



# AIFTP TIMES

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Editor-in-Chief, National President,  
Members of the National Executive Committee and Journal Committee

Wish all our members and readers

## A Happy and Prosperous New Year



### Message from Editor-in-Chief

**NANI A. PALKHIVALA**  
(16-1-1920 to 11-12-2002)

#### **A tribute to a legend – Gem of a tax professional National Tax Moot Court Competition**

- Former Prime Minister Shri Atal Bihari Vajpayee, on the occasion of release of commemorative postage stamp on 16th January, 2004, at Mumbai, organised by the Federation and other organisations, stated that "In those dark days (the period of emergency) the battle for democracy was fought by many people in different ways. Many of us in the politics under the leadership of Shri Jaya Prakash Narayan fought in prison. But I have no doubt that one of the finest battles was fought in the court rooms and that fighter was Shri Nani Palkhivala". Shri N. A. Palkhivala made a huge contribution to the development of tax and constitutional law.
- The life of Shri Nani Palkhivala was as wide and deep as an infinite ocean & all can dip into the same and take out precious gems (of knowledge) and distribute them. We salute this legendary figure who inspired the formation of the Federation in 1976.
- As a tribute and in remembrance of the legend the All India Federation of Tax Practitioners in association with ITAT Bar Association and Government Law College, Mumbai initiated the first Tax Moot Court Competition in the country in the year 2004. When the proposal of holding National Tax Moot Court Competition was put before Mrs. Parimala Rao, the Principal, Government Law College, Mumbai, we assured her that at least for five years we will honour the commitment of holding National Tax Moot Court Competition in memory of Shri Nani Palkhivala. We are happy to say that with the co-operation of the Hon'ble Judges of the Bombay High Court, the Hon'ble Members of the ITAT and tax professionals, we have honoured our commitment.

#### **FOR QUERIES PLEASE CONTACT ANY OF THE FOLLOWING OFFICE BEARERS**

Name	Tel. (O)	Fax	Mobile	E-mail
<b>National President</b> — Bharatji Agrawal, Sr. Adv.	0532-2260576/77	2601389	9415235429	bharatjiagrawal@yahoo.co.in
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4. One of the objects of Nani Palkhivala National Tax Moot Court Competition is to bring awareness amongst law students about the values and ethics practised by Shri N. A. Palkhivala and to encourage young law students to pursue tax litigation practice, before the Courts and Tribunals and help India develop a Tax Bar of International Standards. Prior to the competition, we observed that many law students visited our library and extensively used "R. J. KOLAH International Law Tax Library". We are, therefore, sure that to some extent we might have kindled some interest in tax laws in the young minds.
5. We are happy to note that the Palkhivala Memorial Tax Research Paper, which was started in the year 2004, is gaining importance year after year. We are pleased to state that last year's best research paper was published in the Asia-Pacific Tax Bulletin, Journal of IBFD (International Bureau of Fiscal Documentation), Amsterdam, Netherlands.
6. We are considering the proposal of one year 'Tax Diploma Course' in association with Government Law College, Mumbai for the Law Students, fresh law graduates and Chartered Accountants. We are of the considered view that, this course will create interest in the ethical practice of tax laws and encourage many young lawyers to pursue the tax litigation practice as a career.
7. This year's final moot court competition was witnessed by the National Executive Committee of the Federation. After witnessing the performance of the law students, Shri Bharatji Agrawal, National President, AIFTP desired that such Tax Moot Court Competition may be organised in other zones also in addition to the annual National Tax Moot Court Competition held at Mumbai. The National Executive Committee of the federation at their meeting at Kolkata on 13th December, 2008 has
8. The cost of organising this year National Tax Moot Court Competition at Mumbai is of Rs. 10,11,000/-. At the inaugural session and at the valedictory session, the Hon'ble Judges and many members desired that as a tribute and remembrance to Shri Nani A. Palkhivala, we should continue the National Tax Moot Court Competition at Mumbai every year for benefit of the law students and development of the Tax Bar. We have made an appeal to the members that if we are able to get the support from 60 professionals, whom we can consider the 'Patron members' of Palkhivala Memorial National Tax Moot Court Competition and **if they volunteer to contribute additional subscription of Rs. 25,000/- each, for five years, we shall be able to organise the National Tax Moot Court Competition for another five years, which can be reviewed thereafter.**
9. We are happy to state that, some of our members have already volunteered to contribute for this noble cause. We take this opportunity to appeal to our members that if any of our member having desires to be associated with Palkhivala Memorial National Tax Moot Court Competition as Patron member, please inform the office of the Federation. We are sure, with the co-operation and active support from the members of the Federation & ITAT Bar Association, we can continue the above programme for another five years.



**Dr. K. Shivaram**  
Editor-in-Chief &

Chairman, Palkhivala Foundation and Research Committee, AIFTP

### APPEAL TO MEMBERS

Dear Members,

The journal has become monthly from January, 2002. We desire that the journal should become self-sufficient. Hence, we request you to send us advertisements for the journal. The rates of advertisement are as under:

- |  |             |
|--|-------------|
| 1. Quarter Page  | Rs. 600/-   |
| 2. Ordinary Half Page  | Rs. 1,000/- |
| 3. Ordinary Full Page  | Rs. 2,000/- |
| 4. Second and Third Cover Page                               | Rs. 2,500/- |
| 5. Fourth Cover Page –<br>Three fourth page (in four colour) | Rs. 3,500/- |

**MUKUL GUPTA**  
Secretary General

### Membership of AIFTP as on 10-12-2008

#### Life Members

	Associate	Individual	Association	Corporate	Total
Central	—	589	20	0	609
Eastern	—	715	32	0	747
Northern	—	637	16	0	653
Southern	—	624	13	1	638
Western	03	1434	31	8	1476
<b>Total</b>	<b>03</b>	<b>3999</b>	<b>112</b>	<b>9</b>	<b>4123</b>

# FEDERATION NEWS

Mukul Gupta, Secretary General

## FORTHCOMING PROGRAMMES

Dates & Months	Programmes
10th January, 2009	Regional Tax Conference at Indore organised by Tax Practitioners Association jointly with CTPA, Indore, Indore Branch of ICAI & AIFTP (CZ)
6th March, 2009	National Executive Committee Meeting at Varanasi
7th & 8th March, 2009	National Tax Conference at Varanasi organised by All India Federation of Tax Practitioners (Northern Zone)
19th, 20th & 21st November, 2009	AOTCA International Tax Conference, 2009 at Mumbai.

## REGIONAL TAX CONFERENCE

*Hosted by :* Tax Practitioners Association, Indore  
*Associated By :* CTPA, Indore; Indore Branch of ICAI & AIFTP(CZ)

**10th January 2009, Saturday at Jall Auditorium, South Tukoganj, Indore**

- 09.30 am to 10.00 am : Registration & fellowship
- 10.00 am to 10.30 am : **Inaugural Session** : *Chief Guest* : Consent awaited  
*Special Guest* : Shri N.M. Ranka, Sr. Advocate, Jaipur
- 10.30 am to 12.15 noon : **First Technical Session** : *Chairman* : Shri Suresh Goyal, Sr. Advocate, Ujjain  
**Provisions of Survey Under I.T. Act** – CA. Sanjay Jhanwar, Jaipur  
**Provisions of Search Under VAT Act** – CA. Pradeep Chaudhary, Indore
- 12.15 pm to 01.00 pm : **VAT Audit by Commercial Tax Department** – CA. P.D.Nagar, Indore
- 01.00 pm to 01.30 pm : Lunch Break
- 01:30 pm to 02:30 pm : **Second Technical Session** :  
*Chairman* : CA. Manoj Fadnis, Central Council Member, ICAI, New Delhi  
**Problematic issues in Works Contract Under VAT Act** :  
– Shri Bharatji Agrawal, Sr. Advocate Allahabad
- 02.30 pm to 02.45 pm : Tea Break
- 02:45 pm to 04:30 pm : **Third Technical Session** : *Chairman* : Consent awaited  
**Ten Important Points from Filing of I.Tax Return upto Completion of Assessment** – Shri N.M.Ranka, Sr. Advocate, Jaipur  
**Capital Gains Transactions - Important Issues** – CA. Ashish Goyal, Indore
- 04:30 pm to 05:30 pm : **Brain storming session**  
(On practical problems faced by practitioners in day to day practice)  
**Brains trust** Panel includes : Shri N.M.Ranka, CA. D.J. Dave, CA. B.L.Bansal, CA. S.S. Deshpande and CA. P.D. Nagar.
- Registration Fees : Rs.400/- up to 5th January, 2009; Rs.450/- from 6th January, 2009

**For Registration Contact:**

CA M.D.Sodani Chairman AIFTP(CZ), 2, Ramkrishna Colony, Dewas Road, Ujjain (M.P.) Ph. 0734-2521909, Mo. 9425093888

## NATIONAL TAX CONFERENCE AT VARANASI

*Organised by*

**ALL INDIA FEDERATION OF TAX PRACTITIONERS (NORTHERN ZONE)**

on 7th & 8th March, 2009 at Shehnai, Ramada Plaza, The Mall Cantonment, Varanasi – 221 002

*For further details, please contact:*

Shri Anil Kumar Singh

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## SPEECH ON THE OCCASION OF FINALS OF 5TH NANI PALKHIVALA MEMORIAL NATIONAL TAX MOOT COURT COMPETITION

On 18-10-2008

by Bharat Ji Agrawal,

Senior Advocate, Allahabad High Court, Former Chairman U.P. Bar Council & National President, AIFTP

Hon'ble the Chief Guest, My Lord Hon'ble Mr. Justice Markandey Katju, Judge, Supreme Court of India, Hon'ble Dr. Justice S. Radhakrishnan, Hon'ble Mr. Justice V.C. Daga & Hon'ble Mr. Justice S.J. Kathawalla, Hon'ble Judges of the Mumbai High Court, Principal, Government Law College, Mumbai, Mrs. P.R. Rao, President, Dr. K. Shivaram, Chairman, Palkhivala Foundation & Research Committee, AIFTP, Mr. Dinesh Vyas, Vice President, ITAT Bar Association, Mumbai, Mr. Soli Dastur, President, ITAT Bar Association, Mumbai and the Office Bearers of the Income Tax Appellate Tribunal Bar Association, Mumbai, Respected Colleagues of AIFTP, Respected Members of the ITAT, ladies and gentlemen and young students.

I am extremely grateful to the Government Law College, Mumbai and the Income Tax Appellate Tribunal Bar Association for giving me this privilege to attend the prestigious 5th Nani Palkhivala Memorial National Tax Moot Court Competition which the Federation has the privilege to be associated with.

The objects of the National Tax Moot Court Competition has been to bring awareness amongst law students about the values and ethics practised by late Shri N.A. Palkhivala and to encourage the students to pursue tax litigation practice before the courts and Tribunals for developing the tax bar of great standard.

A strong bar is very essential for an independent and strong judiciary. The law education start in the colleges but the skill for profession have to be acquired by experience and learning with the senior members of the bar.

To acquire the values and ethics of the profession, it is necessary that the young lawyers must observe and try to follow the way the good lawyers are arguing before the court and how the proceedings of the court are being conducted, the person who has chosen law as a profession has to build a strong foundation.

For building strong foundation even for the practice of taxation, the National Tax Moot Court Competition plays an important role. It gives an opportunity to the students to acquire the knowledge and also the way of arguments before the courts or tribunals.

All India Federation of Tax Practitioners have always encouraged not only the young lawyers but also the students from different law colleges so that more and more students may join the tax profession as a career and they must join the tax bar instead of going for appointment in multinationals.

As Dr. K.Shivaram in his report submitted on 4th October 2007 has said that they have committed to the Principal of Mumbai Law College that they will help to organize the National Tax Moot Court Competition for five years and that

commitment has been completed today. But I wish that it should be continued in future also and the Federation shall try to have similar National Tax Moot Court Competitions in other parts of the country also, apart from it being a regular annual feature at Mumbai.

Recently Dr. Ram Manohar Lohia Law Institute, Lucknow has organized the National Moot Court Competition on subjects other than tax but for bringing the good and strong tax bar all over the country for emulating the principles of late Shri Nani Palkhivala, the Federation will make sincere efforts to involve more and more law students to join the tax bar, we shall be making efforts to have such National Tax Moot Courts in the name of tax stalwarts of the country in different zones of the Federation.

Today we are awarding the trophies in the memory of late Shri Raja Ram Agrawal, Senior Advocate and Former Advocate General of U.P. who was a great legal luminary of the State of U.P. and Northern India late Shri Raj Ram Agrawal took keen interest in the matters concerning members of the legal profession when he was elected Chairman of U.P. State Bar Council during his two tenures from 1970 to 1977.

Most of the important cases on the indirect and direct tax laws argued by him before the Supreme Court in which the then Attorney General Shri Soli J. Sorabjee has appeared on behalf of the Union of India and States concerned, who made a specific reference of few of those cases in the speech delivered by him in the full court reference of Hon'ble Supreme on 17-8-2000 which was held when Shri Agrawal left for his heavenly abode in June, 2000.

To commemorate his memory of such an great legal luminary on this 5th Nani Palkhivala National Tax Moot Court Competition the present trophy to the institutions and the students who have successfully participated in this competition, are being awarded.

Shri Agrawal made a notable contribution in the State of U.P. by getting the Group Insurance Scheme for all the advocates in the State of U.P. introduced during his Chairmanship of U.P. Bar Council. He has promoted large number of advocates who have successfully become a pillar of the tax bar in the High Courts.

Even I am whatever today I am because of him. His various juniors have adorned the bench of the Allahabad High Court. One of his sons Justice Rajesh Kumar Agrawal is one of the Senior Judges of Allahabad High Court.

With these words I express my gratitude to all the dignitaries on the dais, of the dais, my fellow colleagues and faculty and specially the teachers & Principal of Law College for giving me the privilege to express my thoughts.

Thank you,

## DIRECT TAXES

AJAY R. SINGH, PARAS S. SAVLA & RAHUL K. HAKANI  
Advocates, KSA Legal

### I. SUPREME COURT

#### 1. Balancing charges – S. 41(2)

Sec. 41(2) applies to a sale of depreciable assets. Section 41(2) brings to tax the balancing charge (difference between written down value and historical cost of depreciable asset) on sale. To attract sec. 41(2), the subject matter should be a depreciable asset and the consideration received should be capable of allocation between various assets. Sec. 41(2) and sec. 45 operates in different fields.

*PNB Finance Ltd. vs. CIT – I (2008) 175 Taxman 242 (SC)*

### II. HIGH COURTS

#### 2. Revision – S. 263

Where the order passed by the Assessing Officer has been subject matter of appeal the same merges with the order passed by the appellate authority and any revision of such order was not possible by the CIT u/s. 263.

*CIT Haryana vs. Surjit & Surinder Investment (P) Ltd. (2008) 37 IT Rep 605 (P & H)*

#### 3. Reassessment – S. 147

When the assessee, in course of original assessment proceedings had supplied all relevant details in respect of share application money and the A.O. had also specifically mentions that details as required had been filed and verified. It was held that there was no failure on part of assessee to disclose fully and truly all material facts necessary for assessment therefore reopening of assessment after expiry of 4 year from end of relevant A.Y. was without jurisdiction.

*Haryana Acrylic Manufacturing Co. vs. CIT (2008) 175 Taxman 262 (Del.)*

### III. TRIBUNALS

#### 4. Deemed Dividend – S. 2(22)(e)

u/s 2 (22) (e), deemed dividend can be assessed only in the hands of a person who is a “shareholder” of the lender

company. The expression “shareholder” in s. 2 (22) (e) refers to both a registered shareholder and beneficial shareholder. If a person is a registered shareholder but not the beneficial shareholder than the provisions of s. 2(22) (e) will not apply. Similarly if a person is a beneficial shareholder but not a registered shareholder then also the provisions of Sec. 2(22) (e) will not apply.

*ACIT vs. Bhaumik Colour (ITAT Bombay - Special Bench)*  
Source: [www.itatonline.org](http://www.itatonline.org)

#### 5. Block assessment order – null and void – S. 158BC

Where the notice u/s 143(2) was issued beyond the prescribed period it was held that the AO had no power to pass a block assessment order u/s 158BC and the same was null and void.

*Zeus Air Services vs. DCIT (ITAT Mumbai)* Source: [www.itatonline.org](http://www.itatonline.org)

#### 6. Notice – Proceedings Valid – S. 143(2)

Where the assessee claimed that the assessment order was invalid for want of service of notice u/s 143(2) though he had participated in the proceedings, HELD rejecting the contention that:

(i) Though s. 292BB comes into force on 1-4-2008 and not from any particular assessment year, it is declaratory, procedural and curative in nature and accordingly the validity of notices issued/served will have to be decided after 31-3-2008 in accordance with the provisions of section 292BB irrespective of the assessment year involved;

(ii) Even if the assessee has appeared in any proceeding or co-operated at any time in the past, i.e., prior to 1-4-2008, in any inquiry related to an assessment etc. that per se is sufficient to preclude the assessee from raising the objection of non-service.

*ITO vs. Varia Pratik (ITAT A'bad)* Source: [www.itatonline.org](http://www.itatonline.org)

## SALES TAX DECISIONS

P. C. JOSHI, Advocate

#### Appeal by Revenue

The Supreme Court, after considering various judgments, especially that of Shri C. K. Gangadharan's case (304 ITR 61), held that though the principle of *res judicata* did not apply in the tax matters, if the facts in the earlier year and the later year are the same and if the revenue had not preferred any appeal in the earlier year, no appeal for the same point can be preferred for the later year. However, if the situation changes, then of course the revenue can prefer

an appeal notwithstanding the fact of non-submission of appeals in the earlier years.  
*Commissioner of Income Tax Central, Kanpur vs. M/s J. K. Charitable Trust Kamal Tower, Kanpur. 2008 NTN (Vol. 38) – 234.*

#### Binding effect of Circular

The Constitution bench of the Supreme Court, after considering the judgments in the case of *Collector of Central Excise vs. M/s Dhiren Chemical Industries & M/s Usha Martin*

*Industries*, held that though the circular was binding on all the authorities under the respective statutes, the Supreme Court or the High Court declare the law on the questions arising before it for consideration. Therefore, it was not appropriate for the High Court to direct the implementation of the circular in preference to the views of the court. In other words, a circular which was contrary to the statutory provisions had no existence in law, because at best the circulars by the Central Government or by the State Government represented merely their understanding of the statutory provisions and were not binding upon the court.

*Commissioner of Central Excise, Bolpur vs. M/s Ratan Melting & Wire Industries 2008 NTN (Vol. 38) – 206.*

### Dealer – Charitable Trust

The applicant, before the Joint Commissioner of Commercial Taxes, Gujarat, was a Charitable Trust established with the object of educating and helping disabled as well as mentally retarded children by teaching them the art of cooking, handicrafts and other eatables, so that they can survive on the self-employed work. The Trust sold all the items so prepared by the students. Considering the object behind all the activities to be that of non-commercial one, the Joint Commissioner of Commercial Taxes held under section 80 of the Gujarat VAT Act that such a Trust was not a dealer under section 2(10) of the said Act.

*Andhakanya Prakash Griha Trust, Ahmedabad (Order dated 11-8-2008)*

Source : *Sales Tax Journal, November 2008, Vol. 47, Part 8, Page 683.*

### Exemption

#### 1. Industrial unit

The Supreme Court, after considering the provisions under the Haryana Sales Tax law and the rules framed thereunder, held that violation of the concerned rules by discontinuing the production during the period of five years would lead to the consequence of cancelling the exemption certificate and therefore, in case of non-continuance of production for a period of five years, the presumption would be that there was no tax exemption available to the unit, subject to the Explanation that may be furnished by the assessee for the loss in production to be because of the reasons beyond its control.

*State of Haryana vs. M/s A. S. Fuels Pvt. Ltd.*

Source : *Sales Tax Matters, Nov. 2008, Vol. 11 Part 11, Page 1217.*

#### 2. Rubber wood

The Kerala High Court held that the rubber wood was soft wood and a perishable one with short life. It was traditionally used only as a firewood. The assessee had effected purchases of rubber wood for making veneer. Though the soft wood fell within the description of timber, the court held that the assessee was entitled for exemption.

*Mr Haris K, vs. State of Kerala (2008) 16 KTR 543 (Ker.)*

### Entries in Schedule

#### 1. Amul Tazza Milk

The Kerala High Court held that the Amul Tazza Milk was pasteurized milk and therefore exempt from any tax under

Entry 23 of the Third Schedule appended to the Kerala General Sales Tax Act, 1963. The Hon'ble Court further observed that even after addition of Vitamin A & D to the milk, the pasteurized milk continued to be so, retaining all its natural flavours and characteristics.

*Gujarat Co-op. Milk Marketing Federation Ltd. vs. State of Kerala 2008 NTN (Vol. 38) – 131.*

#### 2. Furniture

The Supreme Court, while deciding an appeal under the Central Excise Act 1944, held that the storage cabinets, kitchen counters, large reception conference tables erected permanently on the wall, floor etc. resulted in the emergence of immovable property and therefore not furniture items. However, the other movables like tables, chairs etc. were furniture items liable to tax.

*M/s Craft Interiors Pvt. Ltd. vs. Commissioner of Central Excise, Bangalore & Another (2008) 52 S. T. A. – 254.*

#### 3. Diesel engine

The West Bengal Taxation Tribunal held that diesel engines and generator sets were covered by the expression 'plant and machinery' under item 54B of Schedule C Part 1 of the West Bengal VAT Act, 2003. The rate of tax was held to be 4%.

*M/s Premier Diesel Pvt. Ltd. vs. Commissioner of Sales Tax, Beliaghata, Kolkata (2008) 52 S. T. A. – 270.*

#### 4. C. T. Scan & Colour Doppler machines

The Allahabad High Court held that C. T. Scanner and the Colour Doppler was covered by the category of electronic goods and not under the entry relating to machinery.

*Commissioner of Trade Tax, U. P., Lucknow vs. M/s Medicos Diagnostics Centre Pvt. Ltd., Deoria. 2008 NTN (Vol. 38) – 182.*

#### 5. Elaneer cool & Elaneer soda

The Commissioner of Commercial Taxes, under the Kerala VAT Act, clarified under section 94 of the said Act that coconut was a dry fruit.

However, the product Elaneer soda was manufactured out of water from tender coconuts and by mixing CO<sup>2</sup>, so as to have soda in sealed bottle. In case of Elaneer cool, the water from tender coconut was purified and the kept in sealed bottle in freezer. Entry 84(33) of the Third Schedule referred to fruits, nuts and other edible parts of plants. Since the water of tender coconut was prepared out of fruit coconut, the Commissioner held the said item to be covered by entry 84(33) of Third Schedule and liable to be taxed @ 4%. The assessee had also sold Elaneer ice cream that was held to be liable to be taxed @ 12.5%.

Source : *Kerala Tax Reporter, Vol. 16 Part XII, Dec. 2008, Page – 277*

#### 6. Orthopaedic Implants

Originally, the Commissioner of Commercial Taxes under Kerala VAT Act had clarified the orthopaedic implants to be liable to be taxed @ 12.5%. Later on, on the basis of the letter from the Principal, Medical College Hospital, Thiruvananthapuram, the said order was rectified under section 66 and it was held that all the items like Total knee



implants, Total hip implants, Bipolar Prosthesis, Bimod acetabular cups, Square nails for forearm etc. to be covered by entry 2 of First Schedule and therefore exempt from VAT.

Source : Kerala Tax Reporter, Vol. 16 Part XII, Dec., 2008, Page – 280

### Input Tax Credit

Joint Commissioner of Commercial Taxes, while deciding an application under section 80 of the Gujarat VAT Act, held that the applicant was not eligible to input tax credit for the purchases of capital goods required for installation of machinery, frozen and cold storage room etc.

M/s Vadilal Industries Ltd. Source : Sales Tax Journal, November 2008, Vol. 47, Part 8, Page 681.

### Items in C.S.T. Certificate – Contractor

The Uttarakhand Commercial Tax Tribunal, held that a contractor was entitled to have his certificate amended by addition of the items required for construction, machinery, oil and lubricants etc. Where the goods are used in the same form, it was a case of resale, while the civil contractor undertaking the civil construction work can be said to be a case of a manufacturer.

Commissioner of Commercial Taxes, Uttarakhand vs. S/s Constrofab Developers Pvt. Ltd., Dehra Dun 2008 NTN (Vol. 38) Tribunal – 124.

### Limitation

#### 1. Effect of change of law

The Punjab & Haryana High Court held that all pending proceedings which were initiated within the applicable limitation, did not get extinguished unless it was so provided under the new law. The amendment also cannot revive the closed proceedings.

M/s MOI Engineering Ltd. vs. State of Punjab & Another (2008) 32 PHT 476 (P&H).

#### 2. Extension

The Punjab & Haryana High Court held that the power of the Commissioner to extend the period of limitation for completion of assessment proceedings cannot be exercised after the assessment was hit by the bar of limitation. In other words, the power of extension can be exercised only before the end of the limitation period.

M/s Shreyans Industries Ltd., Ahmedgarh vs. State of Punjab & Others (2008) 32 PHT 485 (P&H).

### Notification – Effective date

The Allahabad High Court, following its earlier judgment in the case of Commissioner of Sales Tax vs. M/s Jagannath Dudadhar, held that the notification shall be deemed to have been published from the date mentioned in the notification and the fact that the same was not made available to the public was of no consequence.

The Commissioner, Trade Tax, U. P., Lucknow vs. M/s R. S. Enterprises, Muzaffarnagar 2008 NTN (Vol. 38) – 180.

### Pre-payment of tax

Considering the peculiarity of the case being that of a public sector company in a priority sector obliged to sell its products through public distribution scheme, the Supreme Court interfered with the interim order by the Appellate Authority for grant of stay and directed it to hear the appeal finally on

merits and decide the same within a period of three months. M/s Bharat Petroleum Corpn. Ltd. vs. Commissioner of Sales Tax.

Source : Sales Tax Matters, November 2008, Vol. 11 Part 11, Page 1276.

### Revision

The Supreme Court held that an order of assessment that was in existence at the time of issuance of a revision notice continued to be effective till the same was revised by the revising authority.

M/s Kanpur Edibles Pvt. Ltd. vs. Commissioner, Trade Tax, U. P. 2008 NTN (Vol. 38) – 146.

### Recovery – Director of a company

The Allahabad High Court held that the dues outstanding against the company cannot be recovered from the personal assets of the Director of the company unless it was specifically provided in the statute concerned.

M/s Jai Prakash Agrawal & Others vs. State of U. P. & Others 2008 NTN (Vol. 38) – 178.

### Sale

#### 1. Export

The assessee before the Supreme Court, had produced before the lower authorities necessary information and documents to show the prior purchase order from foreign buyers, copies of export invoices, Bill of Lading and other relevant records. The authorities, however, did not consider them and treated the transaction liable to tax. The Supreme Court, therefore, quashed the order of assessment, observing that it was the duty of the assessing authority to appropriately dissect the facts and ascertain the applicability of section 5(3) of the Central Sales Tax Act.

The Court also observed that the ratio of its judgment in the case of M/s B. M. Ashraf can be decided to be applicable or otherwise, on the factual foundation which was missing in the case.

M/s Alagendran Exports Pvt. Ltd. vs. State of Kerala.

Source : Sales Tax Matters, Nov. 2008, Vol. 11 Part 11, Page 1284.

#### 2. Machinery

The Gujarat Sales Tax Tribunal held that the sale of machinery embedded to wall and earth was a transfer of immovable property not involving any sale of goods.

M/s Petrofils Co-op. Limited vs. State of Gujarat.

Source : Sales Tax Journal, November 2008, Vol. 47, Part 8, Page 647.

#### 3. Professional services

The Supreme Court, while considering an appeal against the Kerala High Court, held that the condition precedent for passing an order of assessment was a transaction of sale. The professional services rendered by the assessee to various exporters in relation to inspection and certification of quality of the items sought to be exported did not amount to a transaction of sale. The order in question, therefore, was quashed.

Ms Haleema Zubair, M/s Tropical Traders vs. State of Kerala 2008 NTN (Vol. 38) – 242.



#### 4. Barter

Before the Allahabad High Court, the assessee was engaged in the business of cold drinks. It exchanged one type of bottles with another type of bottles. The Hon'ble Court held that such exchange did not amount to a transaction of sale, but was in the nature of a barter, not liable to any tax. For that purpose, the Allahabad High Court followed the judgment of the Supreme Court in the case of *M/s Dhampur Sugar Mill vs. Commissioner of Trade Tax [(28 PHT 1 (SC))]*.

*Commissioner of Trade Tax, U. P. vs. M/s Second Polypack Pvt. Ltd. (2008) 32 PHT 512 (All).*

#### Supply of free gift under the marketing scheme

Before the Joint Commissioner of Commercial Tax (Legal), Gujarat, the assessee was conducting a marketing network scheme under which on payment of Rs. 300/-, a person can become a member. Each member so enrolled was provided a scratch card along with a set of literature and items like business manual, marketing plan brochure, trading manual, presentation CD, registration form etc. The scratch card in question had a serial number and a hidden PIN Number. The member concerned, on visiting the company's website, had to feed the serial number and the hidden PIN Number, so that the membership number will be protected by a password. After becoming a member, the person concerned can effect purchases of any of the packages mentioned in the marketing plan. As an incentive towards a person joining the scheme, gift items were given. Such gift items were purchased from another registered dealer within the State or outside the State. The assessee, upon getting the requisition, delivered the holiday package voucher along with the gift items.

The activity in question was held to be not that of sale of gift items as the same were given free.

*M/s Samarpan Products Pvt. Ltd. (Order under section 80 dated 27-10-2008). Source : Sales Tax Journal, November 2008, Vol. 47, Part 8, Page 700.*

#### • Tax on imported sugar

• The Punjab & Haryana High Court struck down the notification by which an entry 152 was inserted in Schedule B to the VAT Act, whereby the sale of sugar imported from outside the State of Punjab was liable to be taxed, because entry 49 of Schedule A referred to only those sugar which were manufactured in the State. The Punjab & Haryana High Court held such insertion to be discriminatory and violative of Articles 301 & 304(a) of the Constitution of India.

• *M/s Nand Kishore & Co. vs. The State of Punjab.*

• *Source : Sales Tax Matters, November 2008, Vol. 11 Part 11, Page 1264.*

#### • Transfer of right to use goods

• The Allahabad High Court held that the lease of plant & machinery permanently attached to earth was not movable property and therefore did not relate to goods. Consequently it was held that no trade tax was leviable on the monthly lease rent received by the assessee.

• *The Commissioner, Trade Tax, U. P. vs. S/s Agrawal Pulp & Paper Ltd. 2008 MTN (Vol. 38) – 117.*

#### • Transfer under section 6A of the Central Sales Tax Act

• The Gujarat VAT Tribunal held that prior to 11th May 2002, the submission of declaration in Form 'F' as provided in section 6A of the Central Sales Tax Act was not mandatory. In support of the said decision, the Tribunal referred to the circular letter dated 22nd January 1974 issued by Government of India on the question of furnishing Form 'F'.

• *M/s Novartis India Ltd. vs. The State of Gujarat*

• *Source : Sales Tax Journal, November, 2008, Vol. 47, Part 8, Page 687.*

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