalty proceedings in respect of several other dealers, though had failed to either file return in time or to pay tax on the return filed within the permitted time; that the legislature has designedly done away with the possibilities of the assessing authorities becoming choosy in the name of exercising discretion; that the discretion even in the area of quantifying penalty from zero to the amount as stipulated, upto outer limit of the quantum of penalty, is also given a go-by to ensure levy of a uniform penalty; that the reason for filing a delayed return or reason for making a delayed remittance of the tax under the return filed is also made non-consequential, consciously to ensure a uniform levy of statutorily determined amount of penalty in all cases of delay; that the provision in fact eliminates any discrimination from dealer to dealer and therefore it is not a provision suffering from unconstitutionality on the touchstone of Article 14 of the Constitution of India, as contended by the petitioners.

10. It is contended in the statements of objections that the argument that it is a provision which goes even beyond the legislative power of the state legislature under Entry 54 of List-II of seventh schedule to the Constitution, is also an untenable and illogical contention; that it is now well accepted legal principle that an ancillary and incidental power is considered as a power that goes with the main legislative subject and therefore also within the competence of the respective legislature; that so long as the main subject is within the legislative competence of the state legislature, such ancillary and incidental power is part of it, is the legal principle that has received judicial recognition in the judgments of Supreme Court, one such being the decision in the case of ***ABC INDIA LTD vs STATE OF ASSAM [(2005) 142 STC 88]***, wherein the Supreme Court had occasion to uphold the provisions of the Assam General Sales Tax Act 1993, and for such purpose reliance has also been placed on the other decisions of the Supreme

Court reported in ***27 STC 101, 73 STC 33, 112 STC 609*** and ***131 STC 111.***

11. It is further urged that complaint of absence of opportunity to the petitioner-dealers to explain the justification for the delay is answered in pointing out that when the legislative scheme does not leave an element of discretion to the authority levying penalty and the amounts are statutorily determined and the function of the authority levying penalty is only to carry out the arithmetical calculations, there is no need for giving an opportunity and therefore the argument of the order being bad for being in violation of principles of natural justice cannot be accepted.

12. It is also urged that it is not the requirement of law to attract levy of a penalty, there should be a willful default or failure on the part of the dealer; that the development in understanding laws is one leading to the opinion that a penalty can be levied even for a technical statutory violation of the fiscal law and there is no requirement that there

should be an element of *mens rea* and this argument is sought to be buttressed by relying upon the decision of the Supreme Court in the case reported in ***GULJAG INDUSTRIES vs COMMERCIAL TAXES OFFICER [9 VST 1]***, wherein Section 78(5) of the Rajasthan Sales Tax Act, 1994, an analogous provision to sub-section (1) of Section 72 of the Act and the validity of which was called in question, had been upheld by the Supreme Court, holding that even in the absence of *mens rea*, penalty can be levied. Reliance is also placed on the decision of the Supreme Court in the case of ***CHAIRMAN, SEBI vs SHRIRAM MUTUAL FUND [(2006) 5 SCC 361]***. The other two decisions of the Supreme Court in the case of ***DIRECTOR OF ENFORCEMENT vs MCTM CORPORATION PVT LTD [AIR 1996 SC 1100*** and ***GUJARAT TRAVANCORE AGENCY vs COMMISSIONER OF INCOME TAX [(1989) 77 ITR 455***, are also cited for the same purpose. The factual averments in the writ petitions are denied in the counter and therefore it is urged that the writ petitions should be dismissed.

13. I have heard a good number of learned counsel appearing on behalf of the petitioners led by Sri G Sarangan and Sri E R Indra Kumar, learned senior counsel and on behalf of the state and its officers, Sri K M Shivayogiswamy, learned government pleader, has made submissions, defending the validity of the provisions of sub-section (1) of Section 72 of the Act. Submissions have proceeded more or less on the lines of the petition pleadings and the grounds urged on behalf of the petitioners and the counter and statement of objections filed on behalf of the state in two writ petitions viz., WP No 1982 of 2007 and 9689 of 2006.

14. On behalf of the petitioners, apart from Sri G Sarangan and Sri Indra Kumar, learned senior counsel, Sri G Rabhinathan learned counsel for the petitioner in WP No 9689 of 2006; Sri C R Pandit, learned counsel for the

petitioner in WP 483 of 2007; Sri Atul K Alur, learned counsel for the petitioner in WP No 9073 of 2007; Sri B P Gandhi, learned counsel for the petitioners in WP No 67 and 69 of 2007; Sri N Nagaraj, learned counsel for the petitioner in WP No 10328 of 2007 and Sri T N Keshavamurthy, learned counsel for the petitioner in WP No 11412 of 2007, have all been heard.

15. The main thrust of arguments addressed by the learned counsel for the petitioners is directed against the unreasonableness and absurdity of providing for such a harsh penalty on the registered dealers, who are only defaulters by mere delay in either filing of the monthly return or in making payments of the tax due in terms of the return; that the very nature of the default is one that would possibly delay the collection of admitted tax; that even for the delay itself, there are other provisions in the Act to compensate the loss to the revenue by providing for charging interest and even while it is conceded that the

legislature can provide for a default also a provision to levy penalty for ensuring proper enforcement of the tax laws and realization of the revenue, the levy of penalty of very huge amounts, which is the case in the case of many of the petitioners and as is obvious on a perusal of the penalty orders, is a penalty that is grossly disproportionate to the object of ensuring prompt compliance by the dealers to adhere to the stipulated periods; that the extent of penalty is so unrealistic and huge, it travels beyond the power of the legislature, which can be characterized as a power ancillary and incidental to the main power of levy of tax on the transactions of sale of goods and enabled under Entry 54 of List-II of seventh schedule to the Constitution; that the levy virtually partakes the character of a levy in the nature of levy of tax on income, as it seeks to make an inroad into the profits of the dealers; that while the levy of penalty becomes arbitrary and irrational, when once the nexus between the actual levy of penalty and the object for which it is levied, is snapped and therefore it is clearly violative of the Article 14 of the Constitution of India; that the levy of penalty when it became disproportionate and reached the level of confiscation, becomes an unrealistic restriction on the dealers to carry on the trade of their choice and therefore is violative of Article 19(1)(g) of the Constitution of India and not saved under Article 19(6) of the Constitution, and renders itself unconstitutional.

16. The argument is two-fold. The first argument is that the levy of penalty when once it exceeds the scope of ancillary and incidental power of legislature, while legislating on the main subject, becomes unconstitutional for want of legislative competence, is also rendered unconstitutional for being in violation of Articles 14 and 19 of the Constitution of India. Such submission is sought to be demonstrated with reference to the actual levies of penalty in the case of the petitioners and it is further urged that the levy of penalty being made compulsory by the statute and not taking into consideration either the

different situations in which different dealers may be placed due to which there can be a failure to ensure compliance within the stipulated time, but also not leaving any element of discretion with the authority levying the penalty to examine any explanation or justification a dealer may have for the smaller delays which may be beyond the control and means of the dealer concerned. Here again, it is submitted that not providing for an opportunity to a registered dealer before levying maximum penalty by itself is in violation of the principles of natural justice. The further argument based on the decision of the Supreme Court in the case of ***HINDUSTAN STEEL LTD vs STATE OF ORISSA [(1970) 25 STC 211]***, is that an automatic levy upto the maximum extent without any scope for levying a reasonable extent of penalty commensurate to the situation within the maximum limit is a levy hit by the law as declared by the Supreme Court in the said case.

17. This argument is sought to be buttressed by drawing attention to the fact that even a single day's delay, while attracts a minimum penalty of 5% or 10% of the tax depending upon the year, the penalty attributable to the length of the delay is a penalty which assumes disproportionate dimensions when the actual tax liability is less and only the extent of delay is more, such as in the case of a dealer with a tax liability of Rs 1,000/-, say if the delay is about three years, the penalty on account of the delay can go up to Rs 1,00,000/- or Rs 50,000/- depending upon the period during which the delay has occurred [the law having undergone periodical annual amendments], which, in either event, will be more than 50 times or more than 100 times of the actual tax liability, which, on the face of it, is not only grossly disproportionate but also beyond the legislative limit.

18. The argument is that the penalty being in the nature of punishment, should always be proportionate to the

object and purpose for which it is levied; that it should be just sufficient to remedy the mischief sought to be prevented and once it exceeds the limits of a corrective deterrent, sufficient to dissuade the violator, it assumes the character of a disproportionate penalty. Reliance is placed on the following decisions in support of the submissions:

- ***STATE OF HARYANA vs SANTLAL [(1993) 4 SCC 390]***
- ***KANTILAL BABULAL vs H C PATEL [(1968) 21 STC 174***
- ***CONSOLIDATED COFFEE LTD vs AGRICULTURAL INCOME TAX OFFICER [(2001) 248 ITR 417***
- ***THE STATE OF MADRAS vs V G ROW [AIR 1952 SC 196***
- ***STATE OF HARYANA vs SANT LAL [(1993) 91 STC 321***
- ***ABDUL QUADER & COMPANY vs SALES TAX OFFICER, II CIRCLE, HYDEREBAD [(1964) SC 15 STC 403]***
- ***OM KUMAR vs UNION OF INDIA [(2001) 2 SCC 386 – PARA 28 AND 32]***
- ***SANYASIRAO vs GOVERNMENT OF ANDHRA PRADESH (1989) 178 IT 31,*** a judgment of the

Andhra Pradesh High Court, which was affirmed by the Supreme Court in the case of ***UNION OF INDIA vs SANYASI RAO [(1996) 219 ITR 330]***

19. Another facet of the argument addressed on behalf of the petitioners is that the state through the statutory provision is treating alike dealers situated in different circumstances for levy of uniform maximum penalty, is *per se* an act of discrimination and in support of such submission, have placed reliance on the decision of the Supreme Court in the case of ***K T MOOPIL NAIR vs STATE OF KERALA [AIR 1961 SCC 552]*** as also the case of ***BADRI PRASAD vs COLLECTOR OF CENTRAL EXCISE [AIR 1971 SC 1170] – PARA-19].***

20. Considerable reliance is placed on the judgment of the Supreme Court in the case of ***UNION OF INDIA vs DHARMENDRA TEXTILE PROCESSORS [(2008) 18 VST 180]*** and the decision of the Supreme Court in the case of ***SALEM ADVOCATE BAR ASSOCIATION, TAMILNADU vs UNION OF INDIA [2005 AIR SCW 3827]*** as also the case

decided by the Supreme Court in ***UNION OF INDIA vs SANYASI RAO*** [supra], to submit that while the scope for reading down a provision by severing the offending part of the provision so that the remaining part of the legislative provision is saved of the vice of unconstitutionality, on the strength of the very decision, it is submitted that when such an alternative is not possible, in the wake of the language of the legislative provision, the provision inevitably has to be declared as unconstitutional being arbitrary, therefore a discriminatory provision violative of Article 14 of the Constitution of India.

21. Sri Indra Kumar, learned senior counsel appearing for some of the petitioners has also placed reliance on the decisions of the Supreme Court in the case of ***MARDIA CHEMICALS LTD vs UNION OF INDIA [AIR 2004 SC 2371 - para 56]*** and ***BOMBAY DYEING & MFG CO LTD vs BOMBAY ENVIRONMENTAL ACTION GROUP [(2006) 3 SCC 434 - paras 72, 73 and 104]*** to submit that even a

legislative provision which is a provision which can be characterized as an arbitrary or irrational provision, renders itself unconstitutional on the touchstone of Article 14 of the Constitution of India and the provisions of sub-section (1) of Section 72 of the Act glaringly fails this test and it is therefore to be declared as unconstitutional.

22. Sri G Sarangan, learned senior counsel appearing for some of the petitioners, has also drawn the attention of the court to an article captioned as ***Proportionality vis-à-vis Irrationality in Administrative Law,*** by Justice Anand Byrareddy, published in the journal section of ***(2008) 7 SCC J-29]***, to submit that an irrational levy of penalty like in the case of penalty under sub-section (1) of Section 72 of the Act by itself becomes a disproportionate penalty and is therefore violative of the right guaranteed under Article 19(1)(g) of the Constitution of India.

23. The other submissions on behalf of the petitioners by the learned counsel mentioned above are that the word

'failure' is the key to the understanding of the provisions of sub-section (1) of Section 72 of the Act; that unless there is a failure, which is a failure which must be intended or deliberate, there cannot be any levy; that unless the officer levying the penalty ascertains this aspect, there cannot by any levy of penalty; that therefore the provision should be interpreted so as to include the principle of natural justice in the very provision and in such a case, the levy of penalty cannot be automatic, as has been done under the impugned orders and therefore also all these orders are bad.

24. One another argument is that the penalty that can be levied under one situation i.e. either the penalty on the basis of the delay excludes the levy of penalty on the basis of the percentage of tax liability and vice versa; that imposition of penalty which is earlier in the sequence of the provisions provided for levying penalty automatically avoids levy of penalty under the subsequent provision, as

otherwise, it results in duplication of levy of penalty for the very act or violation and therefore renders itself arbitrary and excessive and thereby unconstitutional.

25. Yet another argument advanced on behalf of the petitioners is that in the very nature of levy, a tax on the sale of goods is in the nature of an indirect levy which a dealer can pass on to the consumer or buyer and a penalty which has to be necessarily absorbed by the dealer and cannot be passed on to a consumer, when it reaches disproportionate levels, becomes a tax in the nature of the tax on income, a direct tax, and thereby travels beyond the legislative competence of the state under the Constitution. Such is the argument addressed by Sri N Nagaraj, learned counsel for the petitioner in WP No 10328 of 2007.

26. Sri T N Keshavamurthy, learned counsel for the petitioner in WP No 11411 of 2007, by drawing attention to the actual quantum of penalty levied in the case of petitioner in that case, a financial institution under the

Banking Companies Act, has pointed out that the levy of penalty under sub-section (1) of Section 72 of the Act on registered dealers rendered itself discriminatory, for the reason that while a dealer who does not comply with any of the provisions of the Act and does not even file any return or fails to pay the tax or indulges in evasion of tax is visited with a lighter penalty, the dealer who not only gets himself registered but also pays the tax, but there being only a delay in either filing the return or making payment of tax amount, is subjected to a harsher penalty and therefore the provision of sub-section (1) of Section 72 of the Act is discriminatory. Further submission is that treating a dealer like the petitioner in the case, who *bona fide* has not indulged in delaying the filing of return but is only due to a situation beyond the control of the petitioner, who had made all possible efforts to file it within the stipulated time, is also a provision bringing about a discrimination for treating alike, the registered dealers in different categories such as a dealer who has no *bona fides* or even a deliberate evader just like a registered dealer like the petitioner does file the return, but pay the tax only with a small delay.

27. Sri K M Shivayogiswamy, learned Government Pleader has countered such submissions. Learned government pleader has firstly drawn attention to the scheme of the Act and the provisions of the Act as per Sections 3, 4, 9, 10, 35, 39 and the impugned provision of sub-section (1) of Section 72 of the Act of the Act and also to other provisions of the Act providing for levy of penalty, such as sub-section (2) of Section 72 of the Act and has submitted that it is by now well settled principle that the power to levy penalty in an Act providing for raising revenue is a power ancillary and incidental to the power of levying tax on the main subject matter, that levy of penalty being a provision which is deterrent and for the purpose of ensuring prompt compliance with the taxing statute, it necessarily travels beyond the main power; that courts have time and again upheld the validity of such legislative provisions; that the

present provision such as sub-section (1) of Section 72 of the Act is no different from those provisions; that the provision of sub-section (1) of Section 72 of the Act and the rationale for enacting such provision is well supported by a plethora of decided cases and has in this regard placed reliance on the following decisions:

- ***TRIPURA GOODS TRANSPORT ASSOCIATION vs COMMISSIONER OF TAXES [(1999) 112 STC 609 (SC)]***
- ***STATE OF RAJASTHAN vs D P METALS [(2001) 124 STC 611 (SC)]***
- ***STATE OF WEST BENGAL vs EITA INDIA LIMITED [(2003) 131 STC 111 (SC)]***
- ***ABC (INDIA) LTD vs STATE OF ASSAM [(2005) 142 STC 88 (SC)]***
- ***M A RAHMAN vs STATE OF ANDHRA PRADESH [AIR 1961 SC 1471].***

28. With reference to the decision of the Supreme Court in the case of ***M A RAHMAN***, learned government pleader submitted that a harsh provision like cancellation of the very registration of the dealer who has not remitted the

collected tax to the state, which virtually led to stoppage of business of the dealer and violating his right to carry on business as guaranteed under Article 19(1)(g) of the Constitution of India, had been nevertheless sustained by the Supreme Court as a reasonable penalty and on such legal principle, the levy of penalty under sub-section (1) of Section 72 of the Act is also well sustained.

29. Learned government pleader submitted that levy of penalty under sub-section (1) of Section 72 of the Act is part of a well thought out legislative scheme as is obvious on a reading of the statement of objects and reasons placed before the Assembly at the time of the introduction of the Bill, which reads as under:

STATEMENT OF OBJECTS AND REASONS
[Karnataka Act No. 32 of 2004]

> *It is considered necessary to introduce Value Added Tax to replace the present sales tax system in line with the national consensus for bringing in reforms in commodity taxation. The new legislation provides for the following, namely.-*

(i) *Widens the tax base by levying tax on sale of goods at every point of sale;*

(ii) *Makes the levy of tax transparent and removes cascading;*

(iii) *Compels issue of tax invoices by dealers indicating the tax charged separately;*

(iv) *Provides for set off of all tax paid at the earlier points in respect of goods sold (that would include tax paid, defined as input tax on capital goods, raw materials, components and other inputs including consumables with some restrictions and packing materials that are used in the re-sale or manufacture or processing of goods being sold) against tax payable, defined as output tax, at any point, the set off scheme being called as input rebating;*

(v) *Tax paid on inputs purchased within the State is provided to be rebated against goods sold within the State, in the course of inter-State trade;*

(vi) *Provides limited rebating of tax paid in excess of 4% to input used in the goods sent out of State on stock or consignment;*

(vii) *Promotes voluntary compliance by providing for acceptance of returns filed by dealers on self-assessment basis and for scrutiny of books of account only in selected cases.*

> *(viii) Enhances compliance by providing for non-discretionary automatic penalty for offences of non-compliance and contravention of the various provisions of law; and*
>
> *(ix) Minimises disputes regarding the time of sale by defining the same and thereby ensuring payment of tax without delay and also requires dealers to issue tax invoices within reasonable time to the buying dealers.*
>
> *Certain other incidental and consequential provisions are also made.*
>
> *Hence the Bill*

and is only a deterrent to ensure prompt compliance with the time stipulation and compulsory nature of penalty was also an intended provision by the legislature to eliminate arbitrariness in orders passed by the authorities levying penalty, which was the experience when the authorities had been allowed an element of discretion as to the extent of penalty, which is to be levied starting from zero percent to the maximum percent; that it is to be noticed that a penalty is attracted only when a dealer crosses the outer limit of 15 or 20 days allowed by the statutory provision for ensuring compliance; that the dealer has collected the tax on behalf of the State and had kept the amount with him not only throughout the month but also for a period of 15 or 20 days thereafter; that it is only when the dealer crosses this limit, the penalty is attracted; that a dealer can very well avoid getting into such a situation by ensuring early compliance and not to wait till the last day; that the delay was attributable to an act beyond the control of a dealer is a lame excuse by a dealer who waits till the last date; that levy of penalty on erring dealer or defaulting dealer sub-serves the larger public interest of ensuring prompt remittance of the revenue collected by the registered dealer on behalf of the State, which, is due to the State; that such provisions which are enacted keeping in view the larger public interest, have all been approved by courts; that in the very case of ***MARDIA CHEMICALS LTD*** [supra], this principle has been highlighted in para-66 of the judgment itself; that a mere chance or possibility of a provision like sub-section (1) of Section 72 of the Act can act or work oppressively on a smaller group of dealers who may constitute the extreme examples vis-à-vis a large group of defaulting dealers in respect of whom the penalty may be justified and commensurate in itself cannot be a ground for invalidating the provisions as unconstitutional; that the extent of penalty based on the length of delay is not a penalty for an unlimited period, but it takes its colour from the provisions of Sections 38, 39 and 40 of the Act; that the time stipulation for reassessment and reopening of the concluded assessment and to bring to tax the escaped turnover by themselves act as limiting factors; that even if it is not so expressly provided in sub-section (1) of Section 72 of the Act, such a limitation can be read into to the provisions of sub-section (1) of Section 72 of the Act to render it constitutional; that a reading of the provisions in such a manner, while saves it from the vice of unconstitutionality, it is settled on authority that such a reading down of the provision is part of the exercise of judicial review of legislative action; that the decision of the

Supreme Court in the case of ***SANYASI RAO*** [supra] itself is an authority for this proposition and therefore submits that the provision even assuming that it has not mentioned the outer time limit of delay, can be read down in this manner and should be held to be a valid provision and on such interpretation and therefore it is submitted that the writ petitions are all without merit and are to be dismissed.

30. I have bestowed my anxious considerations to the submissions made at the Bar and also examined the legal principles that emerge from a large number of decisions cited at the Bar.

31. The manner in which the provisions of sub-section (1) of Section 72 of the Act have been tinkered every year as an annual exercise, as can be noticed below:

SECTION 72(1) OF THE KARNATAKA VALUE ADDED TAX ACT, 2003 AS IT STOOD FROM TIME TO TIME SINCE 2005

I. Section as it stood after amendment by Act No.6 of 2005 with effect from 01/04/2005.

SECTION 72. PENALTIES RELATING TO RETURNS:

(1) A dealer who fails to furnish a return or who fails to pay the tax due on any return furnished as required under Section 35 shall be liable to a penalty not exceeding two hundred rupees for each day of default in addition to a further penalty of a sum not less than ten per cent but not exceeding fifty per cent of the amount of tax due, together with any tax or interest due.

II. Section as it stood after amendment by Act No.4 of 2006 with effect from 01/04/2006.

SECTION 72. PENALTIES RELATING TO RETURNS:

(1) A dealer who fails to furnish a return or who fails to pay the tax due on any return furnished as required under Section 35 shall be liable to a penalty of fifty rupees for each day of default in addition to a further penalty of ten per cent of the amount of tax due, together with any tax or interest due.

III. Section as it stood after amendment by Act No.6 of 2007 with effect from 01/04/2007.

SECTION 72. PENALTIES RELATING TO RETURNS AND ASSESSMENT:

(1) A dealer who fails to furnish a return or who fails to pay the tax due on any return furnished as required under the Act shall be liable to pay together with any tax or interest due,-

(a) a penalty of fifty rupees for each day of default and where such default is for more than five days, such penalty shall not exceed an amount of two hundred and fifty rupees or equal to the amount of tax due whichever is higher, and

(b) a further penalty equal to ten percent of the amount of tax due.

IV. Section as it stood after amendment by Act No.5 of 2008 with retrospective effect from 01/04/2007.

SECTION 72. PENALTIES RELATING TO RETURNS AND ASSESSMENTS:

(1) A dealer who fails to furnish a return or who fails to pay the tax due on any return furnished as required under the Act shall be liable to pay together with any tax or interest due, -

(a) a penalty of fifty rupees for each day of default where such default is more than five days, such penalty.-

(i) shall not exceed two hundred and fifty rupees if the tax due is less than the said amount;

> *(ii) shall be calculated at fifty rupees per day not exceeding the amount of tax due, if the tax due is more than two hundred and fifty rupees and;*
>
> *(b) a further penalty equal to,-*
>
> *(i) five percent of the amount of tax due or fifty rupees whichever is higher, if the default is not for more than ten days, and*
>
> *(ii) ten per cent of the tax due, if the default is for more than ten days;*
>
> *(Clause (b) is substituted by Act No.5 of 2008 with effect from 01/08/2008)*

While this is an indicator of lack of clear or cogent legislative policy and even though a legislative policy is not a matter for judicial review by courts, the consequences or impact of an incoherent or irrational legislative policy is definitely a matter for judicial review, as what is examined by courts is not the policy but the effect or impact of the implementation of the policy. The policy is implemented by making legislative provision and in this case sub-section (1) of Section 72 of the Act and during all the periods, when it was in different forms, it fails the test of both reasonableness and being proportionate to the mischief sought to be redressed by the legislative provision.

32. While a provision for the levy of penalty in a taxing statute is undoubtedly a power which is ancillary and incidental to the main power of levy of tax on sale of goods and the levy of penalty itself can be sustained on such premise, it has to remain within the scope of the ancillary and incidental powers and cannot go beyond. The power should also be exercised in a fair and reasonable manner and with all possible interpretations and understanding of the provision, if the provision is still one failing the test of either Article 14 or Article 19 of the Constitution of India, it automatically renders itself unconstitutional.

33. Unreasonableness has two dimensions. The word 'unreasonable' assumes its colour and meaning from the context in which it figures. What is unreasonable from the angle of Article – 14 perspective which basically frowns upon discrimination is different from what is unreasonable

in the context of the understanding of Article 19[6] vis-à-vis Article 19[1][a] to [g].

34. The word 'unreasonable' in the context of Article 14 imbibes within itself arbitrariness whereas the phrase 'unreasonable' in the context of Article 19[6] connotes the concept of disproportionality i.e., a restriction disproportionate to the purpose and object of curtailing the right under Article 19[1] so as to achieve the common good or in the larger public interest which overrides even the right guaranteed under Article 19[1][a] to [g] only so long as the restriction is a reasonable restriction. The concept of disproportionateness of a restriction is very much prevalent in understanding the scope of Article 19[6] of the Constitution of India.

35. Irrationality is another concept which is more akin to arbitrariness. While all irrational acts may be arbitrary also, the converse is not necessarily true and an arbitrary action may not partake the colour of irrationality as in the

context of Article 14, arbitrariness is examined from the background of discrimination. While an irrational action is also one facet of Article 14, whether it always constitutes an unreasonable restriction on any of the rights guaranteed under Article 19[1] is a question which is required to be examined in each case. It may or may not be also.

36. Applying the above logic to the provisions of sub-section (1) of Section 72 of the Act and is tested on the touchstone of law as declared by the Supreme Court and as can be culled out from the decisions cited at the Bar on behalf of the petitioners, particularly when the provisions of sub-section (1) of Section 72 of the Act are tested on the touchstone of Articles 14 and 19 of the Constitution of India, I find that the provision fails both the tests of Articles 14 and 19 of the Constitution of India. The test under Article 14 is not passed as the levy of penalty under sub-section (1) of Section 72 of the Act becomes an arbitrary and irrational levy depending upon the quantum

of tax liability being huge and resulting in a fixed penalty of 10% of the tax liability, also being a huge penalty in the case of smaller dealers and in the case of small tax liability, the extent of delay being large, i.e. to say, 3 to 5 years, the penalty based on the extent of delay again assuming gigantic proportions to make it an irrational levy of penalty. An arbitrary penalty, which is also an irrational levy, automatically loses the nexus of achieving the object of correcting the mischief sought to be prevented by the legislature and therefore renders itself unconstitutional. Even a legislative provision becoming unconstitutional as violative of Article 14 of the Constitution of India for arbitrariness or for being irrational, is supported by the authority of the decision of Supreme Court in the case of ***MARDIA CHEMICALS LTD – para-66*** [supra].

37. The provision also becomes disproportionate, as the extent of penalty reaches 100 times or more of the actual tax liability, which is grossly disproportionate to the act of

failure in not complying with the requirement of filing of return within the stipulated time and paying the tax within such stipulated time. This aspect is well supported by numerous decisions of the Supreme Court starting from the judgment in the case of ***THE STATE OF MADRAS vs V G RAO [AIR 1952 SC 196]*** relied on by the learned counsel for the petitioners.

38. The extent of levy of penalty in fact goes much beyond the scope of the power of ancillary and incidental power i.e. for ensuring prompt tax remittance to the state, as the only possible loss to the state is loss of revenue for the period of delay and when the loss is compensated by other statutory provisions providing for levy of penalty should be within reasonable limits to act as a sufficient or mere deterrent and not reaching the levels of confiscation. When such levels are reached, it becomes a tax in the nature of tax on income being at 10% of the tax liability. It is to be noticed that the 10% tax liability may not even be the entire profit

of the dealer and such levy of penalty while therefore becomes an oppressive levy being confiscatory of a percentage of the tax liability, partakes the character of a levy of tax on income, as the penalty has to be inevitably borne by the dealer and cannot be passed on to the consumer/buyer and therefore travels beyond the legislative competency of the state legislature, as enabled under Entry 54 of List-II of the 7th schedule to the Constitution of India.

39. In this regard, I am unable to accept the submission of the learned government pleader that it is within the permitted limits and for achieving the object of discouraging the possibility of registered dealers not filing the returns and remitting the admitted tax within the prescribed period. The unreasonableness of the penalty under sub-section (1) of Section 72 of the Act can be noticed on a perusal of the following statement indicating the tax liability, penalty and the extent of delay in respect of petitioners in these writ petitions:

Sl.No.	Writ Petition Nos.	Tax Liability [In Rupees]	Penalty [In Rupees]	Period of delay
1	9689/06	1,66,53,927	16,65,393	1 day
2	14926/06	88,41,254	8,84,275	30 days
3	15084/06	11,16,034	3,44,773	33 days
4	67/07	71,390	1,55,128	60 days
5	69/07	2,21,808	57,679	210 days
6	483/07	38,11,055	3,81,104	60 days
7	1617/07	1,25,708	20,321	29 days
8	1694/07	1,87,790	18,779	31 days
9	1982/07	10,165	1,016	31 days
10	2630/07	95,53,272	4,77,670	1 day
11	3396/07	12,500	6,000	120 days
12	3854/07	70,89,796	7,09,080	2 days
13	4439/07	25,95,637	2,60,213	30 days
14	6349/07	4,91,753	76,971	31 days
15	6531/07	1,33,89,472	13,38,997	29 days
16	6739/07	36,000	1,45,500	152 days
17	6801/07	56,000	47,600	213 days
18	10328/07	25,818	2,682	2 days
19	11065/07	73,98,426	7,80,042	4 days
20	11255/07	41,000	18,250	365 days
21	11412/07	20,76,040	2,07,604	6 days
22	14111/07	1,29,450	21,250	425 days
23	14112/07	39,500	9,000	180 days
24	14175/07	1,25,600	16,700	334 days
25	14230/07	1,26,800	34,950	699 days
26	15178/07	1,52,250	18,250	365 days
27	17008/07	1,61,750	18,250	365 days
28	17097/07	1,71,500	18,250	365 days
29	17489/07	1,17,500	18,250	365 days
30	18340/07	5,94,507	1,18,902	90 days
31	20604/07	36,84,806	3,68,481	1 day
32	2466/08	5,95,332	93,802	730 days
33	3208/08	1,03,350	19,800	396 days
34	3979/08	71,17,489	7,11,750	153 days
35	8201/08	14,74,327	1,47,582	3 days
36	12006/07	10,29,155	11,32,070	12 days
37	11511/08	1,17,500	18,250	365 days
38	12266/08	18,62,381	1,86,238	4 days

39	19519/07	1,61,300	18,250	365 days
40	9073/07	1,15,150	18,250	365 days
41	18531/07	1,29,800	25,750	515 days
42	15517/08	11,95,524	1,95,552	31 days

40. The provisions of sub-section (1) of Section 72 of the Act have been enacted by the legislature with the specific intention to discourage the registered dealers not complying with the statutory periods provided for under the Act in either filing of the return or paying the collected admitted tax along with the returns etc. The provision is to ensure prompt compliance. It is not a provision which is one to check evasion like in most of the situations which had come in for judicial scrutiny by the Supreme Court, providing for penalty provisions under different enactments. Evasion of tax in itself is taken care of separately by other statutory provisions as noticed earlier viz., Sections 55(1), 73, 74, 75, 76 and 77, apart from providing for prosecution under 79 of the Act. So, sub-section (1) of Section 72 of the Act only intends to check delay in filing of returns and delayed payment of tax and

there is no evasion. A delay even in such statutory periodic compliance also can be discouraged by providing for levy of penalty but the nature of mischief that is sought to be curbed being a mischief of lesser degree in comparison to the mischief of evasion of tax itself, the penalty providing for curbing such mischief should be commensurate to the mischief intended to be remedied and it is here that the provision of sub-section (1) of Section 72 of the Act fails the twin test of non-arbitrariness and irrationality leading to discrimination, violative of Article 14 of the Constitution of India and the levy of penalty being a disproportionately high penalty, failing the test of reasonable restrictions saved under Article 19(6) of the Constitution of India vis-à-vis Article 19(1)(g).

41. The provision cannot also be saved by applying the principle of reading down the statutory provision, as it is not possible to severe any part of the provision to make it reasonable, workable and therefore constitutional. While

the principle of reading down a statutory provision can be applied to save the statute from the vice of the provision becoming unconstitutional, this tool cannot be employed by the judiciary to save legislative provisions, if it has to be stretched to impossible or unrealistic levels, so as to entirely rewrite a statutory provision or to add missing words which is essentially a legislative function. In the eagerness to save the provision from the vice of unconstitutionality such acrobatics cannot be performed.

42. It is the duty of courts to declare a law as unconstitutional if it is found to be so and not to resort to artificial or unrealistic levels of interpretation of statutory provisions, losing sight of the object of the provision, the nature of mischief and the manner and method by which the mischief is sought to be prevented.

43. While it is true that there is an initial presumption of constitutionality in favour of all legislative provisions, when once it is demonstrated that the provisions have failed the

test of Articles 14 and 19 of the Constitution of India and the challenge is not satisfactorily met, it is the duty of the court to declare the provision as unconstitutional.

44. The further argument on behalf of the state that a registered dealer can very well avoid getting into a situation of such nature by ensuring early compliance and not by waiting till the last date for compliance, is an argument only to be rejected, as when once the law provides for an outer limit for compliance, the test is not as to whether the dealer could have acted well within the last date to avoid falling foul of the statutory provision and avoid attraction of the penalty under sub-section (1) of Section 72 of the Act, but as to what will be the consequences on a registered dealer in terms of the provisions of sub-section (1) of Section 72 of the Act when a dealer has made *bona fide* effort to ensure compliance within the permitted limits of law and even when non-compliance occurs due to a reason beyond the control of the dealer. The statutory provision

fails this test of reasonableness also and therefore the defence on behalf of the state has to be rejected.

45. The writ petitioners succeed in the challenge to the validity of the provisions. The penalty provision being in addition to the compensatory provision for levying interest for the delayed period and also being in addition to other penalties under the other provisions of the Act itself, makes it all the more unreasonable, as when the penal provision of sub-section (1) of Section 72 of the Act is compared with the levy of penalty under the other provisions of the Act itself, which provide for a lighter penalty for a greater violation, such as in the case of Section 71 which provides for penalties for failing registration, Section 73 – penalties in relation to unauthorized collection of tax, Section 74 – penalty relating to keeping of records – Section 75 penalties relating to production of records and furnishing of information – Section 76 – penalties relating to tax invoices, bills of sale, credit notes and debits notes – Section 77 -

penalties relating to seals and to unaccounted stocks etc., the irrationality of providing such a harsh penalty under sub-section (1) of Section 72 of the Act becomes very obvious.

46. The argument of Sri Shivayogiswamy, learned government pleader, on the strength of various authorities relied upon and referred to above, that in the larger public interest, private interest of individual dealers has to yield and on this principle, the validity of sub-section (1) of Section 72 of the Act has to be upheld, fails, for the reason that the argument of larger public interest prevailing over a smaller private or individual interest has to be made good within the limits of being fair or non-arbitrary action, in the wake of Article 14 of the Constitution of India and also being a reasonable restriction imposed on the right saved within the protective provisions of Article 19(6) of the Constitution of India and in the instant case, the provisions of sub-section (1) of Section 72 of the Act fail both these

tests. The legal principle of larger public interest prevailing over smaller private interest, cannot be put on a higher pedestal than the rights under Articles 14 and 19 of the Constitution of India and to save the provisions under Article 14, the classification should be a reasonable classification with nexus to the object sought to be achieved by the legislative provision and the restriction should be a reasonable restriction within the meaning of Article 19(6) of the Constitution of India and as the examination reveals that the provision even on such examination is violative of Articles 14 and 19 of the Constitution of India, the argument fails and is therefore rejected.

47. In the result, the petitioners succeed. All these petitions are allowed, provisions of sub-section (1) of Section 72 of the Act as it stood during the different periods in respect of which the validity is challenged in these writ petitions, are declared unconstitutional. Consequently,

the penalty orders or show cause notices for imposing penalty, as the case may be, all stand quashed by issue of a writ of certiorari. The amount collected by way of penalty to be refunded to the respective petitioners.

48. Rule made absolute.

Sd/-
Judge

*pjk