



AIFTP TIMES

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Federation News

Shri Mukul Gupta, *Secretary General*

FORTHCOMING PROGRAMMES

Date & Months	Programmes
15th March, 2008	National Executive Committee Meeting at Jaipur
15th & 16th March, 2008	Two Days National Tax Conference at Jaipur
3rd, 4th & 5th November, 2008	Three Days International Conference in Association with Taxation Institute of Australia at New Delhi
26th, 27th & 28th November, 2008	AOTCA Shanghai Meeting 2008 at Shanghai International Convention Centre, 2727, Riverside Avenue, Pudong, Shanghai, China
19th, 20th & 21st November, 2009	AOTCA Conference 2009 at Mumbai.

DELEGATION OF AIFTP MET CHAIRMAN, CENTRAL BOARD OF DIRECT TAXES — A REPORT

The high level delegation of All India Federation of Tax Practitioners met Shri R. Prasad, Chairman, Central Board of Direct Taxes at North Block, New Delhi in the evening of 19th February 2008. The finer issues of Pre-Budget Memorandum submitted before the Finance Minister has been finally discussed in detail with the Chairman, CBDT for necessary legal amendment in the provisions of Income Tax. The Chairman appreciated the efforts of All India Federation of Tax Practitioners and patiently considered the various suggestions and issues raised in the Pre-Budget Memorandum.

The suggestions has been made for deletion of sub-clause (ia) to section 40(a) providing for disallowance of expense for failure to deduct tax at source, as it is unreasonably causing trouble to the genuine tax-payers. In the larger interest, it has been suggested that Co-operative Bank be included in the definition of 'rural bank' in Explanation (ia) of section 36(1) (vii). It has been strongly suggested that monetary limit u/s. 44AB for requirement of audit of accounts carrying on business or profession be raised to a practical level as limit was fixed more than 23 years back and has not been revised since then. A request has been made to make provision of section 50C more scientific, so as to avoid unnecessary litigation. It has been suggested that reasons be communicated to the assessee in the Notice u/s. 148(2) in the line with the decisions of High Court. The amendments in sections 194C, 194H and 194J has been sought to prevent deduction of tax at source on the 'tax' component of 'VAT or Service Tax'. In addition to these issues, suggestions with regard to some changes in the tonnage tax, extension for period of time for abatement of settlement applications as well as changes in sections 195, 201(2) etc. have also been made.

The delegation of All India Federation of Tax Practitioners comprised of Shri Bharatji Agrawal, Senior Advocate, Allahabad High Court, National President, AIFTP; Shri M. L. Patodi, Advocate, Kota, Deputy President, AIFTP; Shri S. R. Wadhwa, Advocate, New Delhi, Vice President, AIFTP; Shri J. D. Nankani, Advocate, Mumbai, Past Chairman, Western Zone; Shri Arvind Kumar Sharma, Advocate, Ghaziabad, Managing Committee Member, Northern Zone; Shri V. P. Gupta, Advocate, Delhi, Vice Chairman, Northern Zone, Delhi; Shri Mukul Gupta, Advocate, Ghaziabad, Secretary General, AIFTP.

The Chairman CBDT has assured the delegation to make necessary changes in the Finance Act, as the suggestions made by the delegation are reasonable and in the larger interest of the tax-payers.

FOR QUERIES PLEASE CONTACT ANY OF THE FOLLOWING OFFICE BEARERS

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NATIONAL TAX CONFERENCE – 2008

Organized by

ALL INDIA FEDERATION OF TAX PRACTITIONERS (CENTRAL ZONE)

Jointly with

Rajasthan Tax Consultants' Association, Jaipur, Tax Consultants' Association, Jaipur & Jaipur Tax Bar Association,

THEME: EMERGING ECONOMY – BLOOMING PROFESSION

Date : 15th & 16th March, 2008

Venue : Maharana Pratap Sabhaghar, Vidya Ashram School, J.L.N. Marg, Jaipur.

SATURDAY, 15TH MARCH, 2008

- Registration & Breakfast : 8.00 a.m. to 9.00 a.m.
- INAUGURAL SESSION : 9.00 a.m. to 10.30 a.m.**
- Chief Guest : Hon'ble Justice Dr. Arijit Pasayat, Judge, Supreme Court of India
- Guest of Honour : Hon'ble Justice Shri Narain Rao, Chief Justice of Rajasthan High Court
- Tea Break : 10.30 a.m. to 10.45 a.m.**
- FIRST TECHNICAL SESSION : 10.45 a.m. to 1.30 p.m.**
- Chairman : Hon'ble Justice Shri Munishwar Nath Bhandari, Judge, Rajasthan High Court
- Subject-I : Controversies under Direct Tax Laws & Issues under Union Budget, 2008
- Speaker : Shri Saurabh N. Soporkar, Sr. Advocate, Gujarat High Court
- Subject-II : Survey, Search & Seizure under Income-tax Act
- Speaker : Shri Ashwin. C. Shah, FCA, Ahmedabad
- Subject-III : Highlights of Union Budget, 2008 relating to Service Tax
- Speaker : Shri Mukul Gupta, Advocate, Ghaziabad
- LUNCH : 1.30 p.m. to 2.30 p.m.**
- Special Address : 2.30 p.m. to 3.00 p.m.**
- Hon'ble Smt. Vasundhara Raje, Chief Minister of Rajasthan***
- SECOND TECHNICAL SESSION : 3.00 p.m. to 5.00 p.m.**
- Chairman : Shri Bharatji Agrawal, National President, AIFTP
- Chief Guest : Shri S. N. Gupta, FCA, Chairman, Public Grievance & Redressal Committee, Rajasthan
- Guest of Honour : Shri Mukesh Sharma, IAS, Commissioner, Commercial Taxes Deptt., Rajasthan
- Subject- I : Taxability of Works Contract under VAT Act
- Speaker : Smt. Nikita R. Badheka, Advocate, Mumbai
- Subject- II : Issues under VAT Act & Highlights of State Budget, 2008
- Speakers : Shri T. C. Jain, Advocate, Jaipur & Shri P. D. Nagar, FCA, Indore
- 5.00 p.m. to 5.30 p.m.**
- Chief Guest : Shri Kamal Mehta, FCA, Chairman, Vaishali Urban Co-operative Bank Ltd.
- Subject : Personality Development
- Speaker : Shri C. S. Nanda, FCA, Delhi
- EXECUTIVE COMMITTEE MEETING OF AIFTP (at Venue) 5.30 p.m.**
- CULTURAL PROGRAMME (followed by Dinner) 7.30 p.m. to 9.00 p.m.**
- Guest of Honour : Shri Rahul Mohnot, President, Hindalco**



SUNDAY, 16TH MARCH, 2008

Breakfast : 8.00 a.m. to 9.00 a.m.

THIRD TECHNICAL SESSION : 9.00 a.m. to 11.00 a.m.

Chairman : Shri R. Prasad, Chairman, Central Board of Direct Taxes*

Subject : Taxation of Real Estate Transactions–Current Development

Speaker : Shri Pradip Kapasi, FCA, Mumbai

Chief Guest : Shri Rajesh Bindal, Judge, Punjab & Haryana High Court

BRAIN TRUST SESSION : 11.00 a.m. to 12.45 p.m.

Chairman : Dr. A. K. Doshi, Ex-Chairman, Company Law Board

Brain Trustees : Shri S. R. Wadhwa, Shri P. S. Sarin, Shri P. C. Joshi, Shri N.M. Ranka,
Shri H. M. Singhvi, Shri R. C. Agarwal & Shri M. L. Patodi

VALEDICTORY SESSION : 12.45 p.m. to 1.30 p.m.

Chairman : Shri C. M. Birla, FCA, Kota

Chief Guest : Hon'ble Justice Shri Vineet Kothari, Judge, Rajasthan High Court

Guest of Honour : Hon'ble Shri Vimal Gandhi, President, Income Tax Appellate Tribunal,
New Delhi*

LUNCH : 2.00 p.m. to 3.00 p.m.

* Consent awaited

Hearty Congratulations

Hearty Congratulations to the newly elected Office Bearers of Sales Tax Bar Association, Raipur for the year 2008-09.

President : Mr. Ashok Agrawal, Advocate

Vice Presidents : Mr. Lalit Banthia, Advocate
Mr. Shiv Kumar Soni, Advocate

Secretary : Mr. Vinod Maheshwari, Advocate

Joint-Secretaries : Mr. Mani Shankar Soni, Advocate
Mr. Arvind Agrawal, Advocate

Treasurer : Mr. G. K. Lalwani, Advocate

Hearty Congratulations to the newly elected Office Bearers of Western India Regional Council of the Institute of Chartered Accountants of India for the year 2008-09.

Chairman : CA. B. M. Agarwal

Vice Chairman : CA. Atul N. Parikh

Secretary : CA. Dhiraj Khandelwal

Treasurer : CA. Rakesh Lahoti

STUDY COURSE ON SERVICE TAX

Nurturing Opportunities

Organized by

**All India Federation of Tax Practitioners (Western Zone) Jointly with
Sales Tax Practitioners Association of Maharashtra**

Venue for 1st, 3rd, 4th & 5th Day :

M. C. Ghia Hall, Rampart Row, Bhogilal Hargovindas Bldg., 2nd Floor,
18/20, K. Dubash Marg, Kala Ghoda, Mumbai – 400 001.

Venue for 2nd Day :

Dahanukar Hall, Oricon House, 6th Floor, 18/20, K. Dubhash Marg,
Kala Ghoda, Mumbai – 400 001

The Study Schedule :

Day 1 - 21st March, 2008	- Good Friday	- 9.30 a.m. to 5.00 p.m.
Day 2 - 29th March, 2008	- Saturday	- 10.00 a.m. to 5.30 p.m.
Day 3 - 12th April, 2008	- Saturday	- 9.30 a.m. to 5.45 p.m.
Day 4 - 14th April, 2008	- Monday - (Holiday)	- 9.30 a.m. to 4.30 p.m.
Day 5 - 18th April, 2008	- Friday (Holiday)	- 9.30 a.m. to 5.30 p.m.

Western Zone of All India Federation of Tax Practitioners (**AIFTP-WZ**), a unique national association of tax professionals, along with The Sales Tax Practitioners' Association of Maharashtra (**STPAM**), Parent Association of VAT Consultants, have decided to conduct Study Course on Service Tax, to introduce and update tax professionals. As the net of Service Taxation is being spread to cover more and more services, tax professionals cannot afford to ignore this area and therefore will have to equip themselves with thorough knowledge on service tax laws. This subject becomes more important now with the Central Government's intention to allow States to administer and collect tax on certain services. Further, proposed introduction of Goods and Service Tax (GST) from 1-4-2010 makes it inevitable for every Tax Professionals to learn every aspect of Service Tax.

The entire study course is designed over five days, on Saturdays and holidays to avoid disturbance in otherwise busy schedule of tax professionals. The eminent faculty members would not only address on the subjects allotted, but will also reserve last 10-15 minutes for question-answer session. Two special Interactive Brain Trust sessions are also designed to promote intensive study by the participants and to have the benefit of experts in the field. **The course also includes a special session on Service Tax provisions in Finance Bill, 2008.**

The study course will be addressed by Sarvashri A. R. Krishnan, Bharat Shemlani, Girish Raman, Manish Gadia, Nambirajan, Prashant Patankar (Panvel), Prasad Paranjpe, Rajiv Luthia, Shailesh Sheth, S. S. Gupta, Sunil Gabhawalla, T. Gunasekaran, Vikram Nankani, Vipin Kumar Jain and V. Sridharan.

The following areas will be covered by the Study Course :

Service Tax overview, Basic statutory provisions and important definitions, General Exemption (Sections 64, 65, 66), Classification of taxable service (Section 65A), Valuation of Taxable Services (Section 67), Applicability of Central Excise provisions to Service Tax, Implications of VAT on Service Tax, Import of Taxable Service, Export of Taxable Service, Registration, Payment of Service Tax, Issue of Invoices, Maintenance of Records, Filing of Returns and Assessment, Recovery of Service Tax, Interest and Penalties, Show Cause Notices etc. Summons, Survey, Search and Audit, Refunds, Revision, Appeals, Advance Ruling, CENVAT Credit to Service Provider etc. **Few important services viz., Business Auxiliary**

Service, Business Support Service, Management or Business Consultant Service, Manpower Recruitment and Supply Agency's Service, Goods Transport Agency Service, Clearing and Forwarding Agent's Service, Cargo Handling Service, Storage and Warehousing Service, Port Services, Banking & other Financial Services, Construction of Residential Complex Service, Commercial or Industrial Construction Service, Club Association Services, Intellectual Property Services, Erection, Commissioning or Installation Service, Management, Maintenance or Repair Service, Renting of immovable Property Service and Works Contract Service.

Course fee:

Rs. 2,950/- for Members and Rs. 3,500/- for non-Members

(Includes charges for study materials, tea, snacks & lunch on all five days)

Since the capacity is limited please enroll at the earliest. The cheques drawn in favour of "All India Federation of Tax Practitioners – Western Zone" can be tendered/sent with the application form at:—

All India Federation of Tax Practitioners – Western Zone

215, Rewa Chambers, Behind Income Tax Office, 31, New Marine Lines,
Mumbai – 400 020 (Tel. 2200 6342)

OR

Sales Tax Practitioners Association of Maharashtra

104, Vikrikar Bhavan, Mazgaon, Mumbai – 400 010 (Tel. 2375 2267)

OR

Sales Tax Tribunal Bar Association

713, Vikrikar Bhavan, Mazgaon, Mumbai – 400 010 (Tel. 2375 3365)

REPORT FROM SOUTHERN ZONE BY MR. V. NAGENDRA PRASAD, HON. SECRETARY, AIFTP — SZ

All India Federation of Tax Practitioners, Southern Zone in association with Andhra Pradesh Sales Tax Bar Association, Hyderabad had successfully conducted one breakfast interaction meeting on "VAT" on Saturday, 23rd February, 2008 at Hotel Jaya International, Abids, Hyderabad.

The meeting was attended by good number of Advocates and Practitioners from all over Andhra Pradesh.

ALL INDIA FEDERATION OF TAX PRACTITIONERS, SZ, IN ASSOCIATION WITH A.P. TAX BAR ASSOCIATION

Lecture Meeting on Union Budget – 2008

- Date** : Thursday, 6th March, 2008
Time : 2.30 p.m. (High tea) followed by Union Budget Meeting
Venue : K.L.N. Prasad Auditorium, FAPCCI, Redhills, Lakdi-Ka-Pool, Hyderabad.
Tel.: 040-6675 5021, 6675 5026.
Speaker : F. B. Andhyarujina, Sr. Advocate, Mumbai

Meeting will be concluded before 5.00 p.m. in view of "Mahashivaratri"

DIRECT TAXES

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

SUPREME COURT

1. Binding Nature of the Circular

Exemption is a matter of policy. If the Government, acting through the Central Board of Revenue has conferred an administrative exemption, it is not open to the Revenue to challenge the same. Circulars issued by the Board are binding on the officers though not on the assesseees or on the courts. An argument that the circulars are not binding on the revenue is unsustainable in law. If such a contention was to be accepted, it would lead to chaos and indiscipline in the administration of tax laws. Whenever such binding circulars are issued by the Board granting administrative relief(s) business man arranges its affairs relying on such circulars. Therefore, as long as the circular remains in force, it is not open to the subordinate officers to contend that the circular is erroneous and not binding on them.

State of Kerala & Ors. vs. M/s. Kurian Abraham Pvt. Ltd. & Anr. Appeal (Civil) No. 7965 – 7966 of 2004 dt. 8-2-2008.

(Source : www.itatonline.org)

2. Business Expenditure – S. 37(1)

Commitment charges paid in respect of borrowed moneys are allowable as a deduction under section 37(1) of the Act. *Dy. CIT vs. M/s. Core Health Care Ltd. Appeal (Civil) No. 3952 – 3955 of 2002 dt. 8-2-2008.*

(Source: www.itatonline.org)

3. Deduction – S. 36(1)(iii)

Interest paid in respect of borrowings on capital assets not put to use in the concerned financial year are deductible under section 36(1)(iii) of the Act; Interest on all moneys borrowed for the purposes of business are deductible irrespective of whether the moneys are used for a revenue purpose or a capital purpose. Explanation 8 to section 43(1) has no application to section 36(1)(iii). The proviso to section 36(1)(iii) operates prospectively. *Challapalli Sugars 98 ITR 167 (SC)* applies to a case where the business had not yet commenced.

Dy. CIT vs. Gujarat Alkalies & Chemicals Ltd. Appeal (Civil) No. 3957 – 3958 of 2002 dt. 8-2-2008.

(Source : www.itatonline.org)

4. Interest Expenditure – S. 36(1)(iii)

A firm seeking to claim deduction of interest paid on capital from its partners has to first satisfy the requirements of section 36(1)(iii) and thereafter the limits imposed by section 40(b)(iv). The fact that the said capital is not “loans” or “advances” is irrelevant.

• Where loans given in an earlier year were accepted as having been given for business purposes, the interest thereon could not be disallowed in a subsequent year.

• Where the assessee had sufficient profits and own funds, the submission that loans to sister concerns were out of those funds had to be accepted.

• *Munjal Sales vs. CIT (SC) Appeal (Civil) 1378 of 2008 dt. 19-2-2008*

• (Source: www.itatonline.org)

HIGH COURTS

1. Power of the Settlement Commission

The Chairman of the Settlement Commission has the power to constitute a Special Bench and he is not required to give reasons or produce the material in support thereof. Though the Settlement Commission did not follow the correct procedure in hearing the application for privilege of documents by revenue, by directing the petitioners to leave the premises, that by itself could not vitiate the proceedings.

• *Mr. Hasan Ali Khar vs. ITSC (Bom.) WP No. 2421 of 2007 dt. 28-1-2008.*

• (Source: www.itatonline.org)

2. Tax Arrears

• While the arrears of the State have priority over private debts owed to ordinary or unsecured creditors, this priority does not extend over secured creditors (subject to statutory exception). The fact that the tax arrears are recoverable as arrears of land revenue makes no difference to this principle;

• *Krishna Lifestyle Technologies Ltd. vs. UOI (Bom.) WP No. 4171 of 2007 dt. 5-2-2008.*

• (Source: www.itatonline.org)

3. Tax Deducted at Source – S. 192

• Section 192 requires the employer to deduct tax on the “estimated income” of the employee, the test is whether he acted in a bona fide and honest manner. Where the employer allowed the employees deduction under sections 10(5) and 10(14) only on the basis of declarations filed by the employees without verifying actual expenditure incurred by the employee & maintaining records thereof, it could still be regarded as having acted in a bona fide manner.

• *CIT vs. M/s. Nicholas Piramal India Ltd. (Bom.) ITA No. 432 of 2001 dt. 15-1-2008.*

• (Source: www.itatonline.org)

TRIBUNALS

1. Annual Value – S. 23

If a property is held with an intention to let out coupled with efforts made for letting it out, it would be said that, such a property is a let out property and, therefore, its annual letting value would be worked out as per clause (c) of sec. 23(1)

Premasudha Exports (P) Ltd vs. ACIT (2008) 110 ITD 158 (Mum.)

2. Benefit – S. 28(iv)

Where the assessee purchased shares at a price below the market price and the question was whether the difference between the market price and the purchase price can be assessed as unexplained investment u/s 69 or as a benefit u/s 28(iv) of the Act, held:

- (i) Where there was no material to show that the assessee had paid more than the stated consideration and the purchases were recorded in the books of account, s. 69 could not be applied;
- (ii) The purchase of shares at a price lower than their market value does not constitute "income" as generally understood. In order to attract s. 28(iv), there must be a nexus between the business of the assessee and the benefit derived by him. Further, the benefit arising from a purchase of shares at a price lower than the market price does not accrue till the transfer of the shares;

Rupee Finance & Management Pvt. Ltd. vs. ACIT; ITA No. 2300/Mum/2007 Asst. Year 2003-04 dt. 5-2-08

(Source : www.itatonline.org)

3. Deduction – S. 80HHE

Entire activity of assessee in export zone was independent of its other business and there was no overlapping and mingling of services or any link between manufacturing activities of both. Turnover for purposes of computation of deduction u/s. 80HHE was to be worked out on basis of export turnover alone and not on total turnover of entire business as done by AO.

Datamatics Ltd vs. ACIT (Mum) (2008) 110 ITD 24 (Mum.)

4. Depreciation – S. 32

Expression 'used' in sec. 32 is to be construed in context of facts and circumstance of each case and would include not only active use of asset, but also passive use of asset for purposes of business. Hiring of asset is one way of establishing user of asset in business, it is not necessary that assessee should receive hire charges to prove user of assets, even an agreement to hire would tantamount to use of asset.

Sanghvi Movers P. Ltd. vs. CIT (2008) 110 ITD 1 (Pune) (TM)

5. Exemption – S. 54F

Under sec. 54F, assessee has to utilize amount for purchase or construction of new asset before date of furnishing return of income u/s. 139, and in absence of any mention of any sub-section of sec. 139, it cannot be

interpreted that sec. 139 should be read as sec. 139(1) but will also include all sub-section of sec. 139, *Nipun Mehrota vs. Asst. CIT (2008) 110 ITD 520 (Bang.)*

6. Software Expenditure – S. 37

The question whether expenditure is on capital or revenue account should be decided from the practical and business view point and in accordance with sound accountancy principles. The three tests applied to decide the nature of expenditure are the tests of enduring benefit, ownership test and the functional test.

In view of *Tata Consultancy Services vs. State of AP 271 ITR 401 (SC)*, computer software put in the medium of disk are "goods" and its purchase constitutes the "purchase" of a tangible asset and the assessee becomes the "owner" thereof.

The fact that the computer software is obtained by way of "ownership" or on "license" is not determinative. The functional test is more important and the issue has to be seen from the point of its utility to the businessman and to see how important an economic or functional role it plays in his business.

The duration of time for which the assessee acquires right to use the software is relevant. Having regard to the fact that software becomes obsolete with technological innovation and advancement within a short span of time, if it can be said that where the life of the computer software is shorter (say less than 2 years), it should be treated as revenue expenditure. Expenditure having utility beyond 2 years confers 'enduring benefit' though it may still be revenue on application of the 'functional test'.

If the tests of ownership and enduring benefit are satisfied, the question whether expenditure incurred on computer software is capital or revenue has to be seen from the point of view of its utility to a businessman and how important an economic or functional role it plays in his business.

In each case the AO will have to consider the nature of the software and its functional use to the assessee and decide whether the expenditure is capital or revenue in nature.

M/s. Amway India Enterprises vs. The Dy. CIT New Delhi Bench "C" dt. 15-2-2008 (Special Bench)

(Source : www.itatonline.org)

7. Transfer – S. 2(47)

As the partners have no right in the assets of the partnership firm, there is no transfer of any right in the said property on reconstitution/retirement of a partner. The revaluation of assets of partnerships and the credit of revalued amount to the capital accounts of partners in their respective sharing ratio does not entail any transfer as defined under section 2(47). The introduction of new partners to a partnership firm owning immovable assets and consequent reduction in the sharing ratio of existing partners does not entail any relinquishment of their rights in the partnership property.

ITO vs. Paru D. Dave (2008) 110 ITD 410 (Mum.)

INDIRECT TAXES

P.C. JOSHI
Advocate

1. Binding nature of the order by Appellate Authority

The Madras High Court held that the order of the first appellate authority was binding on the assessing authority and therefore, the action of the lower authority not honouring the stay of recovery granted by first appellate authority and holding the same to be illegal was arbitrary exercise of power and not sustainable in law. The High Court held such an action of declaring the order of the first appellate authority to be illegal as nothing but a transgression on the power of the appellate authority.

M/s Larsen & Toubro Ltd. vs. Asst. Commissioner (CT), Chennai.

Source : *Sales Tax Matters, Vol. 11 Part 2, Page 228.*

2. Consumption tax

The West Bengal Taxation Tribunal, following the ratio of the Supreme Court judgment in the case of *M/s Jindal Stainless Steels Ltd (145 STC 544 SC)*, held that levying tax on goods imported from outside the State of West Bengal, were violative of Article 301 of the Constitution of India and therefore *ultra vires*. The Taxation Tribunal also held that the consumption tax was not compensatory one but a general levy under taxing power, for the purpose of generating revenue for the State.

M/s National Hydroelectric Powder Corpn. Ltd. & Others vs. A.C.C.T., Siliguri Charge & Others (2008) 51 S. T. A. – 48.

3. Entries in Schedule

1. Animal feed

The Supreme Court observed that while interpreting the Schedule entries, the insertion of a comma by the legislature reflected the intention of constituting two separate classes in between. It also observed that in addition to the comma, the word 'namely' indicated that the specific instances that followed were exhaustive. In view of that position, the expression 'animal feed and feed supplements' was held not to cover dog feed/cat feed. The entry in question only covered poultry feed, cattle feed, pig feed, fish feed, fish meal, prawn feed and shrimp feed.

M/s Sree Durga Distributors vs. State of Karnataka (2008) 16 KTR 55 (SC).

2. Plastic name plates for motor vehicles

The Supreme Court held that plastic name plates for motor vehicles and sold to vehicle manufacturers alone was

classifiable under headings 87.08 and 87.14 of the Central Excise Tariff Act as parts and accessories of the vehicle and not under heading 39.26 relating to other articles of plastic. According to the Supreme Court, the name plates added to the convenient use of motor vehicle and served a very useful purpose of identifying the vehicle. In vehicle market, each vehicle was marketed under a different brand name and different models with distinct features. Therefore, the name plates conveyed to the consumers, the distinct features of each car. The product in question add effectiveness and value to the vehicle. Under the circumstances, the plastic name plates were held to be accessories of the vehicles even when there was any difficulty to the inclusion of the name plates as part of the vehicles.

M/s Pragati Silicons Pvt. Ltd vs. Commissioner of Central Excise, Delhi (2008) 51 S. T. A. – 9

3. Animal horn and hoof

The Supreme Court, while considering the relevant notifications and language used therein, held that when the notification used the word 'bones', and horn and hoof were not part of animal bone.

M/s Noorie Manure Mill, Sambhal vs. Commissioner, Trade Tax, U. P. (2008) 51 S. T. A. – 26.

4. Entry Tax

The Madras High Court held that when the vehicle was purchased in the year 1992 (i.e., prior to 10th September 1996 when the entry tax was brought into force) and the vehicle was also registered in the Union Territory of Pondicherry, even when the application for change of registration was made in Tamil Nadu in 1997 (i.e., after the law came into force), no tax under section 3 was leviable, because the proviso to section 3(1) expressly barred such a levy.

Shri P. Rajam vs. The Commissioner of Commercial Taxes & Another 2007-08 (13) TNCTJ – 61.

5. Exemption

The Rajasthan High Court held that a certificate issued by the District Level Screening Committee cannot be questioned by the Commercial Tax Officer without getting the corrections, if any in the certificate, by the committee in question.

M/s Arihant Solvex Pvt. Ltd. vs. State of Rajasthan

Source : *Sales Tax Matters, Vol. 11 Part 2, Page 141.*



6. Immunity under Kar Vivad Samadhan Scheme (K. V. S. Scheme)

The Supreme Court, while upholding the order of reassessment under the Kerala General Sales Tax Act, on the basis of a declaration by the assessee under K. V. S. Scheme, observed that immunity under the said Scheme was limited to indirect enactments by Parliament and not the ones by the States. Therefore it was held that the immunity cannot be made applicable to the sales tax assessments under the said legislation.

M/s Master Cables Pvt. Ltd. vs. State of Kerala (2008) 16 KTR 12 (SC)

7. Interest on refund

The Andhra Pradesh High Court disapproved the withholding of refund due to the assessee for no reason. While holding the assessee to be eligible to the interest for delay in refund @ 12%, the Court directed the Principal Secretary to hold enquiry for fixing responsibility of the officers for whose negligence the State had to suffer the payment of interest. The Court also directed to recover the payment of interest from the officers concerned.

M/s First Leasing Company of India Ltd. vs. Commercial Tax Officer, Hyderabad.

Source : *Sales Tax Matters, Vol. 11 Part I, Page 15.*

8. Manufacture

The Supreme Court, while considering the provisions under Central Excise Tariff Act 1985, held that the Aluminium ingots and billets were two different commercial commodities and therefore, conversion of Aluminium ingots into Aluminium billets by process of remelting and adding other alloys amounted to manufacture. The billets had its own independent marketability, independent of ingots, though both the items were covered by the same entry 76.01.

Commissioner of Central Excise, Jaipur vs. M/s Mahabir Aluminium Ltd. (2008) 51 S. T. A. - 21

9. Purchase Tax

The Kerala High Court confirmed the levy of purchase tax when the goods taxable at the last purchase stage in the State was lost from the custody due to theft, especially when they were not available for resale by the dealer.

State of Kerala vs. M/s K. P. Padmanabha Pada Nair & Sons (2008) 16 KTR 60 (Ker)

10. Penalty

1. The Punjab & Haryana High Court quashed the penalty imposed on a ground which did not form part of the notice to the assessee. It was held that

such an imposition was violation of basic principles. The officer imposing the penalty, cannot travel beyond the allegations in the notice proposing the penalty.

State of Punjab vs. M/s Malwa Industries Ltd.

Source : *Sales Tax Matters, Vol. 11 Part I, Page 39.*

2. The Orissa High Court disapproved the imposition of penalty without the assessee being informed about the provisions violated by him, especially when the department was unable to establish the presence of mensrea of the assessee.

M/s Orient Paper Mills vs. State of Orissa.

Source : *Sales Tax Matters, Vol. 11 Part I, Page 121.*

11. Recovery – First charge

The Kerala High Court held that the State dues have priority in the matter of recovery of sales tax over the properties mortgaged to Financial Institutions and therefore, the Recovery Officer of the Debt Recovery Tribunal cannot proceed against the mortgaged property after he was informed about the State Government statutory charge till that gets satisfied.

State of Kerala vs. M/s Rajmohan Cashew Pvt. Ltd. & Others (2008) 16 KTR 22 (Ker.)

12. Refund

The Punjab & Haryana High Court, by considering the language of section 44 of the Haryana General Sales Tax Act, held that though section 44 enabled the State to withhold the refund to protect the interest of the revenue, the facts of the case have also to be borne in mind before resorting to such a power. In absence of any finding about the prejudice to the interest of revenue on grant of refund, the refund as per the order of assessment cannot be withheld.

M/s Sadhu Overseas vs. State of Haryana.

Source : *Sales Tax Matters, Vol. 11 Part I, Page 2.*

13. Sale in the course of export

The Kerala High Court, applying the analogy of the Supreme Court judgment in the case of M/s Sterling Foods (63 STC 239) in regard to the phrase 'those goods', held that similar phraseology appearing in section 5(3) of the Central Sales Tax Act refer to the goods purchased by the exporter and then exported. In other words, the goods purchased and goods exported should be the same. The assessee, before the High Court, had purchased sandalwood in the form of billets and roots, which under the EXIM Policy were not exportable. The assessee had, therefore, changed the forms by converting

the billets and roots in the form of powder or small flakes. Such a conversion and export thereafter was held by the High Court to be not permissible under section 5(3) of the C.S.T. Act.

M/s Gupta Enterprises vs. Commercial Tax Officer, Munnar.

Source : *Sales Tax Matters, Vol. 11 Part 2, Page 180.*

14. Service of notice by pasting

The Allahabad High Court held that without the satisfaction on the part of the assessing authority and without recording any reason, the service of any notice by affixation or pasting cannot be a proper service.

M/s Jain Coal Traders vs. Commissioner of Trade Tax, U. P., Lucknow.

Source : *Sales Tax Matters, Vol. 11 Part 2, Page 192.*

15. Tribunal

The Punjab & Haryana High Court reiterated the well laid down convention that the person who had acted as Appellate Authority and decided a particular case, cannot preside over the Bench of the Tribunal deciding an appeal against such an order.

M/s Kay Ess Traders, Gurgaon vs. State of Haryana

Source : *Sales Tax Matters, Vol. 11 Part I, Page 37.*

16. Taxation without authority of law

The Orissa High Court held that the levy of tax have to be under the provisions of the Act and such levy cannot be resorted to through administrative instructions. The Hon'ble High Court, therefore, quashed the impugned circular and set aside the order of assessment.

M/s Larsen & Toubro Ltd vs. State of Orissa.

Source : *Sales Tax Matters, Vol. 11 Part 2, Page 217.*

17. Works Contract

1. Circular

The Supreme Court, while considering the circular issued by the Commissioner of U. P. Trade Tax, held that the same, being contrary to the definition of the term 'sale' under section 2(h); was erroneous and it cannot give the base for withdrawing the recognition certificate issued for the purchase of material at concessional rate against Form III-B. In that regard, the Supreme Court observed that the term 'sale' included the transfer of property in goods involved in the execution of Works Contract and

the legal fiction created by Article 366(29A)(b) of the Constitution must be carried to its logical conclusion.

State of U. P. & Others vs. M/s P. N. C. Construction Co. Ltd. & Others (2008) 16 KTR 1 (SC).

2. Levy of tax on transfer of property

The Guwahati High Court considered the impact of sections 14 and 15 of the Central Sales Tax Act on the levy of tax on the transfer of property in goods involved in the execution of works contract and held that though the provisions of Assam VAT Act, 2003 prescribe the rate of tax at 12.5% in respect of the deemed sale of the material used in the execution of works contract, the State legislature could not have provided for the same rate for the declared goods so used. The High Court, therefore, quashed the order challenged before it and held that the declared goods cannot be made exigible to tax @ 12.5% and as amended by the C.S.T. Act, the correct rate of tax on the value of such declared goods used in the works contract was restricted to only 3% as against 12.5% for other goods.

M/s Afcons Infrastructure Ltd. vs. State of Assam

Source : *Sales Tax Matters, Vol. 11 Part 2, Page 143.*

3. Construction of building

Granting the leave of appeal to the State of U. P. against the judgment of the Allahabad High Court in the case of *M/s Assotech Realty Pvt. Ltd.*, the Supreme Court by its decision dated 3rd December, 2007, held that the writ petition concerned was required to be adjudicated appropriately about the nature of the Rights conferred on the allottees of the flat, the consideration for payment of instalment and whether the construction by the petitioner was on its own account or for the allottees. The Supreme Court, therefore, set aside the order of the High Court with liberty to the assessee to file an appeal before the appropriate authority within a period of thirty days.

State of U. P. & Anr. vs. M/s Assotech Realty Pvt. Ltd. 2008 NTN - 52

18. Writ Jurisdiction

The Division Bench of the Madras High Court, while deciding an appeal against judgment of the single Judge of the same Court, held that the Writ under Article 226 was legally maintainable even when a statutory appeal was available to the petitioner. Since the demand by the State was nothing but imposing an additional burden with retrospective effect, the same was held to be legally not sustainable.

Tvl. Sakthi Masala (P) Ltd & Others vs. The Special Commissioner & Commissioner of Commercial Taxes & Others 2007-08 (13) TNCTJ - 39.

CORPORATE & ALLIED LAWS

SUJEETH S. KARKALA
Advocate

1. Lawyers are accountable under the Consumer Protection Act – S. 2(1) (o)

The State Commission held that the services rendered by the Lawyer does not come within the ambit of the definition of sec 2(1)(o) as the client executed the power of attorney on behalf of him and the acts are done on behalf of the client. The National Consumer Dispute Redressal Commission held that the lawyers are within the ambit of the definition of the term “Service” and the reason given by the State Commission is totally erroneous.

D. K. Gandhi vs. M. Mathias; Revision Petition No. 1392 of 2006 dated 6th August, 2007

(Source: <http://ncdrc.nic.in>)

2. FERA – Power of RBI – S. 18

The appellant was held guilty for the contravention of section 18(2), as he has failed to take reasonable steps for repatriation of export proceeds of goods sent to abroad. On appeal, it was held that the RBI has allowed write off in favour of the appellant. The Letter of the RBI was to be considered by the adjudicating officer and appear to be a fit case where impugned order was required to be quashed and set aside.

Mohd. Saleem, Proprietor vs. Enforcement Directorate (2008) 81 SCL 320 9ATFFE-New Delhi

3. Suspension of legal proceedings, contract etc. – S. 22 of SICA

The petitioner had filed the writ restraining respondent from resorting to any proceeding for recovery of amount unless a fresh scheme was sanctioned or implemented. In the instance case no claim was pending and all the proceedings has come to close. Therefore protest under section 22 was not available. The writ petition was dismissed.

Neyar Ltd. vs. CTO, Cuddor 81 SCL 535 (Mad.)

4. Workman – No master servant relationship – S. 2(s)

The Court found that since there was no master servant relationship between the employees of canteen and respondent, the workers of the canteen not entitled to claim salary which was given to the employer serving in the VIP Guest House or tea club. The Supreme Court agreed with the views of the Division.

Canteen Mazdoor Sabha vs. Metallurgical Engg. Consultants (I) Ltd. 81 SCL 46 (SC) (Mag.)

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Flash News - 5 Member's Special Bench

Mesne Profits are a Capital Receipt – S. 4, 28.

In view of the conflict of judicial opinion amongst the High Courts on the taxability of mesne profits, the legal position that, where two views are possible, the view favourable to the assessee should be followed applies. Accordingly mesne profits are a capital receipt and are not chargeable to tax.

Narang Overseas vs. ACIT (SB) Mumbai. ITA No. 4623/m/M/05 Asst. year 2002-03, dt. 20-2-2008

Source: www.itatonline.org

EDITORIAL NOTE: Judgement of Special Bench in *Sushil Kumar & Co. vs. Jt. CIT (2004) 88 ITD 35 (SB)* on this point is overruled.



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