

**IN THE HIGH COURT OF KARNATAKA, BENGALURU**

**DATED THIS THE 14<sup>th</sup> DAY OF NOVEMBER 2017**

**BEFORE**

**THE HON'BLE Dr.JUSTICE VINEET KOTHARI**

**W.P.No.33176/2017 c/w W.P.No.32658/2017,**  
**W.P.Nos.32659-670/2017, W.P.Nos.33470-**  
**472/2017, W.P.No.35892/2017,**  
**W.P.Nos.25349/2017 & 31438-448/2017,**  
**W.P.Nos.25350/2017 & 30508-518/2017,**  
**W.P.Nos.25351/2017 & 30526-536/2017,**  
**W.P.Nos.25352/2017 & 34098-108/2017,**  
**W.P.No.32127/2017, W.P.Nos.25353/2017 & 30711-**  
**721/2017, W.P.Nos.25354/2017 & 30318-328/2017,**  
**W.P.No.30001/2017, W.P.No.28370/2017,**  
**W.P.No.26333/2017, W.P.No.38574/2017,**  
**W.P.No.44681/2017, W.P.No.45976/2017,**  
**W.P.No.45978/2017, W.P.No.46691/2017 &**  
**W.P.No.47080/2017 (T-RES)**

**IN W.P.No.33176/2017**

**BETWEEN:**

M/S. WS RETAIL SERVICES PRIVATE LIMITED  
A COMPANY INCORPORATED UNDER THE  
COMPANIES ACT, 1956  
HAVING ITS OFFICE AT  
No.447b, 1<sup>ST</sup> A CROSS, 12<sup>TH</sup> MAIN  
4<sup>TH</sup> BLOCK, KORAMANGALA, BENGALURU-560 034.  
REP. HEREIN BY ITS AUTHORISED SIGNATORY  
Mr. ANIL GUPTA (ADULT).

...PETITIONER

(BY SRI. TARUN GULATI, ADV. WITH SRI. KISHORE KUNAL &  
SRI. ARUN SRI KUMAR, ADVOCATES)

**AND:**

1. THE STATE OF KARNATAKA  
REP. BY ITS FINANCE SECRETARY  
VIDHANA SOUDHA  
BANGALORE-560 001.
2. COMMERCIAL TAX OFFICER (AUDIT)-4.3  
DVO-4, VANIJYA THERIGE KARYALAYA-2  
KORAMANGALA, BANGALORE-560 047.
3. ASSISTANT COMMISSIONER OF COMMERCIAL  
TAXES, (AUDIT)-4.4, DVO-4, VTK-42  
ROOM NO.204, A BLOCK  
KORAMANGALA, BENGALURU-560 047.

... RESPONDENTS

(BY SRI. ADITYA SONDHI, ADDL. ADVOCATE GENERAL  
WITH SRI VIKRAM HULIGOL, HCGP)

THIS W.P. IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA, PRAYING TO DECLARE THE IMPUGNED ORDER AND CONSEQUENTIAL DEMAND NOTICE DATED 29.6.2017 PERTAINING TO DEMAND OF KVAT FOR THE PERIOD 2011-12 AT ANNEX-A, IMPUGNED ORDER AND CONSEQUENTIAL DEMAND NOTICE DATED 29.6.2017 PERTAINING TO THE DEMAND OF CST FOR THE PERIOD 2011-12 AT ANNEX-B AND IMPUGNED ORDER AND CONSEQUENTIAL DEMAND NOTICE DATED 30.06.2017 PERTAINING TO KVAT FOR THE PERIOD 2012-13 AT ANNEX-C AS NULL AND VOID AND HOLD IT TO BE CONTRARY TO THE PROVISIONS OF THE ACT AND/OR THE KARASAMDHANA SCHEME, 2017 AND/OR CALL FOR, EXAMINE THE RECORDS IN RELATION TO AND QUASH THE IMPUGNED ORDERS AND THE DEMAND NOTICES BEING ILLEGAL AND ARBITRARY & ETC.,

**IN W.P.No.32658/2017**

**BETWEEN:**

M/S LAKSHMI TOOLS AND COMPONENTS  
B-34, ITI INDUSTRIAL ESTATE  
MAHADEVAPURA POST  
BENGALURU-560 048

REPRERSENTED BY ITS PROPRIETOR  
SMT. M. VARALAKSHMI

...PETITIONER

(BY SRI. MOHAMMED MUJASSIM, ADVOCATE FOR  
SRI. GANESH S., ADVOCATE)

**AND:**

1. STATE OF KARNATAKA  
THROUGH ITS PRINCIPAL SECRETARY  
FINANCE DEPARTMENT  
VIDHANA SOUDHA, BANGALORE-560 001.
2. THE COMMISSIONER OF COMMERCIAL TAXES  
IN KARNATAKA  
"VANIJYA THERIGE KARYALAYA"  
GANDHINAGAR, BANGALORE-560 009.
3. THE DEPUTY COMMISSIONER OF COMMERCIAL  
TAXES, (AUDIT)-5.2, DVO-5  
ROOM NO.504, 5<sup>TH</sup> FLOOR  
B BLOCK, VTK-2, RAJENDRANAGAR  
KORAMANGALA, BANGALORE-560 047.

... RESPONDENTS

(BY SRI. ADITYA SONDDHI, ADDL. ADVOCATE GENERAL  
A/W SRI. VIKRAM HULIGOL, HCGP)

THIS W.P. IS FILED UNDER ARTICLE 226 OF THE  
CONSTITUTION OF INDIA, PRAYING TO QUASH THE  
ENDORSEMENT DTD.12.6.2016 ISSUED BY R-3 VIDE ANNEX-A  
TO THE W.P. AND ETC.

**IN W.P.Nos.32659-670/2017**

**BETWEEN:**

M/S. FLOWSERVE INDIA CONTROLS PVT. LTD,  
PLOT NO.4, 1-A-EPIP, WHITEFIELD  
BENGALURU-560 066  
REPRESENTED BY ITS ASST. MANAGER  
Mr. H.S. MAHADEVAPPA  
AGED ABOUT 39 YEARS  
S/O SRI SHIVAPPA.

... PETITIONER

(BY SRI. THIRUMALESH M., ADVOCATE)

**AND:**

1. STATE OF KARNATAKA  
REPRESENTED BY ADDITIONAL CHIEF SECRETARY  
AND PRINCIPAL SECRETARY TO GOVERNMENT  
FINANCE DEPARTMENT  
GOVERNMENT OF KARNATAKA  
VIDHANA SOUDHA, BENGALURU-560 001.
2. COMMISSIONER OF COMMERCIAL TAXES KARNATAKA  
VANIJYA THERIGE KARYALAYA  
GANDHINAGAR, BENGALURU-560 009.
3. DY. COMMISSIONER OF COMMERCIAL TAXES  
(AUDIT)5-1, VTK-2, 'B' BLOCK, 5<sup>TH</sup> FLOOR  
RAJENDRA NAGAR, KORAMANGALA  
BENGALURU-560 047.

... RESPONDENTS

(BY SRI. ADITYA SONDHI, ADDL. ADVOCATE GENERAL  
WITH SRI. VIKRAM HULIGOL, HCGP)

THESE W.Ps. ARE FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ALLOW THE WRIT PETITION AND QUASH THE ENDORSEMENT DTD.12.6.2017 ISSUED BY THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES (AUDIT)5.1 BENGALURU, THE R-3 HEREIN, IN HAVING DENIED TO THE PETITIONER THE BENEFIT OF WAIVER OF PENALTY AND INTEREST PAYABLE UNDER KARNATAKA VALUE ADDED TAX ACT, 2003 TO THE EXTENT OF 90% GRANTED IN THE KARASAMADHANA SCHEME, 2017 FOR THE YEAR 2008-09 AND DEMANDING ADDITIONAL AMOUNT OF RS.4,78,124/- ANNEX-G AND ETC.

**IN W.P.Nos.33470-472/2017**

**BETWEEN:**

M/S CASTROL INDIA LTD.,  
C/O SHREE LOGISTICS  
NO.75, HAROKYATHANAHALLI (ADAKAMARANAHALLI)  
DASANAPURA HOBLI, MAKALI POST  
BENGALURU NORTH TALUK

BENGALURU – 562 123.  
A PRIVATE LIMITED COMPANY  
REPRESENTED BY DEPUTY MANAGER (TAXATION)  
SRI V. BALASUBRAMANIAN  
AGED ABOUT 53 YEARS  
S/O SRI T.S.VALLEESAN.

... PETITIONER

(BY SRI. THIRUMALESH M., ADVOCATE)

**AND:**

1. STATE OF KARNATAKA  
REPRESENTED BY ADDITIONAL CHIEF SECRETARY  
AND PRINCIPAL SECRETARY TO GOVERNMENT  
FINANCE DEPARTMENT  
GOVERNMENT OF KARNATAKA  
VIDHANA SOUDHA, BENGALURU-560 001.
2. COMMISSIONER OF COMMERCIAL TAXES KARNATAKA  
VANIJYA THERIGE KARYALAYA  
GANDHINAGAR, BENGALURU-560 009.
3. DEPUTY COMMISSIONER OF COMMERCIAL TAXES  
(AUDIT)6.6, DVO-6, 3<sup>RD</sup> FLOOR,  
KIADB BUILDING, PEENYA INDUSTRIAL AREA  
2<sup>ND</sup> STAGE PEENYA, BENGALURU-560 058.

... RESPONDENTS

(BY SRI. ADITYA SONDHI, ADDL. ADVOCATE GENERAL  
A/W SRI VIKRAM HULIGOL, HCGP)

THESE W.Ps. ARE FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE ENDORSEMENT DTD.1.6.2017 ISSUED BY THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES (AUDIT)6.6 BENGALURU, THE R-3 HEREIN, IN HAVING DENIED TO THE PETITIONER THE BENEFIT OF WAIVER OF INTEREST PAYABLE UNDER KARNATAKA VALUE ADDED TAX ACT, 2003 TO THE EXTENT OF 90% GRANTED IN THE KARASAMADHANA SCHEME, 2017 FOR THE YEARS 2006-07, 2007-08 AND 2008-09 AND DEMANDING ADDITIONAL AMOUNTS ANNEXURE-F, G, H AND ETC.

**IN W.P.No.35892/2017**

**BETWEEN:**

M/S AVK VALVES INDIA PVT LTD  
PLOT NO.179, KIADB INDUSTRIAL AREA  
PHASE-III, MALUR-563 130  
REPRESENTED BY ITS FINANCE MANAGER  
MRS NAFISA FIRDAUS  
AGED ABOUT 37 YEARS  
S/O MR. FAIYAZ FARUQUE.

... PETITIONER

(BY SRI. THIRUMALESH M., ADVOCATE)

**AND:**

1. STATE OF KARNATAKA  
REPRESENTED BY ADDITIONAL CHIEF SECRETARY  
AND PRINCIPAL SECRETARY TO GOVERNMENT,  
FINANCE DEPARTMENT  
GOVERNMENT OF KARNATAKA  
VIDHANA SOUDHA, BENGALURU-560 001.
2. COMMISSIONER OF COMMERCIAL TAXES, KARNATAKA  
VANIJYA THERIGE KARYALAYA  
GANDHINAGAR, BENGALURU-560 009.
3. COMMERCIAL TAX OFFICER (AUDIT)  
BINDU NEW LAYOUT, 2<sup>ND</sup> CROSS  
DOOM LIGHT CIRCLE, KOLAR-563 101

...RESPONDENTS

(BY SRI. ADITYA SONDHI, ADDL. ADVOCATE GENERAL  
A/W SRI. VIKRAM HULIGOL, HCGP)

THIS W.P. IS FILED UNDER ARTICLES 226 & 227 OF THE  
CONSTITUTION OF INDIA, PRAYING TO QUASH THE  
ENDORSEMENT DTD:21.6.2017 ISSUED BY THE COMMERCIAL  
TAX OFFICER [AUDIT] KOLAR, THE R-3 HEREIN, IN HAVING  
DENIED TO THE PETITIONER THE BENEFIT OF WAIVER OF  
PENALTY AND INTEREST PAYABLE UNDER CENTRAL SALES  
TAX ACT, 1956 TO THE EXTENT OF 90% GRANTED IN THE  
KARASAMADHANA SCHEME, 2017 FOR THE YEAR 2011-12 AND

DEMANDING ADDITIONAL AMOUNT OF RS.7,13,842/- VIDE  
ANNEXURE-E AND ETC.

**IN W.P.Nos.25349/2017 & 31438-448/2017**

**BETWEEN:**

NOKIA INDIA PRIVATE LTD  
88, BRIGADE CHAMBERS  
GANDHI BAZAAR MAIN ROAD  
BASAVANAGUDI, BANGALORE-560 004  
(HAVING REGISTERED OFFICE AT:  
FLAT NO.1204, 12<sup>TH</sup> FLOOR  
KAILASH BUILDING  
KASTURBA GANDHI MARG  
NEW DELHI-110 001)  
REP. BY AUTHORISED REPRESENTATIVE  
SURENDRA KUMAR RAHEJA.

... PETITIONER

(BY SRI. UDAYA HOLLA, SENIOR COUNSEL  
A/W SRI. J.P. SINGH, ADVOCATE FOR  
SRI. CHETHANA K.N., ADVOCATE)

**AND:**

1. STATE OF KARNATAKA  
THROUGH THE SECRETARY  
FINANCE DEPARTMENT  
VIDHANA SOUDHA  
BANGALORE-560 001.
2. DEPUTY COMMISSIONER OF COMMERCIAL TAXES  
(AUDIT)-3.6, DVO-3, TTMC  
"B" BLOCK, BMTC BUILDING  
2<sup>ND</sup> FLOOR, SHANTHINAGAR  
BANGALORE-560 027.

... RESPONDENTS

(BY SRI. ADITYA SONDHI, ADDL. ADVOCATE GENERAL  
A/W SRI. VIKRAM HULIGOL, HCGP)

THESE W.Ps. ARE FILED UNDER ARTICLES 226 & 227 OF  
THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE  
ENDORSEMENT DTD:26.5.2017 PASSED BY THE R-2

[ANNEXURE-A] AND DIRECT THE R-2 TO RE-COMPUTE THE AMOUNT DUE UNDER THE KARASAMADHANA SCHEME, 2017 AFTER ADJUSTING THE AMOUNT PAID BY THE PETITIONER TOWARDS THE TAX LIABILITY FOR FY 2007-08 AND ETC.,

**IN W.P.Nos.25350/2017 & 30508-518/2017**

**BETWEEN:**

NOKIA INDIA PRIVATE LTD  
88, BRIGADE CHAMBERS  
GANDHI BAZAAR MAIN ROAD  
BASAVANAGUDI, BANGALORE-560 004  
(HAVING REGISTERED OFFICE AT:  
FLAT NO.1204, 12<sup>TH</sup> FLOOR, KAILASH BUILDING  
KASTURBA GANDHI MARG, NEW DELHI-110 001)  
REPRESENTED BY AUTHORISED REPRESENTATIVE  
SURENDRA KUMAR RAHEJA.

... PETITIONER

(BY SRI. UDAYA HOLLA, SENIOR COUNSEL  
A/W SRI. J.P. SINGH, ADVOCATE FOR  
SRI. CHETHANA K.N., ADVOCATE)

**AND:**

1. STATE OF KARNATAKA  
THROUGH THE SECRETARY  
FINANCE DEPARTMENT  
VIDHANA SOUDHA  
BANGALORE-560 001.
2. DEPUTY COMMISSIONER OF COMMERCIAL TAXES  
(AUDIT)-3.6, DVO-3, TTMC  
"B" BLOCK, BMTC BUILDING  
2<sup>ND</sup> FLOOR, SHANTHINAGAR  
BANGALORE-560 027.

... RESPONDENTS

(BY SRI. ADITYA SONDHI, ADDL. ADVOCATE GENERAL  
A/W SRI. VIKRAM HULIGOL, HCGP)

THESE W.Ps. ARE FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE ENDORSEMENT DTD.26.5.2017 PASSED BY THE R-2 VIDE



ANNEX-A AND DIRECT THE R-2 TO RECOMPUTE THE AMOUNT DUE UNDER THE KARASAMADHANA SCHEME, 2017, AFTER ADJUSTING THE AMOUNT PAID BY THE PETITIONER TOWARDS THE TAX LIABILITY FOR FY 2008-09 & ETC.,

**IN W.P.No.25351/2017 & 30526-536/2017**

**BETWEEN:**

NOKIA INDIA PRIVATE LTD  
88, BRIGADE CHAMBERS  
GANDHI BAZAAR MAIN ROAD  
BASAVANAGUDI, BANGALORE-560 004  
(HAVING REGISTERED OFFICE AT:  
FLAT NO.1204, 12<sup>TH</sup> FLOOR, KAILASH BUILDING  
KASTURBA GANDHI MARG, NEW DELHI-110 001)  
REPRESENTED BY AUTHORISED REPRESENTATIVE  
SURENDRA KUMAR RAHEJA.

... PETITIONER

(BY SRI. UDAYA HOLLA, SENIOR COUNSEL  
A/W SRI. J.P. SINGH, ADVOCATE FOR  
SRI. CHETHANA K.N., ADVOCATE)

**AND:**

1. STATE OF KARNATAKA  
THROUGH THE SECRETARY  
FINANCE DEPARTMENT  
VIDHANA SOUDHA  
BANGALORE-560 001.
2. DEPUTY COMMISSIONER OF COMMERCIAL TAXES  
(AUDIT)-3.6, DVO-3, TTMC  
"B" BLOCK, BMTC BUILDING  
2<sup>ND</sup> FLOOR, SHANTHINAGAR  
BANGALORE-560 027.

... RESPONDENTS

(BY SRI. ADITYA SONDHI, ADDL. ADVOCATE GENERAL  
A/W SRI. VIKRAM HULIGOL, HCGP)

THESE W.Ps. ARE FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE REVISED ENDORSEMENT DATED 26.5.2017 PASSED BY R-2 AT

10/88

ANNEX-A AND DIRECT R-2 TO RE-COMPUTE THE AMOUNT DUE UNDER THE KARASAMADHANA SCHEME, 2017 AFTER ADJUSTING THE AMOUNT PAID BY THE PETITIONER TOWARDS THE TAX LIABILITY FOR FY 2009-10 AND ETC.,

**IN W.P.Nos.25352/2017 & 34098-108/2017**

**BETWEEN:**

NOKIA INDIA PRIVATE LTD  
88, BRIGADE CHAMBERS  
GANDHI BAZAAR MAIN ROAD  
BASAVANAGUDI, BANGALORE-560 004  
(HAVING REGISTERED OFFICE AT:  
FLAT NO.1204, 12<sup>TH</sup> FLOOR, KAILASH BUILDING  
KASTURBA GANDHI MARG, NEW DELHI-110 001)  
REPRESENTED BY AUTHORISED REPRESENTATIVE  
SURENDRA KUMAR RAHEJA.

... PETITIONER

(BY SRI. UDAYA HOLLA, SENIOR COUNSEL  
A/W SRI. J.P. SINGH, ADVOCATE FOR  
SRI. CHETHANA K.N., ADVOCATE)

**AND:**

1. STATE OF KARNATAKA  
THROUGH THE SECRETARY  
FINANCE DEPARTMENT  
VIDHANA SOUDHA  
BANGALORE-560 001.
2. DEPUTY COMMISSIONER OF COMMERCIAL TAXES  
(AUDIT)-3.6, DVO-3, TTMC  
"B" BLOCK, BMTC BUILDING  
2<sup>ND</sup> FLOOR, SHANTHINAGAR  
BANGALORE-560 027.

... RESPONDENTS

(BY SRI. ADITYA SONDHI, ADDL. ADVOCATE GENERAL  
A/W SRI. VIKRAM HULIGOL, HCGP)

THESE W.Ps. ARE FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE REVISED ENDORSEMENT DATED 26.5.2017 PASSED BY R-2 AT

11/88

ANNEX-A AND DIRECT R-2 TO RE-COMPUTE THE AMOUNT DUE UNDER THE KARASAMADHANA SCHEME, 2017 AFTER ADJUSTING THE AMOUNT PAID BY THE PETITIONER TOWARDS THE TAX LIABILITY FOR FY 2010-11 AND ETC.,

**IN W.P.No.32127/2017**

**BETWEEN:**

M/S SMILE ELECTRONICS LTD.,  
PLOT NO.13, BHATTARAHALLI, K.R.PURAM  
OLD MADRAS ROAD, BANGALORE-560 049  
(REPRESENTED BY ITS DIRECTOR  
SRI. ABDUL ALEEM, AGED 60 YEARS)

...PETITIONER

(BY SRI. K.M. SHIVAYOGISWAMY, ADVOCATE)

**AND:**

1. STATE OF KARNATAKA  
REPRESENTED BY ITS SECRETARY  
DEPARTMENT OF FINANCE  
VIDHANA SOUDHA  
BANGALORE-560 001.
2. THE ASSISTANT COMMISSIONER OF  
COMMERCIAL TAXES  
(AUDIT)-5.1, DVO-5, VTK-2  
B BLOCK, 4<sup>TH</sup> FLOOR  
KORAMANGALA  
BANGALORE-560 047.

... RESPONDENTS

(BY SRI. ADITYA SONDHI, ADDL. ADVOCATE GENERAL  
A/W SRI. VIKRAM HULIGOL, HCGP)

THIS W.P. IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE IMPUGNED PROCEEDINGS/ORDER DTD.29.6.2017 PASSED BY THE R-2 UNDER THE KARASAMADHANA SCHEME 2017 VIDE ANNEX-H AND ETC.

**IN W.P.Nos.25353/2017 & 30711-721/2017**

**BETWEEN:**

NOKIA INDIA PRIVATE LTD  
88, BRIGADE CHAMBERS  
GANDHI BAZAAR MAIN ROAD  
BASAVANAGUDI, BANGALORE-560 004  
HAVING REGISTERED OFFICE AT:  
FLAT NO.1204, 12<sup>TH</sup> FLOOR, KAILASH BUILDING  
KASTURBA GANDHI MARG, NEW DELHI-110 001  
REPRESENTED BY AUTHORISED REPRESENTATIVE  
SURENDRA KUMAR RAHEJA.

... PETITIONER

(BY SRI. UDAYA HOLLA, SENIOR COUNSEL  
A/W SRI. J.P. SINGH, ADVOCATE FOR  
SRI. CHETHANA K.N. ADVOCATE)

**AND:**

1. STATE OF KARNATAKA  
THROUGH THE SECRETARY  
FINANCE DEPARTMENT  
VIDHANA SOUDHA  
BANGALORE-560 001.
2. DEPUTY COMMISSIONER OF COMMERCIAL TAXES  
(AUDIT)-3.6, DVO-3, TTMC  
"B" BLOCK, BMTC BUILDING  
2<sup>ND</sup> FLOOR, SHANTHINAGAR  
BANGALORE-560 027.

... RESPONDENTS

(BY SRI. ADITYA SONDHI, ADDL. ADVOCATE GENERAL  
A/W SRI. VIKRAM HULIGOL, HCGP)

THESE W.Ps. ARE FILED UNDER ARTICLES 226 & 227 OF  
THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE  
REVISED ENDORSEMENT DATED 26.5.2017 PASSED BY R-2 AT  
ANNEX-A AND DIRECT THE R-2 TO RE-COMPUTE THE AMOUNT  
DUE UNDER THE KARASAMADHANA SCHEME, 2017 AFTER  
ADJUSTING THE AMOUNT PAID BY THE PETITIONER TOWARDS  
THE TAX LIABILITY FOR FY 2011-12 AND ETC.,

**IN W.P.Nos.25354/2017 & 30318-328/2017**

**BETWEEN:**

NOKIA INDIA PRIVATE LTD  
88, BRIGADE CHAMBERS  
GANDHI BAZAAR MAIN ROAD  
BASAVANAGUDI  
BANGALORE-560 004  
(HAVING REGISTERED OFFICE AT:  
FLAT NO.1204, 12<sup>TH</sup> FLOOR  
KAILASH BUILDING  
KASTURBA GANDHI MARG  
NEW DELHI-110 001)  
REPRESENTED BY AUTHORISED REPRESENTATIVE  
SURENDRA KUMAR RAHEJA.

... PETITIONER

(BY SRI. UDAYA HOLLA, SENIOR COUNSEL  
A/W SRI. J.P. SINGH, ADVOCATE FOR  
SRI. CHETHANA K.N. ADVOCATE)

**AND:**

1. STATE OF KARNATAKA  
THROUGH THE SECRETARY  
FINANCE DEPARTMENT  
VIDHANA SOUDHA  
BANGALORE-560 001.
2. DEPUTY COMMISSIONER OF COMMERCIAL TAXES  
(AUDIT)-3.6, DVO-3, TTMC  
"B" BLOCK, BMTc BUILDING  
2<sup>ND</sup> FLOOR, SHANTHINAGAR,  
BANGALORE-560 027.

... RESPONDENTS

(BY SRI. ADITYA SONDDHI, ADDL. ADVOCATE GENERAL  
A/W SRI. VIKRAM HULIGOL, HCGP)

THESE W.Ps. ARE FILED UNDER ARTICLES 226 & 227 OF  
THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE  
ENDORSEMENT DATED 26.5.2017 PASSED BY R-2 AT ANNEX-A  
AND DIRECT THE R-2 TO RE-COMPUTE THE AMOUNT DUE  
UNDER THE KARASAMADHANA SCHEME, 2017 AFTER

14/88

ADJUSTING THE AMOUNT PAID BY THE PETITIONER TOWARDS  
THE TAX LIABILITY FOR FY 2012-13 AND ETC.,

**IN W.P.No.30001/2017**

**BETWEEN:**

M/S GE T & D INDIA LIMITED  
(FORMERLY KNOWN AS M/S ALSTOM T & D  
LIMITED)  
NO.302, III FLOOR, EMBASSY CLASSIC  
NO.11, VITTAL MALYA ROAD, BENGALURU  
REP. BY ITS ASSISTANT MANAGER-INDIRECT TAX  
SHRI. VENKATESULU YENUGULA.

... PETITIONER

(BY SRI. JOSEPH PRABAKAR, ADVOCATE FOR  
SRI. ANIL KUMAR B., ADVOCATE)

**AND:**

1. STATE OF KARNATAKA  
THROUGH ITS PRINCIPAL SECRETARY  
FINANCE DEPARTMENT  
VIDHANA SOUDHA  
BENGALURU - 560 001.
2. THE COMMISSIONER OF COMMERCIAL TAXES  
IN KARNATAKA  
"VANIJYA THERIGE KARYALAYA"  
GANDHINAGAR, BENGALURU - 560 009.
3. THE DEPUTY COMMISSIONER OF  
COMMERCIAL TAXES (AUDIT)-1.1  
DVO-1, 3<sup>RD</sup> FLOOR, TTMC  
BMTc BUS STAND BUILDING  
YESHWANTHAPUR, BENGALURU - 560 022.

... RESPONDENTS

(BY SRI. ADITYA SONDHI, ADDL. ADVOCATE GENERAL  
A/W SRI. VIKRAM HULIGOL, HCGP)

THIS W.P. IS FILED UNDER ARTICLE 226 OF THE  
CONSTITUTION OF INDIA, PRAYING TO QUASH THE  
ENDORSEMENT DATED 15.6.2017 PASSED BY R-3 VIDE

15/88

ANNEX-A TO THE W.P. AND DIRECT THE R-3 TO GRANT THE  
BENEFIT OF KARASAMADHANA SCHEME, 2017 TO THE  
PETITIONER AND ETC.,

**IN W.P.No.28370/2017**

**BETWEEN:**

M/S GE T & D INDIA LIMITED  
(FORMERLY KNOWN AS M/S ALSTOM T & D  
LIMITED), NO.302, III FLOOR, EMBASSY CLASSIC  
NO.11, VITTAL MALYA ROAD, BENGALURU  
REP. BY ITS ASSISTANT MANAGER-INDIRECT TAX  
SHRI. VENKATESULU YENUGULA.

... PETITIONER

(BY SRI. JOSEPH PRABAKAR, ADVOCATE FOR  
SRI. ANIL KUMAR B., ADVOCATE)

**AND:**

1. STATE OF KARNATAKA  
THROUGH ITS PRINCIPAL SECRETARY  
FINANCE DEPARTMENT  
VIDHANA SOUDHA  
BENGALURU - 560 001.
2. THE COMMISSIONER OF COMMERCIAL TAXES  
IN KARNATAKA  
"VANIJYA THERIGE KARYALAYA"  
GANDHINAGAR, BENGALURU - 560 009.
3. THE ASSISTANT COMMISSIONER OF  
COMMERCIAL TAXES (AUDIT)-1.3  
DVO-1, YESHWANTHAPURA  
BENGALURU - 560 022.

... RESPONDENTS

(BY SRI. ADITYA SONDHI, ADDL. ADVOCATE GENERAL  
A/W SRI. VIKRAM HULIGOL, HCGP)

THIS W.P. IS FILED UNDER ARTICLE 226 OF THE  
CONSTITUTION OF INDIA, PRAYING TO QUASH THE  
ENDORSEMENT DATED 7.6.2017 PASSED BY R-3 VIDE ANNEX-  
A TO THE W.P. AND DIRECT THE R-3 TO GRANT THE BENEFIT

16/88

OF KARASAMADHANA SCHEME, 2017 TO THE PETITIONER AND  
ETC.,

**IN W.P.No.26333/2017**

**BETWEEN:**

M/S CASTROL INDIA LTD.,  
C/O SHREE LOGISTICS  
NO.75, HAROKYATHANAHALLI (ADAKAMARANAHALLI)  
DASANAPURA HOBLI, MAKALI POST  
BENGALURU NORTH TALUK  
BENGALURU – 562 123.  
A PRIVATE LIMITED COMPANY  
REPRESENTED BY DEPUTY MANAGER (TAXATION)  
SRI V. BALASUBRAMANIAN  
AGED ABOUT 53 YEARS  
S/O SRI T.S. VALLEESAN.

... PETITIONER

(BY SRI. THIRUMALESH M., ADVOCATE)

**AND:**

1. STATE OF KARNATAKA  
REPRESENTED BY ADDITIONAL CHIEF SECRETARY  
AND PRINCIPAL SECRETARY TO GOVERNMENT  
FINANCE DEPARTMENT  
GOVERNMENT OF KARNATAKA  
VIDHANA SOUDHA  
BENGALURU-560 001.
2. COMMISSIONER OF COMMERCIAL TAXES KARNATAKA  
VANIJYA THERIGE KARYALAYA  
GANDHINAGAR, BENGALURU-560 009.
3. DEPUTY COMMISSIONER OF COMMERCIAL TAXES  
(AUDIT)6.3, DVO-6, 3<sup>RD</sup> FLOOR  
KIADB BUILDING  
PEENYA INDUSTRIAL AREA, 2<sup>ND</sup> STAGE PEENA,  
BENGALURU-560 058.

... RESPONDENTS

(BY SRI. ADITYA SONDHI, ADDL. ADVOCATE GENERAL  
A/W SRI. VIKRAM HULIGOL, HCGP)



THIS W.P. IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE ENDORSEMENT DTD.31.5.2017 ISSUED BY THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES (AUDIT)6.3 BENGALURU, THE R-3 HEREIN, IN HAVING DENIED TO THE PETITIONER THE BENEFIT OF WAIVER OF PENALTY AND INTEREST PAYABLE UNDER KARNATAKA TAX ON ENTRY OF GOODS ACT, 1979 TO THE EXTENT OF 90% GRANTED IN THE KARASAMADHANA SCHEME, 2017 FOR THE YEAR 2009-10 AND DEMANDING ADDITIONAL AMOUNT OF RS.46,20,252/- VIDE ANNX-J. AND ETC.,

**IN W.P.No.38574/2017**

**BETWEEN:**

M/S SARAS PRECISION TOOLS PVT LTD  
64-B AREA, BOMMASANDRA INDUSTRIAL AREA  
HOSUR ROAD, BENGALURU – 560 009.  
REPRESENTED BY ITS DIRECTOR  
BHEEMESH RAMNATH.

...PETITIONER

(BY SRI. MOHAMMED MUJASSIM, ADVOCATE FOR  
SRI. GANESH S, ADVOCATE)

**AND:**

1. STATE OF KARNATAKA  
THROUGH ITS PRINCIPAL SECRETARY  
FINANCE DEPARTMENT  
VIDHANA SOUDHA  
BANGALORE – 560 001.
2. THE COMMISSIONER OF COMMERCIAL TAXES  
IN KARNATAKA  
“VANIJYA THERIGE KARYALAYA”  
GANDHINGAR, BANGALORE – 560 009.
3. THE ASSISTANT COMMISSIONER OF COMMERCIAL  
TAXES (AUDIT) 4.5, DVO-4  
ROOM NO. 504, 5<sup>TH</sup> FLOOR  
B BLOCK, VTK-2,  
RAJENDRANAGAR,

18/88

KORAMANGALA  
BANGALORE – 560 047.

... RESPONDENTS

(BY SRI. ADITYA SONDHI, ADDL. ADVOCATE GENERAL  
A/W SRI. VIKRAM HULIGOL, HCGP)

THIS W.P. IS FILED UNDER ARTICLE 226 OF THE  
CONSTITUTION OF INDIA, PRAYING TO QUASH THE  
ENDORSEMENT DATED 15.6.2017 ISSUED BY R-3 VIDE ANEX-A  
AND DIRECT R-3 TO CONSIDER THE APPLICATION OF THE  
PETITIONER SUBMITTED UNDER KARASAMADHANA AND  
GRANT THE BENEFIT OF THE KARASAMADHANA AND GRANT  
REFUND OF EXCESS AMOUNT AFTER APPROPRIATING  
TOWARDS THE DUE LIABILITY AND ETC.,

**IN W.P.No.44681/2017**

**BETWEEN:**

M/S AB MAURI INDIA PVT. LTD.,  
PLOT NO.218 & 219  
BOMMASANDRA JIGANI LINK ROAD  
RAJAPURA HOBLI, JIGANI, ANEKAL TQ  
BENGLAURU-560105.  
REPRESENTED BY ITS MANAGER FINANCE  
SHRI. APOORV VERMA.

...PETITIONER

(BY SRI. JOSEPH PRABAKAR, ADVOCATE FOR  
SRI. ANIL KUMAR B., ADVOCATE)

**AND:**

1. STATE OF KARNATAKA  
THROUGH ITS PRINCIPAL SECRETARY  
FINANCE DEPARTMENT  
VIDHANA SOUDHA  
BENGALURU – 560 001.
2. THE COMMISSIONER OF COMMERCIAL TAXES  
IN KARNATAKA  
“VANIJYA THERIGE KARYALAYA”  
GANDHINGAR, BENGALURU – 560 009.

19/88

3. THE ASSISTANT COMMISSIONER OF  
COMMERCIAL TAXES (AUDIT) 4.6  
VAT DIVISION-4, 4<sup>TH</sup> FLOOR  
'A' BLOCK, VTK-2, KORAMANGALA  
BENGALURU – 560 047.

... RESPONDENTS

(BY SRI. ADITYA SONDHI, ADDL. ADVOCATE GENERAL  
A/W SRI. VIKRAM HULIGOL, HCGP)

THIS W.P. IS FILED UNDER ARTICLE 226 OF THE  
CONSTITUTION OF INDIA, PRAYING TO QUASH THE ORDER OF  
REJECTION DATED 17.7.2017 PASSED BY R-3 VIDE ANEX-A  
AND DIRECT THE R-3 TO GRANT THE BENEFIT OF  
KARASAMADHANA SCHEME, 2017 TO THE PETITIONER AND  
ETC.,

**IN W.P.No.45976/2017**

**BETWEEN:**

M/S SRI. ANNAPOORNESWARI BAR AND RESTAURANT  
NO.118, 9<sup>TH</sup> CROSS, JP NAGAR  
2<sup>ND</sup> PHASE, JP NAGAR, BANGALORE-560076  
REPRESENTED BY ITS PROPRIETOR  
SRI. B. GOPALA KRISHNA  
S/O. SRI. BYANNA  
AGED ABOUT 54 YEARS.

...PETITIONER

(BY SMT.VANI H., ADVOCATE)

**AND:**

1. STATE OF KARNATAKA  
REPRESENTED HEREIN BY THE  
PRINCIPAL SECRETARY  
FINANCE DEPARTMENT  
GOVERNMENT OF KARNATAKA  
VIDHANA SOUDHA  
BANGALORE – 560 001.
2. COMMISSIONER OF COMMERCIAL TAXES  
“VANIJYA THERIGE KARYALAYA”

20/88

1<sup>ST</sup> FLOOR, GANDHINGAR  
BANGALORE – 560 009.

3. ASSISTANT COMMISSIONER OF  
COMMERCIAL TAXES, AUDIT 4.6  
VAT DIVISION-4, 4<sup>TH</sup> FLOOR  
'A' BLOCK, VTK-2, KORAMANGALA  
BANGALORE – 560 047.

... RESPONDENTS

(BY SRI. ADITYA SONDDHI, ADDL. ADVOCATE GENERAL  
A/W SRI. VIKRAM HULIGOL, HCGP)

THIS W.P. IS FILED UNDER ARTICLE 226 OF THE  
CONSTITUTION OF INDIA, PRAYING TO DECLARE THAT THE  
CONDITION IN THE DEFINITION OF ARREARS OF PENALTY AND  
INTEREST, UNDER THE KARASAMADHAN SCHEME 2017,  
WHICH IS SET OUT IN THE GOVERNMENT ORDER  
DTD:31.3.2017 VIDE ANNEXURE-D, PROVIDING THAT THE SAID  
SUM OF ARREARS OF PENALTY AND INTEREST IS TO BE  
DETERMINED WITH REFERENCE TO THE AMOUNT OF PENALTY  
AND INTEREST THAT REMAINS UNPAID UP TO 15.3.2017 IS  
ARBITRARY AND ULTRA VIRES THE CONSTITUTION OF INDIA,  
AND THEREFORE, ILLEGAL AND UNENFORCEABLE OR IN THE  
ALTERNATIVE AND ETC.,

**IN W.P.No.45978/2017**

**BETWEEN:**

M/S SRI. NANJUNDESWARA BAR AND RESTAURANT  
NO. 288, N. S.PALYA, B.G. ROAD, BTM LAYOUT  
BANGALORE - 560076  
REPRESENTED BY ITS PROPRIETOR  
SRI. B. GOPALA KRISHNA  
S/O SRI. BYANNA  
AGED ABOUT 54 YEARS.

...PETITIONER

(BY SMT. VANI H, ADVOCATE)

**AND:**

1. STATE OF KARNATAKA  
REPRESENTED HEREIN BY THE

21/88

PRINCIPAL SECRETARY  
FINANCE DEPARTMENT  
GOVERNMENT OF KARNATAKA  
VIDHANA SOUDHA  
BANGALORE – 560 001.

2. COMMISSIONER OF COMMERCIAL TAXES  
“VANIJYA THERIGE KARYALAYA”  
1<sup>ST</sup> FLOOR, GANDHINGAR  
BANGALORE – 560 009.
3. ASSISTANT COMMISSIONER OF  
COMMERCIAL TAXES, AUDIT 4.6  
VAT DIVISION-4, 4<sup>TH</sup> FLOOR  
‘A’ BLOCK, VTK-2, KORAMANGALA  
BANGALORE – 560 047.

... RESPONDENTS

(BY SRI. ADITYA SONDHI, ADDL. ADVOCATE GENERAL  
A/W SRI. VIKRAM HULIGOL, HCGP)

THIS W.P. IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA, PRAYING TO DECLARE THAT THE CONDITION IN THE DEFINITION OF ARREARS OF PENALTY AND INTEREST, UNDER THE KARASAMADHAN SCHEME 2017, WHICH IS SET OUT IN THE GOVERNMENT ORDER DTD:31.3.2017 VIDE ANNEXURE-D, PROVIDING THAT THE SAID SUM OF ARREARS OF PENALTY AND INTEREST IS TO BE DETERMINED WITH REFERENCE TO THE AMOUNT OF PENALTY AND INTEREST THAT REMAINS UNPAID UP TO 15.3.2017 IS ARBITRARY AND ULTRA VIRES THE CONSTITUTION OF INDIA, AND THEREFORE, ILLEGAL AND UNENFORCEABLE OR IN THE ALTERNATIVE AND ETC.,

**IN W.P.No.46691/2017**

**BETWEEN:**

M/S. UNIVERSAL DIGITAL CONNECT LTD.,  
NO.32/3, 1<sup>ST</sup> MAIN  
BEHIND DOMLUR POST OFFICE  
DOMLUR LAYOUT, BENGALURU-560 071.  
REPRESENTED BY ITS AUTHORIZED SIGNATORY  
MR. KESHAV N. HEGDE

22/88

AGED ABOUT 51 YEARS  
S/O. LATE MR. NARAYANA HEGDE.

...PETITIONER

(BY SRI. RABINATHAN G, ADVOCATE)

**AND:**

1. STATE OF KARNATAKA  
REP. BY ADDITIONAL CHIEF SECRETARY AND PRINCIPAL  
SECRETARY TO GOVERNMENT  
FINANCE DEPARTMENT  
GOVERNMENT OF KARNATAKA  
VIDHANA SOUDHA  
BENGALURU-560 001.
2. COMMISSIONER OF COMMERCIAL TAXES KARNATAKA  
VANIJYA THERIGE KARYALAYA  
GANDHINAGAR, BENGALURU-560 009.
3. DEPUTY COMMISSIONER OF COMMERCIAL TAXES  
(AUDIT)5.1, DVO-5, 5<sup>TH</sup> FLOOR, B-BLOCK  
VANIJYA THERIGE KARYALAYA-2  
KORAMANGALA, BENGALURU-560 047.

... RESPONDENTS

(BY SRI. ADITYA SONDHI, ADDL. ADVOCATE GENERAL  
A/W SRI. VIKRAM HULIGOL, HCGP)

THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE ENDORSEMENT DTD:12.6.2017 ANNEXURE-E ISSUED BY THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES [AUDIT]5.1 BENGALURU, THE THIRD RESPONDENT, IN HAVING REJECTED THE APPLICATION IN ANNEXURE-1-A FILED BY THE PETITIONER FOR THE BENEFIT OF 90% WAIVER OF THE PENALTY AND INTEREST LEVIED IN THE REASSESSMENT ORDER PASSED UNDER KARNATAKA VALUE ADDED TAX ACT, 2003 FOR THE YEAR 2010-11 REMAINING INPAID UPTO 15.3.2017 IN NEGATION OF THE CLEAR SANCTION ACCORDED IN THE KARASAMADHANA SCHEME 2017 AND ETC.,

23/88

**IN W.P.No.47080/2017**

**BETWEEN:**

M/S FAKHRI SONS  
NO.23/5 S.P.ROAD  
BENGALURU-560 002  
(REPRESENTED BY ITS PROPRIETOR  
MUFADDAL FAKHRI, 48 YEARS)

...PETITIONER

(BY SRI. ATUL K. ALUR, ADVOCATE)

**AND:**

1. STATE OF KARNATAKA  
REPRESENTED BY ITS  
FINANCE SECRETARY  
GOVERNMENT OF KARNATAKA  
VIDHANA SOUDHA  
AMBEDKAR VEEDI  
BENGALURU-560 001.
2. THE COMMISSIONER OF COMMERCIAL TAXES  
VTK-1, KALIDAS ROAD,  
GANDHINAGAR, BENGALURU-560 009.
3. THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES  
(AUDIT)-3.6 DVO-3  
II FLOOR, TTMC, BMTc BUILDING  
SHANTHI NAGAR, BENGALURU-560027.

... RESPONDENTS

(BY SRI. ADITYA SONDHI, ADDL. ADVOCATE GENERAL  
A/W SRI. VIKRAM HULIGOL, HCGP)

THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF  
THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE  
ENDORSEMENT ISSUED BY THE R-3 DTD.15.9.2017 AT ANNEX-  
G IN SO FAR AS THE PETITIONER IS CONCERNED AND ETC.

THESE WRIT PETITIONS HAVING BEEN HEARD AND  
RESERVED ON **02-11-2017**, COMING ON FOR  
PRONOUNCEMENT OF JUDGMENT, THIS DAY, **DR VINEET  
KOTHARI, J**, DELIVERED THE FOLLOWING:

**JUDGMENT**

**Mr. Tarun Gulati**, Adv. a/w **Mr.Kishore Kunal**, Adv. for Mr.Arun Sri. Kumar,  
**Mr.Udaya Holla**, Sr.Counsel a/w **Mr.J.P.Singh**, Adv. for Mr.K.N.Chethana,  
**Mr.Mohd.Mujassin**, Adv. for Mr.S.Ganesh  
**Mr.M.Thirumalesh & Mr.K.M.Shivayogimath**,  
& other Advocates on record for **Petitioners**  
**Mr.Aditya Sondhi**, **Addl.Advocate General** a/w  
**Mr.Vikram Huligol**, HCGP for **Respondents**

1. **Ved Vyas** in his famous Epic '**Mahabharat**', about tax in 'Ramarajya', said that "*the State Tax be such which should not prove to be a burden on the subject; the King should behave **like those bees which collect honey without causing harm to the tree***" (12/88/4)".

2. With that epoch making hollow of 'Ramarajya' in the Budget speech of the Chief Minister of the State of Karnataka in the year 2017-18, the Hon'ble Chief Minister in Paragraph-5 of the State Budget Speech began by saying that "*Ramarajya is a concept representing hunger-free, exploitation-free, over all*



*development with deep rooted harmony*". In the same Budget Speech, in pursuance to paragraph-488 for the year 2017-18, the Government of Karnataka, Finance Secretariat, promulgated the '**Karasamadhana Scheme, 2017**'. **Paragraph-488** of the Budget Speech of the Hon'ble Chief Minister on the floor of Legislative Assembly is quoted below:-

**"488.** *As we are moving towards replacing the existing Value Added Tax with proposed Goods and Services Tax, I propose a Karasamadhana Scheme to waive 90% of penalty and interest on payment of full tax and remaining 10% of penalty and interest by 31<sup>st</sup> May 2017. This will enable trade and industry to clear their pending tax liabilities and start with a clean slate in GST*".

3. It is this 'Karasamadhana Scheme' which has given rise to the present litigation before this Court and the various Petitioners-Assessees have filed these Writ Petitions which are being disposed of by this common judgment, as certain provisions of the Notification of

**G.O.No.FD 24 GSL 2017, Bengaluru, Dated 31<sup>st</sup> March 2017**, promulgated the said 'Karasamadhana Scheme, 2017', requires interpretation by this Court in the present set of writ petitions.

4. Briefly stated, the said '**Karasamadhana Scheme, 2017**' ('**KSS 2017**', for short) provided for the waiver of penalty and interest under the 8 enactments namely, Karnataka Sales Tax Act, 1957, Central Sales Tax Act, 1956, Karnataka Value Added Tax Act, 2003 etc., and the broad features of the Scheme provided that while whole of the amount of tax as assessed by the Adjudicating Authority was required to be paid, along with 10% payment of the interest and penalty components of the demand raised by the Assessing Authority, the remaining 90% of the interest and penalty was to be waived by the Respondent-State. The said waiver was subject to the further condition that the petitioner-assessee will withdraw his pending appeals,

revision petitions or writ petitions or any other litigation pending in any Court or Tribunal. Thus, the twin objectives of putting an end to the litigation and quicker recovery of the whole amount of the due tax and 10% of interest and penalty was sought to be achieved by the said Scheme.

5. The two important definitions in the said Scheme are reproduced below for ready reference:-

*“1.1 **“Arrears of tax”** means tax **assessed/reassessed** as per the provisions of the KST and CST Acts relating to all the assessment years upto 31/03/2005 and tax assessed/reassessed as per the provisions of the KVAT Act and CST Acts relating to the tax periods for all the years commencing from **01/04/2005 upto 31/03/2016** and also tax assessed/reassessed under the provisions of KTEG Act, KTPTC & E Act, KTL Act, KAIT Act and KET Act relating to all the years upto **31/03/2016** and **remaining unpaid upto 15/03/2017.***

1.2 **“Arrears of penalty and interest”**  
*means all kinds of penalties levied and all kinds of interest accrued under the provisions of the KST and CST Acts relating to all the assessment years ending on 31/03/2005 and all kinds of penalties levied and all kinds of interest accrued under the provisions of the KVAT Act and CST Act relating to the tax periods for all the years commencing from 01/04/2005 upto 31/03/2016 and all kinds of penalties levied and all kinds of interest accrued under the provisions of the KTEG Act/KTPTC & E Act /KTL Act /KAIT Act /KET Act relating to the assessment/ reassessment for all the years upto 31/03/2016 and **remaining unpaid upto 15/03/2017**. This shall also include all kinds of penalties leviable and **interest accrued till the date of filing of application** by the dealer or person or proprietor as the case may be under the Scheme.*

The Scheme further provided that the assessee-dealer who makes full payment of arrears of tax on or before **31.05.2017** shall be granted waiver of 90% of the penalty and interest payable.

6. **Clause 2.4** of the '**KSS 2017**' further provided that if Appeal or other Application is withdrawn, as was required by the Scheme, the quantum of arrears of tax/penalty and interest for the purpose of this Scheme shall be considered as per the order, against which, Appeal or other Application had been filed, which are since withdrawn to avail the benefits of the said '**KSS 2017**'. The withdrawal of such appeal etc., was final and not allowed to be restored under any circumstances and on the other hand, if the State had filed such an Appeal before any higher Appellate Authority like KAT or High Court, the benefit of Scheme was not available to the Dealers.

The relevant **Clause 2.4** is also quoted below for ready reference:-

***2.4** If the dealer or person or proprietor, as the case may be, has filed Appeal or other Applications against the order or proceedings relating to 'arrears of tax' and 'arrears of penalty and interest' before any Appellate Authority or*

*Court and if disposal of such Applications is still pending then the dealer or person or proprietor, as the case may be, shall withdraw the Appeal or other Application before availing the benefit of waiver of arrears of penalty and interest under this Scheme. If Appeal or other Application is withdrawn, **the quantum of arrears of tax/penalty and interest for purposes of this Scheme shall be considered as per the order against which Appeal or other Applications had been filed** which are since withdrawn to avail of the benefits of the Karasamadhana Scheme, 2017”.*

7. As far as the scrutiny of the application filed under the said **‘KSS 2017’** by the dealer was concerned and which has given rise to the present controversy and the litigation before this Court are **Clauses 3.2 to 3.8**. These Clauses are quoted below for ready reference:-

***“3.2** The concerned Assessing Authority/Recovery Officer/Prescribed Authority **shall scrutinize the Application and workout the actual arrears of tax, penalty and interest payable by the dealer or person or***

*proprietor, as the case may be, upto the date of filing of Application and **if any discrepancies** are found in the amount of 'arrears of tax' and 'arrears of penalty and interest' payable upto the date of Application as declared by the dealer or person or proprietor in his Application, then the concerned Assessing Authority/Recovery Officer/Prescribed Authority **shall inform the dealer or person** or proprietor within 15 days from the date of filing of Application about the discrepancies.*

**3.3.** *After receipt of information from the Assessing Authority/Recovery Officer/Prescribed Authority, the dealer or person or proprietor, as the case may be, **at his option, may pay the balance amount of tax as in Clause 2.1** and 'arrears of penalty and interest' as in Clause 2.2/2.3 so as to avail of the benefits of this Scheme. **All payments should be made on or before 31/05/2017.** The dealer or person or proprietor, as the case may be shall file a declaration in support of withdrawal of Appeal or other Application as per Annexure-II along with Application for waiver of 'arrears of penalty and interest'. Such declaration shall be filed separately under relevant Act for each year relating to 'arrears of penalty and interest'.*

**3.4** *If the dealer or person or proprietor, as the case may be, fails to do so, the Authority/Officer shall pass a speaking order rejecting the Application.*

**3.5** *On satisfaction that the applicant-dealer or person or proprietor, as the case may be is eligible for the benefits of the Scheme, the Assessing Authority/Recovery Officer/ Prescribed Authority shall pass the order waiving the balance amount of arrears of penalty and interest payable by the dealer or person or proprietor, as the case may be, as per Annexure-III separately under relevant Act for each assessment year/each assessment or reassessment order relating to the relevant tax periods/week/month of the year.*

**3.6** *The order of waiver shall be passed within 30 days from the date of making payment as specified in Para 3.3.*

**3.7** *The order of waiver shall be served on the dealer or person or proprietor, as the case may be, within ten days from the date of such order.*

**3.8** *The Assessing Authority/Recovery Officer/Prescribed Authority shall help the dealer or person or proprietor, as the case may*



*be, in correct quantification of the amount of interest and penalty”.*

8. In the present case, the applications filed by the Dealers-petitioners under **‘KSS 2017’**, have been rejected by the impugned orders and endorsements, mainly on the ground that the payments of tax or deposits in pursuance of the impugned assessment orders passed by the Assessing Authority, during the pendency of the appeals before the next higher authorities or writ petitions before this Court, which were required to be withdrawn were first adjusted by the Respondent-Authorities against the outstanding ‘interest’ demand as per the assessment order passed by the first Adjudicating Authority and not against the amount of ‘tax’ found due to be paid, so as to determine the **‘arrears of tax’** or **‘arrears of interest and penalty’**, as defined in the **‘KSS 2017’** quoted above.

9. This 'adjustment' of amount paid during the pendency of the appeals etc., which were required to be withdrawn by the Dealers first against the head of **'interest'** and not against the **'tax'** as per the assessment order has led to this litigation by way of present writ petitions. While, the assessee contend that the 'adjustment' should have been made first against the arrears of 'tax' as per the adjudication orders and the balance amount of tax and 10% of interest and penalty as per the adjudication order was only required to be paid by them to avail the benefit of **'KSS 2017'**. The Department, on the other hand, contends that by virtue of Section 42(6) of the KVAT Act, 2003, they are entitled to adjust these payments or deposits subject to appeals against the outstanding 'interest' amount first and only the balance amount can be adjusted against the tax or penalty parts of the total demand raised by the Assessing Authority.

10. This obviously resulted in more demand of arrears of tax, interest or penalty, upon such scrutiny of the applications filed by the Dealers in comparison to the arrears of tax computed by them by first adjusting the deposits against the tax dues and then paying the balance of tax and 10% of interest and penalty along with the application under '**KSS 2017**' and seeking the waiver of 90% interest and penalty.

11. It is this difference in the diagonally opposite stands of the Dealers and Revenue, which has led to the filing of the present writ petitions and calls for the interpretation of the provisions of the '**KSS 2017**', in harmony with the provisions of KVAT Act, 2003 and other enactments and arrears of tax, interest and penalty which is sought to be recovered and 90% of interest and penalty of interest was sought to be waived under '**KSS 2017**'.

12. The learned Counsels for the Petitioners led by Mr.Tarun Gulati and the Senior Counsel Mr.Udaya Holla along with other Advocates on record have made before the Court the following submissions :-

(i) that the dues as per the original assessment orders, against which appeals etc., earlier were pending and were to be withdrawn as a condition of the '**KSS 2017**', were required to be determined as per the impugned assessment orders only and not by any further adjudication by the Assessing Authority while undertaking the scrutiny of the Applications under '**KSS 2017**' and therefore, the Revenue Authorities were not entitled to make any adjustment of payments or deposits made by the dealer either as a condition for maintaining their appeals or otherwise against the head of 'interest' and then claim the recovery of remaining arrears of tax without taking into account the payment or deposits already made by the Dealers.

(ii) that the Scheme '**KSS 2017**' is a special delegated legislation and the provisions of Section 42(6) of the KVAT Act, 2003, cannot be imported and implanted in the said '**KSS 2017**', so as to cause any prejudice to the Dealers overriding the clear terms of the Scheme itself;

(iii) that whatever the amounts are deposited, once the assessment order is passed by the Assessing Authority they are only "**deposits**" and not "**payments**" by the dealer against any specific head of tax, interest or penalty and therefore, that 'deposit' amount is without any colour of specific nature and adjustment or set off of such deposit has to be first made against the amount of tax due or arrears of tax only and if any balance amount remains, such adjustment can be made under the head of '**interest**' and thereafter, under the head of '**penalty**'.

(iv) They further submitted that unless the amount of tax is found due, the question of levying and

computation of interest which is compensatory in nature cannot arise and so also, the question of determining the quantum of 'penalty' which requires generally the presence of *mens rea* on the part of the dealer and is computed as a percentage of tax amount also cannot arise, if tax due is not there. In other words, the amount of 'deposit' made in pursuance of the impugned assessment order, subject to their right to contest such adjudication before the Appellate Forums, is nothing but a trust money with the Department, which the Respondents cannot adjust first against the 'interest' and thereafter against the 'tax' or 'penalty'.

(v) It was also contended that the provisions of Section 42(6) is only in one of the 8 enactments covered by '**KSS 2017**' and the same cannot be applied uniformly for all the enactments covered by the '**KSS 2017**' in the absence of the similar provisions existing in all such enactments, which they contended, do not so exist and therefore, for the purpose of giving 90% of

waiver of interest and penalty to the Dealers, as promised by the Hon'ble Chief Minister and as indicated in the form of '**KSS 2017**', cannot be defeated by the authorities now, misinterpreting the provisions of the said Scheme.

(vi) They also contended that the dues of tax, interest and penalty up to the period from **01.04.2005** till **31.03.2016** covered by the said Scheme and remaining unpaid upto **15.03.2017**, while the said Scheme was promulgated on **31.03.2017** have to be computed only with reference to the order passed by the Assessing Authority against which appeal etc., was pending and the authorities cannot shift the date of such dues to a later date than **15.03.2017** and if such adjustment as contended by the Revenue is to be allowed, those dues as on 15.03.2017 will be a different amount than the one determined by the Revenue Authorities in the present cases now and therefore,

such authorities cannot be allowed to go against the clear language of the Scheme itself.

(vii) that the assesseees have lost their valuable right to object to the imposition of demand of tax, interest and penalty in their appeals or writ petitions, which were required to withdraw as a condition precedent and the Scheme in **Clause 2.4** quoted above, clearly stipulated that the quantum of arrears of tax, penalty and interest for the purpose of this Scheme, shall be considered as per the order against which the Appeal or Application had been filed and therefore, this clear language of **Clause 2.4** cannot be deviated and departed by the Assessing Authorities and the administrative job of scrutinizing of application contained in **Clause 3.2** for computing the actual arrears of tax by the scrutiny of applications filed by the Dealers under '**KSS 2017**' envisaged in **Clause 3.2** onwards is only a mathematical computation as per the original assessment orders and computing the arrears



of tax to be completely paid and 10% of interest and penalty components of total demand raised in the impugned assessment orders are also to be paid by the Dealers, so that after waiver of remaining 90% of the arrears of penalty and interest, the Certificate of waiver can be granted to the Dealers, finally putting an end to the process and the litigation and recovering the arrears of tax etc., in terms of the said Scheme finally.

(viii) The learned counsels contended that **Clauses 3.8** and **4** of the said Scheme, on the other hand, indicate that the Assessing Authority will 'help' the Dealers in the correct quantification of the amounts of interest and penalty and for removal of difficulties, the Commissioner of Commercial Tax may issue necessary instructions to his subordinates, but the Revenue Authorities in the present cases have distorted the purpose of the said Scheme by taking only a Pro-Revenue stand by first adjusting the entire 'deposit' made by the assessee, which is generally made to the

extent of 30% of the demand as required by the appellate provisions under Section 62(4) and 63 of the KVAT Act, 2003 against the demand of 'interest' and then demanding the whole of arrears of tax over and above the admitted tax liability of the Dealer and then only the minimal remaining balance towards the tax and penalty amount as per the original assessment orders. Such was not the intention of the specially enacted and self contained beneficial Scheme in the form of '**KSS 2017**', announced by the Hon'ble Chief Minister just before the new indirect tax regime in the form of GST (Goods and Services Tax), which substituted levy of amount of VAT tax, Service Tax, Excise Duty etc., and this new tax regime of the GST was to be rolled out by the Central Government as well as all the State Governments with effect from **01.07.2017** and therefore, to pave the way for GST and to provide a clean slate to the Dealers for easy switch over from VAT regime to GST regime, such Scheme was

announced by the State Government to put an end to the pending litigation and for effecting quick and hassle free spontaneous recovery of the arrears of tax etc., due to be recovered from the Dealers which was subject to the pendency of such litigation.

13. The learned counsel for the petitioners-assesseees relied upon several case laws and also the learned Addl.Advocate General on the other side and a brief review of these case laws will be made hereinafter at the appropriate place.

14. On the other hand, Mr.Aditya Sondhi, learned Addl.Advocate General appeared for the Respondent-State and Commercial Tax Department, has vehemently submitted that the provisions of '**KSS 2017**', have to be harmoniously read with the provisions of KVAT Act, 2003 and **Chapter-V** comprising from Sections 35 to 57 of the KVAT Act, 2003, including Section 42 of the Act provides for "**Payment and recovery of tax, penalties,**

***interest and other amounts, issuance of clearance certificates***” and in the framework of the said provisions, the provisions of Section 42(6) of the Act clearly stipulate that the amount paid by the dealer which falls short of the aggregate of the tax or any other amount due and interest payable, the amount so paid shall first be adjusted towards the interest payable and the balance, if any, shall be adjusted towards the tax or any other amount due.

15. The learned AAG contended that there is no use of word “deposit” in the provisions of KVAT Act, 2003 and other enactments involved under the said Scheme unlike Central Excise Act, 1944 and the only provision for ‘adjustment’ of amount deposited by the assessee, even though which may be subject to an appeal filed by them has to be made under Section 42(6) of the Act only and in the face of the clear stipulation therein that amount so paid has to be first adjusted

towards the interest and balance thereafter only, has to be adjusted against the tax and other amounts due, the Departmental Authorities cannot be faulted in computation of arrears of tax, interest and penalty as per the provisions of '**KSS 2017**', in the manner they have done and then informing the Dealers about the balance of arrears of tax, interest and penalty as per the original assessment orders and subject to complying with the other conditions of the Scheme like withdrawal of the appeals and payments of whole of the arrears of tax and 10% of arrears of interest and penalty only, they could be given the waiver of remaining 90% of interest and penalty in terms of the provisions of the said '**KSS 2017**' and therefore, there is nothing wrong in the stand taken by the Department in the present cases.

16. Mr.Aditya Sondhi, learned AAG further contended that the entire '**KSS 2017**', itself is a

voluntary Scheme and the State has not compelled any dealer to compulsorily go for it and opt for the same and therefore, if they did not find it suitable to avail the benefit of the said Scheme in the present cases, they had all the options, not to go for it and continue with their litigation at the Appellate Forums or Courts and any concession given in the form of waiver under the **'KSS 2017'**, does not create any vested right in the Dealers to claim the adjustment of the amounts paid by them against the tax dues first and only thereafter against the interest and penalty as contended by them.

The learned AAG further submitted that unlike the provisions of the other Enactments and particularly under the Central Excise Act, 1944, wherein Section 35-F of the Act specifically provides for 'deposit' of a duty for maintaining the appeals before the next higher authority under the provisions of KVAT Act, 2003, the maintainability of the appeal does not depend upon the minimum deposit of 30% of the demand due, as

contended, but on the other hand, the provisions of Section 62 stipulates and envisages the payment of whole of the demand of tax, interest and penalty at the time of filing of the appeal and the appellate authority only in its discretion can stay the payment of 70% of the tax and other amounts, if the appellant-dealer makes the payment of the balance 30% of the tax and other amounts. He urged that the power to grant stay to the extent of 70% of the demand does not mean that the appeal itself is not maintainable, if the balance amount of 30% is not paid and therefore, the assesseees cannot invoke the concept of colourless deposits or trust money, while they filed the appeals in the present cases and therefore, they cannot claim as a matter of right the adjustment of such payment of tax and other amounts first in the head of 'tax' and thereafter only under the heads of 'interest' and 'penalty', contrary to the specific provisions of Section 42(6) of the Act. Similar provision of Section 63 for appeals to the Appellate Tribunal also

provides for a power to grant stay to the extent of 70% of tax or other amounts, subject to the payment of 30% of the tax or other amounts disputed in the appeal before it.

17. I have heard the learned counsels at length and perused the relevant provisions of the statutes and the case laws cited at the bar.

18. Before coming to the discussion of the points raised at the bar and the case laws, it is considered opportune to reproduce the provisions of **Section 42 of Chapter-V** and **Sections 62(4) and 63(7)** of the **KVAT Act, 2003 :-**

***“42. Payment and recovery of tax, penalties, interest and [other amounts, issuance of clearance certificates]***

*(1) Every registered dealer shall furnish returns to the prescribed authority, and the tax payable shall be paid in such manner as may be prescribed, within the period specified and on an application by a dealer, the Government or*



*Commissioner may permit, subject to such conditions as may be prescribed, payment of tax or any other amount payable, in such instalments and at such intervals as may be prescribed.*

*(2) Every registered dealer shall, **on receipt of a Notice** from the prescribed authority, **pay any penalty or interest** due in such manner as may be prescribed.*

*(3) (a) Notwithstanding anything contained in this Act, the **Government may**, in such circumstances and subject to such conditions as may be prescribed, by notification, **defer payment by any new industrial unit** of the whole or any part of the tax payable in respect of any period and also permit payment of such tax before the expiry of any deferred period, subject to the condition that in respect of such industrial unit the Government has already notified deferred payment of tax under the provisions of the Karnataka Sales Tax Act, 1957 (Karnataka Act 25 of 1957).]*

*(b) Notwithstanding anything contained in this Act but subject to such conditions as the **Government may**, by general or special order specify, where **a dealer to whom incentives by way of deferment** offered by the Government in its orders issued from time to time has been*

*granted by virtue of eligibility certificate and where liability equal to the amount of any such tax payable by such dealer has been created as a loan by the Department of Industries and commerce of the Government of Karnataka, then such tax shall be deemed, in the public interest, to have been paid.*

(c) *Notwithstanding anything contained in this Act, the **deferred payment of tax** under clause (a) **shall not attract interest** under sub-section (2) of Section 36, provided the conditions laid down for payment of the tax deferred are satisfied.*

(4) **Any other amount due** under this Act **shall be paid within ten days** from the date of service of the order or proceedings imposing such amount, unless otherwise specified.

(5) **The Commissioner or the Government may**, subject to such conditions as they may specify, **remit by an order the whole or any part of the interest** payable in respect of any period by any person or class of persons.

(6) **Where the amount paid falls short of the aggregate of the tax or any other amount due and interest payable, the amount so paid shall first be adjusted towards interest payable** and the balance, if any, shall be

*adjusted towards the tax or any other amount due.*

(7) A registered dealer, furnishing **a revised return** in accordance with this Act which shows a greater amount of tax to be due than was paid or payable in accordance with the original return, shall pay **with that revised return the tax so payable in such** manner as may be prescribed.

(8) Any amount, which remains unpaid under this Act after the due date of payment, shall be recoverable from a dealer in the manner specified under this Act.

(9) Any tax due or assessed, or any other amount due under this Act from a dealer, or any other person, may without prejudice to any other mode of collection be recovered. –

(a) as if it were an **arrears of land revenue**; or

(b) by attachment and sale or by sale without attachment of any property of such dealer or any other person by the prescribed authority or the prescribed officer in the prescribed manner, and any prescribed certificate issued towards such sale shall be deemed to be a decree of a Civil Court and shall be executed in the same manner as a decree of such Court; or

*(c) notwithstanding anything contained in the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), on application to any Magistrate, by such Magistrate as if it were a fine imposed by him.*

*(10) Where a dealer or other person who has appealed or applied for revision of any order made under this Act and has complied with an order made by the appellate or the revising authority in regard to the payment of the tax or other amount, no proceedings for recovery under this Section shall be taken or continued until the disposal of such appeal or application for revision.*

*(11) The High Court may, either suo motu or on an application by the Commissioner or any person aggrieved by the order, revise any order made by a Magistrate under clause (c) of subsection (9).*

*(12) Where for the purpose of complying with the requirement of any law for the production of a clearance certificate with respect to payment of tax or any other amount under this Act, a registered dealer makes an application to the prescribed authority, the prescribed authority shall, if no amount of assessed tax or no other amount under this Act is due by such dealer or no*

*amount of tax payable in accordance with the provisions of sub-section (1) of Section 35 is outstanding from such dealer, issue a clearance certificate in the prescribed form.]*

## **62. Appeals**

(1) xxxxxxx

(2) xxxxxxx

(3) xxxxxxx

(4) (a) *No appeal against an order of assessment shall be entertained by the Assessing Authority **unless it is accompanied by satisfactory proof of the [payment of tax and other amount] not disputed in the appeal.***

(b) **The tax or other amount shall be paid in accordance with the order [or proceedings] against which an appeal has been preferred.**

(c) (i) **The Assessing Authority may, in its discretion, [stay payment of seventy per cent of tax] and other amount, if the appellant [makes payment of the balance **thirty per cent of the tax] and other amount along with prescribed form of appeal.]****

(ii) *Where any application made by an applicant for staying proceedings of recovery of any tax or other amount has not been disposed of*

*by the Assessing Authority within a period of thirty days from the date of such application, it shall be deemed that the Assessing Authority has made an order staying proceedings of recovery of such tax or other amount [subject to [payment of thirty per cent of the tax] and other amount disputed] and furnishing of sufficient security to the satisfaction of the Assessing Authority in regard to the [balance seventy percent of such tax] or amount within a further period of fifteen days]*

(d) *Where an order staying proceedings of recovery of any tax or other amount is passed in any proceedings relating to an appeal under sub-section (1), the Assessing Authority **shall dispose of the appeal within a period of [two hundred forty days] from the date of such order.***

(e) *xxxxxx.*

### **63. Appeal to the Appellate Tribunal**

(1) *xxxxxxxxxxxxxx*

(2) *xxxxxxxxxxxxxxxxxx*

(3) *xxxxxxxxxxxxxx*

(4) *xxxxxxxxxxxxxx*

(5) *xxxxxxxxxxxxxx*

(6) *xxxxxxxxxxxxxx*

(7) (a) *The **Appellate Tribunal may, in its discretion, [stay payment of seventy per cent of the tax] or other amount disputed, if the appellant makes payment of the [thirty per cent of the tax] or other amount disputed along with the prescribed form of appeal.***

(b) *The Appellate Tribunal shall dispose of such appeal within a period of [three hundred and sixty-five days] from the date of the order staying proceedings of [recovery of seventy per cent of tax] or other amount and, if such appeal is not so disposed of within the period specified, the order of stay shall stand vacated after the said period and the Appellate Tribunal shall not make any further order staying proceedings of recovery of the said tax or other amount”.*

19. Admittedly, the ‘**KSS 2017**’, is a self contained and special piece of legislation enacted under the special circumstances in the month of March, 2017, to pave the way and to provide the clean slate for the new indirect regime of GST to be implemented from 01.07.2017 with a view to put an end to the pending litigation and also to recover the arrears of revenue

under the old Enactments which were to be repealed under the new GST law. The main object and urgency of the implementation of the said Scheme carved out the special provisions in the said Scheme for achieving the twin objectives of the quicker and easy recovery of the arrears of tax and other demands and putting an end to the pending litigation. Naturally, it was a beneficial and welfare Scheme to provide the win-win situation for both the tax payers and the tax collectors. Though the said provisions made in the Scheme cannot be read as repugnant and in conflict with the provisions of relevant statutes, which the said Scheme covered but the at the same time, it also cannot be said that the usual procedure of assessment, adjudication, appeals and recovery provisions under the statutes themselves can be given the overriding effect over the said Scheme '**KSS 2017**', even to the extent of undoing the purpose of the Scheme itself.



20. There has to be a harmonious and balanced reading of the two legislations together. Even though the said Scheme of subordinate and delegated legislation is not as such an Act passed by the Legislative Assembly, nonetheless, it has the same force of a statute which an Act or even the Rules enacted by the State Government have and neither any redundancy or repugnancy *per se* can be attributed to the provisions made in the '**KSS 2017**' itself and if at all, there is any doubt or a grey area, the interpretation of the terms of Scheme should undoubtedly be made in favour of the tax payers and Dealers as per the well settled provisions of interpretation applicable to the taxing statutes namely that the benefit of doubt or benefit in case of two views being possible, the one which is more favourable to the Dealers has to be adopted by the Courts.

21. Viewed from this angle and few of the propositions laid down for interpreting similar Schemes

even under the Income Tax Act, and VAT or other Tax laws, it clearly appears to this Court that the stand of the Respondents-Department in the present cases, is incongruous and unsustainable and the same defeats the purpose of the Scheme for the Dealers, who voluntarily opted for the same giving up their valuable rights of disputing the entire liability as per the adjudication orders passed by the Assessing Authorities and putting an end to the litigation and paying the remaining arrears of tax, interest and penalty as per the provisions of the Scheme and thus giving finality to the dispute and achieving the twin purposes of the Scheme itself.

22. It does not behove the State to contend before the Court that since the Scheme was voluntary one, it was for the Dealers to take it or leave it. The Scheme announced on the floor of Legislative Assembly was a solemn promise held out to the Dealers and was

intended to serve the interests of both the Tax Payers and the State. The State cannot and should not be allowed to walk over the interests of the Tax Payers and taunt at them by saying **“Who invited you”**. The State is constitutionally bound to act fairly and reasonably even in the realm of taxation.

23. In order to appreciate the rival contentions raised before this Court, one has to understand the basic Scheme of levy of tax, interest and penalty itself under the taxing statutes. While the ‘tax’ as per the charging provisions of these enactments is a compulsory exaction of tax from the subjects, the levy of interest even though the necessary corollary of tax is a compensatory levy in nature, to compensate the State for the loss caused to it by the non-payment of the due tax for the period for which it remains unpaid and the third component viz., ‘penalty’ which generally depends upon the presence of guilty animus or *mens rea* on the

part of the tax payer, is also consequential and depends upon the amount of tax itself being first found to be due, because the calculation of the penalty amount is also based on the amount of tax itself.

24. The first essential component of the entire demand under the assessment orders under the tax laws is always the tax, thereafter only, the determination of interest and penalty can be made. If the tax itself is not due, the question of levying interest and penalty upon that does not arise.

25. Tax is at the Foundation of Demand under Tax Laws. Interest and Penalty take later or back stages. Take the analogy of 3 boxes in a puzzle game, one laid over another, where the bottom box is of Tax, the middle box is 'Interest' and top box is that of 'Penalty'. That first two boxes of penalty and interest having the connecting hole at the bottom. If one was to fill up the water in all three of them, (clearing off the

arrears of demand) unless the bottom box of 'Tax' is filled up, nothing will come in the middle box of 'Interest' and unless middle box of interest is filled up, nothing will come in the top box of 'Penalty'.

26. This analogy reflects and explains the scheme of imposition of tax, interest and penalty in the Tax Laws and the Scheme '**KSS 2017**' viz., first the arrears of tax have to be cleared off by the dealer and there is no waiver of tax amount in the Scheme. The waiver is only of arrears of penalty and interest to the extent of 90% is given, if 10% of the same is paid by the dealer.

27. The question which therefore arises is that whatever the amount is paid in pursuance of the assessment order or after the assessment order is passed by the Assessing Authority, whether it is described as a 'deposit' or 'payment' of tax or other amounts, such payment remains subject to the adjudication by the Appellate Authority or by the

Courts, where the uncertainty of the entire demand raised by the Assessing Authority being deleted, reduced or upheld by the appellate authority exists. Therefore, that deposit or that payment cannot be allowed to be 'adjusted' or considered as a general revenue of the State itself, unless and until the Appellate Authorities or the Courts determines the issues finally and subject to such decisions only, the 'adjustment' of the 'payment' or 'deposits' can be made by the Revenue Department. Until that is done, it remains the colourless deposit.

28. Since under the '**KSS 2017**', the arrears of tax as well as the arrears of interest and penalty were to be determined in terms of the assessment order itself and remaining unpaid as on **15.03.2017**, as required in **Clause 2.4** quoted above, while scrutinizing the applications as per **Clause 3.2** of the '**KSS 2017**' itself, the Assessing Authority is not entitled to undertake

fresh adjudication process of computing or adjusting the amounts deposited, in the manner he chose or applying the provisions of Section 42(6) of the Act.

29. The provisions of Section 42(6) of the Act, read in conjunction and on sequence with other Sub-sections of Section 42, upon a harmonious reading would reflect that normally assessee is expected to first square up its liability to pay the tax with the returns itself and thereafter upon passing of the assessment order and if the amount paid falls short of the aggregate amount of tax and other amount (penalty) and interest payable, such amount paid shall be first adjusted against interest. This sequence of payments and adjustments under Section 42(6) does not govern the payments and adjustments subject to appellate proceedings under Sections 62 or 63 of the Act nor they are applicable to special Schemes like '**KSS 2017**' in the present case. The said Scheme is a self contained Code in itself and

envisages first the complete payment of tax assessed and then only 10% of assessed interest and penalty and therefore, adjustment of amount lying deposited or paid after the assessment order should also follow the same sequence and the order of preference.

30. Section 42(6) of the Act contained in only one of the eight enactments covered by the said Scheme, is applicable only where the assessments, payment of tax and other amounts, adjudicated by the Assessing Authority is happening in a normal course, irrespective of the existence of any special law like the '**KSS 2017**'. The Scheme '**KSS 2017**' does not envisage any such 'adjustment' or adjudication but only talks of "work out the actual arrears of tax and penalty and interest payable by the Dealers". This working out has to be done only as per the impugned assessment orders, which were the subject matter of appeals, revisions or writ petitions. The Revenue Authorities are not entitled



to undertake the fresh adjudication or adjustment process which is not envisaged in the Scheme itself.

31. The amount deposited or paid by the dealer after the point of time of assessment orders, which is the subject matter of challenge, whether it is called a 'payment of tax or other amounts' or a 'deposit', does not give it the different colour or payment of demand in water tight silos of tax, interest and penalty and therefore, in the absence of any specific and clear provisions in the Scheme itself specifying as to how the amounts lying deposited with the Department during the pendency of the appeals etc., are to be adjusted, the Department cannot be allowed to take a pro-revenue approach like a money lender to first set off and satisfy the demand of interest and thereafter further call upon the Dealers to pay the arrears of tax, without taking into account the deposits already made by the dealer and the set off of such deposits in the first instance has to

be made against the arrears of tax and thereafter, if some balance amount remains, the Department can adjust it against the interest and thereafter under the head 'penalty'.

32. Unless this sequence of adjustment or computation of arrears is followed, it will defeat the very purpose of this beneficial Scheme which was promulgated to provide for the quicker recovery of arrears of tax and the Dealers giving up their right to challenge the very imposition by the withdrawal of their appeals.

33. As already stated above, unless the tax dues or the arrears of tax are first satisfied, the question of levying of interest and penalty itself may be without any foundation and therefore, the arrears of interest and penalty cannot be allowed to be first satisfied and adjusted out of the payments and deposits already made by the Dealers and thereafter still requiring them

to pay the arrears of tax as per the impugned assessment orders, without taking into account the payments already made.

34. The normal and ordinary sequence of levying of these three components of demand namely, the tax, interest and penalty should be followed in the beneficial piece of legislation like '**KSS 2017**' in the present case. The provisions of Section 42(6) of the Act cannot be given an overriding and encroaching effect upon the provisions of the Scheme itself, so as to permit the prior adjustment against the 'interest' head, as claimed by the revenue authorities. That will render the computation exercise under clause 3.2 tilted and biased in favour of the Revenue, rather than the normal and ordinary prudence in the computation of total tax and other demands under these enactments. In the considered opinion of this Court, the aforesaid manner of computation only serves the purpose of the Scheme

and renders the Scheme practically available to the Dealers to avail the same for serving the twin objectives of the said Scheme for the sides.

35. The well settled rule of interpretation of Tax laws that in case the two views are possible, the one favourable to the assessee should be adopted, clearly leads this Court to the aforesaid conclusion. The stand of the Revenue on the contrary therefore is not in consonance with the over all objective and clear provisions of the “**KSS 2017**”, promulgated with the avowed purpose of quick recovery of arrears of tax, interest and penalty and putting a quicker end to the litigation for both the parties.

36. The aforesaid conclusions are supported with the following discussion of the judgments, wherein such a purposive interpretation of similar Schemes under the Income Tax law and as well as other Tax laws were

rendered by the different Courts including the Apex Court of the Country.

37. At this stage, the brief review of the case laws discussed at the bar would be opportune.

38. The Division Bench of this Court in ***Mangilal S.Jain vs. Commissioner of Income Tax and Others (ILR 2003 KAR 2066)*** dealt with a similar controversy under 'Kar Vivad Samadhan Scheme, 1998', under Income Tax law announced in the Finance Act, 1998 and the Court held that any payments made towards tax arrears after the date of assessment and before the date of declaration filed under 'Kar Vivad Samadhan Scheme', will have to be taken as part payment towards tax in regard to declaration under the said Scheme and Explanation to Section 140-A(1) of the Income Tax Act which is akin to Section 42(6) of the KVAT Act, 2003, cited before this Court and the general law will be

inapplicable to the matters covered by the 'Kar Vivad Samadhan Scheme'.

Hon'ble Justice R.V.Raveendran, (as His Lordship's then was) speaking on behalf of the Bench, held as under:-

*"12. In this case, admittedly a revision was pending. If the KVS scheme had not been brought into force, and if the revision had been taken to its logical conclusion, there were two possibilities: (a) If the appellant succeeded in the revision, his liability to tax should stand reduced and consequently payment of interest would also be reduced or wiped out; or (b) If the revision were dismissed, the liability of the Assessee to pay tax and interest as per the order of the assessing authority would have stood undisturbed. Thus the claim for interest as also the claim in regard to tax were amount in dispute as on the date of declaration. They were not admitted or undisputed tax arrears. It is to avoid the uncertainties connected with the litigation, and to put an end to the litigation and to realize the tax arrears locked up in litigation the scheme was conceived and put into effect. The effect of the scheme is that if 30% of the disputed income*

*is paid, that would be accepted in full and final settlement resulting in waiver of payment of tax on the remaining portion of the disputed income and waiver of interest as also the penalty if any.*

**13. If any amount paid towards arrears during the pendency of the litigation (by way of appeal, revision, etc.) is to be irreversibly adjusted against the interest under Section 140A, that would render infructuous the pending litigation (in this case pending revision petition). Surely that cannot be and in fact is not the intention. As noticed above, if the appellant had succeeded in the revision petition, his liability towards interest would have been deleted/reduced and obviously the sum of Rs. 60,000 that has been paid by him towards tax arrears would have adjusted either against the tax or would have been refunded. Therefore, the Explanation to Sub-section (1) of Section 140A of the IT Act applies only where the liability has attained finality. This is clarified by the Department itself. The Government of India, Ministry of Finance (Department of Revenue), Central Board of Direct Taxes, issued certain clarifications by circular No. F 149/145/98/DPL, dated 3.9.1998, under**

*Section 96 of the Finance (No. 2) Act, 1998. The said Section 96 enables the Central Government to issue from time to time, such orders, instructions and directions to the authorities as it may deem fit, for the proper administration of the KVS Scheme and the authorities concerned with execution of the scheme are required to observe and follow such orders and instructions. The relevant portions of the clarifications (questions 4 and 7 and their answers) are extracted below:*

*"Q-4: Where the tax arrear comprises tax and interest, how will the part payment be first appropriated-towards tax or interest ?*

*Ans: The part payments are appropriated first towards tax and then towards interest.*

***The normal rule** that payments will first be adjusted towards interest and then towards principal (income-tax), based on the Explanations Section 140A(1) of IT Act **and general law, will be inapplicable to matters covered by the KVS Scheme.** The Learned Single Judge has lost sight of the above aspects and has wrongly proceeded as if the explanation to Section 140A(1) of IT Act is applicable to the KVS Scheme".*



This case is on all fours with the case on hand before this Court and answers all the contentions raised on behalf of the Respondents-Department fully.

39. In ***Union of India and Others vs. NITDIP Textile Processing Private Limited and Another***[(2012) 1 SCC 226], the Hon'ble Apex Court also dealing with the same Scheme, namely 'Kar Vivad Samadhan Scheme, 1998' under Income Tax law, in **paragraph-48** observed that 'Kar Vivad Samadhan Scheme' is a complete code in itself and the Courts must construe the provisions of the Scheme with reference to the language used therein.

**Paragraph-48** of the said judgment is quoted below for ready reference:-

*“48. The Kar Vivad Samadhan Scheme is a step towards the settlement of outstanding disputed tax liability. **The Scheme is a complete code in itself and exhaustive of matter dealt with therein.** Therefore, the courts must construe the provisions of the Scheme*

*with reference to the language used therein and ascertain what their true scope is by applying the normal rule of construction. Keeping this principle in view, let us consider the reasoning of the High Court”.*

40. In ***Union of India and Others vs. Onkar S.Kanwar and Others [(2002) 7 SCC 591]***, the Hon’ble Apex Court again with reference to the ‘Kar Vivad Samadhan Scheme, 1998’, which also covered the Excise Duty disputes, held that determination of amount of tax, the arrears under ‘Kar Vivad Samadhan Scheme, is a settlement of tax arrears and not an adjudication on the subject matter of Demand Notice or Show-cause Notice.

The relevant extract from **paragraphs 14 and 15** from the said judgment is also quoted below for ready reference:-

*“It is settled law that when an appeal is pending there is no finality to the proceedings. The proceedings are then deemed to be*

*continuing. Undoubtedly, at one place the Kar Vivad Samadhan Scheme (Removal of Difficulties) Order seems does state that the show-cause notice should be pending adjudication. However, the same Order also talks of the show-cause notice being in respect of the same matter on which the show-cause notice has been issued to the main declarant. Then the Order provides that a settlement in favour of the declarant will be deemed to be full and final in respect of other persons also. This Order has to be read as a whole. If read as a whole, it is clear that a settlement by the main declarant is to operate as full and final settlement in respect of all other persons on whom show-cause notice was issued in respect of the same matter. Thus read as a whole the words "pending adjudication" cannot be read to exclude cases where the proceedings are still pending in appeal. Even otherwise the Order has to be read along with the Kar Vivad Samadhan Scheme. Under the Kar Vivad Samadhan Scheme, a party can file a declaration so long as the proceedings are pending. Thus, even though the show-cause notice may have been adjudicated upon and an appeal is pending, a party could still take the benefit of the Kar Vivad Samadhan Scheme and file a declaration.*

*The object of the Kar Vivad Samadhan Scheme (Removal of Difficulties) Order is to give benefit of a settlement by the main party (i.e. the Company in this case) to all other co-noticees. This being the object, a classification, restricting the benefit only to cases where the show-cause notice is pending adjudication, would be unreasonable. If read in this manner the Order would be discriminatory. An interpretation which leads to discrimination must be avoided.*

*In any event this would clearly be a case where two views are possible. It is settled law that if two views are possible then the one which is in favour of the assessee must be adopted”.*

41. On the issue of the ‘deposit’ under Section 35-F of the Central Excise Act, as to its character and nature, the learned counsel for the petitioners also relied upon the decision of the learned Single Judge of this Court in **Nestle India Limited vs. Asst.Commissioner of Central Excise, Mysore-II, [2003(154) E.L.T. 567(Kar.)]** and the learned Single Judge held in **paragraph-6** as under:-

*“In the case of Suidhe Limited v. Union of India reported in 1996 (82) E.L.T. 177 (Bom), the Division Bench considered an identical question and **ruled that the deposit under Section 35F is not a payment of duty, but is only a pre-deposit for availing a right of appeal.** Such amount is bound to be refunded when an appeal is allowed with consequential relief. The Court also has allowed interest from the date of the order of the Tribunal till payment. The said judgment was challenged by the Union of India in a Special Leave Petition (Civil) No...../96 in CC No.3522/96. The Supreme Court dismissed the said Special Leave Petition filed by the Union of India [1997 (94) E.L.T. A159 (S.C.)] thereby confirming the judgment of the Bombay High Court. The Madras High Court in somewhat identical circumstances has ordered refund along with 15 percent interest. It is also to be noticed at this stage that the respondents themselves in the light of dismissal of SLP by the Supreme Court has chosen to issue circular instructions dated 2-1-2002. They have stated that such refund application under Section 11B(1) need not be insisted upon in the light of the judgment of the Supreme Court. In these circumstances, the endorsement at Annexure-H has no legs to stand*

*and the same has to fail in the light of the judgment of the Supreme Court confirming the Bombay High Court judgment. **Pre-deposit amount cannot be equated to excise duty as held by the Bombay High Court and confirmed by the Supreme Court**.*

42. To the same effect, the Division Bench of the Delhi High Court in ***Voltas Limited vs. Union of India [1999(112) E.L.T.34 (Del.)***, also held that the pre-deposit under Section 35F of the Act is a deposit pending appeal and it is not available for appropriation or disbursal by the Revenue Department.

**Paragraph-7** of the said judgment is also quoted below for ready reference:-

*“7. It cannot be denied that the demand against the petitioner was raised consequent to the order of adjudication. Section 35F of the Act under which the petitioner was required to deposit the amount of Rs.50 lakhs speaks of ‘deposit pending appeal’. It is clear that the amount so deposited remains a deposit pending appeal and is thereafter available for*

*appropriation or disbursement consistently with the final order maintaining or setting aside the order of adjudication”.*

43. The learned Single Judge of the Kerala High Court in ***M/s.Always Sugar Agency vs. Commercial Tax Officer, Always & Others [(2011) 42 VST 517]***, also dealt with a similar controversy as is involved in the present case and under the provision of ‘Amnesty Scheme’ announced in Kerala in the Budget Speech of 2010, the learned Single Judge directed that a sum of Rs.75,000/- deposited by the petitioner-assessee under the said Scheme, cannot be adjusted against the interest portion under Section 55C of the Act, which is also akin to Section 42(6) in KVAT Act and the Court allowed the Writ Petition with the following observations:-

*“More so since, once the Scheme is announced and specified to be commenced from the 1<sup>st</sup> day of the relevant financial year, for a specified period, it may not be proper for the*

*State/Department to augment the revenue collection by resorting to coercive steps before the defaulters get an opportunity to apply for and obtain the benefit of the Scheme, which otherwise can only defeat or frustrate the Scheme itself and in turn, the 'Policy' of the Government. In the above circumstances, this Court finds that the course pursued by the respondents; issuing Ext. PA rejecting Ext. P2 preferred by the petitioner seeking **the amount deposited as a token of willingness to clear the liability availing the benefit of the Scheme** proposed in Ext. P1 and **consciously appropriating the said amount against 'interest' portion under the cover of Section 55 C, is not correct or sustainable.** Accordingly, Ext. P4 is set aside. The respondents are directed to pass fresh orders quantifying the liability of the petitioner, In the application preferred for extending the benefit under the "Amnesty Scheme", giving credit to a sum of Rs.75,000/- paid by him vide Ext.P2, as payment towards a portion of the liability under the Scheme, and effect appropriation, in tune with the terms of the Scheme".*

44. The Division Bench of Gujarat High Court in

***Shaily Engineering Plastics Ltd., vs. Designated***



***Authority under Kar Vivad Samadhan Scheme***

***[(1999) 239 ITR 90 (Guj) ]*** dealing with the 'Kar Vivad Samadhan Scheme, 1998, under Income Tax law, also held that the Scheme only concerns the liability already determined and existing and remaining outstanding. The Division Bench of the Gujarat High Court held that a honest tax payer who seeks the Scheme benefit under 'Kar Vivad Samadhan Scheme', cannot be put to more disadvantageous position in comparison to a disputant assessee and the purpose of such Scheme is not only the recovery of all the arrears, but it is intertwined with settlement of the disputes.

The relevant portion of the said judgment is quoted below for ready reference:-

*“Looking to the Scheme of the Act one plausible view appears to be, that as the Scheme does not apply where there is no dispute between the assessee and the Revenue and the tax determined and arrears of tax are admitted, the benefit which has been extended under the Scheme is only to settle the disputed liability by*

*reducing the extent of that disputed liability as provided under section 88, and require the payment of reduced liability of the disputed tax maximum to such extent the same is outstanding, along with full admitted tax, if the same is outstanding, and to grant immunity from liability of interest, penalty and prosecution, etc. In case there are no arrears of tax but only of interest and penalty, demand in respect of such arrears is reduced to half. That construction saves the provision from the vulnerability to fall foul of article 14 on the ground of hostile discrimination. A person who for any reason has not paid admitted tax but is honest in his declaration is placed at a disadvantage position vis-a-vis a person not so transparent assessee whose tax declaration is not found acceptable and addition in income has been made, interest and penalties levied and also with those assessees who have recourse to even a wholly untenable dispute the benefit of reduction in tax liability is extended to admitted tax liability as well, inasmuch as a non-disputant assessee is prohibited to get any benefit under the KVSS, a disputant assessee will get benefit not only in respect of tax arrear in respect of which a dispute is pending, settlement of which is one of the purposes, but also in*

*respect of undisputed liability, **when recovery of all arrears is not the sole purpose but is intertwined with settlement of the dispute.** In such event, a case of an honest assessee being unequally treated is prima facie made out.*

45. The aforesaid judgments cited by the learned counsel for the petitioners support the construction and interpretation as also the conclusions arrived at by this Court hereinbefore.

46. On the other hand, the learned Addl. Advocate General Mr. Aditya Sondhi, relying upon the decision of the Gujarat High Court in the case of **State of Gujarat vs. Essar Steel Ltd., [(2016) 55 GST 250 (Gujarat)] = MANU/GJ/0265/2016**, wherein the Division Bench of Gujarat High Court also held that the pre-deposit pending the appeal does not bear the character of duty but bears the character of 'Security Deposit' being the condition precedent for hearing the appeal under Section 73 of the Gujarat Sales Tax Act.

47. The learned AAG submitted that Section 73(4) of the said Act clearly stipulated such a security deposit as may be directed by the Appellate Authority and therefore, unlike Section 62(4) of the KVAT Act, 2003, the provisions being different in Gujarat, the Court took a view there that the deposit is in the nature of pre-deposit, whereas under the Karnataka law, there is no use of word 'deposit' under the provisions relating to appeal or in Section 42 of the Act.

48. This judgment is of no application to the present case, as this Court has held that during the pendency of the appeal, the payment or the deposit made by the petitioners-assesseees, after the assessment orders are passed, remains the colourless deposit and cannot be adjusted under any specific head of the 'total demand' comprising of tax, interest and penalty and the full effect and play of the '**KSS, 2017**' can be given to the assessee on a beneficial and purposive

interpretation of the provisions of the said Scheme, only if such payment or deposit is first adjusted against the outstanding or arrears of tax, then against interest and then against penalty amount.

49. Similarly, the reliance placed by the learned AAG on the judgment of the learned Single Judge of this Court in **V.Venugopala Reddy vs. Commissioner of Income Tax & Another [(1999) SCC online KAR 623]**, under 'KVSS, 1998' under Income Tax law, is of little avail to the Respondents-State.

The learned Single Judge in that case had observed in **paragraph-10** of the judgment as under:-

*“10. The Provisions of Section 140A by its Explanation would have no force, had there been any specific provision under the Kar Vivad Samadhan Scheme, 1998. Since the KVS Scheme does not contemplate adjustment of the amount paid under Section 140A towards tax, the arguments raised by learned counsel for the petitioner cannot be accepted. Question No.4 of the clarification dated September 3, 1998, also*

*does not help the petitioner's case, because, it refers to the payments which are made after the tax arrears are computed and thereafter any part payment is made. The clarification given by the Government dated January 18, 1999, has only used the words "the Scheme is different from section 140A." This also does not help the petitioner, for, it is nowhere stated in this clarification that the amount paid under section 140A has to be adjusted towards tax. The amount has been paid admittedly under section 140A and the **Explanation to section 140A is clear in requiring adjustment of the payment first towards interest-liability.** Even in the Budget Speech, the contention raised by the petitioner has not been elaborated, explained or stated. It is pointed out that, if the payment made under section 140A is adjusted towards interest, then such adjustment would be disadvantageous in comparison to the assessee who has not paid the tax at all. **There may be anomalies or the Scheme may be more beneficial to the greater defaulter than to the honest taxpayer or the taxpayer who has complied with the provisions but the Scheme has to be read as it is.** In these circumstances, I do not consider that any case for interference is*

*made out. The contention that the payment under section 140A should be treated towards the tax liability has no force.*

50. The said judgment of learned Single Judge of 1999 in **V.Venugopal Reddy's** case therefore appears to be in conflict with the later decision of the Division Bench of the Karnataka High Court in **Mangilal S.Jain vs. CIT** and therefore cannot be said to be a good law in the face of the Division Bench decision rendered in the year 2003 in the case of **Mangilal S.Jain.**

51. Thus on the aforesaid legal analysis, this Court is of the clear opinion that the rejection of the applications filed by the petitioners-assessees under the Scheme '**KSS 2017**', after adjustment of the amounts deposited by them after the assessment orders were passed, first under the head 'interest' and thereafter computing the arrears of tax, interest and penalty is unsustainable in law and illegal and the impugned

orders therefore deserve to be quashed and set aside and the writ petitions deserves to be allowed.

52. The Writ petitions are accordingly allowed and quashing and setting aside the impugned orders passed by the Respondents-Authorities of the Department, the matters are remanded back to the concerned authorities for re-computing the arrears of tax, interest and penalty, in the manner indicated above in this judgment and then pass appropriate orders and subject to payments already made by the petitioners-assessee or further payments to be made by them in accordance with the provisions of the Scheme as interpreted by this Court above, the waiver of the interest and penalty to the extent of 90% shall be granted to the petitioners-assesseees under the said Scheme. The said exercise be completed within a period of three months from today.

No order as to costs.

Sd/-  
JUDGE

Srl.