**REPORTABLE**

**IN THE SUPREME COURT OF INDIA**

**CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO.4280 OF 2007**

M/S. SHREE BHAGWATI STEEL
ROLLING MILLS …APPELLANT

VERSUS

COMMISSIONER OF CENTRAL EXCISE
& ANR. …RESPONDENTS

**WITH**

**CIVIL APPEAL NO.4281 OF 2007**
**CIVIL APPEAL NO.4282 OF 2007**
**CIVIL APPEAL NO.3031 OF 2008**
**CIVIL APPEAL NO.13601 OF 2015**
**(ARISING OUT OF SLP (CIVIL) NO.22134 OF 2008)**
**CIVIL APPEAL NO.4379 OF 2010**
**CIVIL APPEAL NO.13602 OF 2015**
**(ARISING OUT OF SLP (CIVIL) NO.11030 OF 2010)**
**CIVIL APPEAL NO.908 OF 2011**
**CIVIL APPEAL NO.5448 OF 2011**
**CIVIL APPEAL NO.5449 OF 2011**
**CIVIL APPEAL NO.5452 OF 2011**
**CIVIL APPEAL NO.5453 OF 2011**
**CIVIL APPEAL NO.13603 OF 2015**
**(ARISING OUT OF SLP (CIVIL) NO.5532 OF 2011)**
**CIVIL APPEAL NOS.8685-8686 OF 2011**
**CIVIL APPEAL NO.13605 OF 2015**
**(ARISING OUT OF SLP (CIVIL) NO.19964 OF 2011)**
**CIVIL APPEAL NO.13606 OF 2015**
**(ARISING OUT OF SLP (CIVIL) NO.19966 OF 2011)**
**CIVIL APPEAL NO.13607 OF 2015**
**(ARISING OUT OF SLP (CIVIL) NO.19968 OF 2011)**

**CIVIL APPEAL NO.13608 OF 2015**
**(ARISING OUT OF SLP (CIVIL) NO.19969 OF 2011)**
**CIVIL APPEAL NO.13609 OF 2015**
**(ARISING OUT OF SLP (CIVIL) NO.19972 OF 2011)**
**CIVIL APPEAL NO.13610 OF 2015**
**(ARISING OUT OF SLP (CIVIL) NO.19975 OF 2011)**
**CIVIL APPEAL NO.13611 OF 2015**
**(ARISING OUT OF SLP (CIVIL) NO.19979 OF 2011)**
**CIVIL APPEAL NO.13612 OF 2015**
**(ARISING OUT OF SLP (CIVIL) NO.19983 OF 2011)**
**CIVIL APPEAL NO.13614 OF 2015**
**(ARISING OUT OF SLP (CIVIL) NO.20667 OF 2011)**
**CIVIL APPEAL NO.13615 OF 2015**
**(ARISING OUT OF SLP (CIVIL) NO.21584 OF 2011)**
**CIVIL APPEAL NO.13616 OF 2015**
**(ARISING OUT OF SLP (CIVIL) NO.25881 OF 2011)**
**CIVIL APPEAL NO.13617 OF 2015**
**(ARISING OUT OF SLP (CIVIL) NO.1796 OF 2012)**
**CIVIL APPEAL NO.13618 OF 2015**
**(ARISING OUT OF SLP (CIVIL) NO.16249 OF 2012)**
**CIVIL APPEAL NO.13619 OF 2015**
**(ARISING OUT OF SLP (CIVIL) NO.21273 OF 2012)**
**CIVIL APPEAL NO.13620 OF 2015**
**(ARISING OUT OF SLP (CIVIL) NO.21402 OF 2012)**
**CIVIL APPEAL NO.13621 OF 2015**
**(ARISING OUT OF SLP (CIVIL) NO.24139 OF 2012)**
**CIVIL APPEAL NO.13622 OF 2015**
**(ARISING OUT OF SLP (CIVIL) NO.27752 OF 2012)**
**CIVIL APPEAL NO.13623 OF 2015**
**(ARISING OUT OF SLP (CIVIL) NO.37566 OF 2012)**
**CIVIL APPEAL NO.13624 OF 2015**
**(ARISING OUT OF SLP (CIVIL) NO.38588 OF 2012)**
**CIVIL APPEAL NO.13625 OF 2015**
**(ARISING OUT OF SLP (CIVIL) NO.39972 OF 2012)**
**CIVIL APPEAL NOS.13626-13627 OF 2015**
**(ARISING OUT OF SLP (CIVIL) NOS.1103-1104 OF 2013)**
**CIVIL APPEAL NO.13628 OF 2015**
**(ARISING OUT OF SLP (CIVIL) NO.4224 OF 2013)**
**CIVIL APPEAL NO.13629 OF 2015**
**(ARISING OUT OF SLP (CIVIL) NO.5877 OF 2013)**

**CIVIL APPEAL NO.13630 OF 2015**
**(ARISING OUT OF SLP (CIVIL) NO.7852 OF 2013)**
**CIVIL APPEAL NO.13631 OF 2015**
**(ARISING OUT OF SLP (CIVIL) NO.9796 OF 2013)**
**CIVIL APPEAL NO.13632 OF 2015**
**(ARISING OUT OF SLP (CIVIL) NO.11709 OF 2013)**
**CIVIL APPEAL NO.13633 OF 2015**
**(ARISING OUT OF SLP (CIVIL) NO.14097 OF 2013)**
**CIVIL APPEAL NO.13634 OF 2015**
**(ARISING OUT OF SLP (CIVIL) NO.17534 OF 2013)**
**CIVIL APPEAL NO.13635 OF 2015**
**(ARISING OUT OF SLP (CIVIL) NO.18902 OF 2013)**
**CIVIL APPEAL NO.13636 OF 2015**
**(ARISING OUT OF SLP (CIVIL) NO.21590 OF 2013)**
**CIVIL APPEAL NOS.13637-13638 OF 2015**
**(ARISING OUT OF SLP (CIVIL) NOS.27235-27236 OF 2013)**
**CIVIL APPEAL NO.13639 OF 2015**
**(ARISING OUT OF SLP (CIVIL) NO.29566 OF 2013)**
**CIVIL APPEAL NO.13640 OF 2015**
**(ARISING OUT OF SLP (CIVIL) NO.1269 OF 2014)**
**CIVIL APPEAL NO. 1979 OF 2014**
**CIVIL APPEAL NOS.13641-13642 OF 2015**
**(ARISING OUT OF SLP (CIVIL) NOS.4511-4512 OF 2014)**
**CIVIL APPEAL NO.13643 OF 2015**
**(ARISING OUT OF SLP (CIVIL) NO.20044 OF 2014)**
**CIVIL APPEAL NO.13644 OF 2015**
**(ARISING OUT OF SLP (CIVIL) NO.23009 OF 2014)**
**CIVIL APPEAL NO.13645 OF 2015**
**(ARISING OUT OF SLP (CIVIL) NO.26042 OF 2014)**
**CIVIL APPEAL NO.13646 OF 2015**
**(ARISING OUT OF SLP (CIVIL) NO.26036 OF 2014)**
**CIVIL APPEAL NO.13647 OF 2015**
**(ARISING OUT OF SLP (CIVIL) NO.30377 OF 2014)**
**CIVIL APPEAL NO.13648 OF 2015**
**(ARISING OUT OF SLP (CIVIL) NO.30378 OF 2014)**
**CIVIL APPEAL NO.13649 OF 2015**
**(ARISING OUT OF SLP (CIVIL) NO.30376 OF 2014)**
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**(ARISING OUT OF SLP (CIVIL) NO.31332 OF 2014)**

**CIVIL APPEAL NO.13651 OF 2015**
**(ARISING OUT OF SLP (CIVIL) NO.36410 OF 2014)**
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**(ARISING OUT OF SLP (CIVIL) NO.36196 OF 2014)**
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**(ARISING OUT OF SLP (CIVIL) NO.22354 OF 2015)**
**CIVIL APPEAL NO.13665 OF 2015**
**(ARISING OUT OF SLP (CIVIL) NO.27474 OF 2015)**
**CIVIL APPEAL NO.13666 OF 2015**
**(ARISING OUT OF SLP (CIVIL) NO.26580 OF 2015)**
**CIVIL APPEAL NO.13667 OF 2015**
**(ARISING OUT OF SLP (CIVIL) NO.27998 OF 2015)**
**CIVIL APPEAL NO.13668 OF 2015**
**(ARISING OUT OF SLP (CIVIL) NO.28262 OF 2015)**
**CIVIL APPEAL NO.13669 OF 2015**
**(ARISING OUT OF SLP (CIVIL) NO.27471 OF 2015)**
**CIVIL APPEAL NO.13670 OF 2015**
**(ARISING OUT OF SLP (CIVIL) NO.27997 OF 2015)**

**CIVIL APPEAL NO.13671 OF 2015**
**(ARISING OUT OF SLP (CIVIL) NO.28264 OF 2015)**
**CIVIL APPEAL NO.13672 OF 2015**
**(ARISING OUT OF SLP (CIVIL) NO.28935 OF 2015)**
**CIVIL APPEAL NO.13673 OF 2015**
**(ARISING OUT OF SLP (CIVIL) NO.29004 OF 2015)**
**CIVIL APPEAL NO.13674 OF 2015**
**(ARISING OUT OF SLP (CIVIL) NO.19948 OF 2011)**

**J U D G M E N T**

**R.F. Nariman, J.**

1. Leave granted.

2. This batch of appeals raises questions relating to the demand for interest and penalty under Rules 96ZO, 96 ZP and 96 ZQ of the Central Excise Rules, 1994, which were framed in order to effectuate the provisions contained in Section 3A of the Central Excise Act, 1994. Several High Courts have struck down the said Rules relating to penalty as being *ultra vires* the parent provision and violative of Articles 14 and 19(1)(g) of the Constitution. Most of the appeals in this batch are, therefore, by the Union of India. However, before dealing with the said appeals, it is necessary to first segregate Civil Appeal No.4280 of 2007 which raises a slightly different question from the questions raised in the other appeals and decide it first.

3. The question which arises for decision in the said appeal is the demand, by means of a letter dated 19.8.2005, for payment of interest for delayed payment of central excise duty under Section 3A of the Central Excise Act, 1944.

4. The case of the appellant is that it took a rolling mill on lease for the period from 1997 to 2000 and manufactured rerolled non-alloyed steel products. On 1.9.1997 the compounded levy scheme was introduced by way of insertion of Section 3A of the Central Excise Act. The appellant opted for the aforesaid scheme under Rule 96ZP of the Central Excise Rules. When the lease expired, the appellant surrendered its registration certificate on 1.6.2000. As stated hereinabove, on 19.8.2005 the impugned notice was issued to the appellant demanding interest for delayed payment of duty for the period 1997 to 2000.

5. The High Court framed two questions which arose for its consideration: (1) whether "omission" of the compounded levy scheme in 2001 wipes out the liability of the assessee for the period during which the scheme was in operation, and (2)

whether the letter of demand of interest for delayed payment was liable to be set aside on the ground of delay.

6. The High Court found, after distinguishing some of the judgments of this Court, and after relying upon Section 38A of the Central Excise Act, which was added vide Section 131 of the Finance Act, 2001, that on omission of Section 3A, the liability of the assessee was not wiped out.

7. Shri Ajay Aggarwal, learned counsel who appeared on behalf of the appellant fairly submitted that a recent judgment delivered by this Bench, namely, **M/s Fibre Boards (P) Ltd., Bangalore** v. **Commissioner of Income Tax, Bangalore,** [2015] 376 ITR 596 (SC), would cover the matter before us being directly against the appellant's case. However, he submitted that for various reasons this judgment requires a relook and ought to be referred to a larger Bench of three Judges. Shri Aggarwal argued the matter with great ability and we listened to him with considerable interest.

8. First, it may be stated that the judgment of this Court in the **Fibre Board's case** has taken the view that an "omission"

would amount to a “repeal”, after referring to several authorities of this Court, G.P. Singh’s Principles of Statutory Interpretation, Section 6A of the General Clauses Act, 1897, and a passage in Halsbury’s Laws of England. Ultimately, this Court arrived at the conclusion that an “omission” would amount to a “repeal” for the purpose of Section 24 of the General Clauses Act. Since the same expression, namely, “repeal” is used both in Section 6 and Section 24 of the General Clauses Act, the construction of the said expression in both sections would, therefore, include within it “omissions” made by the legislature.

9. Shri Aggarwal, however, argued that there is a fundamental distinction between a “repeal” and an “omission” in that in the case of a “repeal” the statute is obliterated from the very beginning whereas in the case of an “omission” what gets omitted is only from the date of “omission” and not before. This being the case, it is clear that things already done in the case of an “omission” would be saved. However, a “repeal” without a savings clause like Section 6 of the General Clauses Act would not so save things already done under the repealed statute. He further argued that Section 6A which was relied upon by the

Bench in the Fibre Board's case did not state that an "omission" would be included within the expression "repeal", but that if Section 6A were carefully read, an "omission" would only be included in an "amendment" which, under the Section, can be by way of omission, insertion or substitution. Therefore, it is fallacious to state that Section 6A would lead to the conclusion that "omissions" are included in "repeals". He further argued that in any event, the true *ratio decidendi* of the Constitution Bench decision in **Rayala Corporation (P) Ltd. & Ors.** v. **Director of Enforcement, New Delhi**, **1969 (2) SCC 412,** is that an "omission" cannot amount to a "repeal" inasmuch as the first reason given for distinguishing the Madhya Pradesh High Court's judgment in that case was that Section 6 cannot apply to the omission of a rule because an "omission" is not a "repeal". He further argued that as the Madhya Pradesh High Court's decision was put forward by the respondent in that case in support of their argument, the Constitution Bench's dealing with the said decision in order to overcome it would necessarily be the *ratio decidendi* of the said decision, and being a Constitution Bench decision, would be binding upon this Bench.

He further referred to Section 31 of the Prevention of Corruption Act, 1988, which, in his opinion, makes it clear that Parliament itself has understood that a repeal under Section 6 of the General Clauses Act would not apply to omissions. He has further argued that it may be true that the expression "repeal" is normally used when an entire statute is done away with, as opposed to an "omission" which is applied only when part of the statute is deleted, but said that this is not invariably the case, and referred to Section 1 of the Indian Contract Act in which enactments mentioned in the schedule are repealed not in their entirety but only to the extent provided and, therefore, argued that the expression "repeals" will apply also to a part of an enactment as opposed to the enactment as a whole.

10. Shri Radhakrishnan, learned senior counsel appearing on behalf of the revenue supported the judgment of this Court in the **Fibre Board's case** and said that recent judgments delivered which have clarified the law ought not to be disturbed in the larger public interest.

11. Since Shri Aggarwal has made detailed submissions on why according to him the judgment in the Fibre Board's case is

not correctly decided, we propose to deal with each of those submissions in some detail.

12. First and foremost, it is important to refer to the definition of “enactment” contained in Section 3(19) of the General Clauses Act. The said definition clause states that “enactment” shall mean the following:-

> “enactment" shall include a Regulation (as hereinafter defined) and any Regulation of the Bengal, Madras or Bombay Code, and shall also include any provision contained in any Act or in any such Regulation as aforesaid.”

13. From this it is clear that when Section 6 speaks of the repeal of any enactment, it refers not merely to the enactment as a whole but also to any provision contained in any Act. Thus, it is clear that if a part of a statute is deleted, Section 6 would nonetheless apply. Secondly, it is clear, as has been stated by referring to a passage in Halsbury’s Laws of England in the Fibre Board’s judgment, that the expression “omission” is nothing but a particular form of words evincing an intention to abrogate an enactment or portion thereof. This is made further clear by the Legal Thesaurus (Deluxe Edition) by William C

Burton, 1979 Edition. The expression “delete” is defined by the Thesaurus as follows:

> “Delete**: -** Blot out, cancel, censor, cross off, cross out, cut, cut out, dele, discard, do away with, drop, edit out, efface, elide, eliminate, eradicate, erase, excise, expel, expunge, extirpate, get rid of, leave out, modify by excisions, obliterate, omit, remove, rub out, rule out, scratch out, strike off, take out, weed wipe out.”

Likewise the expression “omit” is also defined by this Thesaurus as follows:-

> “Omit:- Abstain from inserting, bypass, cast aside, count out, cut out, delete, discard, dodge, drop exclude, exclude, fail to do, fail to include, fail to insert, fail to mention, leave out, leave undone, let go, let pass, let slip, miss, neglect, *omittere*, pass over, *praetermittere*, skip, slight, *transire*.”

And the expression “repeal” is defined as follows:-

> “Repeal:- Abolish, *abrogare*, abrogate, annul, avoid, cancel, countermand, declare null and void, delete, eliminate, formally withdraw, invalidate, make void, negate, nullify, obliterate, officially withdraw, override, overrule, quash, recall, render invalid, rescind, *rescindere*, retract, reverse, revoke, set aside, vacate, void, withdraw.”

14. On a conjoint reading of the three expressions “delete”, “omit”, and “repeal”, it becomes clear that “delete” and “omit” are used interchangeably, so that when the expression “repeal” refers to “delete” it would necessarily take within its ken an omission as well. This being the case, we do not find any substance in the argument that a “repeal” amounts to an obliteration from the very beginning, whereas an “omission” is only *in futuro*. If the expression “delete” would amount to a “repeal”, which the appellant’s counsel does not deny, it is clear that a conjoint reading of Halsbury’s Laws of England and the Legal Thesaurus cited hereinabove both lead to the same result, namely that an “omission” being tantamount to a “deletion” is a form of repeal.

15. Learned counsel’s second argument that Section 6A when it speaks of an “omission” only speaks of an “amendment” which omits and, therefore does not refer to a repeal is equally fallacious. In **Bhagat Ram Sharma** v. **Union of India**, 1988 Supp SCC 30, this Court held that there is no real distinction between a repeal and an amendment and that “amendment” is in fact a wider term which includes deletion of

a provision in an existing statute. In the said judgment, this Court held:-

> "17. It is a matter of legislative practice to provide while enacting an amending law, that an existing provision shall be deleted and a new provision substituted. Such deletion has the effect of repeal of the existing provision. Such a law may also provide for the introduction of a new provision. There is no real distinction between 'repeal' and an 'amendment'. In Sutherland's Statutory Construction, 3rd Edn., Vol. 1 at p. 477, the learned author makes the following statement of law:
>
> The distinction between repeal and amendment as these terms are used by the Courts is arbitrary. Naturally the use of these terms by the Court is based largely on how the Legislature have developed and applied these terms in labelling their enactments. When a section is being added to an Act or a provision added to a section, the Legislatures commonly entitled the Act as an amendment.... When a provision is withdrawn from a section, the Legislatures call the Act an amendment particularly when a provision is added to replace the one withdrawn. However, when an entire Act or section is abrogated and no new section is added to replace it, Legislatures label the Act accomplishing this result a repeal. Thus as used by the Legislatures, amendment and repeal may differ in kind - addition as opposed to withdrawal or only in degree -abrogation of part of a section as opposed to abrogation of a whole section or Act; or more commonly, in both kind and degree - addition of a provision to a section to replace a provision being abrogated as opposed by abrogation of a whole section of an Act. This arbitrary distinction has been followed by the Courts, and they have developed separate rules of construction for each.

> However, they have recognised that frequently an Act purporting to be an amendment has the same qualitative effect as a repeal - the abrogation of an existing statutory provision -and have therefore applied the term "implied repeal' and the rules of construction applicable to repeals to such amendments.
>
> 18. Amendment is in fact, a wider term and it includes abrogation or deletion of a provision in an existing statute. If the amendment of an existing law is small, the Act professes to amend; if it is extensive, it repeals a law and re-enacts it. An amendment of substantive law is not retrospective unless expressly laid down or by necessary' implication inferred." (at para 17 & 18)

16. It is clear, therefore, that when this Court referred to Section 6A in **Fibre Board's case** and held that Section 6A shows that a repeal can be by way of an express omission, obviously what was meant was that an amendment which repealed a provision could do so by way of an express omission. This being the case, it is clear that Section 6A undisputedly leads to the conclusion that a repeal would include a repeal by way of an express omission.

17. Learned counsel then argued that while distinguishing the Madhya Pradesh High Court's judgment in Rayala Corporation, a Constitution Bench of this Court expressly held as the first

reason that Section 6 applies only to repeals and not to omissions. The **Fibre Board's judgment** has clearly held as follows:

> "First and foremost, it will be noticed that two reasons were given in **Rayala Corporation (P) Ltd.** for distinguishing the Madhya Pradesh High Court judgment. Ordinarily, both reasons would form the *ratio decidendi* for the said decision and both reasons would be binding upon us. But we find that once it is held that Section 6 of the General Clauses Act would itself not apply to a rule which is subordinate legislation as it applies only to a Central Act or Regulation, it would be wholly unnecessary to state that on a construction of the word "repeal" in Section 6 of the General Clauses Act, "omissions" made by the legislature would not be included. Assume, on the other hand, that the Constitution Bench had given two reasons for the non-applicability of Section 6 of the General Clauses Act. In such a situation, obviously both reasons would be *ratio decidendi* and would be binding upon a subsequent bench. However, once it is found that Section 6 itself would not apply, it would be wholly superfluous to further state that on an interpretation of the word "repeal", an "omission" would not be included. We are, therefore, of the view that the second so-called ratio of the Constitution Bench in **Rayala Corporation (P) Ltd.** cannot be said to be a *ratio decidendi* at all and is really in the nature of *obiter dicta*." (at para 27)

18. Merely because the Constitution Bench referred to a repeal not amounting to an omission as the first reason given

for distinguishing the Madhya Pradesh High Court's judgment would not undo the effect of paragraph 27 of **Fibre Board's case** which, as has already been stated, clearly makes the distinction between Section 6 not applying at all and Section 6 being construed in a particular manner. Obviously, if the Section were not to apply at all, any construction of the Section would necessarily be in the nature of *obiter dicta*.

19. We also find that Section 6 could not possibly apply to the facts in **Rayala Corporation's case** for yet another reason. Clause 2 of the amendment rules which was referred to in paragraph 14 of the judgment in **Rayala Corporation** reads as follows:-

> "In the Defence of India Rules, 1962, rule 132A (relating to prohibition of dealings in foreign exchange) shall be omitted except as respects things done or omitted to be done under that rule."

20. A cursory reading of clause 2 shows that after omitting Rule 132A of the Defence of India Rules, 1962, the provision contains its own saving clause. This being the case, Section 6 can in any case have no application as Section 6 only applies

to a Central Act or regulation "unless a different intention appears". A different intention clearly appears on a reading of clause 2 as only a very limited savings clause is incorporated therein. In fact, this aspect is noticed by the Constitution Bench in paragraph 18 of its judgment, in which the Constitution Bench states:-

> "As we have indicated earlier, the notification of the Ministry of Home Affairs omitting Rule 132-A of the D.I.Rs. did not make any such provision similar to that contained in Section 6 of the General Clauses Act."

21. It was then urged before us that Section 31 of the Prevention of Corruption Act, 1988 would also lead to the conclusion that Parliament itself is cognizant of the fact that an omission cannot amount to a repeal. Section 31 of the Prevention of Corruption Act, 1988, states as follows:-

> "Section 31 - Omission of certain sections of Act 45 of 1860
>
> Sections 161 to 165A (both inclusive) of the Indian Penal Code, 1860 (45 of 1860) shall be omitted, and section 6 of the General Clauses Act, 1897 (10 of 1897), shall apply to such omission as if the said sections had been repealed by a Central Act."

22. It is settled law that Parliament is presumed to know the law when it enacts a particular piece of legislation. The Prevention of Corruption Act was passed in the year 1988, that is long after 1969 when the Constitution Bench decision in Rayala Corporation had been delivered. It is, therefore, presumed that Parliament enacted Section 31 knowing that the decision in Rayala Corporation had stated that an omission would not amount to a repeal and it is for this reason that Section 31 was enacted. This again does not take us further as this statement of the law in Rayala Corporation is no longer the law declared by the Supreme Court after the decision in the **Fibre Board's case**. This reason therefore again cannot avail the appellant.

23. The reference to the savings provision in Section 1 of the Indian Contract Act again does not take us very much further as the expression "repeal" as has been pointed out above can be of part of an enactment also. This being the case, when the legislature uses the word "omit" it usually does so when it wishes to delete a particular section as opposed to deleting an entire Act. As has been noticed both in Fibre Board's case and

hereinabove, these are all expressions which only go to form and not to substance. Even assuming for the sake of argument that we were inclined to agree with Shri Aggarwal, given the force of his inexorable logic, this Court has laid down the parameters of when it would be expedient to have a relook at a particular decision in the case of **Keshav Mills Co. Ltd. v. CIT, Bombay North,** 1965 (2) SCR 908, as follows.-

> "In dealing with the question as to whether the earlier decisions of this Court in the New Jehangir Mills [1959]37ITR11(SC) case and the Petlad Co. Ltd. [1963] S.C.R. 871 case should be reconsidered and revised by us, we ought to be clear as to the approach which should be adopted in such cases. Mr. Palkhivala has not disputed the fact that, in proper case, this Court has inherent jurisdiction to reconsider and revise its earlier decisions, and so, the abstract question as to whether such a power vests in this Court or not need not detain us. In exercising this inherent power, however, this would naturally like to impose certain reasonable limitations and would be reluctant to entertain pleas for the reconsideration and revision of its earlier decisions, unless it is satisfied that there are compelling and substantial reasons to do so. It general judicial experience that in matters of law involving question of constructing statutory or constitutional provisions, two views are often reasonably possible and when judicial approach has to make a choice between the two reasonably possible views, the process of decision-making is often very difficult and delicate. When this Court hears appeals against decisions of the High

Courts and is required to consider the propriety or correctness of the view taken by the High Courts on any point of law, it would be open to this Court to hold that though the view taken by the High Court is reasonably possible, the alternative view which is also reasonably possible is better and should be preferred. In such a case, the choice is between the view taken by the High Court whose judgment is under appeal, and the alternative view which appears to this Court to be more reasonable; and in accepting it own view in preference to that of the High Court, this Court would be discharging its duty as Court of Appeal. But different considerations must inevitably arise where a previous decision of this Court has taken a particular view as to the construction of a statutory provision as, for instance, section 66(4) of the Act. When it is urged that the view already taken by this Court should be reviewed and revised, it may not necessarily be an adequate reason for such review and revision to hold that though the earlier view is a reasonably possible view, the alternative view which is pressed on the subsequent occasion is more reasonable. In reviewing and revising its earlier decision, this Court should ask itself whether in interests of the public good or for any other valid and compulsive reasons, it is necessary that the earlier decision should be revised. When this Court decides questions of law, its decisions are, under Article 141, binding on all courts within the territory of India, and so, it must be the constant endeavour and concern of this Court to introduce and maintain an element of certainty and continuity in the interpretation of law in the country. Frequent exercise by this Court of its power to review its earlier decisions on the ground that the view pressed before it later appears to the Court to be more reasonable, may incidentally tend to make law uncertain and introduce confusion which must be consistently avoided. That is not to say that if on a subsequent occasion, the Court is satisfied that its

earlier decision was clearly erroneous, it should hesitate to correct the error; but before a previous decision is pronounced to be plainly erroneous, the Court must satisfied with a fair amount of unanimity amongst its members that a revision of the said view is fully justified. It is not possible or desirable, and in any case it would be inexpedient to lay down any principles which should govern the approach of the Court in dealing with the question of reviewing and revising its earlier decisions. It would always depend upon several relevant considerations:- What is the nature of the infirmity or error on which a plea for review and revision of the earlier view is based? On the earlier occasion, did some patent aspects of the question remain unnoticed, or was the attention of the Court not drawn to any relevant and material statutory provision, or was any previous decision of this Court bearing on the point not noticed? Is the Court hearing such plea fairly unanimous that there is such an error in the earlier view? What would be the impact of the error on the general administration of law or on public good ? Has the earlier decision been followed on subsequent occasions either by this Court or by the High Courts ? And, would the reversal of the earlier decision lead to public inconvenience, hardship or mischief ? These and other relevant considerations must be carefully borne in mind whenever this Court is called upon to exercise its jurisdiction to review and review and revise its earlier decisions." (at page 921-922)

24. **Fibre Board's case** is a recent judgment which, as has correctly been argued by Shri Radhakrishnan, learned senior counsel on behalf of the revenue, clarifies the law in holding that an omission would amount to a repeal. The converse view

of the law has led to an omitted provision being treated as if it never existed, as Section 6 of the General Clauses Act would not then apply to allow the previous operation of the provision so omitted or anything duly done or suffered thereunder. Nor may a legal proceeding in respect of any right or liability be instituted, continued or enforced in respect of rights and liabilities acquired or incurred under the enactment so omitted. In the vast majority of cases, this would cause great public mischief, and the decision of **Fibre Board's case** is therefore clearly delivered by this Court for the public good, being, at the very least a reasonably possible view. Also, no aspect of the question at hand has remained unnoticed. For this reason also we decline to accept Shri Aggarwal's persuasive plea to reconsider the judgment in **Fibre Board's case**. This being the case, it is clear that on point one the present appeal would have to be dismissed as being concluded by the decision in the **Fibre Board's case**.

25. Even on the point of limitation, we find that the High Court noticed that the assessee undertook to pay the amount with interest upto 31.3.2003, on which date a last part payment was

made. As the demand was raised by the Department on 19.8.2005 i.e. within a period of three years from 31.3.2003, it is clear that the said recovery notice would not be beyond the time limit.

26. However, Shri Aggarwal has also argued that in this appeal as well as in Civil Appeal No.4281 and 4282 of 2007, the Rule providing for payment of interest would itself be *ultra vires* inasmuch as Section 3A of the Act does not itself provide for the payment of interest. He argued that despite the fact that this point was not raised before any of the authorities below he ought to be allowed to raise it for the first time in this Court not only as it is a pure question of law but also because, according to him, this Court has held that rules which are *ultra vires* ought to be ignored by the courts even if there is no substantive challenge to them.

27. Shri Radhakrishnan, learned senior advocate appearing for the revenue, strongly contradicts this position and has vehemently argued that since this issue was never raised before the authorities below, this Court should not allow the appellant to raise it at this belated stage. He further submitted

that in any case it would not be necessary for the statute to provide for interest and it is good enough that subordinate legislation in the nature of a rule could do so. Inasmuch as these cases relate to interest and penalty leviable under certain provisions of the Central Excise Rules, it may be necessary to set out the said provisions. They read as follows:

> "RULE 96ZO. Procedure to be followed by the manufacturer of ingots and billets.
>
> (3)……..
>
> Provided also that where a manufacturer fails to pay the whole of the amount payable for any month by the 15th day or the last day of such month, as the case may be, he shall be liable to,-
>
> **(i)** Pay the outstanding amount of duty along with interest thereon at the rate of eighteen per cent. per annum, calculated for the period from the 16th day of such month or the 1st day of next month, as the case may be, till the date of actual payment of the outstanding amount; and
>
> **(ii)** A penalty equal to such outstanding amount of duty or five thousand rupees, whichever is greater."
>
> **RULE 96ZP. Procedure to be followed by the manufacturer of hot rolled products.**
>
> (3)…….
>
> Provided also that where a manufacturer fails to pay the whole of amount of duty payable for any month

by the 10th day of such month, he shall be liable to pay, -

(i) The outstanding amount of duty along with interest thereon at the rate of eighteen per cent. per annum calculated for the period from the 11th day of such month till the date of actual payment of the outstanding amount; and

(ii) A penalty equal to the amount of duty outstanding from him at the end of such month or five thousand rupees, whichever is greater.

**Rule 96ZQ Procedure to be followed by the independent processor of textile fabrics.**

(5) If an independent processor fails to pay the amount of duty or any part thereof by the date specified in sub-rule (3), he shall be liable to,-

(i) Pay the outstanding amount of duty along with interest at the rate of thirty-six per cent per annum calculated for the outstanding period on the outstanding amount; and

(ii) A penalty equal to an amount of duty outstanding from him or rupees five thousand, whichever is greater."



28. Shri Aggarwal in order to buttress his submission that he ought to be allowed to raise a pure question of law going to the very jurisdiction to levy interest cited before us the judgment in **Bhartidasan University and Another v. All-India Council for Technical Education,** 2001 (8) SCC 676, and in particular paragraph 14 thereof which reads as follow:-

> "The fact that the Regulations may have the force of law or when made have to be laid down before the legislature concerned do not confer any more sanctity or immunity as though they are statutory provisions themselves. Consequently, when the power to make Regulations are confined to certain limits and made to flow in a well defined canal within stipulated banks, those actually made or shown and found to be not made within its confines but outside them, the Courts are bound to ignore them when the question of their enforcement arise and the mere fact that there was no specific relief sought for to strike down or declare them ultra vires, particularly when the party in sufferance is a Respondent to the lis or proceedings cannot confer any further sanctity or authority and validity which it is shown and found to obviously and patently lack. It would, therefore, be a myth to state that Regulations made under Section 23 of the Act have "Constitutional" and legal status, even unmindful of the fact that anyone or more of them are found to be not consistent with specific provisions of the Act itself. Thus, the Regulations in question, which the AICTE could not have made so as to bind universities/UGC within the confines of the powers conferred upon it, cannot be enforced against or bind an University in the matter of any necessity to seek prior approval to commence a new department or course and programme in technical education in any university or any of its departments and constituent institutions."

29. It would be seen that Shri Aggarwal is on firm ground because this Court has specifically stated that rules or regulations which are in the nature of subordinate legislation which are *ultra vires* are bound to be ignored by the courts

when the question of their enforcement arises and the mere fact that there is no specific relief sought for to strike down or declare them *ultra vires* would not stand in the court's way of not enforcing them. We also feel that since this is a question of the very jurisdiction to levy interest and is otherwise covered by a Constitution Bench decision of this Court, it would be a travesty of justice if we would not to allow Shri Aggarwal to make this submission.

30. On merits, the matter is no longer *res integra*. A Constitution Bench decision of this Court in **VVS Sugars** v. **Government of A.P.**, 1999 (4) SCC 192, has held, following two earlier judgments of this Court, as follows:-

> "This Court in *India Carbon Ltd.* v. *State of Assam* [(1997) 6 SCC 479] has held, after analysing the Constitution Bench judgment in *J.K. Synthetics Ltd.* v. *CTO* [(1994) 4 SCC 276] that interest can be levied and charged on delayed payment of tax only if the statute that levies and charges the tax makes a substantive provision in this behalf. There being no substantive provision in the Act for the levy of interest on arrears of tax that applied to purchases of sugarcane made subsequent to the date of commencement of the amending Act, no interest thereon could be so levied, based on the application of the said Rule 45 or otherwise."

31. Applying the Constitution Bench decision stated above, it will have to be declared that since Section 3A which provides for a separate scheme for availing facilities under a compound levy scheme does not itself provide for the levying of interest, Rules 96 ZO, 96 ZP and 96 ZQ cannot do so and therefore on this ground the appellant in Shree Bhagwati Steel Rolling Mills has to succeed. On this ground alone therefore the impugned judgment is set aside. That none of the other provisions of the Central Excise Act can come to the aid of the Revenue in cases like these has been laid down by this Court in **Hans Steel Rolling Mill v. CCE**, (2011) 3 SCC 748 as follows:

> "13. On going through the records it is clearly established that the appellants are availing the facilities under the compound levy scheme, which they themselves opted for and filed declarations furnishing details about the annual capacity of production and duty payable on such capacity of production. It has to be taken into consideration that the compounded levy scheme for collection of duty based on annual capacity of production under Section 3 of the Act and the 1997 Rules is a separate scheme from the normal scheme for collection of Central excise duty on goods manufactured in the country. Under the same, Rule 96-ZP of the Central Excise Rules stipulate the method of payment and Rule 96-ZP contains detailed provision regarding time and manner of payment and it also contains provisions relating to

> payment of interest and penalty in event of delay in payment or non-payment of dues. Thus, this is a comprehensive scheme in itself and general provisions in the Act and the Rules are excluded." (at page 751)

32. We now come to the other appeals which concern themselves with penalties that are leviable under Rules 96 ZO, 96 ZP and 96 ZQ. Since the lead judgment is a detailed judgment by a Division Bench of the Gujarat High Court reported in **Krishna Processors** v. **Union of India,** 2012 (280) ELT 186 (Guj.) and followed by other High Courts, we will refer only to this decision.

33. On the facts before the Gujarat High Court, there were three civil applications each of which challenged the constitutional validity of the aforesaid rules insofar as they prescribed the imposition of a penalty equal to the amount of duty outstanding without any discretion to reduce the same depending upon the time taken to deposit the duty. The Gujarat High Court struck down the aforesaid Rules on the basis that not only were they *ultra vires* the Act but they were arbitrary and unreasonable and therefore violative of Articles 14 and 19(1)(g) of the Constitution.

34. Shri Radhakrishnan, learned senior advocate appearing on behalf of the revenue found it extremely difficult to argue that the aforesaid judgment was wrong. He therefore asked us to limit the effect of the judgment when it further held that after omission of the aforesaid Rules with effect from 1.3.2001 no proceedings could have been initiated thereunder. In this submission he is correct for the simple reason that the Gujarat High Court followed **Rayala Corporation** in holding that "omissions" would not amount to "repeals", which this Court has now clarified is not the correct legal position.

35. However, insofar the reasoning of the High Court is concerned on the aspects stated hereinabove, we find that on all three counts it is unexceptionable. First and foremost, a delay of even one day would straightaway, without more, attract a penalty of an equivalent amount of duty, which may be in crores of rupees. It is clear that as has been held by this Court, penalty imposable under the aforesaid three Rules is inflexible and mandatory in nature. The High Court is, therefore, correct in saying that an assessee who pays the delayed amount of duty after 100 days is to be on the same footing as an

assessee who pays the duty only after one day's delay and that therefore such rule treats unequals as equals and would, therefore, violate Article 14 of the Constitution of India. It is also correct in saying that there may be circumstances of force majeure which may prevent a bonafide assessee from paying the duty in time, and on certain given factual circumstances, despite there being no fault on the part of the assessee in making the deposit of duty in time, a mandatory penalty of an equivalent amount of duty would be compulsorily leviable and recoverable from such assessee. This would be extremely arbitrary and violative of Article 14 for this reason as well. Further, we agree with the High Court in stating that this would also be violative of the appellant's fundamental rights under Article 19(1)(g) and would not be saved by Article 19(6), being an unreasonable restriction on the right to carry on trade or business. Clearly the levy of penalty in these cases of a mandatory nature for even one day's delay, which may be beyond the control of the assessee, would be arbitrary and excessive. In such circumstances, this Court has held in **Md. Faruk** v. **State of M.P.**, 1970(1) SCR 156:

> "The Court must in considering the validity of the impugned law imposing a prohibition on the carrying on of a business or profession, attempt an evaluation of its direct and immediate impact upon the fundamental rights of the citizens affected thereby and the larger public interest sought to be ensured in the light of the object sought to be achieved, the necessity to restrict the citizen's freedom, the inherent pernicious nature of the act prohibited or its capacity or tendency to be harmful to the general public, the possibility of achieving the object by imposing a less drastic restraint, and in the absence of exceptional situations such as the prevalence of a state of emergency-national or local-or the necessity to maintain essential supplies, or the necessity to stop activities inherently dangerous, the existence of a machinery to satisfy the administrative authority that no case for imposing the restriction is made out or that a less drastic restriction may ensure the object intended to be achieved." (at page 161)

36. The direct and immediate impact upon the fundamental right of the citizen is that he is exposed to a huge liability by way of penalty for reasons which may in given circumstances be beyond his control and/or for delay which may be minimal. The possibility of achieving the object of deterrence in such cases can be achieved by imposing a less drastic restraint. In point of fact when we contrast these provisions with Section 37 of the Act, it becomes clear how arbitrary and excessive they are.

37. Section 37(3) and 37(4) of the Central Excise Act reads as follows:-

> "Section 37. Power of Central Government to make rules. —
>
> (3) In making rules under this section, the Central Government may provide that any person committing a breach of any rule shall, where no other penalty is provided by this Act, be liable to a penalty not exceeding five thousand rupees.
>
> (4) Notwithstanding anything contained in sub-section (3), and without prejudice to the provisions of section 9, in making rules under this section, the Central Government may provide that if any anufacturer, producer or licensee of a warehouse —
> (a) removes any excisable goods in contravention of the provisions of any such rule, or
> (b) does not account for all such goods manufactured, produced or stored by him, or
> (c) engages in the manufacture, production or storage of such goods without having applied for the registration required under section 6, or
> (d) contravenes the provisions of any such rule with intent to evade payment of duty,
> then, all such goods shall be liable to confiscation and the manufacturer, producer or licensee shall be liable to a penalty not exceeding the duty leviable on such goods or ten thousand rupees, whichever is greater;"

38. Under Section 37(3), the statute itself provides in all cases where no other penalty is provided by the Act that a

penalty not exceeding Rs.5,000/- alone can be levied. Sub-Section(4) is even more telling. Even in cases where there is a clandestine removal of excisable goods, and cases where the assessee intends to evade payment of duty, the assessee is liable to a penalty not exceeding the duty leviable on such goods or Rs.10,000/- whichever is greater. It will be noticed that the Act is very circumspect in laying down penalty provisions. Penalties in given circumstances extend only to Rs.5,000/- and Rs.10,000/- which are small amounts. Further, even where clandestine removal and intent to evade duty are present, yet the authorities are given a discretion to levy a penalty higher than Rs.10,000/- but not exceeding the duty leviable. In a given case, therefore, even where there is willful intent to evade duty and the duty amount comes to say a crore of rupees, the authorities can in the facts and circumstances of a given case, levy a penalty of say Rs.25,00,000/- or Rs.50,00,000/-. This being the position, it is clear that when contrasted with the provisions of the Central Excise Act itself, the penalty provisions contained in Rules 96ZO, 96 ZP and 96 ZQ are both arbitrary and excessive.

39. A penalty can only be levied by authority of statutory law, and Section 37 of the Act, as has been extracted above does not expressly authorize the Government to levy penalty higher than Rs.5,000/-. This further shows that imposition of a mandatory penalty equal to the amount of duty not being by statute would itself make rules 96ZO, 96 ZP and 96 ZQ without authority of law. We, therefore, uphold the contention of the assessees in all these cases and strike down rules 96ZO, 96 ZP and 96 ZQ insofar as they impose a mandatory penalty equivalent to the amount of duty on the ground that these provisions are violative of Article 14, 19(1)(g) and are *ultra vires* the Central Excise Act.

40. It now remains to deal with SLP(civil) No.22134 of 2000, (APS Associates v. Commissioner of Central Excise). In this SLP, the Punjab and Haryana High Court has passed a judgment on 20.5.2008 in which it construed Rule 3(2) of the Induction Furnace Annual Capacity Determination Rules, 1997. The said Rule is set out hereinbelow:-

> "3. The **annual capacity of production** referred to in Rule 2 shall be **determined in the following manner, namely :-**

The Commissioner of Central Excise (hereinafter referred to as the Commissioner) shall call for an authenticated copy of the manufacturer's invoice or trader's **invoice,** who have supplied or installed the furnace or crucible to the induction furnace unit, and **ascertain** the total capacity of the furnaces installed in the factory on the basis of such invoice or document;

(1) **If the invoice or document referred to in sub rule (1) is not available for any reason** with the manufacturer then the Commissioner shall ascertain the capacity of the furnaces installed in the induction furnace unit **on the basis of the capacity of comparable furnaces installed in any other factory** in respect of which the manufacturer's invoice or other document indicating the capacity of the furnace is available or, if not so possible, **on the basis of any other material as may be relevant for this purpose. The Commissioner may, if he so desires, consult any technical authority for this purpose;"**

41. On the facts in this case, the assessee made a declaration dated 9.9.1997 that they will pay lump sum duty on the basis that their induction furnace has a capacity of only 3.2 metric tons. As they were unable to trace out the original bill, they worked out their capacity on the basis of a Chartered Engineer's Certificate dated 7.9.1997 which stated as follows:-

**"REF. : Js <u>CE/97</u> 197** **DATED 07.09.97**

## TO WHOM IT MAY CONCERN

On the request of M/s. A.P.S. ASSOCIATES PVT LIMITED, I visited their works at D-133, Phase V. Focal Point. Ludhiana for inspection of the INDUCTION FURNACE and assessing the capacity thereof.

The party has ONE FURNACE of following specifications:-

MAKE GEC CAPACITY 3200 KG/1600 KW/1200 V.

While assessing the capacity of a FURNACE for a particular heat. It may please be noted that besides crucible size, other factors affecting the capacity are as follows:

Incoming Power to the crucible from the Power Pack System of the FURNACE and its quality.

Power fed to the crucible from the Power Pack System of the FURNACE and its quality.

Quality/Mix of Scrap.

Lining quality and its thickness.

The heatwise capacity may vary for a crucible out over a given period of time, the average output/Capacity shall remain almost same.

However, in this case, it may please be noted that at present, this unit has a sanctioned load of 1680 KVA (Photocopy enclosed) resulting in a load of 1428 KW, that can be utilized by the unit. After allowing for an Aux. load of approximately 125 KW, the load available for melting shall be approximately 1300 KW. As such, the unit shall not be able to utilize the full capacity of the furnace i.e. 1600 KW."

42. The said declaration and Chartered Engineer Certificate have not been accepted by the authorities below, and the High Court rejected it on the footing that Rule 3(2) of the aforesaid Rules did not, in terms, refer to the sanctioned load of electrical units, and therefore this could not be taken into account for the purpose of ascertaining the capacity of the furnaces installed in the induction furnace unit. We find that the Karnataka High Court **Bhuwalka Steel Industries Ltd. v. Union Of India** 2003(159) ELT 147 (Kar.), after quoting the aforesaid Rule, held as follows:-

> "11. Section 3-A of the Central Excise Act provides for a power to change the excise duty on the basis of capacity of production in respect of the notified goods. This has been introduced with a view to safeguard the interest of Revenue and to arrest evasion of duty. Sub-section (2) of Section 3-A provides for framing of Rules in the matter of determination of the annual capacity. It specifically provides for taking into consideration *such factor or factors relevant for annual capacity of production of the factory in which goods are produced*. Therefore, relevant factor like power factor is not alien for determination of annual production capacity in terms of Section 3-A of the Act. At this stage it is to be noticed that the formula provided in Rule 3 of the Induction Furnace Annual Capacity Determination Rules provides for three contingencies. The first contingency is the determination on the basis of authenticated copy of the manufacturers invoice or

traders invoice who have supplied or installed the furnace. The second contingency is that in the absence of the invoice document being available for any reason with the manufacturer that the Commissioner is to ascertain the capacity on the basis of the capacity of the comparable furnaces available in similar industry. The third contingency is determination of the annual capacity of production of ingots by formula. The formula is ACP = TCF × 3200. ACP is nothing but the annual capacity of production of the factory. TCF is also again referred to the total capacity. Therefore, capacity plays a vital role in terms of levy of excess duty.

12. In the case on hand, the petitioner has sought for an option that the annual capacity is to be determined on *pro rata* basis in terms of Rule 96-ZO(3) of the Rules. Petitioner has produced sufficient material with regard to power factor being a relevant one. As I mentioned earlier, it is not the case of the respondents that power factor is not a relevant factor in terms of the endorsement. Helplessness is the answer given in the endorsement. There is no prohibition under the rules for taking into consideration the power factor for determination of the annual capacity. So long as the power factor is not said to be irrelevant factor, that factor has to go into the process of determination in terms of Section 3-A read with the Rules."

43. We are in broad agreement with the Karnataka High Court view as it is clear that the load capacity of an induction furnace unit is certainly relevant material referred to in Rule 3(2)

to determine the capacity of the furnace installed. It is obvious that it is not necessary to state such load capacity in terms for it to be included in Rule 3(2). Agreeing therefore with the Karnataka High Court's view we set aside the judgment of the Punjab and Haryana High Court and declare that a Chartered Engineer Certificate dealing with the sanctioned electrical load for a furnace is a relevant consideration which can be looked at in the absence of other factors mentioned in Rule 3. This appeal is disposed of accordingly.

44. **Conclusion**

We have declared in this judgment that the interest and penalty provisions under the Rules 96ZO, ZP, and ZQ of the Central Excise Rules, 1994 are invalid for the reasons assigned in the judgment. Accordingly, the appeals filed by the Revenue are dismissed and the appeals filed by the assessees are allowed to the extent indicated above. It may be noted that in an appeal from a judgment of the Allahabad High Court dated 8.11.2012 in SLP (C) No. 9796/2013, it has been held that the

levy of penalty under the aforesaid provisions is mandatory in character. In view of what has been held by us today, this appeal will also have to be allowed in the same terms as the other assessees' appeals which have been allowed. All the aforesaid appeals are disposed of accordingly.

**…….J.**

**(A.K. Sikri)**

**…….J.**

**(R.F. Nariman)**

**New Delhi;**

**November 24, 2015.**