



AIFTP TIMES

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Federation News

Shri Mukul Gupta, *Secretary General*

FORTHCOMING PROGRAMMES

| Date & Months | Programmes |
|----------------------------------|---|
| 12th July, 2008 | Third National Executive Committee Meeting at Hyderabad |
| 12th & 13th July, 2008 | National Tax Conference in Hotel 'The Manohar', Begumpet, Hyderabad, AP. Organised by All India Federation of Tax Practitioners (Southern Zone) |
| 3rd, 4th & 5th November, 2008 | Three Days International Conference in Association with Taxation Institute of Australia at Taj Mahal Hotel, New Delhi |
| 26th & 27th & November, 2008 | AOTCA Shanghai Meeting 2008 at Shanghai International Convention Centre, 2727, Riverside Avenue, Pudong, Shanghai, China |
| 19th, 20th & 21st November, 2009 | AOTCA International Tax Conference 2009 at Taj Mahal Hotel, Mumbai. |

NEWS FROM SOUTHERN ZONE

The Managing Committee of AIFTP (Southern Zone) will hold at least one monthly lecture meeting for the benefit of the members.

For the month of February, 2008, in association with AP Sales Tax Bar Association, lecture meeting was held on 23-2-2008 in Jaya International Hotel, Hyderabad. Three young professionals were given opportunity to make maiden speech. Various queries raised by the participants were answered in the meeting by speakers.

For the month of March, 2008, meeting on Union Budget was held on 6-3-2008 in KLN Prasad AC Auditorium, in association with AP Tax Bar Association. Shri F.B. Andhyarujina, Senior Advocate, Mumbai delivered the lecture. The meeting was well attended.

For the month of April, 2008, Seminar on AP VAT issues was held in Nellore on 19-4-2008, in association with AP Sales Tax Bar Association.

AOTCA Shanghai Meeting 2008 (21-11-2008 to 27-11-2008)

Theme : The Chinese Tax System and its development and the situation of the Chinese Certified Tax Agents Industry and its development"

Approximate cost for three days visit in Beijing, two days visit in Shanghai and two days Conference at Shanghai in Four Star Hotels will be Rs. 97,000/- on Single Sharing basis and Rs. 85,000/- on Twin Sharing basis.

In Five Star Hotels it will approximate Rs. 1,19,000/- on Single Sharing basis and Rs. 97,000/- on Twin Sharing basis.

Note: Delegate fees has to be paid separately and directly at the venue of the Conference. Those who desire to attend the Conference, may inform the office of the Federation at 215, Rewa Chambers, 31, New Marine Lines, Mumbai – 400 020.

FOR QUERIES PLEASE CONTACT ANY OF THE FOLLOWING OFFICE BEARERS

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REPORT ON NATIONAL TAX CONFERENCE 2008 held on 15th & 16th March, 2008 at Jaipur

All India Federation of Tax Practitioners jointly with Rajasthan Tax Consultants Association, Tax Consultants' Association, Jaipur as well as Jaipur Tax Bar Association, had organized a two days National Tax Conference on 15th & 16th March, 2008 at Maharana Pratap Sabhaghar, Vidya Ashram School, J.L.N. Marg, Jaipur.

More than 500 delegates from around 80 cities were present in the Conference, which included Hon'ble Judges from High Courts, Members from Income Tax Appellate Tribunal, Hon'ble Rajasthan Tax Board, Commissioners of Income Tax, Officers of Income Tax and Sales Tax, besides Senior Advocates, Chartered Accountants, Tax Practitioners, and other eminent personalities from various Associations, from all over the country.

The details in brief are as under:

March 15, 2008

Inaugural Session

Hon'ble Justice Dr. Arijit Pasayat, Judge, Supreme Court of India, was the Chief Guest of the Inaugural session where the Guest of Honour was Hon'ble Justice Shri Narayan Rao, Chief Justice of Rajasthan High Court.

Mr. P. M. Chopra, Chairman, Conference Committee & President RTCA delivered welcome address followed by the speech of Mr. Bharatji Agarwal, National President of All India Federation of Tax Practitioners.

On this occasion, Dr. S.L. Jain, President, Tax Consultants' Association as well as Shri R.C. Gupta, President, Jaipur Tax Bar Association had also addressed the delegates.

Apart from above, Vote of Thanks was given by Shri Sudhir Bhansali, General Secretary, RTCA.

During the Inaugural Session Shri Mahendra Gargieya, Chief Editor of Tax World has handed over the Souvenir to Hon'ble Justice Dr. Arijit Pasayat, Judge, Supreme Court of India, who subsequently released the same.

Apart from this, Mr. M. R. Verma was felicitated and was given Lifetime Achievement Award for his outstanding contribution in the field of Tax & Law. He is one of the Senior Chartered Accountants and has become role model for many young professionals. He was applauded and was given a standing ovation by the august gathering.

First Technical Session

The First Technical Session was held under the Chairmanship of Hon'ble Justice Shri Munishwar Nath Bhandari, Judge, Rajasthan High Court. During this Session, very informative papers have been presented by the eminent Speakers such as Shri Saurabh N. Soporkar

on Controversies under Direct Tax Laws & Issues under Union Budget, 2008, Shri Ashwin C. Shah on Survey, Search & Seizure under Income-tax Act and Shri Mukul Gupta on Highlights of Union Budget, 2008 relating to Service Tax.

Second Technical Session

In the Second Session, Mr. Bharatji Agrawal, National President of AIFTP took the Chair and Shri Vipin Bhanagar, Member, Rajasthan Tax Board was the Guest of Honour.

In this session also various papers were presented by eminent Speakers viz. Mrs. Nikita R. Badheka on Taxability of Works Contract under VAT Act, Shri T.C. Jain on Issues under VAT Act & Highlights of State Budget, 2008

Cultural Programme

The cultural programme took place on the first day of the Conference in which Shri Rahul Mohnot, President, Hindalco Ltd. was the Guest of Honour. This programme has been well appreciated by the entire delegates.

March 16, 2008

Third Technical Session

The Third Technical Session started at 9.00 a.m. under the Chairmanship of Shri N.M. Ranka, Past National President of AIFTP and the Hon'ble Justice Shri Rajesh Bindal, Judge, Punjab & Haryana High Court had graced the session as the Chief Guest while Shri A.L. Gehlot, A.M. ITAT, Mumbai was the Guest of Honour.

In this session Shri Pradeep Kapasi, had presented paper on Taxation of Real Estate Transactions, Current Development.

Subsequent to above, the Brain Trust Session took place in which eminent Brain Trustees was Shri Ashwin C. Shah, Shri H.M. Singh, Shri R.C. Agarwal and Shri M. L. Patodi etc.

The Valedictory session took place from 12.30 p.m. to 1.30 p.m. under the Chairmanship of Shri C.M. Birla, FCA from Kota where the Chief Guest was Hon'ble Justice Dr. Vineet Kothari, Judge, Rajasthan High Court while the Guest of Honour was Shri I. C. Sudhir, Judicial Member, Income Tax Appellate Tribunal, Jaipur.

After having the above activities all the delegates have taken their sumptuous Dinner and left the venue with wonderful memories.

P.M. CHOPRA
Conference Chairman

DIRECT TAXES

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

SUPREME COURT

1. Capital Gain – 'Transfer' possession is essential element to be considered

Assessee having entered into an agreement with a party to sell vacant land and conveyed some plots to the nominees of the vendor during relevant year before the agreement came to be rescinded. In the absence of relevant facts on record to show as to whether the entire land or part thereof stood conveyed or delivered to the vendor or any finding on possession of such land, Tribunal was not justified in holding that capital gain relatable to the whole agreed consideration is not liable to tax:

Ajay Kumar Shah Jagati vs. CIT (2008) 4 DTR (SC) 214

2. Deduction – Computation : A.Ys. 1990-91 & 1991-92 – S. 80-I

Gross total income of the assessee has first got to be determined after adjusting losses of earlier years, unabsorbed depreciation, etc. and if the gross total income of the assessee is 'Nil' the assessee would not be entitled to deduction under Chapter VI-A; non obstante clause in S. 80 I(6) cannot restrict the operation of ss. 80A(2) and 80B(5) which operate in different spheres. Secondly, if the assessee has suffered loss in one unit the same has to be set off against the profits of the undertaking before determining the gross total income, and if the gross total income was 'nil', no deduction under s. 80-I is allowable.

Synco Industries Ltd. vs. Assessing Officer & Anr (2008) 4 DTR 203 (SC)

3. Residential status: Binding nature of Circular

- (i) U/s 6(6), a person will become an ordinarily resident only if (a) he has been residing in nine out of ten preceding years; and (b) he has been in India for at least 730 days in the previous seven years;
- (ii) Though judgments given by a High Court are not binding on the other High Court(s), judicial decorum, propriety and discipline requires that the High Court should, especially in the event of its contra view or dissent, discuss the aforesaid judgments of the different High Courts and record its own reasons for its contra view;
- (iii) It is well settled that when two interpretations are possible, then invariably the Court would adopt the interpretation which is in favour of the tax-payer and against the Revenue;
- (iv) Circulars issued by the Department are binding on the Department.

Pradip Mehta vs. CIT (Supreme Court)
Source: www.itatonline.org

4. Special audit: Principles of natural justice

- (i) There has to be a genuine and honest attempt on the part of the AO to understand accounts maintained by the assessee; appreciate the entries made therein and in the event of any doubt, seek explanation from the assessee. The opinion must be based on objective criteria and not on the basis of subjective satisfaction. Recourse to s. 142 (2A) cannot be had by the AO merely to shift his responsibility of scrutinizing the accounts of an assessee and pass on the buck to the special auditor.
- (ii) The CIT has a very heavy duty to see that the requirement of the previous approval is not an empty ritual. Before granting approval, the CIT must have the material on the basis whereof an opinion has been formed by the AO. The approval must reflect application of mind.
- (iii) Even in the absence of express provision for affording an opportunity of pre-decisional hearing to an assessee the requirement of observance of principles of natural justice is to be read into the provision of sec. 142(2A).

Note: *Rajesh Kumar 287 ITR 91 (SC)* was affirmed.
Sahara India vs. CIT (Supreme Court) (Larger Bench)
Source: www.itatonline.org

HIGH COURTS

1. Avoidance of Tax

The effect of **Azadi Bachao Andolan** 263 ITR 706 is that an act which is otherwise valid in law cannot be treated as non est merely on the basis of some underlying motive supposedly resulting in some economic detriment or prejudice to the national interests, as perceived by the AO.

In **McDowell** 154 ITR 148, the Court nowhere said that every action or inaction on the part of the tax-payer which results in reduction of tax liability to which he may be subjected to in the future, is to be viewed with suspicion and be treated as a device for avoidance of tax irrespective of legitimacy or genuineness of the act.

CIT vs. Lazor Syntex & CIT vs. M/s. Akshay Textiles Trading (Bombay High Court).

Source : www.itatonline.org

2. Constitutional validity – MVAT – S. 61

S. 61 of the MVAT which confers right to do audit to CAs and excludes Advocates and STPs is neither discriminatory, arbitrary or unreasonable and consequently not unconstitutional. Only CAs are competent to perform audit

functions having regard to the expertise achieved as a result of their academic knowledge and practical experience.

Sales Tax Practitioners vs. State (Bombay High Court)
Source : www.itatonline.org

3. Notice – Mandatory – S. 16(2)

The issue of notice under s. 16(2) W. T. Act [S. 143(2) I.T. Act] is mandatory for reassessment proceedings. If notice u/s 16(2) [143(2)] is not issued, the assessment order passed u/s 17 [s. 147] is not valid.

CWT vs. J. M. Scindia (HUF) (Bombay High Court)
Source : www.itatonline.org

4. Satisfaction – Vague – Proceedings bad-in-law – S. 158BD

The consequences arising out of invoking Chapter XIV-B of the Act are drastic and draconian. The accounts of the assessee may be re-opened for ten years and not only a legal presumption is raised against the assessee but the burden shifts on the assessee to show that it did not have any undisclosed income. Under these circumstances the Revenue should not exercise its powers in a mechanical power but should be circumspect while taking action under the provisions of Chapter XIV-B of the Act. Where the 'satisfaction' recorded by the AO u/s 158 BD was vague and lacking material particulars, held the proceedings were bad-in-law.

New Delhi Auto Finance (P) Ltd. vs. JCIT (Delhi High Court)
Source : www.itatonline.org

TRIBUNAL

1. Business expenditure

Redemption fine levied on assessee jeweller by custom authorities, for keeping primary gold and gold ornaments in his licensed premises without forming part of stock-in-trade in violation of provisions of Gold (Control) Act, 1968, could not be allowed as business expenditure. The confiscation was one of the penalties which was more in the nature of proceedings in rem than proceedings in personam, the object being to confiscate the offending goods, which had been dealt with contrary to the provisions of law and in respect of the confiscation also an option was given to the assessee to pay in lieu of the confiscation such fine, as the officer thought fit.

P. Sonam vs. ITO (2008) 111 ITD 24 (Kochi)

2. Search and Seizure

The Search warrant was not issued in the name of the assessee and his two associate concerns. Section 132(1) empowers the Income-tax authorities specified therein to carry out search and seizure action in the circumstances mentioned in clauses (a), (b) and (c) of sub-section (1) of section 132. The authorities mentioned therein can authorize the officer or officers of the department to enter and search any building, place, vessel, vehicle or aircraft, where on the basis of information he had reason to suspect that such books of account, other documents, money, bullion, jewellery or other valuable articles or things are kept. When a search warrant is issued in the names of persons, the places to be searched are also mentioned

therein. It is not necessary that such place or building must belong to the assessee in whose name search warrant is issued. Such place or building may belong to some other person who is not covered in the search warrant. What is required is that the books of accounts or other documents, valuables, etc., belonging to the person searched are suspected to be lying at such place or building. The very fact that books of account or documents belonging to the persons searched are not found from the said premises and some incriminating documents belonging to other persons not covered under the search warrant are found, would neither invalidate or vitiate the search proceeding, nor would absolve the person not searched, whose books and incriminating documents have been found, from proceedings against him.

ACIT vs. Vinod Goel (2008) 111 ITD 70 (Amritsar)

3. Accrual of income

Income that is received or deemed to be received in previous year is exigible to tax and obligation to use income in a particular manner does not remove it from category of income. There is absolutely nothing in Act to permit the assessee to treat part of income as deferred income and to offer it for taxation as per its own sweet will.

Sterling Holiday Resorts (India) Ltd. vs. ACIT (2008) 111 ITD 116 (Chennai)

4. Charitable or Religious Trust

Commissioner is empowered to condone delay in making of application for registration if he is so satisfied and grant registration from date of establishment of institution but if he is not so satisfied, registration is to be granted from first day of the financial year in which application is made.

Edith Wilkins Hope Foundation vs. Director of Income Tax (Exemption) (2008) 111 ITD 97 (Kol)

5. TDS

Under section 195, any person responsible for paying to a non-resident, including a foreign company, any income by way of interest or any other sum which is chargeable to tax in India, is required to deduct tax at source on such income at the time of payment. As per the mandate of the section, tax is to be deducted at source with reference to the income element embedded in the payments. However, a non-resident including a foreign company may obtain from the A.O. a certificate authorizing him to receive payment without deduction of tax at source. The expression "any other sum" occurring in section 195(1) does not necessarily refer to sums which represent wholly income or profit. It is not open to a person making payment to a non-resident to take unilateral decision that the payments to a non-resident to take unilateral decision that the payments made by him are not sums chargeable to tax. To take this view, the concurrence of the A.O. as provided in section 195(2) is *sine qua non*. Section 195 is for tentative deduction of income tax subject to regular assessment. By the deduction of tax the rights of parties are not, in any manner, adversely affected. Where there exists a doubt as to the chargeability of income to tax, there also tax is to be deducted at source *ex abundanti cautela*.

West Asia Maritime Ltd. vs. ITO (2008) 111 ITD 155 (Chennai)

INDIRECT TAXES - SALES TAX DECISIONS

P. C. JOSHI

Advocate

Composition

The Supreme Court, while considering the language used in the amended provisions of section 17(7) of the Karnataka Sales Tax Act, held that the expression 'receive' would cover receipt in any manner, with the result that the receipt of goods by way of transfer from another branch outside the State for the purpose of using them in the execution of works contract, would lead to non-eligibility of the assessee to the benefit of composition under section 17(6) of the Karnataka Sales Tax Act.

M/s Indian Dairy Machinery Co. Ltd. vs. Asstt. Commissioner of Commercial Taxes (2008) 31 PHT 170 (SC).

Circulars – Binding effect

The Supreme Court, while dealing with the provisions of the Kerala Sales Tax law, held that circulars and orders issued by the Commissioner were not binding on the assessee and it was open to the assessee to claim the benefit of various exemption notifications issued from time to time without having any regard to the circulars and orders, if the terms and conditions were satisfied by the assessee. In that regard the Apex Court also observed that interpretation adopted in a classification dispute need not be the same while interpreting the language of exemption notification which has to be read on its own term.

M/s Padinjarekara Agencies Ltd vs. State of Kerala [VSTI 2008 B-74]

Entries in Schedule

1. Multifunctional Digital Copier Machine

The West Bengal Taxation Tribunal disapproved the order of the Commissioner and held that multifunctional digital copier machine if connectable with a computer and if the principal function of the machine was printing, it would be peripheral falling within the HSN Code 8471 and therefore liable to be taxed @ 4%.

M/s Ricoh India Ltd & Another vs. A.C.S.T., Public Relations Officer & Others (2008) 51 S.T.A. – 81.

2. Cast Iron & Spun pipe castings

The Madras High Court held that Cast Iron & Spun pipe castings were declared goods and therefore cannot be taxed more than @ 4% and that too only at one stage. For the aforesaid purpose, the Court relied on the judgment of the Supreme Court in the case of M/s Bengal Iron Corporation followed by M/s Vasantham Foundry.

M/s Electro Steel Castings Ltd vs. The Tamil Nadu Taxation Special Tribunal & Others 2007-08 (13) TNCTJ - 103

3. Tonner & Cartridge

The Delhi High Court, after considering Entry 41A of the Delhi VAT Act, 2004 relating to notified IT products, held that tonners and cartridges used in Inkjet printers were parts and accessories of HSN Code 84.71 and therefore liable to be taxed only @ 4%.

Commissioner of Trade & Taxes vs. M/s Symphony Enterprises

Source : Sales Tax Matters, Vol. 11, Part 3, Page 268.

4. HDPE Fabrics / bags

The Punjab & Haryana High Court held that the HDPE fabrics were not textile fabrics under the Punjab VAT Act 2005, as applicable to Chandigarh, but was covered by Entry 58 of Schedule B as packing material and therefore was liable to be taxed @ 4%.

M/s Lakshmi Polyfab vs. Union Territory of Chandigarh & Another (2008) 31 PHT 74 (P&H).

5. Inverter & U. P. S.

The Uttar Pradesh Tribunal held that the Inverter & U.P.S. i.e. power supply devices, were electronic components of power supply devices and therefore liable to be taxed @ 4%.

Commissioner, Trade Tax, U. P., Lucknow vs. M/s Hari Trading Co. [VSTI 2008 C-29].

6. Diesel Engine / Kerosene Pumping Sets

The Commercial Tax Commissioner, U. P., while deciding an application under Section 59 of the U. P. VAT Act, held that Diesel Engine Pumping Set and Kerosene Pumping Sets were covered by entry 26 of Schedule C relating to machinery, equipment etc and therefore liable to be taxed @ 4%.

Commissioner, Commercial Tax, U. P. vs. M/s Usha International Ltd., Lucknow 2008 NTN (Vol. 36) – 28.

7. Plastic rope

The Commissioner of Commercial Taxes, U. P., while passing an order under Section 59 of the U. P. VAT Act 2007, held that Plastic rope and Plastic sutli were packing material and therefore liable to be taxed @ 4%.

Commissioner, Commercial Taxes, U. P. vs. M/s Abhiraj Industries, Kanpur 2008 NTN (Vol. 36) – 30.

8. Cotton Bandage

The Commissioner of Commercial Taxes, U. P., determined under Section 59 of the U. P. VAT Act that Cotton bandage would be covered by entry 21 of Second Schedule Part C and liable to be taxed @ 4%.

Commissioner, Commercial Taxes, U. P., vs. M/s Modika, Moradabad 2008 NTN (Vol. 36) – 34.

Exemption

The Allahabad High Court held that while interpreting an exemption notification, one has to look at the language used. There was no room for any intendment nor equity about the tax.

Commissioner of Trade Tax, U. P., Lucknow vs. M/s Laxmi Leather Cloth Industries 2008 NTN (Vol. 36) – 67.

Inter-State sale

1. The assessee before the Supreme Court, had its corporate office in the State of Orissa and mercantile one in the State of Andhra Pradesh. Pursuant to the exports made by the assessee, the corporate office in Orissa obtained DEPFB under the Exim policy from the Director General of Foreign Trade. Such DEPFB were sold by open auction. Since

the exports were made from the State of Andhra Pradesh, auction sale of DEPB, though held in the State of Orissa, were sold to bidders from West Bengal & Maharashtra.

The State of Andhra Pradesh treated such transactions as that of local sale within the State of Andhra Pradesh and levied tax, while the assessee had treated the transactions as that of inter-State sale and accordingly had paid Central Sales Tax in the State of Orissa where auction took place, the Commercial Tax Tribunal in the State of Andhra Pradesh held the transactions to be not within the State of Andhra Pradesh, but concluded that the transactions were intra-State sale in the State of Orissa. The Supreme Court on the above facts held that the Tribunal was not required to go into any other question than the situs of sale, whether within the State of Andhra Pradesh or not. In absence of the material, it was not correct to treat such transactions of intra-State sale within the State of Orissa. Such a conclusion was, therefore, set aside.

M/s National Aluminium Co. Ltd. vs. State of Andhra Pradesh & Others (2008) 31 PHT 273 (SC).

2. The Delhi High Court, after interpreting the provisions of Section 3(a) of the Central Sales Tax Act, held that where under the terms of a contract of sale, the buyer was required to remove the goods from the State in which he had purchased the goods, to another State and when the goods were so moved, the nature of the transaction was that of an inter-State sale, but where the buyer sells them in the local market of the State where he had purchased, then the transaction would be a local sale.

M/s D. C. M. Ltd., Delhi & Others vs. Commissioner of Sales Tax, New Delhi & Others (2008) 31 PHT 111 (Del).

Input tax credit

The VAT Tribunal, Punjab, considering the provisions of Section 14 of the Punjab VAT Act 2005, read with rule 25(i)(b), held that though the Act and Rules were brought into force with effect from 01st April 2005, the time limit of 45 days for declaring the stock and claiming the input tax credit commenced only from the date when the rules were published in the Government Gazette.

M/s Rampal Service Station, Amritsar vs. State of Punjab (2008) 31 PHT 277 (PVT).

Interpretation

The VAT Tribunal, Punjab, held that the operation of the notification issued in exercise of the statutory power by the State government had to be judged by the words employed therein and not by the so called object which rule making authority may have in their mind.

M/s Shreyans Industries Ltd, Ahmedgarh vs. State of Punjab. (2008) 31 PHT 94 (PVT).

Jurisdiction on remand

The Punjab VAT Tribunal held that the jurisdiction of the assessing authority, after remand by the Appellate Authority, was confined only to the subject matter in appeal. He cannot touch other points de novo.

State of Punjab vs. M/s Bhagat Industrial Corporation, Amritsar

Source : Sales Tax Matters, Vol. 11, Part 3, Page 340.

Law applicable

The Punjab VAT Tribunal, after considering the provisions of Punjab VAT Act, especially the Saving clause of Section 92, held that the appeal under the repealed Act can be decided

as per the provisions of the said Act without being affected by the VAT Act.

M/s Jai Shree Steel Traders, Sangrur vs. State of Punjab.

Source : Sales Tax Matters, Vol. 11 Part 3, Page 260.

Penalty under section 10A of the Central Sales Tax Act

The assessee was having its business of manufacture or processing of goods for sale. In view of the acute shortage of steam and electricity which were essentially required in the process of manufacture, a captive power plant was installed with due permission from the Electricity Board. The machinery and equipment that were required for the purpose of power plant were purchased by issuing declaration in Form 'D'. Such a use of 'C' Form was not acceptable to the Revenue, with the result penalty under Section 10A was imposed. When the matter reached Orissa High Court, it was held that though the assessee was not permitted to purchase the goods which were not directly used in the production, the assessee all along had kept the department in picture and therefore, in the absence of mens rea, the penalty was held to be not leviable.

M/s Orient Paper Mills vs. State of Orissa & Others (2008) 31 PHT 279 (Ori).

Registration Certificate – Inclusion of items under section 8(3)(b) of CST Act

The Allahabad High Court, after considering the provisions of Section 8(3)(b) of the Central Sales Tax Act, read with Rule 13 of the Central Sales Tax (Registration & Turnover) Rules 1957, held that fuel and lubricants used in the manufacture or processing of goods for sale was eligible to be included in the Registration Certificate. In the case before the Court, diesel oil and other fuels were used for running Generator sets that were treated as part of the manufacturing process.

Commissioner of Trade Tax vs. M/s Goel India, Moradabad.
Source : Sales Tax Matters, Vol. 11, Part 3, Page 286.

Recovery

1. The Punjab & Haryana High Court held that the arrears of Sales Tax or Central Sales Tax due from a limited company, which was neither wound up nor liquidated, cannot be recovered from the Director of the company. Since the notice of recovery was issued by the authorities without any statutory backing, the Court directed a cost of Rs.10,000/- to be paid by the authorities in question to the aggrieved Director.

Shri Om Prakash Walecha vs. State of Haryana & Others (2008) 31 PHT 121 (P & H).

2. The Madras High Court held that the Sales Tax Act was a complete code with complete machinery for adjudication as well as recovery proceeding and therefore a decree obtained from a Civil Court restraining the department from proceeding against the property of the assessee was of no effect, especially in view of the fact that the Sales Tax Act provided a statutory bar for any proceeding before a Civil Court.

Shri K. Damodara Menon vs. Deputy Commercial Tax Officer, Dharmapuri & Others (2008) 31 PHT 123 (Mad).

Reassessment

The Punjab VAT Tribunal held that the information given by the Audit department did not constitute information contemplated in section 11A of the Punjab General Sales Tax Act, 1948 and the initiation thereof on such a note

amounted to only change of opinion which did not entitle the officer to reopen a completed assessment.

M/s Shreyans Industries Ltd., Ahmedgarh vs. State of Punjab. (2008) 31 PHT 242 (PVT).

Scope of power of High Court – Revision – Reference

The Supreme Court, while considering the scope of Section 11 of the U. P. Trade Tax Act 1948, held that when the fact finding authority had come to a particular conclusion, the mere fact that a Court may have a different perspective of that question, cannot be a ground to interfere with the finding of the Tribunal. The jurisdiction was restricted only on the question of law which was precisely to be stated and formulated.

Commissioner of Trade Tax, U. P. vs. M/s J. U. Pesticides & Chemicals P. Ltd. (2008) 31 PHT 269 (SC).

Sale price

1. Inspection charges

The Madras High Court held that the inspection charges were closely linked to the transaction of sale and therefore will form part of the sale price for the purpose of determining the turnover for assessment.

M/s Electro Steel Castings Ltd vs. The Tamil Nadu Taxation Special Tribunal & Others 2007-08 (13) TNCTJ – 103

2. Freight

The Madhya Pradesh High Court, following the principles laid down by the Supreme Court in the case of *M/s Hindustan Sugar Mills Ltd (43 STC 13)*, held that where the terms of the contract provided for Ex-factory delivery or FOR Railway Station, whereafter the risk of transit was that of purchaser, the freight cannot form part of the sale price under Section 2(h)

of the Central Sales Tax Act. However, if it was the obligation of the seller to transport the goods upto the destination, then the freight charges would form part of the sale price.

Commissioner of Commercial Tax vs. M/s Shah Gordhandas Bhikharidas. Source : Sales Tax Matters, Vol. 11 Part 3, Page 249.

3. The Supreme Court held that the amortization cost calculated in terms of Rule 6 of the Excise Valuation Rules was not includible as part of the sale price.

M/s Moriroku UT India (P) Ltd vs. State of U. P. & Others. 2008 NTN (Vol. 36) – 72.

Sale or Works Contract

The Punjab & Haryana High Court, while considering the nature of the transaction involving installation of lifts at various places of the building, held that the same were not the contract of sale, but that of work and labour. In that connection, the Court observed that the essence of the contract or the substance thereof would govern the nature of the transaction which should be considered as a whole for finding out the predominant object of the contract.

The circumstances of the case and the custom of the trade in question would also be a guide for deciding the controversy. The Court therefore held that the petitioner was not liable under the Punjab VAT Act on the footing that they were entering into a transaction of sale.

M/s E. C. E. Industries Ltd vs. State of Punjab & Others (2008) 31 PHT 66 (P&H).

Seizure of goods and truck

Before the Punjab & Haryana High Court, the goods belonging to the assessee that was being transported in a vehicle were detained, because on an earlier occasion the said transport vehicle had committed a fault. Since such a detention was absolutely unreasonable, the Hon'ble Court held such an action to be that of complete negligence leading to harassment to the assessee. The Court not only directed the immediate release of the goods, but also awarded an exemplary cost of Rs.25,000/- to be recovered from the officer found to be guilty.

M/s Goyal Furnace (P) Ltd vs. State of Punjab & Others (2008) 31 PHT 154 (P&H).

Transfer of right to use goods – Lease finance

The assessee, before the Supreme Court, was carrying on the business of leasing and financing plants and machinery. It had supplied certain plants and machinery on lease to a company in Uttar Pradesh for which the lease rent was received. Considering the text of the lease agreement containing warranty clause, the assessing authority from U. P., held that the lessee having selected the equipment that were given on lease by the assessee, it had effected the purchase of equipment prior to giving the same on lease. In absence of the agreement, the assessing authority relied upon the Invoice showing the purchase of the equipment from Punjab. On the basis of such an Invoice, the conclusion was arrived at that the equipment in question was purchased prior to the same being given on lease. Under the circumstances, the assessing authority held that no movement took place from Punjab to Uttar Pradesh as a result of the lease transaction and therefore, the same were held to be a local transaction in the State of U. P. While explaining its judgment in the case of *M/s 20th Century Finance Corpn. Ltd.*, the Supreme Court observed that the transfer of right to use the goods was *sine qua non*, where the goods sought to be given on lease were in existence or available. The transfer would take place when the contract in that respect was executed. In other words, as soon as the contract was executed, the right was vested in the lessee.

Considering the scope of levy, the Supreme Court held that the place of delivery was not relevant, but the place where such right was transferred was important. The assessee tried to refer to a Letter of Intent, but that was not admitted by the Court in view of the fact that the same was sought to be produced after a long period of twelve years and no reference was found to such a Letter of Intent in the Invoice considered by the authority. The Supreme Court, under the circumstances, confirmed the finding of facts recorded by the Tribunal to the effect that the entire arrangement was tried to be made out so as to get the advantage of the Supreme Court judgment in the case of *M/s 20th Century Finance Corpn. Ltd.*

M/s Goa Carbon Ltd vs. Commissioner of Trade Tax JT 2008 (3) SC 316

Works Contract – Liability

The Gujarat VAT Tribunal followed the relevant judgments of other Courts and held that when the sub-contractor was a registered dealer and was liable to tax for the work carried out by him, there was no liability to the main contractor in that regard.

M/s Nagarjuna Construction Co. Ltd. vs. The State of Gujarat Source : Sales Tax Journal, Vol. 46, Part : 11, Page 1152.



Hearty Congratulations

Hearty Congratulations to **Shri Y. P. Trivedi**, Sr. Advocate for being elected as Rajya Sabha Member.

All India Federation of Tax Practitioners (WZ) jointly with Bombay Chartered Accountants Society and The Chamber of Tax Consultants had organised a Felicitating function at Hotel West End, Mumbai on 7-4-2008 wherein Shri Y. P. Trivedi, Sr. Advocate was felicitated.

Hearty Congratulations to **Shri Mitesh S. Modi** for being elected as a Chairman in Surat Branch of WIRC of The Institute of Chartered Accountants of India for the year 2008-09.

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