REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 202 OF 2012

GOVERNMENT OF KERALA & ANR. …APPELLANTS

VERSUS

MOTHER SUPERIOR ADORATION CONVENT …RESPONDENT

WITH

CIVIL APPEAL NO. 6589 OF 2015

CIVIL APPEAL NO. 10298 OF 2016

CIVIL APPEAL NO. 10297 OF 2016

CIVIL APPEAL NO. 10881 OF 2016

CIVIL APPEAL NO. 203 OF 2012

CIVIL APPEAL NO. 204 OF 2012

CIVIL APPEAL NO. 207 OF 2012

CIVIL APPEAL NO. 206 OF 2012

CIVIL APPEAL NO. 205 OF 2012

CIVIL APPEAL NO. 745 OF 2021
(ARISING OUT OF SLP (CIVIL) NO.905 OF 2012)

CIVIL APPEAL NO. 5036 OF 2015

CIVIL APPEAL NO. 8351 OF 2014

CIVIL APPEAL NO. 746 OF 2021
(ARISING OUT OF SLP (CIVIL) NO.12235 OF 2014)

CIVIL APPEAL NO. 747 OF 2021
(ARISING OUT OF SLP (CIVIL) NO.13874 OF 2014)

CIVIL APPEAL NO. 8352 OF 2014

CIVIL APPEAL NO. 4445 OF 2015

CIVIL APPEAL NO. 4446 OF 2015

CIVIL APPEAL NO. 4447 OF 2015

CIVIL APPEAL NO. 7368 OF 2016

J U D G M E N T

R.F. Nariman, J.

1. Leave granted.

2. All these appeals pertain to an exemption provision contained in the Kerala Building Tax Act, 1975. Under Section 3(1)(b) buildings

that are used principally for religious, charitable or educational purposes or as factories or workshops are exempted from building tax under the Act. All of the appeals, except one, are by the State of Kerala against a judgment dated 22.11.2007 passed by a Division Bench of the Kerala High Court in Government of Kerala & Anr v. Mother Superior Adoration Convent (Civil Appeal No.202 of 2012) and a Full Bench judgment in State of Kerala & Ors v. Unity Hospital (P) Ltd. (Civil Appeal No. 207 of 2012), being a judgment dated 21.12.2010. Both judgments decided to exempt the buildings in question. The other appeals by the State contain judgments which follow either or both of these judgments. The only appeal by an assessee namely, Administrator, Jos Giri Hospital v. Government of Kerala (Civil Appeal No.204 of 2012), is from a judgment of the Division Bench of the Kerala High Court deciding the case in favour of the State. However, this judgment was referred to the Full Bench which decided the judgment in State of Kerala & Ors v. Unity Hospital (P) Ltd. (Civil Appeal No. 207 of 2012) and has been stated to have reached an incorrect conclusion.

3. On facts, there is a similarity in most of the cases before us. Either there are residential accommodations for nuns as in the first appeal before us or there are hostel accommodations which are attached to various educational institutions. In both cases, the State claims that no exemption should be granted as residential accommodation for nuns and hostels for students would be for residential as apart from religious or educational purposes and would not therefore be covered by the exemption contained in Section 3(1)(b) of the Act.

4. We may take up the facts in Civil Appeal No.202 of 2012. In this case, by an order of assessment dated 14.03.2002, building tax was levied on residential accommodation for nuns who underwent religious training to become nuns in a convent. Against the aforesaid assessment to tax, the respondent filed O.P. No.11246 of 2002 and the High court *vide* its judgment and order dated 29.5.2002 quashed the aforesaid assessment order and directed the Tehsildar to refer the case to the Government for its decision. A representation was made to the Government by the respondent on 10.2.2004 in which it was stated:

“2. At present we the 8 sisters residing here are deputed to render services in religious as well as charitable needs of the Vinjan Matha Church, East Thodupuzha and the people around the Church, irrespective of caste, creed and community.

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In order to become sisters, we had undergone 8 years rigorous religious education and training and then decided to lead a life of a SANYASINI throughout our life.

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8. The vow of obedience, is intended to make use of the individual sisters by their elected superior sisters, where their services are most needed. It means, we the present sisters attached to this convent at present are not permanent members here. We have come from different places, and each one of us will be individually transferred to other places, as our Superior’s Council decides.

9. So much so, the convent is a permanent set up here to render the religious and charitable needs of the locality, whereas the members are individually deputed to render the services for a period found proper.

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11. The convent was established by the Council decision of the St. Mary’s Province of the Congregation of the Sisters of Adoration of the Blessed Sacrament.

12. The building is also intended for accommodating the junior sisters who are undergoing their college education in the nearby Newman College -

Thodupuzha. Thus, at present 8 students-sisters also are residing here.

13. The Building is two storeyed and measures approximately 5000sq.ft. The ground floor contains a prayer hall, kitchen, refectory, study hall and small rooms for sisters. The upper floor contains 5 rooms for sisters, a dormitory and study hall.

14. The building is not at all given for amount at any time, and it will not be given so in the future also. It will be used only as a religious house."

5. This representation was turned down by the Government's order dated 11.09.2006 as follows:

"The Government has examined the matter in detail. The petitioner was heard on 16.9.2004 and he claimed that the building is exclusively used for accommodating the nuns who are engaged in religious and charitable activities. No part of the building is rented out or used for any other purpose. On perusal of the records the documents produced at the time of hearing it has become evident that the convent is not principally used for any religious or charitable purpose. The District Collector, Idukki as per letter read as fourth paper above has also informed that no charitable activities are undertaken in the convent and the building is used for the residential purpose of nuns.

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It includes professing once used in public expressing it by private and public worship, practicing rituals and ceremonies. It also includes observances, ceremonies and functions which are being customarily performed by members of a particular religion. If the main use of the major portion of a

> building is for the above then that building can be said to be used principally for religious purposes.
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> *xxx xxx xxx*
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> In the above circumstances, Government Order that the building in Survey No. 206 Thodupuzha village, Thodupuzha Taluk having plinth area of 903.24 M2 owned by the Adoration Convent, Shanti Bhavan, Thodupuzha is not eligible for exemption under Section 3 of the Kerala Building Tax Act, 1975."

6. A writ petition being Writ Petition No.27108 of 2006 was filed against the said order before a learned Single Judge who then referred the matter to a Division Bench as he did not agree with an earlier judgment of a learned Single Judge of the Kerala High Court. By the impugned judgment dated 22.11.2007, a Division Bench of the Kerala High Court held as follows:

> "8. If the activities that are going on in the convent are predominantly religious, then, normally, buildings of the convent used for the said purpose should also qualify for exemption. Of course, if any particular building is used for any commercial activity, such buildings could be segregated. It is not in dispute that a chapel is used for religious purposes. Attached to that, there may be a room for the Chaplain for taking rest etc. Can that room be segregated and said that it is not used for religious purposes. We feel that the answer should be in the negative. If the buildings of convents are generally used for religious purposes and one of the buildings is used for residence of an inmate there, it shall also be treated as one, used for religious purposes. Any

> interpretation to the contrary will be irrational. So, we are of the view that the buildings, used for the residence of the nuns in a convent, is principally used for religious purposes and therefore, should also qualify for exemption. We are in respectful agreement with the views expressed by C.N. Ramachandran Nair, J., in Writ Petition (C) No.27250/06. The judgment in W.A.2424/05 deals with the case of a boarding and lodging house for students run by a convent where rooms are let out collecting a fee. If the convent is running a commercial or industrial unit, the building housing that establishment will not qualify for exemption. That principle cannot be applied in the case of the building used for accommodating nuns in the convent. The decision of the Apex Court relied on by the learned Government Pleader also does not have any application to the facts of this case. The point considered therein was whether the building used for accommodating a school can be treated as a building used for charitable purposes or religious activities. The principle stated therein does not have any application to the facts of this case."

7. The Full Bench judgment of 2010 contained in Civil Appeal No.207 of 2012 was as a result of a Division Bench doubting the correctness of the Division Bench judgment in Administrator, Jos Giri Hospital v. Government of Kerala that is contained in Civil Appeal No.204 of 2012. Paragraphs 2 and 3 of the Full Bench posed the question raised thus:

> "2. The question raised is whether hostel building of an educational institution is entitled for exemption

from building tax under Section 3(1)(b) of the Kerala Building Tax Act, 1975 (hereinafter referred to as the Act for short), which provides for building tax exemption for buildings used for "educational purposes".

3. While the building involved in Writ Appeal No.1648/2009 is a hostel building owned by a nursing school, the building involved in Writ Appeal No.2495/2009 is a hostel building attached to a Residential Higher Secondary School owned by a private management."

The Full Bench held:

"6. The short question that arises for consideration is whether "educational purposes" referred to in the above Section has only a restricted meaning covering buildings, where students are imparted education; or whether it has a wider meaning covering hostel buildings owned by educational institutions to provide accommodation to students in the premises of the educational institutions. The Division Bench of this Court in the above referred judgment held that "educational purposes" cover only purposes which have integral, immediate and proximate connection to education. In the reference order, another Division Bench of which one of us is a member [CNR(J)], took the view that the above test laid down by the other Division Bench in the earlier judgment is satisfied at least in respect of hostels run by nursing schools and medical educational institutions and probably mistake is there only in the conclusion drawn in that judgment. What we notice is that the Division Bench while deciding the matter did not consider the educational Regulations of the Medical Council of India and Nursing Council of India, which make it mandatory that in order to get approval for a medical college or a nursing college,

hospital for patients and hostel facilities for students are mandatory. The State also does not controvert this position and in fact all the medical colleges and nursing colleges run in the State including those run by the Government have hospitals of their own or attached hospitals, and have hostels providing accommodation to all students. Except probably few students who hail from the areas very close to the colleges, all the nursing and medical students reside in the hostels attached to their colleges. The students of both medical and nursing colleges require clinical training in hospitals, and students in senior classes are deployed on a turn basis in hospitals. Unless accommodation is provided to the students in the college campus or nearby, it would not be possible for them, particularly for girls, to reach the hospitals attached to the medical and nursing colleges for duty at odd hours in the night. Therefore, the Medical Council of India and Nursing Council of India have made it mandatory for every medical college and nursing college to have hostel facilities, and without such facility no medical or nursing college will get approval from the Medical Council or Nursing Council of India, and only on their approval, the medical educational institution can get affiliation to the University. So much so, in our view, the test laid down by the Division Bench i.e. integral, immediate and proximate connection of the hostel building with education, is squarely satisfied in the cases of hostels attached to nursing schools and other medical educational institutions which require compulsory hostel facility for students for their approval. We, therefore, hold that wherever hostel is compulsory for approval of a course study or an educational institution by the regulatory body as in the case of medical and nursing colleges, hostel building is an integral part of the educational institution, and so much so, accommodation to students provided in the hostel building is for

educational purpose and therefore the hostel building qualifies for exemption from building tax. In view of the above finding, we are unable to agree with the conclusion drawn by the Division Bench i.e. denial of exemption to hostel building attached to the nursing school.

7. The next question to be considered is whether hostel facility to students provided by other educational institutions, which are not compulsorily required under the educational regulations to provide accommodation to students, is an educational purpose qualifying the hostel buildings for tax exemption. In this context, we have to necessarily consider the object and scope of the exemption clause provided in the statute. While learned counsel for the appellants have relied on Section 235 of the Kerala Municipalities Act, which provides for exemption to buildings used for educational purposes including hostel buildings owned by the same educational institutions, learned Government Pleader has relied on the decision of the Supreme Court in Municipal Corporation of Delhi v. Children Book Trust, reported in AIR 1992 SC 1456, where the Supreme Court held that school buildings are not entitled to exemption from municipal tax under the Delhi Municipal Corporation Act. On going through the judgment of the Supreme Court, we notice that the provision for exemption from property tax under the Delhi Municipal Corporation Act is not similar to the provisions of the Kerala Building Tax Act, and so much so, in our view, the decision cannot be applied while deciding the claim of exemption made by the appellants in these cases. Even though Section 235 of the Kerala Municipalities Act specifically provides for property tax exemption for hostel buildings owned by the very same educational institutions, there is no specific exemption for hostel buildings in Section 3 (1)(b) of

the Kerala Building Tax Act. Therefore, we have to examine whether “educational purposes” referred to in Section 3(1)(b) has only restricted meaning or it has a wider meaning covering all buildings directly or indirectly catering to the needs of student community. In this context, we have to necessarily consider the general pattern of hostel facility provided by education institutions in the State. In the recent past, large number of educational institutions, particularly engineering colleges are established all over Kerala including remote areas and hill stations, where the students admitted are not from local area and they have to necessarily depend on hostel facility to be provided by the educational institution. In fact admissions to medical and engineering colleges are given on central allotment basis and hardly any student can get admission in a college near to his/her house. Therefore, necessarily, the students have to depend on hostel accommodation to pursue their studies. Colleges will not get students if they do not provide hostel accommodation to students near to the College. Therefore, hostel buildings are constructed by educational institutions to attract students to their institutions. Many educational institutions provide only basic facilities like building, electricity and water connections for hostels and in fact, students are running mess on sharing basis. So much so, the State’s contention that hostels attached to educational institutions are commercial ventures intended to make profit, in our view, is unacceptable. In order to consider whether hostel provided by an educational institution is for educational purpose or not, we have to consider the consequences if such educational institution does not have hostel facility to provide accommodation to its students. Obviously, such educational institutions have to source students locally, which may be possible only in the case of Schools. In fact, thousands of schools and colleges in the State do

not have hostel facility because they depend on students from the local area only. However, wherever an educational institution has students from different parts of the State, and Non Resident Indians sending their children for studies in Kerala, necessarily the educational institution has to provide hostel facility to the students. In fact, without hostel facility, many educational institutions will not have required number of students to run it. We, therefore, feel accommodation is a necessary facility, which an educational institution is required to provide to it's students; and so long as the purpose of stay of students in the hostel is to study in the educational institution, the purpose of such building, which is used for accommodation of students, qualifies as educational purpose.

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9. We are therefore of the view that buildings owned by educational institutions for providing hostel accommodation to students qualify for building tax exemption under clause (b) of Section 3(1) of the Act. However all buildings accommodating students do not qualify for building tax exemption because there are so many lodge buildings constructed by various people around educational institutions which do not have hostel facility, to rent out to students in such educational institutions. Letting out of buildings by private agencies is a commercial activity whether tenants are students or not. In other words, only hostel buildings owned by educational institutions for accommodating it's own students in such hostels will qualify for exemption under clause (b) of Section 3(1) the Act."

8. Shri Jaideep Gupta, learned senior advocate appearing on behalf of the State of Kerala, assailed the correctness of these judgments. According to him, an exemption provision contained in a fiscal statute must be construed strictly and in the case of doubt or ambiguity must be construed in favour of the State. For this proposition, he cited a number of judgments. He then analysed Section 3(1)(b) of the Act and argued that a building used principally for religious or educational purposes can only be a building that is used for religious/educational activity and not for activity which has no direct connection with religious/educational activity, such as residential quarters for nuns, priests or hostel accommodation for students. He argued that even assuming that there is ambiguity in Section 3(1)(b), in that a purpose connected with the religious/educational activity may be included, yet the ambiguity has to be resolved in favour of the State and this being so, on this short ground, the judgment of the Division Bench and the judgment of the Full Bench are incorrect. He further went on to argue that the term “building” has been defined in Section 2(e) of the Act as meaning a separate house, out-house, etc. and that in the present case as no religious/educational activities are carried on at all in the buildings

which house nuns and hostel accommodation which houses students, such buildings, not being principally used for religious purposes, cannot possibly be exempt under the Act.

9. Learned counsel for the respondents supported the judgment of the Division Bench and the Full Bench, arguing that on facts, a beneficial legislation which is meant to further religious, charitable and educational purposes should not be construed in a narrow fashion, and should be construed in accordance with the object sought to be achieved, and this being the case, the aforesaid judgments do not require to be disturbed.

10. Having heard learned counsel appearing for all parties, we must first set out the relevant provisions of the Kerala Building Tax Act, 1975:

> ***"2. Definitions*** - In this Act, unless the context otherwise requires,
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> (e) "building" means a house, out-house, garage, or any other structure, or part thereof, whether of masonry, bricks, wood, metal or other material, but does not include any portable shelter or any shed constructed principally of mud, bamboos, leaves, grass or thatch or a latrine which is not attached to the main structure.

(i) "owner" includes a person who for the time being is receiving, or is entitled to receive, the rent of any building, whether on his own account or on account of himself and others or as an agent, trustee, guardian or receiver for any other person or who should so received the rent or be entitled to receive it if the building or part thereof were let to a tenant;

(l) "residential building" means a building or any other structure or part thereof built exclusively for residential purpose including outhouses or garages appurtenant to the building for the more beneficial enjoyment of the main building but does not include hotels, boarding places, lodges and the like.]

3. Exemptions - (1) Nothing in this Act shall apply to-

(a) buildings owned by the Government of Kerala or the Government of India or any local authority; and

(b) buildings used principally for religious, charitable or educational purposes or as factories or workshops.

Explanation. - For the purposes of this sub-section, "charitable purpose" includes relief of the poor and free medical relief.

5. Charge of building tax - (1) Subject to the other provisions contained in this Act, there shall be charged a tax (hereinafter referred to as "building tax") based on the plinth area at the rate specified in the Schedule on every building the construction of which is completed on or after the appointed day.

5A. Charge of luxury tax - [1) Notwithstanding anything contained in this Act, there shall be charged a luxury tax based on the plinth area at the rate specified in Schedule II, annually on all

residential buildings having a plinth area of 278.7 square metres completed on or after the 1st day of April, 1999."

11. Before coming to the case law that has been cited before us, it is important to first analyse Section 3(1)(b) with which we are directly concerned. First and foremost, the subject matter is "buildings" which as defined, would include a house or other structure. Secondly, the exemption is based upon user and not ownership. Third, what is important is the expression "principally", showing thereby that the legislature decided to grant this exemption *qua* buildings which are "principally" and not exclusively used for the purposes mentioned therein. Dominant object therefore is the test to be applied to see whether such building is or is not exempt. Fourthly, religious, charitable or educational purposes are earmarked by the legislature as qualifying for the exemption as they do not pertain to business or commercial activity. Fifthly, what is important is that even factories or workshops which produce goods and provide services are also exempt, despite profit motive, as the legislature obviously wishes to boost production in factories and services in workshops. What is important to note is that the

expression “used principally for” is wider than the expression “as” which precedes the words “factories or workshops”.

12. A reading of the provision would show that the object for exempting buildings which are used principally for religious, charitable or educational purposes would be for core religious, charitable or educational activity as well as purposes directly connected with religious activity. One example will suffice to show the difference between a purpose that is directly connected with religious or educational activity and a purpose which is only indirectly connected with such activity. Take a case where, unlike the facts in Civil Appeal No. 202 of 2012, nuns are not residing in a building next to a convent so that they may walk over to the convent for religious instruction. Take a case where the neighbouring building to the convent is let out on rent to any member of the public, and the rent is then utilised only for core religious activity. Can it be said that the letting out at market rent would be connected with religious activity because the rental that is received is ploughed back only into religious activity? Letting out a building for a commercial purpose would lose any rational connection with religious activity. The indirect

connection with religious activity being the profits which are ploughed back into religious activity would obviously not suffice to exempt such a building. But if on the other hand, nuns are living in a neighbouring building to a convent only so that they may receive religious instruction there, or if students are living in a hostel close to the school or college in which they are imparted instruction, it is obvious that the purpose of such residence is not to earn profit but residence that is integrally connected with religious or educational activity.

13. A reading of the other provisions of the Act strengthens the aforesaid conclusion. "Residential building" is defined separately from "building" in Section 2(l). A "residential building" means a building or any other structure or part thereof built exclusively for residential purpose. It is important to note that "residential building" is not the subject matter of exemption under Section 3 of the Act. Quite the contrary is to be found in Section 5A of the Act, which starts with a non-obstante clause, and which states that a luxury tax is to be charged on all residential buildings having a plinth area of 278.7 square meters and which have been completed on or after

1.4.1999. If we were to accept the contention of the State, buildings in which nuns are housed and students are accommodated in hostels which have been completed after 1.4.1999 and which have a plinth area of 278.7 square meters would be liable to pay luxury tax as these buildings would now no longer be buildings used principally for religious or educational purposes, but would be residential buildings used exclusively for residential purposes. This would turn the object sought to be achieved in exempting such buildings on its head. For this reason also, we cannot countenance a plea by the State that buildings which are used for purposes integrally connected with religious or educational activity are yet outside the scope of the exemption contained in Section 3(1)(b) of the Act. We may now examine the case law.

14. In **Union of India v. Wood Papers Ltd** (1990) 4 SCC 256 the rule as to exemption notifications in tax statutes was felicitously laid down as follows:

> "4. Entitlement of exemption depends on construction of the expression "any factory commencing production" used in the Table extracted above. Literally exemption is freedom from liability, tax or duty. Fiscally it may assume varying shapes, specially, in a growing economy. For instance tax

> holiday to new units, concessional rate of tax to goods or persons for limited period or with the specific objective etc. That is why its construction, unlike charging provision, has to be tested on different touchstone. In fact an exemption provision is like an exception and on normal principle of construction or interpretation of statutes it is construed strictly either because of legislative intention or on economic justification of inequitable burden or progressive approach of fiscal provisions intended to augment State revenue. But once exception or exemption becomes applicable no rule or principle requires it to be construed strictly. Truly speaking liberal and strict construction of an exemption provision are to be invoked at different stages of interpreting it. When the question is whether a subject falls in the notification or in the exemption clause then it being in nature of exception is to be construed strictly and against the subject but once ambiguity or doubt about applicability is lifted and the subject falls in the notification then full play should be given to it and it calls for a wider and liberal construction. Therefore, the first exercise that has to be undertaken is if the production of packing and wrapping material in the factory as it existed prior to 1964 is covered in the notification."

15. This statement of the law was followed in a number of judgments. Suffice it to say that in **Star Industries v. Commr. of Customs (Imports)** (2016) 2 SCC 362, a large number of judgments are referred to for the same proposition (see paragraphs 32 to 34).

16. However, there is another line of authority which states that even in tax statutes, an exemption provision should be liberally construed in accordance with the object sought to be achieved if such provision is to grant incentive for promoting economic growth or otherwise has some beneficial reason behind it. In such cases, the rationale of the judgments following **Wood Papers** (supra) does not apply. In fact, the legislative intent is not to burden the subject with tax so that some specific public interest is furthered. Thus, in **CST v. Industrial Coal Enterprises** (1999) 2 SCC 607, this Court held:

> "11. In *CIT v. Straw Board Mfg. Co. Ltd.* 1989 Supp (2) SCC 523 this Court held that in taxing statutes, provision for concessional rate of tax should be liberally construed. So also in *Bajaj Tempo Ltd. v. CIT* (1992) 3 SCC 78 it was held that provision granting incentive for promoting economic growth and development in taxing statutes should be liberally construed and restriction placed on it by way of exception should be construed in a reasonable and purposive manner so as to advance the objective of the provision.
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> 12. We find that the object of granting exemption from payment of sales tax has always been for encouraging capital investment and establishment of industrial units for the purpose of increasing production of goods and promoting the development of industry in the State. If the test laid down in Bajaj

> Tempo Ltd. case (1992) 3 SCC 78 is applied, there is no doubt whatever that the exemption granted to the respondent from 9-8-1985 when it fulfilled all the prescribed conditions will not cease to operate just because the capital investment exceeded the limit of Rs 3 lakhs on account of the respondent becoming the owner of land and building to which the unit was shifted. If the construction sought to be placed by the appellant is accepted, the very purpose and object of the grant of exemption will be defeated. After all, the respondent had only shifted the unit to its own premises which made it much more convenient and easier for the respondent to carry on the production of the goods undisturbed by the vagaries of the lessor and without any necessity to spend a part of its income on rent. It is not the case of the appellant that there were any mala fides on the part of the respondent in obtaining exemption in the first instance as a unit with a capital investment below Rs 3 lakhs and increasing the capital investment subsequently to an amount exceeding Rs 3 lakhs with a view to defeat the provisions of any of the relevant statutes. The bona fides of the respondent have never been questioned by the appellant."

17. Likewise, in **State of Jharkhand v. Tata Cummins Ltd** (2006) 4 SCC 57 in dealing with a tax exemption for setting up an industry in a backward area, this Court held as follows:

> "16. Before analysing the above policy read with the notifications, it is important to bear in mind the connotation of the word "tax". A tax is a payment for raising general revenue. It is a burden. It is based on the principle of ability or capacity to pay. It is a manifestation of the taxing power of the State. An

exemption from payment of tax under an enactment is an exemption from the tax liability. Therefore, every such exemption notification has to be read strictly. However, when an assessee is promised with a tax exemption for setting up an industry in the backward area as a term of the industrial policy, we have to read the implementing notifications in the context of the industrial policy. In such a case, the exemption notifications have to be read liberally keeping in mind the objects envisaged by the industrial policy and not in a strict sense as in the case of exemptions from tax liability under the taxing statute."

18. Similarly, in **Pondicherry State Coop. Consumer Federation Ltd. v. Union Territory of Pondicherry** (2008) 1 SCC 206 this Court held:

"5. Learned Senior Counsel Shri Venkatraman appearing for the appellant assessee submitted that this question was no more res integra and was covered by the judgment of this Court in *Vadilal Chemicals Ltd. v. State of A.P.* (2005) 6 SCC 292. It was pointed out that in that case an identical question fell for consideration under the similar circumstances. There also, the question was as to whether the small-scale industry which was engaged in bottling of anhydrous ammonia could be said to be entitled to the exemption from payment of sales tax on the ground that it was manufacturing such goods since there was a general exemption offered by the Andhra Pradesh Government by GOMs No. 117 dated 17-3-1993 to the small-scale industry. There also it was found on inspection that the

assessee industry was allowed irregular tax exemption on the first sales of anhydrous liquefied ammonia as it was found that the commodity that was purchased and sold was one of the same and there was no new commodity that had emerged and that the assessee had only done bottling of ammonia. The show-cause notices were issued to the assessee in that case suggesting therein that the activity of bottling/packing of gases into unit containers from bulk quantities was not recognised as “manufacture” even under the Central Excise Act. In that view the question which fell for consideration before this Court was as to whether under the circumstances the assessee could claim the exemption. This Court firstly held that the exemption certificate was granted by the authorities after due consideration. It was then noted that though the exemption was available on the products “manufactured” in industrial units, the interpretation put forth by the authorities on the word “manufacture” was incorrect. This Court took the view that the authorities had based the interpretation of word “manufacture” on the law relating to excise and that it was erroneous to do so. It was observed that in the State Sales Tax Act there was no provision relating to “manufacture” and the concept was to be found only in the 1993 G.O. which had provided the exemption. The Court further took the view that the exemption was granted with a view to give a fillip to the industry in the State and also for the industrial units of the State. The Court, therefore, took the view that a liberal interpretation of the term “manufacture” should have been adopted by the State authorities, more particularly, when the State authorities had granted the certificate of eligibility after due consideration of the facts.

6. In our view the law laid down in this decision is applicable to the present case on all fours. Here also

the authorities had firstly certified the assessee's industry to be small-scale industry and had then proceeded to grant exemption to it from payment of sales tax on the goods manufactured. The said certificate was not found to have been erroneously issued and was very much in vogue when the show-cause notices came to be served on the assessee. The G.O. providing exemption clearly suggested that such exemption was given in the public interest. Therefore, it is obvious that the decision in *Vadilal Chemicals* case (2005) 6 SCC 292 would be equally applicable as even in that case what the industry did was to bottle the ammonia gas purchased in bulk. In the present case it is palmolive oil which is purchased in bulk and is repacked so as to facilitate its sale in the retail market.

7. Shri T.L.V. Iyer, Senior Advocate appearing on behalf of the Union Territory of Pondicherry, however, tried to suggest that the exemption from payment of tax granted on 19-5-1989 was granted by the Director of Industries and it was clear from that exemption that it was only on the basis of GOMs No. 15/74 dated 25-6-1974. Our attention was invited to the last lines of the aforementioned G.O. dated 19-5-1989. The last portion is as under:

> “The unit is exempted from payment of sales tax for five years vide GOMs No. 15/74/FIN(CT) dated 25-6-1974.”

On this the learned Senior Counsel argued that, therefore, it had to be proved that the goods were manufactured by the assessee and in the present case since the palmolive oil did not change its character on its being repacked by the assessee, it could not be said that the assessee had manufactured any goods. Learned counsel also urges that in the absence of any definition of

"manufactured goods" in the Sales Tax Act, we would have to fall back upon either the dictionary meaning of the term or to borrow it from the Central Excise Act. We are afraid, the contention cannot be accepted in the wake of clear law laid down by this Court in *Vadilal Chemicals* case (2005) 6 SCC 292. We have already shown as to how the decision in that case is applicable to the present situation. In that view we are of the clear opinion that since in the present case the exemption was granted to all small-scale industrial units registered with the Director of Industries and since the assessee was recognised and certified as a small industrial unit, engaged in the activity of repacking of edible oil and further since the exemption was granted with the open eyes to this particular industry, the State cannot be allowed to turn around and take a stance that the appellant assessee was not entitled to the exemption on the ground that it did not manufacture any goods. We are in respectful agreement with the view taken in *Vadilal Chemicals* case (2005) 6 SCC 292 which is more particularly reflected in paras 19 and 20 of that decision where this Court observed as under: (SCC p. 298, para 20)

> "20. In this case the State Sales Tax Act contains no provision relating to 'manufacture'. The concept only finds place in the 1993 G.O. issued by the Department of Commerce and Industries. It appears from the context of the other provisions of the 1993 G.O. that the word 'manufacture' had been used to exclude dealers who merely purchased the goods and resold the same on retail price. What the State Government wanted was investment and industrial activity. It is in this background that the 1993 G.O. must be interpreted. (See CST v. Industrial Coal Enterprises (1999) 2 SCC 607). The exemption was granted in terms of the

> 1993 G.O. the thrust of which was to increase industrial development in the State."
>
> 8. We respectfully agree with the aforesaid observations and would choose to take the same view by accepting the contention of the appellant that a liberal view of GOMs No. 15/74 dated 25-6-1974 would have to be taken. We accordingly allow the appeal, set aside the order passed by the High Court and restore that of the Tribunal but without any order as to costs."

19. While construing an exemption in a sales tax statute, this Court in **CST v. Amara Raja Batteries Ltd** (2009) 8 SCC 209 held:

> "21. An exemption notification should be given a literary (sic literal) meaning. Recourse to other principles or canons of interpretation of statute should be resorted to only in the event the same give rise to anomaly or absurdity. The exemption notification must be construed having regard to the purpose and object it seeks to achieve. The Government sought for increase in industrial development in the State. Such a benevolent act on the part of the State, unless there exists any statutory interdict, should be given full effect. (See Vadilal Chemicals Ltd. v. State of A.P. (2005) 6 SCC 292)"

20. Likewise, even under the Customs Act, this Court in **Commr. of Customs (Preventive) v. M. Ambalal & Co.** (2011) 2 SCC 74 made a clear distinction between exemptions which are to be strictly interpreted as opposed to beneficial exemptions having as their

purpose - encouragement or promotion of certain activities. This case felicitously put the law thus follows:

> "16. It is settled law that the notification has to be read as a whole. If any of the conditions laid down in the notification is not fulfilled, the party is not entitled to the benefit of that notification. The rule regarding exemptions is that exemptions should generally be strictly interpreted but beneficial exemptions having their purpose as encouragement or promotion of certain activities should be liberally interpreted. This composite rule is not stated in any particular judgment in so many words. In fact, majority of judgments emphasise that exemptions are to be strictly interpreted while some of them insist that exemptions in fiscal statutes are to be liberally interpreted giving an apparent impression that they are contradictory to each other. But this is only apparent. A close scrutiny will reveal that there is no real contradiction amongst the judgments at all. The synthesis of the views is quite clearly that the general rule is strict interpretation while special rule in the case of beneficial and promotional exemption is liberal interpretation. The two go very well with each other because they relate to two different sets of circumstances."

21. This judgment was followed in **CCE v. Favourite Industries** (2012) 7 SCC 153 (see paragraph 42).

22. A recent 5-Judge Bench judgment was cited by Shri Gupta in **Commr. of Customs v. Dilip Kumar & Co.** (2018) 9 SCC 1. The 5-Judge Bench was set up as a 3-Judge Bench in **Sun Export**

Corporation v. Collector of Customs 1997 (6) SCC 564 was doubted, as the said judgment ruled that an ambiguity in a tax exemption provision must be interpreted so as to favour the assessee claiming the benefit of such exemption. This Court after dealing with a number of judgments relating to exemption provisions in tax statutes, ultimately concluded as follows:

> "66. To sum up, we answer the reference holding as under:
>
> 66.1. Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.
>
> 66.2. When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the Revenue.
>
> 66.3. The ratio in Sun Export case [Sun Export Corpn. v. Collector of Customs, (1997) 6 SCC 564] is not correct and all the decisions which took similar view as in Sun Export case stand overruled."

23. It may be noticed that the 5-Judge Bench judgment did not refer to the line of authority which made a distinction between exemption provisions generally and exemption provisions which

have a beneficial purpose. We cannot agree with Shri Gupta's contention that *sub-silentio* the line of judgments *qua* beneficial exemptions has been done away with by this 5-Judge Bench. It is well settled that a decision is only an authority for what it decides and not what may logically follow from it (see **Quinn v. Leathem** [1901] AC 495 as followed in **State of Orissa v. Sudhansu Sekhar Misra** (1968) 2 SCR 154 at 162,163)

24. This being the case, it is obvious that the beneficial purpose of the exemption contained in Section 3(1)(b) must be given full effect to, the line of authority being applicable to the facts of these cases being the line of authority which deals with beneficial exemptions as opposed to exemptions generally in tax statutes. This being the case, a literal formalistic interpretation of the statute at hand is to be eschewed. We must first ask ourselves what is the object sought to be achieved by the provision, and construe the statute in accord with such object. And on the assumption that any ambiguity arises in such construction, such ambiguity must be in favour of that which is exempted. Consequently, for the reasons given by us, we agree with

the conclusions reached by the impugned judgments of the Division Bench and the Full Bench.

25. The matter can also be seen from a slightly different angle. Where a High Court construes a local statute, ordinarily deference must be given to the High Court judgments in interpreting such a statute, particularly when they have stood the test of time (see **State of Gujarat v. Zinabhai Ranchhodji Darji** (1972) 1 SCC 233 at paragraph 10, **Bishamber Dass Kohli v. Satya Bhalla** (1993) 1 SCC 566 at paragraph 11, **Duroflex Coir Industries Ltd. v. CST** 1993 Supp (1) SCC 568 at paragraph 2, **State of Karnataka v. G. Seenappa** 1993 Supp (1) SCC 648 at paragraph 3 and **Bonam Satyavathi v. Addala Raghavulu** 1994 Supp (2) SCC 556 at paragraph 4). This is all the more applicable in the case of tax statutes where persons arrange their affairs on the basis of the legal position as it exists.

26. In the result, the appeals filed by the State of Kerala are dismissed. The appeal filed in Civil Appeal No.204 of 2012 is allowed and the judgment of the Division Bench is set aside.

……J.
(R. F. Nariman)

……J.
(B.R. Gavai)

New Delhi.
March 01, 2021.