

# 5

## STRICT VERSUS LIBERAL CONSTRUCTION

---

### 5.1 Distinction between strict and liberal construction of Statute

Strict Construction means each of the words in Statute should be interpreted by letter and no regard should be had to the spirit beyond the statute. Liberal or beneficial construction means the interpretation should be made liberally with intention to advance the purpose or object of the statute. Thus, in case of strict interpretation Courts may prefer the literal rule while for liberal construction courts may prefer golden rule or mischief rule. Generally, taxing and penal statutes are to be strictly construed while beneficial or benevolent legislation like ESI, Contract Labour Act or P.F. should be liberally construed. Even in case of taxing statutes, beneficial provisions should be liberally construed.

In *State of Jharkhand v. Ambay Cements* (2005) 1 SCC 368 = 178 ELT 55 = 139 STC 74 = 2004 AIR SCW 6703 (SC 3 member bench), it was held as follows, (a) Provision of exemption should be strictly construed. It is not open to Court to ignore the conditions prescribed in the exemption notification (b) Mandatory rule must be strictly followed, while substantial compliance might suffice in a directory rule (c) Whenever the statute prescribed that a particular act is to be done in a particular manner and also lays down that failure to comply with the said requirement leads to severe consequences, such requirement is mandatory (d) It is the cardinal rule of the interpretation that where a statute provides that a particular thing should be done, it should be done in the manner prescribed and not in any other way (e) Where a statute is penal in character, it must be strictly construed and followed - quoted with approval in *CCE v. Emkay Investments* 2004 (174) ELT 298 (SC 3 member bench).

### 5.2 Strict interpretation in taxation provisions - No equity in tax laws

Tax laws are required to be strictly construed.

In a taxing statute, one has to look at what is clearly said. There is no equity about a tax. There is no intentment. There is no presumption as to tax. Nothing is to be read in, nothing to be implied.

See case law under 'Interpretation of tax laws'.

### 5.3 Penal statute to be strictly construed

In *CCE v. Orient Fabrics* 2003 (158) ELT 545 (SC 3 member bench), it was observed, 'Expropriatory legislation must be strictly construed. It is further trite that a penal statute must receive strict construction'. - Strict construction is the general rule of penal statutes. - *Bijay Kumar Agarwala v. State of Orissa* - 1996 (5) SCALE 530 \* *Govind Impex v. Appropriate Authority, Income Tax Deptt* (2011) 1 SCC 529 = 330 ITR 10 (SC) \* *State of Punjab v. Gurmit Singh* (2014) 9 SCC 632.

If two possible constructions can be put upon a penal provision, the court must lean towards that construction which exempts the subject from the penalty rather than the one which imposes penalty - *Tolaram Relumal v. State of Bombay* - AIR 1954 SC 496 = 1954(1) SCR 158 (SC Constitution Bench) - quoted with approval in *Virtual Soft Systems v. CIT* (2007) 9 SCC 665 = 159 Taxman 155 = 289 ITR 83 (SC) \* *Abhiram Singh v. C D Commachen* (2017) 2 SCC 629 (SC 7 member bench - majority decision) \* *Excel Crop Care Ltd. v. CCI* (2017) 8 SCC 47 = 141 SCL 480 = 81 taxmann.com 173 (SC).

In *Sanjay Dutt v. State* - 1994(5)SCC 402 (5 member bench), it was observed that those not covered by express language of the penal statute should not be roped in by stretching the language of the law.

In *Isher Das v. State of Punjab* AIR 1972 SC 1295 = 1972 CrLJ 874 (SC), it was observed that if there is reasonable doubt or ambiguity, the principle to be applied in construing a penal act is that such doubt or ambiguity should be resolved in favour of the person who would be liable to the penalty' - same view in *Asstt Commissioner v. Velliappa Textiles* (2003) 132 Taxman 165 = 157 ELT 369 = 2003 AIR SCW 5647 = 263 ITR 550 = 46 SCL 808 (SC 2 v 1 order) \* *Krishi Utpadan Mandi Samitiv. Pilibhit Pantnagar Beej* 2003 AIR SCW 6696 (SC 3 member bench).

Penal statutes should be strictly construed - *Sakshi v. UOI* 2004 AIR SCW 3449 \* *Rahul Builders v. Arihant Fertilizers* (2007) 80 SCL 277 (SC) \* *Raj Kumar Khurana v. State (NCD of Delhi)* (2009) 6 SCC 72 = 92 SCL 370 (SC).

Where a statute is penal in character, it must be strictly construed and followed - *India Agencies v. ACCT* (2005) 139 STC 329 (SC 3 member bench).

In *Swedish Match AB v. SEBI* (2004) 11 SCC 641 = 54 SCL 549 = AIR 2004 SC 4219 = 2004 AIR SCW 4853 (SC 3 member bench), it was observed that penal statute is required to be strictly construed. Failure to comply with a

statute may attract penalty, but only because a statute attracts penalty for failure to comply with statutory provisions, the same in all situations would not all for a strict construction. In this case, as per strict interpretation, penalty was called for. However, there were differences in interpretation of SEBI regulations. Hence, SC exercised its jurisdiction under Article 142 and asked SEBI not to proceed with adjudication in the matter.

### **5.3-1 Principle that penal statute should be strictly construed is not of universal application**

In *Lalita Jalan v. Bombay Gas Co. Ltd.* (2003) 6 SCC 107 = 44 SCL 130 = 2003 AIR SCW 2175 = 2003 CLC 531 (SC 3 member bench), it was observed, 'The principle that a statute enacting an offence or imposing a penalty is strictly construed is not of universal application which must necessarily be observed in every case. Penal statute should be construed in a manner which will suppress mischief and advance the object which the Legislature had in view - quoted with approval in *Iqbal Singh Marwah v. Meenakshi Marwah* AIR 2005 SC 2119 (SC 5 member Bench).

In *M Narayanan Nambiar v. State of Kerala* AIR 1963 SC 1116 = (1963) 2 (Supp) SCR 724, it was observed, "No doubt all penal Statutes are to be construed strictly, that is to say, the Court must see that the thing charged as an offence is within the plain meaning of the words used, and must not strain the word. . . . But where the thing is brought within the words and spirit (of statute), then a penal enactment is to be construed, like any other instrument, according to the fair common sense meaning of the language used, and Court is not to find or make any doubt or ambiguity in the language of a penal statute, where such doubt or ambiguity would clearly not to be found or made in the same language in any other instrument'. - quoted with approval in *Suman Sethi v. Ajay K Churiwal* 2000 AIR SCW 383.

Even in relation to penal statute any narrow and pedantic, literal and lexical construction may not always be given effect to. The law would have to be interpreted having regard to the subject matter of the offence and the object of the law it seeks to achieve. The purpose of the law is not to allow the offender to sneak out of meshes of law. Criminal Jurisprudence does not say so. - *Indian Handicrafts Emporium v. UOI* 2003 AIR SCW 4617 = AIR 2003 SC 3240 = (2003) 7 SCC 589 (SC 3 member bench).

Rule of strict construction of a regulatory/penal statute may not be adhered to, if thereby the plain intention of the Parliament to combat crimes of special nature would be defeated. - *Balram Kumawat v. UOI* 2003 AIR SCW 4658 = 134 STC 626 = AIR 2003 SC 3268 = 2003(7) SCC 628 (SC 3 member bench) \* *Jyoti Harshad Mehta (Mrs.) v. Custodian* (2009) 10 SCC 564.

Even in penal statutes, provisions can be interpreted broadly.

In *Baladev Krishna Sahiv. Shipping Corporation of India* AIR 1987 SC 2245, it was observed - 'Provisions of section 630 (of Companies Act, 1956) are penal, but have been purposely enacted to provide summary procedure for returning company's property. Hence, these should be interpreted broadly and liberally - quoted with approval in *Petlas Bulakhidas Mills Co. Ltd. v. State of Gujarat* (1998) 31 CLA 45 (Guj DB).

In *NEPC Micon Ltd. v. Magma Leasing Ltd.* 96 Comp Cas 822 = AIR 1999 SC 1952 = 1999 AIR SCW 1637 = (1999) 4 SCC 253, it was held that even with regard to penal provision, any interpretation which withdraws life and blood of the provision and makes it ineffective and a dead letter should be averted. - . - Even if statute is penal, it is the duty of Court to interpret it consistent with the legislative intent and purpose so as to suppress mischief and advance the remedy. (i.e. in such cases, strict interpretation is not essential and interpretation which advances the remedy should be adopted) - similar view in *Ankush Shivaji Gaikwad v. State of Maharashtra* (2013) 6 SCC 770 \* *Badshah v. Urmila Badshah Godse* (2014) 1 SCC 188.

In *State of Madhya Pradesh v. Shri Ram Singh* AIR 2000 SC 575 = 2000 AIR SCW 454, it was observed that Prevention of Corruption Act is a social legislation defined to curb illegal activities of public servants and is designed to be liberally construed so as to advance its object. - . - Procedural delays and technicalities of law should not be permitted to defeat the object sought to be achieved by the Act.

#### **5.4 Liberal construction in case of beneficial legislation**

A legislation which is enacted to protect public interest (in this case - Consumer Protection Act) cannot be construed in narrow manner so as to frustrate its objective. . . . The Consumer Protection Act is a social benefit legislation. . . . It should be construed in favour of customer - *Lucknow Development Authority v. MK Gupta* (1994) 1 SCC 243 = 1994 AIR SCW 97 = AIR 1994 SC 787 = 80 Comp Cas 714.

Consumer Protection Act is a beneficial legislation to protect interest of consumers. It deserves liberal interpretation - *Om Prakash v. Reliance General Insurance* (2017) 9 SCC 724.

In *Smt. Shashi Gupta v. LIC* AIR 1995 SC 1367, it was held that while interpreting the terms of insurance policies, courts will accept the one which favours the policy holders - quoted with approval in *LIC v. Shri Raj Kumar Rajgarhia* 1999(1) SCALE 599.

Remedial statutes like welfare, beneficent or social justice oriented legislation should always receive a liberal construction - *Allahabad Bank v. All India Allahabad Bank Retired Employees Association* (2010) 2 SCC 44 =

2010 LLR 193 (SC) \* *Badshah v. Urmila Badshah Godse* (2014) 1 SCC 188 \* *Richa Mishra v. State of Chhattisgarh* (2016) 4 SCC 179.

A welfare or beneficial legislation should be liberally construed - *Kerala Fisherman's Welfare Board v. Fancy Food* - AIR 1995 SC 1620 = (1995) 4 SCC 341 \* *Colour Chem v. Alaspurkar* AIR 1998 SC 948.

A welfare legislation, especially involving labour, should be literally construed in favour of the weak - *Workmen of Binny Ltd. v. Management of Binny Ltd.* (1985) 4 SCC 325 = AIR 1986 SC 509 (SC 3 member bench) \* *KCP Employees Assn. v. Management* 1978- II MLJ 11 = 1978 Lab IC 518 (SC) \* *GPant University v. State of Uttar Pradesh* 2000 AIR SCW 2870 = AIR 2000 SC 2695 \* *M C Chamaraju v. Hind Nippon Rural Industrial P Ltd.* 2007 LLR 1129 (SC) \* *Oriental Insurance Co. v. Mohd. Nasir* 2009 LLR 817 (SC) *Maharashtra State Cooperative Bank Ltd. v. APFC* (2009) 10 SCC 123 (SC 3 member bench) \* *Lanco Anpara Power v. State of UP* (2016) 10 SCC 329.

Contract Labour Regulation Act being a beneficial piece of legislation ought to receive the widest possible interpretation in regard to the words used. - . . . - Law courts exist for the society and in the event of there being a question posed in the matter of interpretation of beneficial legislation, question of interpreting the same with a narrow pedantic approach would not be justified.. - *Secretary v. Suresh* 1999(3) SCC 601 = 1999 AIR SCW 1160 = AIR 1999 SC 1160.

Construction which fructifies a welfare measure has to be preferred as compared to another construction which stultifies a benevolent welfare measure - *Indian Bank v. K Usha* 1998 AIR SCW 619 = AIR 1998 SC 866 - similar views in *Shivaji Dayanu Patil v. Vatschala Uttam More* (1991) 3 SCC 530 = 1991 AIR SCW 1867 = AIR 1991 SC 1769 \* *Rita Devi v. New India Assurance Co.* 2000 AIR SCW 1579. \* *SEBI v. Ajay Agarwal* (2010) 3 SCC 765 = 98 SCL 424 = 155 Comp Cas 1 (SC).

In *Madan Singh v. UOI* 1999 AIR SCW 3342, it was observed - 'It is duty of court to interpret a provision, especially a beneficial provision, liberally so as to give a wider meaning rather than a restrictive meaning which would negate the very object of the rule'.

A welfare legislation (like ESIC) should be liberally construed so as to promote its objects - *Cochin Shipping Co. v. ESIC* - AIR 1993 SC 252 = (1992) 4 SCC 245 \* *Delhi Gymkhana Club Ltd. v. ESIC* (2015) 1 SCC 142 \* *Royal Western India Turf Club v. ESIC* (2016) 4 SCC 521.

Provident Fund Act is a beneficial social welfare legislation to ensure benefits to the employees. These statutes are normally called remedial statutes or social welfare legislation. The normal canon of interpretation is that a remedial statute receives liberal construction whereas a penal

statute calls for strict interpretation - *RPFC v. Hoogly Mills Company Ltd.* (2012) 2 SCC 489.

In *Bombay Anand Bhavan Restaurant v. ESIC* (2009) 9 SCC 61 = 2009 LLR 1169, it was observed that ESI Act is a social welfare legislation. It is beneficial legislation. Court must even, if necessary, strain the language of Act in order to achieve the purpose. The Act must receive a liberal construction so as to promote its objects - quoted with approval in *Bangalore Turf Club v. Regional Director, ESIC* (2014) 9 SCC 657 [SC 3 member bench] \* *Delhi Gymkhana Club Ltd. v. ESIC* (2015) 1 SCC 142.

Same view has been held in respect of EPF Act in *EPFC v. Official Liquidator of Esskay Pharmaceuticals* (2011) 110 SCL 520 = 15 taxmann.com 140 = 10 SCC 727 (SC).

In *Workmen v. American Express International* - (1985) 4 SCC 1, it was observed that words occurring in Statutes of welfare legislation and human rights legislation should be liberally construed. Literal construction should be avoided - same view in *Hindustan Lever Ltd. v. Ashok Vishnu Kunte* - (1995) 6 SCC 326 = AIR 1996 SC 285 = 1996 ILLJ 899 \* *Lanco Anpara Power v. State of UP* (2016) 10 SCC 329.

In *UOI v. Pradeep Kumari* - (1995) 2 SCC 736 (3 member), it was observed : 'It is well settled that in beneficial legislation, Court should adopt that construction which advances the policy of legislature to extend the benefit rather than a construction which has effect of curtailing it.'

In *Broach Dist Coop Society v. CIT* - (1989) 177 ITR 418 = 44 Taxman 439 = AIR 1989 SC 1493, it was observed that exemption clause to encourage cooperative societies should be liberally construed.

In *Indian Drugs & Pharmaceuticals Ltd. v. ESIC* 1997(9) SCC 71 = 1997 LLR 1 (SC), it was held that while interpreting a beneficial legislation (like ESIC), any ambiguity in expression will receive beneficial construction at the hands of Court. In *Mrs. Helen C Rebello v. Maharashtra State Road Transport Corpn.* 1998(5) SCALE 339, it was held that in case of beneficial legislation (Fatal Accidents Act in this case), whenever there are two possible interpretations, the one which subserves the object of legislation (viz. benefit of the subject) should be accepted. - same view in *Transport Corporation of India v. ESIC* 1999 AIR SCW 4340 = AIR 2000 SC 238 (SC 3 member bench) in matter of ESIC. [*Unfortunately, Supreme Court is not aware that ESIC is not a beneficial but a tyrannical legislation*].

In *Hindustan Steel Works Construction Co. v. Limestone and Dolomite Mines Welfare and Cess Commissioner* - 1996 (6) SCALE 130, it was held that provision imposing cess for welfare of labour has to be widely construed, as otherwise purpose of legislation would be defeated.

In *Bhavnagar University v. Palitana Sugar Mills* 2002 AIR SCW 4939 = AIR 2003 SC 511 = (2003) 2 SCC 111 (SC 3 member bench), it was observed, 'It is well settled that a beneficial provision of legislation must be liberally construed so as to fulfil the statutory purpose and not to frustrate it' - same view in *Edukanti Kistamma v. S Venkatarreddy* (2010) 1 SCC 756.

A beneficial statute, as is well known, must receive a liberal interpretation - *National Insurance Co. Ltd. v. Swaran Singh* 2004 AIR SCW 663 = AIR 2004 SC 1531 = (2004) 3 SCC 257 (SC 3 member bench) [The matter was regarding third party liability in case of insurance claim. In this case, it was held that 'duly licensed' does not mean 'effective license'].

In *State of Andhra Pradesh v. Vatsavayi Kumara Venkata* 1999(1) SCALE 79, it was held that a beneficial legislation like Land Ceiling Act, enacted with a view to achieve more equitable distribution of land for common good should be interpreted so as to further the object of the legislation and not defeat the same.

#### 5.4-1 Liberal view in provisions for development and growth

Provision in the statute granting incentives for promoting growth and development should be construed liberally, so that real object of such encouragement is not frustrated - *Bajaj Tempo Ltd. v. CIT* 196 ITR 188 = AIR 1992 SC 1622 = (1992) 3 SCC 78 = (1992) 62 Taxman 480 (SC) = 1992 AIR SCW 1782 \* *CIT v. Strawboard Mfg. Co. Ltd.* - AIR 1989 SC 1490 = 1989 Supp (2) SCC 523 = 44 Taxman 189 = 177 ITR 431 (SC). \* *CST v. Industrial Coal Enterprises* 1999 AIR SCW 1020 = 114 STC 365 = (1999) 2 SCC 607 = AIR 1999 SC 1324 \* *CIT v. South Arcot District Coop. Society* - AIR 1990 SC 1249 = 43 Taxman 328 = (1989) 176 ITR 117 (SC) \* *Commissioner, Trade Tax v. DSM Group of Industries* AIR 2005 SC 271 = (2005) 1 SCC 657 = 139 STC 269 = 2004 AIR SCW 6771 \* *Vadilal Chemicals v. State of Andhra Pradesh* AIR 2005 SC 3073 = (2005) 6 SCC 292 = 142 STC 76 (SC) \* *State of Jharkhand v. Tata Cummins Ltd.* (2006) 4 SCC 57 = 145 STC 340 (SC) \* *State of Orissa v. Tata Sponge Iron* (2007) 8 SCC 189 = 9 VST 415 (SC) \* *CIT v. Baby Marine Exports* (2007) 211 ELT 12 (SC) \* *CIT v. First Leasing Co. of India* - (1995) 216 ITR 455 (Mad HC) \* *CTO v. Anadi Nath Halder* - (1994) 93 STC 516 (Cal HC DB) \* *ACCT LTU v. Amara Raja Batteries Ltd.* (2009) 8 SCC 209 = 24 VST 537 (SC) \* *Tamil Nadu Electricity Board v. Status Spinning Mills* (2008) 7 SCC 353 \* *Tamil Nadu Electricity Board v. Status Spinning Mills* (2008) 7 SCC 353 = AIR 2008 SC 2838 \* *CCE v. Favourite Industries* (2012) 278 ELT 145 (SC) \* *CC v. Konkan Synthetic Fibres* (2012) 6 SCC 339 = 278 ELT 37 (SC) \* *State of Haryana v. Bharti Teletech Ltd.* (2014) 3 SCC 556 = 45 GST 283 = 45 taxmann.com 7 = 68 VST 1 (SC 3 member bench) \* *DCIT v. Ace Multi Axes Systems* (2018) 2 SCC 158.

In *Gujarat Industrial Development Corporation v. CIT* 227 ITR 214 = 1997 AIR SCW 3336 = AIR 1997 SC 3275 = 94 Taxman 64, it was observed that when object is of development, an interpretation which would preserve the object should be accepted even if the provision is capable of more than one interpretation. This principle of interpretation is very much applicable to fiscal statutes also.

However, though provision relating to incentives for export has to be given a liberal interpretation, the interpretation has to be as per wording of the section. If the wordings of the section are clear, then benefits cannot be conferred by ignoring or misinterpreting words of the section - *A M Moosa v. CIT* (2007) 163 Taxman 741 (SC).

#### **5.4-2 Broad view in socio-economic legislation**

Legislation having socio-economic perspective ought to be interpreted with widest possible connotation, as otherwise, the intension of legislature would stand frustrated - *Velamuri Venkata Sivaprasad v. Kothari Venkateswarlu* 1999(7) SCALE 224 = JT 1999(9) SC 242 (SC 3 member bench) - In this case, the issue was regarding Hindu Widow's Re-marriage Act.

#### **5.4-3 Inapplicability of rule of benevolent or liberal construction**

Rule of benevolent construction will not apply (a) When Court finds that by application of rule of benevolent construction, it would be re-legislating a provision of Statute by substituting, adding or altering the words in Statute (b) When word used in Statute is capable of only one meaning. (However, if word is capable of more than one meaning, benevolent construction can apply) (c) If the provision of statute is plain, unambiguous and does not give rise to any doubt. - *Shyam Sundar v. Ram Kumar* 2001 AIR SCW 2768 = AIR 2001 SC 2472 = (2001) 8 SCC 24 (SC 5 member bench) - quoted with approval in *UOI v. Tata Chemicals* (2014) 6 SCC 335.

Even a beneficial legislation cannot be given retrospective operation, unless specific retrospective effect has been given or there is ambiguity - *Shyam Sundar v. Ram Kumar* 2001 AIR SCW 2768 = (2001) 8 SCC 24 = AIR 2001 SC 2472 (SC 5 member bench).

A beneficial statute may have to be construed liberally but where a statute does not admit of more than one interpretation, literal interpretation must be resorted to - *CCE v. Saurashtra Chemicals* (2007) 8 STT 433 = 212 ELT 7 (SC).

Concept of liberal interpretation of beneficial legislation applies only when two views are possible - *Manipal Academy of Higher Education vs. Provident Fund Commissioner* 2008 LLR 443 (SC) = AIR 2008 SC 1951.

#### 5.4-4 Liberal interpretation should not be carried too far and not beyond statutory scheme

In *CIT v. N.C. Budharaja & Co.* - (1993) 204 ITR 412 (SC) - (1993) 91 STC 448 (SC) = 1993 AIR SCW 2529 = AIR 1993 SC 2529 = 1994 Supp(1) SCC 280 = 70 Taxman 312, it was observed that liberal construction cannot be carried to the extent of doing violation to plain and simple language used in the Act - quoted with approval in *K N Farms Industries v. State of Bihar* AIR 2009 SC 3031.

In *RD, ESIC v. Ramanuja Match Industries* 1998(6) SCALE 38, it was observed - 'We do not doubt that beneficial legislations should have liberal construction with a view to implementing the legislative intent but where such beneficial legislation has a scheme of its own, there is no warrant for the Court to travel beyond the scheme and extend the scope of the statute on the pretext of extending the statutory benefit to those who are not covered by the scheme' - quoted with approval in *UOI v. Nitdip Textile Processors P Ltd.* (2011) 203 Taxman 1 = 15 taxmann.com 59 = 273 ELT 321 (SC) = (2012) 1 SCC 226 (while deciding issue relating to *Kar Vivad Samadhan Scheme - Tax Litigation Settlement Scheme*).

The principle that a beneficial legislation need to be construed liberally in favour of the class for whose benefit it is intended, does not extend to reading provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the legislature - - Principles of interpretation of public law and private law are same. - *Steel Authority of India Ltd. (SAIL) v. National Union Water Front Workers* (2001) 7 SCC 1 = AIR 2001 SC 3527 = 2001 AIR SCW 3574 (SC 5 member Bench).

A beneficial statute may receive liberal construction but the same cannot be extended beyond the statutory scheme - *Maruti Udyog Ltd. v. Ram Lal* AIR 2005 SC 851 = (2005) 2 SCC 638 - relying on *Deepal Girishbhai Soni v. United Insurance Co. Ltd.* (2004) 5 SCC 385 = AIR 2004 SC 2107 = 2004 AIR SCW 1864 \* *CCE v. Saurashtra Chemicals* (2007) 8 STT 433 (SC).

#### 5.5 Distinction between strict and liberal view is reducing

The modern view is that the distinction between strict view for taxation statutes and liberal view for welfare statutes is not much relevant.

In *Babua Ram v. State of UP* (1995) 2 SCC 689 it was observed : 'Strict and liberal construction is a means by which statute is expanded or restricted in order to convey legislative intent. It would make no difference whether Statute involved is penal, criminal, remedial or in derogation of any rights. Strict or liberal construction should be used as a tool in the process of

ascertaining legislative intent when in doubt. Otherwise, they have little or no value’.

In *Standard Chartered Bank v. Directorate of Enforcement* (2005) 4 SCC 530 = 145 Taxman 154 = 275 ITR 81 = 60 SCL 217 = 125 Comp Cas 513 = AIR 2005 SC 2622 (SC 5 member bench majority decision), it was observed, ‘The distinction between a strict and liberal construction has almost disappeared with regard to all cases of statutes, so that all statutes, whether penal or not, are now construed by substantially the same rules. All modern Acts are framed with regard to equitable as well as legal principles. They are construed now with reference to the true meaning and real intention of the Legislature’.

In *Keshavji Ravji v. CIT* 49 Taxman 87 (SC) = AIR 1991 SC 1806 = 183 ITR 1 = (1990) 2 SCC 231 = 1991 AIR SCW 1845 also, it was observed that even in taxing statute, aim is to give effect to intention of legislature. . . . When strict literal construction leads to a result not intended by Parliament, another construction - permissible in the context - should be adopted.’ - quoted with approval in *State of Kerala v. A P Mammikutty* (2015) 82 VST 418 (SC) - similar views in *Macquarie Bank Ltd. v. Shilpi Cable Technologies Ltd.* [2017] 88 taxmann.com 180 (SC)

In *CIT v. JH Gotla*- AIR 1985 SC 1698 = (1985) 4 SCC 343 = 156 ITR 323 (SC) = 23 Taxman 14J (SC), it was observed : ‘Though tax and equity are often strangers, attempts should be made that these do not remain always so . . . . Even in taxation statute, if there are two constructions, one resulting in equity rather than in injustice, that construction should be preferred to literal construction’

In *CTO v. Emkay Investments (P.) Ltd.* AIR 1996 SC 1622 = (1996) 101 STC 455 (SC), West Bengal Government had announced certain incentives to new industries. One of the conditions was that such unit should not use trade mark or the brand name of any product of an existing industrial unit. Literal construction would mean that if a manufacturer uses brand name or trade mark of an existing unit even in respect of a small portion of its production, the manufacturer would be totally deprived of the benefit of said exemption. Hence, having regard to object and purpose underlying the said rule, it was held that the manufacturer would not be entitled to benefit of exemption in respect of goods for which the trade mark or brand name of existing unit is used, but he will be entitled to claim benefit of exemption in respect of other products for which such brand name is not used.

**Strict and liberal construction in procedural notification-** Procedures are broadly classified as mandatory and directory. Present judicial thinking is that procedural lapses should not be viewed seriously and a substantive benefit should not be taken away for technical lapses. See discussions later in another chapter.

### 5.6 Interpretation favouring revenue in case of exemption or exception

Burden to prove tax exemption under a notification is on assessee. Exemption notification must be construed strictly. If there is any ambiguity in exemption notification, benefit of such ambiguity cannot be claimed by assessee. It must be interpreted in favour of revenue - *CC v. Dilip Kumar & Co.* (2018) 9 SCC 1 = 95 taxmann.com 327 = 69 GST 239 = 361 ELT 577 (SC 5 member Constitution Bench).

In *Novopan India Ltd. Hyderabad v. CCE* 73 ELT 769 (SC) = 1994 AIR SCW 3976 = (1994) Supp (3) SCC 606 (three member bench decision of SC), it was held that if there is any ambiguity or doubt regarding an exception or exempting provision in a fiscal statute, the ambiguity or doubt will be resolved in favour of revenue and not in favour of assessee. This is on the principle that each such exception/exemption increases burden on other members of the community - . - followed in *Liberty Oil Mills (P.) Ltd. v. CCE* 1995 (75) ELT 13 (SC) = 1995 (6) RLT 121 (SC) = (1995) 1 SCC 451 \* *State Level Committee v. Morgard Shammar India Ltd.* - AIR 1996 SC 524 = 1995 AIR SCW 4427 = (1996) 1 SCC 108 = (1996) 101 STC 1 (SC) \* *Ecomax Agro Systems Ltd. v. CC* 1995 (77) ELT 688 (CEGAT) \* *CC v. Perfect Machine Tools* (1998) 9 SCC 418 = 1997(96) ELT 214 (SC) \* - *Tata Iron and Steel Co. v. State of Jharkhand* (2005) 4 SCC 272 = AIR 2005 SC 2871 = 140 STC 284 (SC).

**Contrary views** - In some cases like \* *CIT, Punjab v. Kulu Valley Transport Co. (P.) Ltd.* - AIR 1970 SC 1734 = (1970) 77 ITR 518 \* *CIT v. Gwalior Rayon Silk Mfg Co.* - (1992) 62 Taxman 471 = 196 ITR 149 (SC), view was expressed that provision for deduction, exemption or relief should be construed reasonably and in favour of assessee.

In *Sun Export Corporation v. CC* 93 ELT 641 = 1998 AIR SCW 2621 = 111 STC 69 = AIR 1997 SC 2658 (SC 3 member bench), in interpretation of exemption notification, it was observed that when two views are possible, one favourable to assessee in matters of taxation has to be preferred. - same view in *CCE v. Usha Martin Industries* 111 STC 254 = 1997 AIR SCW 3795 = 94 ELT 460 = (1997) 7 SCC 47 = 22 RLT 221 = AIR 1997 SC 3871 (SC 3 member), while interpreting an exemption notification. - also in *STP Ltd. v. CCE* 1998(97) ELT 16 (SC) = AIR 1998 SC 407 = 1997 AIR SCW 4396 (SC 2 member bench). [Now these decisions stand overruled in view of judgment of 5 member Constitution Bench].

### 5.7 Illustrations of liberal and strict constructions

In *Royal Hatcheries v. State of Andhra Pradesh*- (1994) 92 STC 239 (SC) = 53 ECR 200 = AIR 1994 SC 666 = (1994) Supp 1 SCC 429, it has been held that 'one day old chicks' are not 'domestic animals' for Sales Tax purposes

as the illustrations given in the relevant provision for 'domestic animals' were oxen, bulls, cows, buffaloes, goats, sheep etc.

However, in another case, - *Bridge v. Parsons* - (1863) 32 LJMC 95, a British Court had held that cock can be considered as 'domestic animal' for purposes of 'Protection to Animals from Cruelty'. It is clear that for sales tax purposes, strict interpretation is preferred, while for prevention of cruelty to animals, liberal interpretation is preferred.

Hospital was not treated as 'industry' by Supreme Court for purpose of Customs Act - *MS Company (P.) Ltd. v. UOI* - 1985 (19) ELT 15 (SC). However, in *Bangalore Water Supply and Sewage Board v. R Rajjappa* - (1978) 3 SCR 207 = 52 FJR 197 = (1978) 2 SCC 213 = AIR 1978 SC 548, hospital was considered as 'Industry' for purposes of Industrial Disputes Act. ID Act is a benevolent legislation for benefit of workmen and liberal definition was preferred (apart from the fact that definition of 'Industry' in Industrial Disputes Act is very broad and wide).