



All India Federation of Tax Practitioners

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AIFTP TIMES

Volume 2 - No. 2 • February, 2011

FORTHCOMING PROGRAMMES	
Date & Month	Programme
5th March, 2011	Full Day Seminar on Direct & Indirect Taxes with focus on Union Budget, 2011
11th & 12th March, 2011	Two Days Conference at Junagadh
15th January to 30th April, 2011	Workshop on MVAT and Service Tax at Mumbai
23rd April, 2011	National Executive Committee Meeting at Jodhpur
23rd & 24th April, 2011	Two Days National Tax Conference at Jodhpur
13th August, 2011	National Executive Meeting at Kochi
13th & 14th August, 2011	Two Days National Tax Conference at Kochi

FEDERATION NEWS

J. K. Ranka, Secretary General

TAX BENCH STABILISED AT M.P. HIGH COURT, INDORE

On 11th & 12th December, 2010 a National Tax Conference was organized at Indore where more than 500 Delegates were present. In the Inaugural Session Chairman of Conference Mr. M.D. Sodani in his address requested the Chief Guest Hon'ble Shri Syed Rafat Alam Saheb Chief Justice of M.P. High Court to set up a separate Tax Bench for the hearing the Tax matters considering the pendency and involvement of Revenue. The Hon'ble Chief Justice assured to consider a Tax Bench.

It is a matter of great pleasure and honour for AIFTP that the Hon'ble Chief Justice on 1st January directed to have a separate Bench for Tax matters twice in a week i.e. on Tuesday and Thursday to hear tax matters exclusively between 2 P.M. and 4.30 P.M.

On this occasion all the Office Bearers, National Executive Members and all the Members of AIFTP feel obliged and congratulated the Hon'ble Chief Justice for such a prompt decision. AIFTP hopes that other Hon'ble High Courts follow this precedent.

M.D. Sodani
Vice President
AIFTP (CZ)

FOR QUERIES PLEASE CONTACT ANY OF THE FOLLOWING OFFICE BEARERS

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71st FOUNDATION DAY OF INCOME TAX APPELLATE TRIBUNAL WAS CELEBRATED AT MUMBAI, CHENNAI, JAIPUR AND PUNE ON 25-1-2011

The Income Tax Appellate Tribunal ["the Tribunal"] which was founded on 25-11-1941 has completed its 70 years of existence. On 25-1-2011, for the first time in the history of the Tribunal, Hon'ble Members, Members of the Bar and Departmental Representatives joined together at Mumbai, Chennai and Jaipur to celebrate the 71st Foundation Day of Income Tax Appellate Tribunal.

AT MUMBAI

At Mumbai, on behalf of ITAT Bar Association, Dr. K. Shivaram, President of ITAT Bar Association, Mumbai & Past President, AIFTP, welcomed the gathering. He stated that on 25th January every year, the Bar, the Bench and Departmental Representatives from all 25 places where Benches of the Tribunal are functioning may meet together, interact and reaffirm our responsibilities for better administration of justice before the Tribunal. He requested the members of the Bar to forward constructive suggestions for better administration of justice before the Tribunal.

Mr. Dinesh Vyas, Past President of ITAT Bar Association, Mumbai, paid rich tribute to the Income Tax Appellate Tribunal on the completion of 70 years and made few constructive suggestions.

Mr. S. E. Dastur, Past President of ITAT Bar Association, Mumbai, stated that the Government must confirm appointment of President of the Tribunal in the interest of the institution. He also made very constructive suggestions for better administration of justice before the Tribunal by sharing his experiences.

Mr. Y. P. Trivedi, Past President of ITAT Bar Association, Mumbai, paid rich tribute to the Tribunal and shared his rich experiences. He fondly shared some of his memories concerning the Tribunal. He posed a question: "We have grown big but have we grown more beautiful?"

He opined that the path towards excellence is a continuous path and it is always necessary to overcome hurdles on the path. He then gave few suggestions:

1. The selection process needs to be more streamlined and scientific.
2. The unseemly rush for disposals should be avoided as it has lowered the quality of orders and justice.
3. Every judge should be fired by keen sense of justice and humility.

Mr. S. K. Pahwa, Commissioner of Income Tax (DR), explained the difficulties faced by the departmental representatives and requested the Hon'ble President to consider the same.

Hon'ble Vice President, Shri D. Manmohan, and Hon'ble President, Shri R. V. Easwar, assured the gathering that they would consider all the suggestions objectively and would try to implement the same.

Dr. K. Shivaram wished all the persons present Happy Republic Day.

It is heartening to note that more than 100 persons attended the function.

AT CHENNAI

Under the able guidance of Mr. V. Ramachandran, Past President of AIFTP and Revenue Bar Association, Chennai, Foundation Day of the Tribunal was celebrated at Chennai in the presence of Hon'ble Member, Shri U. B. S. Bedi, other Members of the Tribunal, Departmental Representatives and Members of the Bar.

AT JAIPUR

Under the able guidance of Mr. N. M. Ranka, Past President of AIFTP and Past President of Rajasthan Tax Consultants Association, Foundation Day of the Tribunal was celebrated at Rajasthan in the Tribunal premises in the presence of Shri N. L. Kalra, Hon'ble Member of the Tribunal, Shri O. P. Agarwal, President, Jaipur Tax Tribunal Bar Association, Members of the Bar and Smt. Irina Garg, CIT (DR).

AT PUNE

Under the guidance of Mr. Sunil Pathak, Past President, ITAT Bar Association, Pune, Foundation Day of the ITAT was celebrated at Pune in the Tribunal premises in the presence of Hon'ble Member, Shri Shailendra Kumar Yadav, Hon'ble Member, Shri D. Karunakara Rao, Members of the Bar and Departmental Representative.

REPORT OF NATIONAL CONVENTION ON TAXATION – 2011

HELD AT AHMEDABAD ON 8TH AND 9TH JANUARY, 2011

1. The National Convention on Taxation - 2011 was held at J.B. Auditorium, Ahmedabad Management Association, Vastrapur, Ahmedabad – 380 015 on 8th and 9th January, 2011. The National Convention on Taxation - 2011 was organized by All India Federation of Tax Practitioners [Western Zone] in association with:
 1. **All Gujarat Federation of Tax Consultants**
 2. **ITAT Bar Association, Ahmedabad**
 3. **Ahmedabad Branch of WIRC of ICAI**
 4. **Chartered Accountants Association, Ahmedabad**
 5. **Income Tax Bar Association, Ahmedabad**
 6. **Tax Advocates Association Gujarat, Ahmedabad**
 7. **Gujarat Sales Tax Bar Association**
2. The theme of the convention was "Socio Economic Growth, Ethics and Taxation".
3. The National Convention on Taxation - 2011 was inaugurated by Hon'ble Mr. Justice Anil R. Dave, Judge, Supreme Court of India. Hon'ble Mr. Justice D.A. Mehta, Former Judge, High Court of Gujarat and Hon'ble Shri R.V. Easwar, President, ITAT were guests of honour. Hon'ble Mr. Justice Anil R. Dave and guests of honour stressed in their speech on character. It was stated that knowledge of without character is of no use.
4. There were Four Technical Sessions on Saturday 8th January 2011 and Four Technical Sessions on Sunday 9th January, 2011. The Topics, Chairmen and Faculties are as under:

Saturday, 8th January, 2011

Technical Name of Chairmen Session	Name of Faculties	Topics	
1st	Hon'ble Mr. Justice D.A. Mehta	Shri K.H. Kaji, Advocate	Precedents, Judicial Discipline & Contempt
2nd	Shri J.P. Shah, Advocate	Shri H. Padamchand Khincha CA.	Some Aspects of Depreciation
3rd	Shri Mukesh M. Patel, Advocate	Shri Dhinal A. Shah, CA	TDS Provision under Section 195
4th	Shri Bharatji Agrawal, Sr. Advocate	Shri Naresh Thakkar Advocate	Construction and Renting Services under Service Tax

Sunday, 9th January, 2011:

5th	Hon'ble Shri R.V. Easwar, President, ITAT	Shri Saurabh N. Soparkar, Sr. Advocate	Taxation of Real Estate – Some important aspects including project completion method, Section 50C, Development & Redevelopment and Section 80-IB
6th	Shri N.M. Ranka, Advocate	Shri Dr. Girish Ahuja, CA	Computation of Income under Direct Tax Code Bill
7th	Shri P.C. Joshi, Advocate	Shri Nayan Sheth, Advocate	VAT – Controversial Issues in Input Tax Credit
		Smt. Nikita Badheka Advocate	Intricate Issues of declarations under Central Sales Tax Act
8th	Shri Samir N. Divatia Advocate	Shri Keshav Bhujle, Advocate	Controversies under section 14A of I.T. Act

5. The topics selected were of practical nature. All the technical sessions were very live and the delegates took active participation as evidenced from the queries raised by them.
6. Hon'ble Shri R.V. Easwar, President, ITAT was felicitated on his elevation as President, ITAT during Valedictory Session on Sunday 9th January, 2011 at 4.30 P.M. All speakers spoke very high of Hon'ble Shri R.V. Easwar and wish him a successful tenure as President, ITAT. The confidence was expressed that ITAT would achieve greater heights during his tenure as President. Hon'ble Shri R.V. Easwar, President, ITAT while responding to his felicitation stressed on moral values. The last two paragraphs are reproduced as under:

"Economic growth and prosperity and taxation are inter-connected and both impel each other. The growth and prosperity of society as a whole is dependent on the character and values of each member of the society. It is not enough to enjoy the fruits of economic prosperity and wealth; it has to be done responsibly. Such responsibility can only come out of the ethical values which every individual member of the society undertakes to imbibe. If the fruits of the economic prosperity are to sustain, the only way it can be ensured is to practise - not merely to preach - those ethics which conform to our convenience. It can even be said that ethics are the bridge which connect taxation and socio-economic growth.

I am thankful to the organisers of this Convention for giving me this opportunity of sharing my thought with you. I must congratulate them - Mr. Kaji and Mr. Aswin Shah in particular - for having chosen a most relevant topic. This Convention is a gentle but firm reminder that in our hurry to be an economic super power let us not sacrifice the basics of human conduct and character.

I thank you all for the patient indulgence!

JAI HIND !

The text of the speech is published in this journal.

7. Hon'ble Shri R.V. Easwar, President, ITAT gave away the appreciation awards to the persons who have worked very hard for the success of the convention.
8. The food served during Convention was delicious and excellent and all delegates enjoyed the food and hospitality. On the first day of the Convention the entertainment programme - Gujarati Drama was arranged. The Convention ended with grand success.

FULL DAY SEMINAR ON DIRECT & INDIRECT TAXES WITH FOCUS ON UNION BUDGET, 2011

A full day Seminar on Recent Developments in Direct & Indirect Taxes with analysis of Union Budget, 2011 is being held on Saturday the 5th March, 2011 at the Golden Park Hotel, 13, Ho Chi Minh Sarani, Kolkata - 71. Eminent Speakers include Shri M.L. Patodi, National President, AIFTP; Shri P.C. Joshi (Mumbai); Shri Bharatji Agrawal (Allahabad) and Shri N.K. Poddar (Kolkata) and the CCITs from Income Tax Department. Shri S.K. Poddar, Dy. National President has also consented to grace the occasion.

We have also requested Shri N.M. Ranka, Senior Advocate and Past President AIFTP to kindly chair one of the sessions.

Regn fee Rs.750 only for AIFTP Members and Rs. 1,000 for others.

Please also see the website www.aiftpeast.org

Narayan Jain,
Chairman, AIFTP (East Zone)

ALL INDIA FEDERATION OF TAX PRACTITIONERS (WZ)

Organised

WORKSHOP ON MVAT & SERVICE TAX

Jointly with

BCAS, CTC & STPAM

Venue : STPAM Library-104, Vikrikar Bhavan, Mazgaon, Mumbai – 400 010

Time : 2.30 p.m. to 5.00 p.m.

We request all our members to take benefit of the Workshop organised by AIFTP (WZ) alongwith BCAS, CTC & STPAM on the subject of MVAT and Service Tax. The details are as under:

Sr. No.	DATE	DAY	SUBJECT	MONITOR & SPEAKER
1	12th February, 2011	2nd Saturday	Practical Aspects under Business & Refund Audit	Deepak Bapat, Adv.
2	19th February, 2011	3rd Saturday	Intricate Issues under Input Tax Credit & Refunds (Set-off)	CA. Kiran Garkar
3	12th March, 2011	2nd Saturday	Intricate Issues under Works Contracts/ Lease Tax & Provisions of Composition Schemes under MVAT Act	CA. Mayur Parekh
	Service Tax			
4	19th March 2011	3rd Saturday	Export & Import of Services, Valuation of Services Rules, 2006,	CA. Manish Gadia
5	2nd April, 2011	1st Saturday	Construction Services, Works Contract Services, Management, Maintenance & Repair Services, Renting of immovabale Property	CA. Naresh Sheth
6	16th April, 2011	3rd Saturday	Information Technology Services, Health Services, Commercial Coaching & Training, Supply of Tangible Goods Services	CA. Ashit Shah
7	30th April, 2011	5th Saturday	CENVAT Credit Rules, 2004	CA. Rajiv Luthia

Fees : Rs. 1,750/- for Members & Rs. 2,500/- for Non-members.

Please enroll early as the limited seats are available.

Workshop of 15th January 2011, i.e., Intricate Issues under MVAT Act, 2002 by C. B. Thakar and Workshop of 29th January, 2011 on Filing of Returns (including E-filing and payment of taxes, Assessment Procedures, Interest, Penalties and Prosecutions.

For All India Federation of Tax Practitioners (Western Zone)

Harish N. Motiwalla
Chairman

Chirag S. Parekh & Avinash Lalwani
Jt. Secretaries

Note: Cheque/DD to be drawn in favour of "All India Federation of Tax Practitioners-Western Zone", payable at Mumbai.

DIRECT TAXES

Ajay R. Singh, Paras Savla, Rahul Hakani & Renu Choudhari
Advocates

SUPREME COURT

1. High Court not to dispose of cases of department involving high stakes merely on ground of delay

Where there is delay on part of department in the cases involving huge stakes, the High Court should not merely dispose of matter only on the ground of delay but must examine the same on merit. It must consider imposing cost for delay.

CIT vs. West Bengal Infrastructure Development Finance Corpn. Ltd., Source : www.itatonline.org

2. S. 115JB : Book profit – Minimum Alternate Tax – Revaluation of Reserve

Amount withdrawn from revaluation reserve & credited to P & L A/c. cannot be reduced from book profit, even if in year of creation of reserve the P&L A/c. was not debited. It is precisely to tax these kinds of companies, that MAT provisions had been introduced. The object of MAT provisions is to bring out the real profit of the companies. The thrust is to find out the real working results of the company.

Indo Rama Synthetics (I) Ltd. vs. CIT (Supreme Court) Source: www.itatonline.org

3. S. 234B : Interest – Book profit company – (Ss. 115J, 115JA)

The assessee was bound to pay advance tax under the scheme of the Act. Section 234B is clear that it applies to all companies. There is no exclusion of section 115J/115JA in the levy of interest under section 234B (*Kwality Biscuits Ltd. vs. CIT 243 ITR 519 (Kar.) (SLP dismissed in 284 ITR 434) considered*).

Jt. CIT vs. Rolta India Ltd. (Supreme Court) Source: www.itatonline.org

HIGH COURTS

4. S. 9(1)(i) : Income deemed to accrue or arise in India – Business Connection

The profits from the offshore supply contract held not to be liable to tax in India on the ground that the transfer of title in the goods had passed outside India. As no operations *qua* the agreement for supply of equipment were carried out in India, no income can be deemed to have accrued or arisen in India

whether directly or indirectly or through any business connection in India.

Dy. CIT vs. LG Cables Ltd. (Delhi High Court) Source: www.itatonline.org

5. S. 80-IA(9) : Deduction – Industrial Undertaking – Interpretation – (S. 80HHC)

S. 80-IA(9) cannot be interpreted to mean that section 80-IA deduction has to be reduced for computing section 80HHC deduction. The restriction in section 80-IA(9) relates to the allowance of deduction i.e. seeks to curtail allowance and not computation of deduction. Section 80IA(9) does not disturb the mechanism of computing the deduction provided under section 80HHC(3). (ii) The reasonable construction of section 80-IA(9) is that where deduction is allowed under section 80-IA(1), then the deduction computed under other provisions under heading 'C' of Chapter VIA has to be restricted to the profits of the business that remains after excluding the profits allowed as deductions under section 80-IA, so that the total deduction allowed under the heading 'C' of Chapter VIA does not exceed the profits of the business.

Associated Capsules Pvt. Ltd. vs. Dy. CIT (Bombay High Court) Source: www.itatonline.org

6. S. 226 : Recovery – No-coercive recovery if first appeal is ready for hearing

The assessee filed appeals before the Commissioner of Income-tax (Appeals) against the assessment orders for Asst. Years 2004-05 to 2008-09. Though the appeals were ripe for hearing and the Appellate Authority had already posted for hearing on different dates, the Assessing Officer without considering the pendency of the appeals issued demand notice and took steps for attachment of the assessee's bank account. The assessee filed a Writ Petition to challenge the recovery action which was opposed by the department on the ground that the assessee had repeatedly sought adjournment of the hearing of appeals, the Court allowed the petition and directed to dispose the appeals at the earliest possible after affording an opportunity of hearing to the assessee, at any rate within a period of one month from the date of receipt of a copy of the Court's judgment and till such time orders are passed by the Appellate Authority, recovery steps shall be kept in abeyance. If there is no co-operation by assessee the Appellate Authority is at liberty to finalise the appeals without according any further opportunity of hearing.

Hotel Leela Venture vs. Ag. ITO (Kerala High Court) Source: www.itatonline.org

TRIBUNALS

7. S.4 : Income – Revenue receipt – Compensation for cancellation of contract not affecting trading structure of business

In case where the cancellation of a contract does not affect the trading structure of the business. Then the compensation received for such cancellation shall be treated as revenue receipt.

Ion Exchange (India) Ltd. vs. ITO (2010) 8 taxmann.com 295 (Mum.)

8. S. 28 : Business loss – Irrecoverable deposits for residential accommodation of employees – allowed

In every case where the deposit is made for residential accommodation of employees of assessee company and such deposit becomes irrecoverable; then such irrecoverable deposits must be allowed as business loss u/s 28.

ITO vs. Reliance Engineering Associates (P.) Ltd. (2011) 9 taxmann.com 6 (Mum.)

9. S. 37(1) : Business income – legal expenses in relation to business – Allowable

Legal expenses to be deductible under sec. 37(1) must be in connection with the business whose profits are under computation and cannot be affected by the final outcome of that proceedings .

Vivek P. Talwar vs. ACIT (2010) 8 taxmann.com 268 (Mum.)

10. S. 73 : Loss in speculation business – Deeming fiction – Invoked in case of purchase and sale of shares whether or not be actual delivery

Deeming fiction contained in Explanation to sec. 73 not to be invoked merely when there is loss w.r.t speculative transactions u/s 43(5) carried on by the assessee but it is in relation to the entire activity of purchase and sale of shares whether or not affected by actual delivery.

Dartmour Holdings Pvt. Ltd. vs. ITO (2010) 8 taxmann.com 244 (Mum.)

Hearty Congratulations

Hearty Congratulations to the newly elected office bearers of ITAT Bar Association, Mumbai for the year 2011-12.

President : Dr. K. Shivaram
 Immediate Past President : Shri Dinesh Vyas
 Vice Presidents : Shri Arun Sathe and Shri S. N. Inamdar
 Secretaries : Shri Hiro Rai and Shri Vipul Joshi
 Treasurer : Shri Haresh P. Shah
 Advisors : Shri Y. P. Trivedi • Shri S. E. Dastur • Shri P. N. Shah

We wish them all the success.

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 –
Three fourth page (in four colour) | Rs. 3,500/- |

J. K. RANKA
Secretary General

**Membership of AIFTP
as on 20-01-2011**

Life Members

	Associate	Individual	Association	Corporate	Total
Central	0	701	21	2	724
Eastern	2	888	33	0	923
Northern	—	815	17	0	832
Southern	—	741	13	3	757
Western	3	1548	32	14	1597
Total	5	4693	116	19	4833

INTERNATIONAL TAXATION

CA. Dhanesh Bafna, CA. Madhav Khandelwal & Sujeeth Karkal, Advocate

HIGH COURTS

1. Off-shore supply – Explanation 1 to S. 9(i) – Income-tax Act, 1956

The High Court has held as under:

- i. Offshore supplies are not taxable in India if the title passes outside India and payments are received in foreign exchange.
- ii. The fact that the assessee could have asserted the rights of an unpaid seller as per s. 46 of the Sales of Goods Act did not change the position of transfer of title.
- iii. The fact that a part of the consideration for the supply was payable to the assessee after operational acceptance on erection and completion of the system does not mean that the title in the goods did not pass to the buyer abroad.
- iv. Even under clause (a) of Explanation (1) to S.9(i), since no operations *qua* the agreement for supply of equipment were carried out in India, no income can be deemed to have accrued or arisen in India whether directly or indirectly or through any business connection in India. The fact that the assessee had a "permanent establishment" with regard to the onshore activities is of no relevance.

DIT vs. LG Cable Ltd. (2011-TII-02- HC-Del- Intl)

TRIBUNALS

2. Continuing debit balance – No International Transaction – S. 92 – Income-tax Act, 1961

The Tribunal had held that:

- i. A transfer pricing adjustment can be made under section 92 in respect of an "international transaction". A continuing debit balance is not an "international transaction" *per se* but is a "result" of the international transaction. A continuing debit balance reflects that the payment, even though due, has not been made by the debtor. Unlike a loan or borrowing, it is not an independent transaction which can be viewed on standalone basis.
- ii. Assuming the continuing debit balances can be treated as an 'international transaction', the Transfer Pricing Officer ('TPO') ought to have applied the comparable uncontrolled price ('CUP') method by considering whether the assessee had charged interest on overdues from independent enterprises (internal CUP)

or whether other enterprises had charged interest in respect of overdues in respect of similar business transactions from independent enterprises (external CUP).

Nimbus Communications Ltd. vs. ACIT (2011-TII-03-ITAT-Mum-TP)/www.itatonline.org

(Also refer to recent decision of Bangalore Tribunal in the case of Logix Micro Systems Ltd. vs. ACIT (2010-TII-50-ITAT-Bang-TP), wherein Hon'ble Tribunal has taken a negative view)

3. Most appropriate method – S. 92C – Income-tax Act, 1956

The Tribunal, for computing arm's length price ('ALP') for active pharmaceutical ingredients ('API'), had held as under:

- i. Innovators of drugs are allowed monopolistic pricing during the period when patents are in force so as to recoup the research and development costs, however, once the patent period expires, the higher pricing of the drug vis-à-vis prices of generic drugs manufactured by competitors cannot be justified on the ground of heavy research and development costs.
- ii. It is open to the TPO to reject the transactional net margin method ('TNMM') and adopt the CUP method on the basis that the latter is "most appropriate" under section 92C r.w. Rule 10C.
- iii. On merits, the CUP method is the 'most appropriate method' to determine the arm's length price in the cases of generic drug manufacturers so long as comparables are available.

Serdia Pharmaceuticals (I) Pvt. Ltd. vs. ACIT (2011-TII-02-ITAT-Mum-TP)

4. Transfer pricing benefit – S. 92C – Income-tax Act, 1956

The Tribunal had held that the proviso to S. 92C as amended w.e.f. 1-10-2009 is a substantive provision and not clarificatory and applies only from A.Y. 2009-10 and onwards. Even otherwise, the exception provided in both the provisos of S. 92C(2) with regard to the +/- 5% variation applies only when more than one price is determined. Even under the amended law, the benefit is not available to the assessee if only one price has been determined by applying CUP method.

ACIT vs. UE Trade Corporation (India) (2011-TII-04-ITAT-Del-TP)



INDIRECT TAXES

Sales Tax Decisions

P. C. JOSHI, Advocate

1. ASSOCIATION OF PERSONS

The Allahabad High Court held that simply because a person happens to be one of the signatories for operating the bank account without any agreement for carrying out the business jointly, he cannot be considered to be a person having connection with the business therefore the assessment in question as A.O.P. was held to be illegal.

Commissioner, Trade Tax, UP, Lucknow vs. M/s. Kapil Dev Chamra Vyapari [2010 NTN P. 293].

2. AUCTION SALE – VOID

The Madras High Court held that the auction of the property of a defaulter by the bank was void when the same was conducted during the subsistence of the attachment order, over the property by the Sales Tax Authorities for recovery of outstanding sales tax dues. The High Court therefore directed the bank to refund the amount received by it as advance from the successful bidder.

Chemstar Chemicals and Intermediates Pvt. Ltd. vs. The Commercial Tax Officer. [2010-11 (16) TNCTJ Pg. 130]

3. CLASSIFICATION UNDER CUSTOMS TARIFF ACT.

The controversy before the Supreme Court was about the proper classification of different models of xerox machines which were capable of performing various functions that of a printers, copier, fax & scanner. According to the assessee such machine was covered by chapter heading 8471.60 while the authorities were of the view that the proper chapter heading was residuary i.e. 8479.89. After considering the relevant Headings and Sub-Headings the Supreme Court accepted the submissions of the assessee.

M/s. Xerox India Ltd vs. Commissioner of Customs, Mumbai 2010 (1) GST P. 208.

4. EXPORT U/S. 5(3)

Following the Supreme Court Judgment in the case of *State of Karnataka vs. Azad Coach Builders Private Ltd. & Ors [2010 (36) VST 1]*, the Madras High Court held that when the sale by a manufacturer to an exporter was inextricably connected with the export outside the territory of India, the penultimate transaction by the manufacturer was eligible to the exemption u/s. 5(3) of the CST Act.

M/s. Sri Rama Vilas Services Ltd vs. The Tamil Nadu Taxation Special Tribunal Chennai & Ors. [2010-11 (16) TNCTJ P.127].

5. ENTRIES IN SCHEDULE

a) Articles for treatment

The Commissioner while clarifying the rate of tax u/s. 94 of the Kerala Value added Tax Act, 2003 held that

the equipments and similar other commodities used in ayurvedic medical treatment were covered by entry 59A of Third Schedule to KVAT Act, 2003 and therefore liable to be taxed @ 4%.

[2010 18 KTR P.120]

b) Computer based instruments

The assessee before the Supreme Court had imported computer based instruments. The Customs Authorities held such items to be classified under Chapter 90 which relate to measuring and checking instruments/apparatus as also parts and accessories, while the assessee claimed the same to be covered by Chapter 84. On verification of the technical data and the relevant chapters, the Supreme Court confirmed the decision of the customs authorities and held that the items in questions were covered by Chapter 90.

Commissioner of Customs, Bangalore vs. N.I. Systems (I) Pvt Ltd. [(2010) 56 S.T.A. P.247]

c) Battery charger

The Punjab & Haryana High Court held that the battery charger sold along with the cell phone in a composite package, without any extra charge, was covered by the entry relating to cell phone. Mere fact that the battery charger was not affixed to the cell phone did not mean that the same was different item. The battery charger was a necessary item for continuous use of the cell phone.

Nokia India Pvt. Ltd vs. State of Punjab & Ors. (2010) 37 PHT 534 (P & H).

6. EXEMPTION

The Supreme Court after considering the excise rules framed under the Central Excise Tariff Act, 1985, held that the benefits of exemption from remission of excise duty on intermediate goods was available when the same were captively consumed in the manufacturing process of final product.

Commissioner of Central Excise, New Delhi vs. M/s. Hari Chand Shri Gopal & Ors etc. 2010 (1) GSTJ P.193.

7. EVIDENCE AT LATER STAGE

The Supreme Court held that ordinarily it would not examine the contentions based on any new evidence without its evaluation at the lower stage, however when the issue related to a notification, the same being a public document, can be considered for determining the controversy before it.

Technoglobe vs. State of Tamil Nadu & Ors. (2011) 38 PHT 1 (SC) (FB).

8. F FORM & PENALTY

The Central Sales Tax Appellate Authority by a detailed judgment in appeal under section 20 of the CST Act,

1956, affirmed the decision of the Gujarat Value Added Tax Tribunal and held that the forms produced by the assessee were not genuine especially because the assessee produced no evidence to show that forms produced were issued to the concerned agents by their respective sales tax authorities. On enquiry the same were found to be not genuine. On the face of such facts, the Central Sales Tax Appellate Authority, did not accept the other evidence to show that the movement of goods was not pursuant to contract of sale. The authority observed in that connection that the fake or fictitious F Forms were no forms at all and had to be treated as non est in the eyes of law.

As regards the penalty under section 9(2) of the CST Act read with section 45(6) of the Gujarat Sales Tax Act, 1969, the same having been imposed; without any specific show cause notice with reasons, without granting any opportunity of hearing to the assessee and absence of any finding in terms of the section, the authority quashed the penalty as well as the interest levied on the premises that the assessee defaulted in the payment of tax.

Prabhat Solvent Extraction Industries Pvt. Ltd. vs. State of Gujarat [(2010) 34 VST 433 = 49 STJ 795].

9.a) Input tax credit

The authority for clarification u/s.94 of the Kerala Value Added Tax Act, 2003 clarified that when the goods meant for export were received by the export godown in Tamil Nadu as unascertained goods whereafter, the goods purchased from other states were pulled together packed and then exported, it cannot be said that the export from Tamil Nadu, was the result of the movement of goods from Kerala and was in Export stream. Such a transaction was branch stock transfer, therefore full ITC was not available to Kerala dealer.

[2010 18 KTR P.136].

b) Input tax credit

The Karnataka High Court directed the Commissioner of Commercial Taxes to re-examine the question as to whether a tea grower was eligible to have input tax credit on the purchase of pesticide, Manure, Fertilizers & Chemicals used in growing of tealeaves.

Consequent to the above directions, the Commissioner of Commercial Taxes on re-examination held that growing of tea continued to be agricultural activity while the processes of obtaining tea from tea leaves was a commercial activity and therefore both were distinct and separate activity. The Commissioner therefore held that the input tax credit could be availed of only in relation to the commercial activity and not the agricultural one.

M/s. Diwan Bahadur S.L. Mathias & Sons vs. State of Karnataka & Ors. [2010-11 (15) KCTJ P. 39 & P. 366].

c) Input tax credit – Promissory estoppel

The assessee before the Punjab & Haryana High Court challenged the validity of section 8 (1) of the Haryana VAT Act, 2003 on the footing that 1) the section

restricted the input tax credit only to the transfer of goods that take place in the State of Haryana and 2) was contrary to the promise made in the white paper issued by the Empowered Committee of State Finance Ministers. The assessee therefore prayed for the directions to the State to implement such a promise.

After considering the provisions of the Act passed by the State Legislature, the court rejected the prayers so made observing that the court cannot compel the Government to act contrary to the provisions of law.

(Varun Beverages Ltd. vs. State of Haryana & Ors. [(2010) 37 PHT 451 (P&H)].

d) Input

The Division Bench of two judges after considering the definition of the term 'input' in rule 2(g) of the CENVAT Credit Rules 2002, were of the view that the legislature did not intend to understand the term 'input' in a restricted manner therefore when welding electrodes were used in the maintenance of machines, the assessee was entitled to input tax credit however there was the earlier judgment in the case of Maruti Suzuki Ltd. (2009) 9 SCC 193 holding a different view. In that case, it was observed that three components were required to be satisfied before the input claim can be considered namely 1) The specific part 2) Inclusive part and 3) Place of use.

In the above situation, the Division Bench recommended that the controversy in question be placed before a larger bench, for its decision.

Ramala Sahakari Chini Mills Ltd vs. Commissioner Central Excise 2010 (1) GSTJ P.216

10. INTERPRETATION OF TAXING STATUTES (Charging and Machinery Provisions)

The Karnataka High Court held that while interpreting the distinction between charging provision and the machinery provision, have always to be borne in mind. The charging provisions levy the charge to tax while machinery provision provide for the quantification of tax. While the charging provision was to be construed strictly, the machinery provision should be construed in such a manner that it effectuate the charging section.

Shri, T. Shivakumar vs. Commissioner of Commercial Taxes [2010 NTN P.332]

11. LUXURY TAX

The Himachal Pradesh High Court held that the turnover of receipts for the purpose of levying luxury tax would be not the aggregate of receipts but was restricted to the amount related to the luxuries provided to the customer.

Hotel Sterling Holiday Resort vs. State of H.P. & Ors. (2011) 38 PHT 93 (HP).

12. POWER TO MAKE RULES

After considering the provisions of Haryana VAT Act, 2003 and the corresponding provisions under the Haryana General Sales Tax Act, 1973, the Punjab & Haryana High Court held that the State Government acting as delegatee of legislature cannot enact a rule with retrospective effect nor can it amend the

existing rules with retrospective effect. The impugned notification prescribing the enhanced rate with a prior date as effective one was held to be bad in law.

(Ram Gopal Murli Dhar Juntra vs. State of Haryana & Ors. 2010) 37 PHT 438 (P&H).

13. POWER TO AMEND THE LAW

The Punjab & Haryana High Court held that the power of amending an existing provisions of law must be exercised in accordance with Article 14 of the Constitution else the same was liable to be struck down as discriminatory.

Goel Brick Industries and Others vs. M/s. Radha Swami Brick Co. [(2010) 37 PHT 440 (P&H)]

14. PURCHASE TAX

The Punjab & Haryana High Court held that Purchase Tax u/s. 9 of the Haryana General Sales Tax Act, 1973 cannot be levied when the paddy husk was used as fuel in the manufacture of liquor. Such use cannot be treated as the use of paddy husk as raw material which was required for the levy.

(Haryana Distillery vs. State of Haryana & Ors. [(2010) 37 PHT 458 (P&H)]

15. REMAND

The Allahabad High Court approved the directions issued by the Tribunal while remanding the matter back to the assessing authority for making further enquiry with the selling dealer; when the invoices produced by the purchaser were found to be not genuine.

M/s. Waterflow Industries Gaur Kendra Mathura vs. The Commissioner of Commercial Tax U.P. Lucknow [2010 NTN (Vol. 44) 324].

16.a) Revision

The Allahabad High Court held that for taking or for sustaining the revision action by the authority, the

record that was available at the time when the order sought to be revised was passed were the relevant record and the documents that came into existence after passing of the said order, cannot be considered.

M/s. Rathi Industries Ltd vs. The Commissioner of Trade Tax [2010 NTN P.290].

(b) Revision

The Punjab & Haryana High Court held that revision u/s. 40 of Haryana General Sales Tax Act, 1973 was not permissible to be taken by the officer of the same rank or level.

Trupti Udyog Ltd vs. State of Haryana (2010) 37 PHT 521 (P&H).

17. RECOVERY OF DUES

The Allahabad High Court held that the recovery of tax as arrears of land revenue from a legal representative was restricted to the extent of the inherited property of the assessee in default. The court also held that the recovery of the amount as and when made or the amount paid; have to be first adjusted towards the principal amount of tax dues and not towards the recovery of interest.

M/s. Shiv Nath Singh Yadava vs. Assistant Collector (Grade-I) / Sub-Divisional Magistrate, Bharthana & Ors. [2010 NTN (Vol. 44) – 359].

18. REFERENCE

The Punjab & Haryana High Court held that while hearing a reference, the court cannot consider any new facts or evidence over and above the statement of the case sent by the Tribunal for its opinion on questions of law.

United Oil Mill Machinery and Spare (P) Ltd vs. State of Haryana (2010) 37 PHT 523 (P&H).



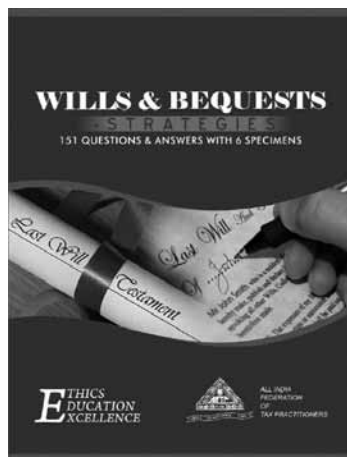
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