

All India Federation of Tax Practitioners



AIFTP TIMES

Volume 6 – No. 5 • May 2015

FORTHCOMING PROGRAMMES	Date & Month	Programme	Place
	9-5-2015 to 4-7-2015	Workshop on MVAT Act, Service Tax & Allied Laws	Mumbai
	22-5-2015	Adjourned Annual General Meeting	Mumbai
	13-6-2015	National Executive Committee Meeting	Bengaluru
	13, 14-6-2015	National Tax Conference (SZ)	Bengaluru
	20, 21-6-2015	Two Day Tax Conference	Pune
	11-7-2015	ITAT Bar Associations' Co-ordination Committee Meeting	Ahmedabad
	11-7-2015	National Executive Committee Meeting	Ahmedabad
	11, 12-7-2015	National Tax Conference (WZ)	Ahmedabad

AIFTP JOURNAL SUBSCRIPTION 2015-16

Dear Members,

The AIFTP Journal is the mouthpiece of the All India Federation of Tax Practitioners and it is also a source of information for updating our subscribers with the latest developments on Direct and Indirect Taxes.

The unique feature of our Journal is that every quarter, we publish the gist of important case laws reported in more than 30 tax magazines. We publish opinions of eminent professionals, thought provoking speeches of Hon'ble Judges of Apex Court and High Courts, important articles on Direct and Indirect Taxes, articles on Wealth Management and answers by eminent professionals on various controversial issues. We are sure that in the era of information technology, our journal would definitely help you to update your knowledge on latest case laws and development of law.

Please note that AIFTP Journal subscription for the year 1st April, 2015 to 31st March, 2016 falls due for payment on 1st April, 2015.

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JANAK VAGHANI

Treasurer

Note:

1. Payment should be made by Account Payee Cheque/Demand Draft in favour of "ALL INDIA FEDERATION OF TAX PRACTITIONERS".
2. OUTSTATION MEMBERS are requested to send payments only by either at par cheque or Demand Draft payable at Mumbai drawn in favour of "ALL INDIA FEDERATION OF TAX PRACTITIONERS".
3. An early payment of the subscription would be highly appreciated.
4. AIFTP Journal subscription form can be downloaded from our website, i.e., www.aiftponline.org.
5. Please write your name on the reverse of Cheque/D.D.

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Workshop on MVAT Act, Service Tax & Allied Laws

Organised by
ALL INDIA FEDERATION OF TAX PRACTITIONERS (WZ)
Jointly with
BCAS, CTC, MCTC, STPAM & WIRC OF ICAI

We are happy to announce “Workshop on MVAT Act, Service Tax & Allied Laws” jointly with BCAS, CTC, MCTC, STPAM and WIRC of ICAI which has commenced on 18th April, 2015 & which will end on 11th July, 2015.

The object of Workshop is to share the essence of professional experience and expertise of the faculties which they have gained over the years. Here, the Delegates will get an opportunity to gain knowledge and wisdom by interacting with seniors.

The topics selected for Workshop are Issue Based and will cover MVAT Act, 2002, CST Act, 1956, Service tax provisions and introduction to GST. These topics are of immense importance and will be of enormous help and use to Professionals practicing in Indirect Taxes.

The Scheduled List containing the dates, topics, and names of faculties is given herein below (Subject to confirmation and availability). “Jugalbandi Lectures” have been arranged on topics where both VAT & Service Tax provisions are applicable.

The enrolment is restricted. Enrolment will be made on first-come-first-serve basis. The fees for the Workshop are ₹ 2,000/- for members of the above Associations and ₹ 2,500/- for non-members.

Kindly enroll yourself at the earliest to avoid disappointment.

You are requested to enroll at the earliest to enable us to make proper arrangement.

Vipul Joshi
Chairman, AIFTP (WZ)

Pravin R. Shah
Secretary, AIFTP (WZ)

Timing	For Single Lecture – 2.30 pm to 5.30 pm & Jugalbandi lecture – 2.00 pm to 5.30 pm	
Venue	STPAM Library Hall, 1st Floor, R.No. 104, Vikrikar Bhavan, Mazgaon, Mumbai – 400 010.	
(Saturdays) Date	Subject	Speaker
09-05-2015	Issues in Branch Transfers, Sales in Transit and High Seas Sales under CST Act.	CA. Rajat Talati
06-06-2015	Issues in Interest, Penalties and Show Cause Notices under MVAT and CST Acts.	Shri Ashvin Acharya, Adv.
	Issues in Interest, Penalties and Show Cause Notices under Service Tax.	CA. Jayesh Gogri
13-06-2015	Issues in Definition of Services, Exempt & Declared Services.	CA. Sunil Gabhawalla
	Issues in Valuation of Services, Abatement & Reverse Charge Mechanism.	CA. Ashit Shah
20.06.2015	Issues in Refunds, Audits, Assessments under MVAT and CST Acts.	Adv. C B Thakar
27.06.2015	Issues in CENVAT Credit Rules under Service Tax.	CA. Naresh Sheth
04.07.2015	Constitutional amendments & Overview of GST Act.	Eminent Speaker
	Interstate Transactions under GST.	Eminent Speaker
11.07.2015	Issues in Place of Provision of Service Rules, 2012.	CA. Girish Raman
	Issues in Point of Taxation Rules, 2011.	CA. Rajiv Luthia

TWO DAY CONFERENCE

Organized by
All India Federation of Tax Practitioners – SZ (AIFTP-SZ)
Jointly with
**Bangalore Branch of SIRC of ICAI &
Karnataka State Chartered Accountants Association (KSCAA)**
on Saturday, 13 & Sunday, 14 of June, 2015
at Hotel Le-Meridian, Sankey Road, Bengaluru

PROGRAMME

DAY 1 – 13TH JUNE, 2015

- 09:45 AM **INAUGURAL SESSION**
Inauguration by
Chief Guest : An eminent personality from the Judiciary
Guest of Honour: Shri F. R. Singhvi
- 11:30 AM **SESSION I**
Gearing up for GST
CA. Madhukar Hiregange, Bengaluru
Chairperson: Dr. Anita Sumanth, Advocate, Chennai
- 01:15 PM **LUNCH**
- 02:15 PM **SESSION II**
Service Tax
Eminent Speaker
Chairman: Mr. Bharat Ji Agrawal, Sr. Advocate, Allahabad
- 04:00 PM **SESSION III**
Companies Act, 2013 – Important provisions for Practitioners
CA. Gururaj Acharya, Bengaluru
Chairman: Eminent Faculty

DAY 2 – 14TH JUNE 2015

- 09:00 AM **SPIRITUAL SESSION**
- 10:15 AM **SESSION IV**
Direct Taxes – Finance Act, 2015 – Discussion on Provisions relating to – TDS & Place of effective management
Mr. Saurabh Soparkar, Sr. Advocate, Ahmedabad
Chairman: Jnanasagara CA. S. Krishnaswamy, Bengaluru
- 12:00 noon **SESSION V**
Labour Laws for practising professionals
Mr. B. C. Prabhakar, Advocate, Bengaluru
Chairman: Eminent Faculty
- 01:15 PM **LUNCH**

- 02:15 PM **SESSION VI**
Panel discussion on Works Contract (VAT/Service Tax/Income Tax)
CA. Raghuraman, Advocate, Bengaluru, CA. K. K. Chythanya, Advocate, Bengaluru
CA. Vishnumurthy, Bengaluru
Moderator: CA. S. Ramasubramanian, Bengaluru
- 04:30 PM **VALEDICTORY SESSION**

DELEGATE FEE: Members – ₹ 3,000/- inclusive of Service Tax

Mode of Payment: Cash/ Cheque in favour of “Bangalore Branch of SIRC of ICAI” payable at Bangalore

*For further details please contact Ms. Geetanjali. D., Tel : 080-3056 3500 / 3513 |
Email: blrregistrations@icai.org Website: www.bangaloreicai.org*

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CA. T. R. Rajesh Kumar
Co-Convenor

ANNOUNCEMENT
TWO DAY TAX CONFERENCE

at Pune

(Saturday, 20th & Sunday, 21st June, 2015)

All India Federation of Tax Practitioners – Western Zone is pleased to announce Two Day Tax Conference at Aurora Towers, 9, Moledina Road, Pune – 411 001 Maharashtra on Saturday, 20th & Sunday, 21st June, 2015. The Conference aims to cover the latest developments concerning Direct & Indirect Taxes, including the Post Budget scenario. Various complex and practical issues will be addressed by eminent faculty.

The details of the programme will be announced soon.

**YOU ARE REQUESTED TO BLOCK THIS DATE
FOR THIS UNIQUE OPPORTUNITY**

TWO DAY NATIONAL TAX CONFERENCE AT AHMEDABAD

Organised by

ALL INDIA FEDERATION OF TAX PRACTITIONERS (WZ)

Jointly with

**ALL GUJARAT FEDERATION OF TAX CONSULTANTS, AHMEDABAD &
OTHER LOCAL ASSOCIATION**

Venue : J. B. Auditorium, Ahmedabad Management Association,
Near IIM, Panjrapole, Ahmedabad

Dates : 11th & 12th July, 2015

Delegate Fees: Members ₹ 2,000/- & Spouse ₹ 1,500/-

PROGRAMME

11TH JULY, 2015 (SATURDAY)

10.00 am to 11.00 am	Inaugural Session Hon'ble Mr. Justice Anil R. Dave, Judge, Supreme Court of India,* Hon'ble Chief Justice of Gujarat High Court,* Hon'ble Mr. Justice Dev Darshan Sud (Retd.), President, ITAT*
11.00 am to 11.15 am	Comfort Break
11.15 am to 1.15 pm	First Technical Session – Tax Reforms MOS Hon'ble Mr. Jashwant Sinha,* Dr. K. Shivaram, Sr. Advocate, Mr. S. R. Wadhwa, Advocate, Delhi & Mr. Mukesh Patel, Advocate, Ahmedabad
01.15 pm to 2.15 pm	Lunch Break
2.15 pm to 3.45 pm	SERVICE TAX Chairman : Mr. Vikram Nankani, Sr. Advocate, Mumbai Speaker : Mr. Mukul Gupta, Advocate, Ghaziabad Speaker : Mr. Paresh Dave, Advocate, Ahmedabad
3.45 pm to 4.00 pm	Tea Break
4.00 pm to 5.45 pm	DIRECT TAXES Chairman : Mr. K. H. Kaji, Advocate, Ahmedabad Speaker : CA. H. Padamchand Khincha, Bengaluru Speaker : Mr. Saurabh Soparkar, Sr. Advocate, Ahmedabad
5.45 pm to 6.00 pm	Vote of Thanks

12TH JULY, 2015 (SUNDAY)

10.00 am to 11.30 am	DIRECT TAXES Chairman : Mr. S. K. Poddar, Advocate, Ranchi Speaker : Mr. Ajay Vora, Sr. Advocate, Delhi* Speaker : CA. Ashwin C. Shah, Ahmedabad
11.30 am to 11.45 am	Break

* Confirmation awaited

11.45 am to 1.15 pm	VAT Chairman : Mr. Bharat Ji Agrawal, Sr. Advocate, Allahabad Speaker : Mr. Nayan Sheth, Advocate, Ahmedabad Speaker : Mrs. Nikita Badheka, Advocate, Mumbai
1.15 pm to 2.15 pm	Lunch Break
2.15 pm to 3.00 pm	Investment Opportunities in Cambodia & Myanmar by Ms. Sin Sophea, Legal Advisor, BNG Legal
3.00 pm to 4.30 pm	Brains' Trust Session Mr. N. M. Ranka, Sr. Advocate, Jaipur, Chairman (Direct Taxes) Mr. P. C. Joshi, Advocate, Mumbai, Chairman (Indirect Taxes) Mr. Samir Divetia, Advocate, Ahmedabad, (Direct Taxes) Mr. Manish J. Shah, Advocate, Ahmedabad, (Direct Taxes) Mr. Rajul K. Patel, Advocate, Ahmedabad, (Direct Taxes) Mr. M. L. Patodi, Advocate, Kota, (VAT) Mr. Monish Bhalla, Advocate, Ahmedabad, (Service Tax)
4.30 pm to 5.00 pm	Valedictory Session
5.00 pm	High Tea

PLACE OF VISIT

Ahmedabad Local Sight seeing, Gandhi Ashram, Akshardham, Adalaj Step well, Kankaria, Siddi Said, Hatheesingh Temple, Sardar Patel Museum, Sarkhej Roja, etc.

ACCOMMODATIONS

PREMIUM 3,500-4,000

KARNAVATI CLUB, RAJPATH CLUB, YMCA CLUB, RAMADA, COMFORT INN, RADISSON

COMFORT 2,000-2,500

Sarovar Portico, Ambassador, Vice President

ECONOMY 1,500-2,000

Hotel Heritage, Nilkanth Group

Payment should be made by Account Payee Cheque in favour of "All India Federation of Tax Practitioners – Western Zone" or "All Gujarat Federation of Tax Consultants, Ahmedabad"

**Report of Two Day National Tax Conference at Darjeeling
on 18th & 19th April, 2015**

by
D. K. Agarwal, Advocate
Co-Chairman of Conference

National Tax Conference 2015 organised by AIFTP (EZ) in association with North Bengal Tax Advocates Association & Siliguri Tax Advocates Bar Association on 17th & 18th April, 2015 at Ranga Mancha, Darjeeling attended by a large number of delegates.

This was the second conference during entire history of AIFTP which was organized at highest altitude of 7000 fts. from the sea level and all the delegates enjoyed Sunrise, Kanchanjunga, Toy Train, Zoo & Mountaineering Institute.

Conference was inaugurated by Hon'ble Mr. Justice A. K. Sikri, Judge, Supreme Court of India by lighting the lamp and Justice Mr. A. K. Sikri spoke on the theme "Learn, Relax and Enjoy the Natural Beauty".

Mr. R. D. Kakra, Vice-Chairman, AIFTP (EZ) delivered the welcome address and President speech was delivered by Dr. M. V. K. Moorthy, Dy. President (AIFTP).

Eminent Faculties were Dr. K. Shivaram, Smt. Prem Lata Bansal, Shri V. P. Gupta, Shri P. Purusottam, Shri Sujit Ghosh, CA. S. Venkataramni, Shri P. C. Joshi, Shri Mukul Gupta, Shri K. C. Kaushik, Shri S. K. Poddar, CA. Arun Agarwal, Shri K. L. Goyal, CA. Siddheshwar Yalamani spoke on the subject assign to them. Delegates were very happy with knowledge gained in this conference.

Special thanks to Senior Advocate Smt. Prem Lata Bansal for help in finalising the Chief Guest Hon'ble Mr. Justice A. K. Sikri. Justice Mr. A. K. Sikri accompanied by her better half Mrs. Madhu Sikri.

In the Valedictory session learned Senior Member of AIFTP distributed the Memento to the members, who have actively participated in the conference.

Thanks to all the members of AIFTP, who extended their co-operation for organizing this conference.

**Report on Study Circle Meeting of AIFTP (SZ)
held at Thiruvananthapuram on 28th April, 2015**

by
A. Retnakumar, Treasurer, AIFTP (SZ)

Fourth Study Circle Meeting of AIFTP Thiruvananthapuram for the year 2015 was held on 28-4-2015 at Hospitality Centre, Trivandrum Club at 6 PM.

There were ten participants including four non-members.

Meeting started with a silent prayer.

A. Retnakumar, Treasurer, AIFTP, South Zone welcomed the Participants.

Topic for discussion was "Income Computation and Disclosure Standards" issued by CBDT.

Discussion was led by

CA. C. Hari – Tangible fixed Assets.

CA. S. Padmanabhan – The effects of changes in foreign exchange rates.

Though four standards were slated to be discussed in the meeting only the above two could be discussed as there was good participation and prolonged discussion.

Three more applications have been received for new membership.

Meeting concluded at 9 PM.

Decided to meet again on the last Tuesday of May 2015.

Members dispersed after Dinner.

DIRECT TAXES

Ajay R. Singh, Rahul Hakani, Rahul Sarda and Ms. Neelam Jadhav
Advocates, KSA Legal Chambers

HIGH COURTS _____

1. S. 254(2) / 260A : Pendency of an appeal filed in the High Court, is no bar to the maintainability of a MA filed u/s. 254(2)

The assessee filed an appeal u/s. 260A to the High Court against the order of the Tribunal. During the pendency of the appeal, the assessee filed a Miscellaneous Application (MA) before the Tribunal u/s. 254(2) to request it to rectify certain mistakes apparent from the record. The Tribunal dismissed the MA on the ground that “judicial propriety does not allow the assessee to seek efficacious remedy simultaneously before two authorities and in particular where the issue is seized by a higher judicial forum, even if pending admission”.

The Hon’ble High Court held that, merely because the assessee has challenged the order of the Tribunal in an Appeal under section 260A before the High Court does not mean that the power under section (2) of section 254 cannot be invoked either by the assessee or by the revenue/Assessing Officer. Such a power enables the Tribunal to rectify any mistake apparent from the record and make amendments. That in a given case would not only save precious judicial time of the Tribunal but even of the higher Court. Only when the assessee or the Assessing Officer calls upon the Tribunal to undertake an exercise which is not permissible within the meaning of section (2) of section 254 that the Tribunal can rely on the principle of judicial propriety or its reluctance or refusal to take upon itself the powers of the higher Court of Appeal. If the Tribunal had passed an order after considering the application made by the petitioner-assessee on its merits and in accordance with law. However, the refusal of the Tribunal to go ahead and reject the application only on the ground that the petitioner-assessee has invoked the appellate powers of higher court cannot be sustained. It is contrary to the plain language of the two statutory provisions and which have been brought to our notice. Nothing contrary having been pointed out and such a view of the Tribunal may affect and prejudicially the interest of the revenue that all the more we cannot sustain the impugned order.

Also held that misc. application seeking to invoke the powers under subsection (2) of section 254 of the Income Tax Act, 1961 shall be heard and decided by the Tribunal in accordance with law.

R. W. Promotions P. Ltd v. ITAT (Bombay High Court)
 Source : itatonline.org

2. S. 271(1)(c): Immunity against penalty under Expl. 5 is available even if return is not filed provided a statement is made during the search, explaining the manner of deriving the income and due tax & interest thereon is paid

In order to get the benefit of immunity under clause (2) of Explanation 5 to s. 271(1)(c), it is not necessary to file the return before the due date provided that the assessee had made a statement, during the search and explained the manner in which the surrendered amount was derived, and paid tax as well as interest on the surrendered amount. It is not relevant whether any return of income was filed by the assessee prior to the date of search and whether any income was undisclosed in that return of income. In view of specific provision of S. 153A, the return of income filed in response to notice u/s. 153(a) is to be considered as return filed under Section 139 of the Act, as the A.O. has made assessment on the said return and therefore, the return is to be considered for the purpose of penalty u/s. 271(1)(c) of the I.T. Act and the penalty is to be levied on the income assessed over and above the income returned under Section 153A.

Kirit Dayabhai Patel v. ACIT (Gujarat)(HC)

3. S. 147: Reopening (even of s. 143(1) assessment) on the ground that a specific aspect requires verification is not permissible

The assessee filed a return of income which could have been subjected to verification and scrutiny and in terms of the applicable law and sections in the Income-tax Act, 1961 itself. However, if

this notice has been issued in the present case and on the footing that the income chargeable to tax has escaped assessment during the course of the assessment proceedings, then, we would not go by the stand taken by the revenue and on affidavit. It is too late now to urge that there was no assessment and therefore no question arises of reopening thereof. In the light of the language of the notice itself, it would not be proper for us and to permit the Revenue to raise such a plea.

In the present case, the AO does not state that any income chargeable to tax has escaped assessment. All that the Revenue desires is verification of certain details and pertaining to the gift. That is not founded on the belief that any income which is chargeable to tax has escaped assessment and hence, such verification is necessary. That belief is not recorded and which alone would enable the Assessing Officer to proceed. Thus, the reasons must be founded on the satisfaction of the AO that income chargeable to tax has escaped assessment. Once that is not to be found, then, we are not in a position to sustain the impugned notice (*Smt. Maniben Valji Shah (2006) 283 ITR 453 and Prashant S. Joshi and Anr. v. Income Tax Officer (2010) 324 ITR 154 referred*)

dealers of the sales-tax dept – and that assessee is unable to produce – does not mean that the purchases are bogus if the payment is through banking channels

If the addition made by the A.O. is accepted, then G.P. Ratio of the appellant during the present A.Y. will become abnormally high and therefore that is not acceptable because onus of the A.O. by bringing adequate material on record to prove that such a high G.P. ratio exists in the nature of business carried out by the appellant. Further, it has to be appreciated that (i) Payments were through banking channel and by cheque, (ii) Notices coming back, does not mean, those Parties are bogus, they are just denying their business to avoid sales tax/VAT etc., (iii) Statement by third parties cannot be concluded adversely in isolation and without corroborating evidences against appellant, (iv) No cross examination has been offered by AO to the appellant to cross examine the relevant parties (who are deemed to be witness or approver being used by AO against the appellant) whose name appear in the website www.mahavat.gov.in and (v) Failure to produce parties cannot be treated adversely against appellant.

ACIT v. Ramila Pravin Shah (ITAT Mumbai)

TRIBUNAL

4. S. 69C : Bogus purchases – suppliers names appear in the list of hawala



NOTICE OF ADJOURNED ANNUAL GENERAL MEETING

NOTICE is hereby given that the adjourned Annual General Body meeting of All India Federation of Tax Practitioners will be held on Friday, 22nd May 2015 in the office of Federation at 215, Rewa Chambers, 31, New Marine Lines, Mumbai - 400020 at 6.30 p.m. to transact the following business :-

1. To consider and adopt the Audited Accounts of AIFTP for the year ended 31st March, 2014.

For All India Federation of Tax Practitioners

Sd/-

Harish N. Motiwalla
Secretary General

Place: Mumbai
Date: 28th April, 2015

Note :

1. The Audited Profit and Loss Account and Balance Sheet will be circulated to the National Executive Members by E-mail.
2. If there is no quorum by 6.30 p.m., the meeting will be adjourned by half an hour and the members present at such adjourned meeting shall form the quorum.

INDIRECT TAXES

SALES TAX

D. H. Joshi, Advocate

1. Assessing Authority – Powers and Jurisdiction

U/s 2(5), Section 48 r/w Sections 22(2) and 27(1)(a) of TN VAT Act, 2006 an interesting question arose as to whether order already passed by the superior authority whether could be altered or revised by the inferior authority lower in rank ? Held, No.

2. Conferment of concurrent jurisdiction did not mean that the inferior authority would be able to take a view different from the one taken by the superior authority in respect of the same order unless there was a specific provision enabling it to do so.

3. Concurrent jurisdiction means a subordinate authority could deal with the matter equally with any superior authority in its entirety so that either one of such jurisdictions could be invoked. It could not be construed as concurrent jurisdiction when one part of the assessment would be dealt with by one superior officer and the other part would be dealt with by one subordinate officer.

4. The HC took an opportunity to point out distinction in the case of concurrent exercise of power and joint exercise of power. The court observed: “when power has been conferred upon two authorities concurrently, either one of them could exercise that power and once a decision is taken to exercise the power by anyone of those authorities, that exercise must be terminated by that authority only. It is not that one authority could start exercising a power and the other authority having concurrent jurisdiction could conclude the exercise of that power. This perhaps may be permissible in a situation where both the authorities jointly exercise power but it certainly was not permissible where both the authorities concurrently exercise power.” Accordingly, the writ petition was decided in favour of the petitioner.

TVL. Vinayaga Metals, (Proprietor) v. Dy. CTO, Circle-I, Cuddalore and The Asstt. Commr. (Commercial Taxes), Assessment Circle-I, Cuddalore (2015) PHT 424 (Mad.)

2. Classification of goods

A. “Hooka” made of brass with iron based manufactured and sold by the petitioner whether a “utensil” for purposes of sales tax? Held, Yes.

2. In this case, the HC interpreted the word “utensil” to include a tool, a receptacle, a vessel, an instrument, or a container that may be used as a tool, a receptacle, and instrument, a vessel or a container. The same utensil may be used in a kitchen, in a hotel, in a restaurant, for worship, for ceremonial purposes, in a dairy farm, for farming and various other purposes that may require the use of a utensil as a tool, a receptacle, and instrument, a vessel or a container. A utensil is not necessarily confined to articles used in a kitchen, a hotel or a restaurant but is often misunderstood as referring to an item used in a kitchen. Accordingly, “Hooka” was held as a “utensil” for purposes of payment of tax liable to sales tax at 3%.

Shakti Industries, Rohtak v. Revisional Authority, Rohtak (2015) 50 PHT 431 (P&H)

B. JCB Excavator: The question before the HC was under Entry 13 of the U.P. Tax on Entry of Goods into Local Areas Act, 2007 whether JCB Excavator was motor vehicle or machinery and whether any Entry Tax @2% was payable on the same? The assessee purchased JCB Excavator from outside the State of U.P. and brought in the State. By following a decision in *Commissioner, C.T., Lucknow v. Anand Tyres, Jhansi (2015) 50 PHT 316 (All)* it was held that JCB Excavator to be motor vehicle and not machinery. Accordingly, it being not a machinery, no entry tax was payable. Accordingly, revenues revision was dismissed.

Commissioner, C.T., U.P. v. M/s. Uttam Singh Thekedar (2015) 50 PHT 427 (All)

3. Dismissal in default

The appellant in this case failed to appear on the date of hearing which was fixed on 8-3-2010. Thereafter, the appellant applied for restoration of the appeal. The restoration application was considered and allowed applying the decision of the M.P. HC in the case of EDI Pack, Indore (2009) 15 STJ 104 (M.P.) and the M.P. Board observed: “Even if the petitioner was somewhat negligent in not attending the appeal, but when application for restoration has been filed, then the said appeal should have been restored and decided on merits. It is well settled that rights of the parties should be decided on merits, rather than, adopting a hyper technical approach, which would defeat the ends of justice. The petitioner has nothing to gain by

not getting the appeal adjudicated on merits.” Accordingly, the appeal was restored for decision on merits.

ITC Ltd., Bhopal v. Commissioner, C.T., M.P. (2015) 26 STJ 483 (MP-Bd)

4. Expert opinion

In this case, the Allahabad HC held that when expert opinion is in favour of the assessee, then, neither the court nor the AO is expert on the subject. When the expert has given opinion on highly technical matter, then, the court found no reason to interfere with the impugned order passed by the Tribunal, the same has to be sustained along with the reasons mentioned therein. In this case, the question was Rubber Process Oil, Heavy Cut Oil, Bitumen Cut back and Thinner etc. what would be the rate of tax applicable to these items? The AO opined that tax would be applicable at 5% whereas the assessee claimed that tax is leviable @2.5%, as the items are not being the variant. First Appellate Authority upheld the order passed by the AO, but the Tribunal after examining the report received from Indian Research Institute, Dehradun as well as from the Bharat Petroleum Institute opined that these items viz. Low Sulfur heavy stock, heavy petroleum stock are not the variant and uphold the tax at 2.5%. The HC following the expert opinion decided the case in favour of the assessee and declined to interfere with the impugned order.

Commissioner, Commercial Tax v. Modern Chemicals (2015) PHT 430 (All)

5. Retrospective Legislation

Notification No. 56 dt. 5-8-2000 was issued under the M.P.C.T. Act, which provided for exemptions to the hoteliers. Accordingly, the case of petitioner, namely, Sayaji Hotels Ltd. was considered and eligibility certificate dt. 17-7-2001 was issued in its favour by the competent authority, and exemption was granted to the petitioner upto 4-11-2006, but *vide* Notification dt. 15-9-2006, it was restricted upto 31-3-2006, meaning thereby, for a period of near about 6 months. As

a result, petitioner was held liable for payment of tax for which there was no power with the State Govt. to withdraw such exemption with retrospective effect. This action of the Govt. was challenged by the petitioner in Writ petition. The M.P. HC while allowing the writ petition held that the exemption could not be withdrawn by the State Govt. *vide* Notification date 15-9-2006 with retrospective effect.

2. It was a fundamental rule of law that no statute shall be construed to have retrospective operation unless such a retrospective operation appears very clearly in the terms of the Act, or arises by necessary and distinct implication. A subordinate legislation can be given a retrospective effect, if any power was contained in that behalf in the main Act. Rule making power is a species of delegated legislation. A delegatee therefore could make rules only within the four-corners thereof. No statute could be construed to have a retrospective operation unless such a construction appears very clearly in terms of the Act. Hence, by a delegated legislation the right accrued to the petitioner could not be taken away. Accordingly, the writ petition was allowed.

Sayaji Hotels Ltd. v. State of M.P. & Ors. (2015) 26 STJ 464 (M.P.)

6. Sale vis-a-vis subsidy

In this case, the Allahabad HC was seized to decide whether subsidy granted to assessee forms part of sale price and liable to tax. In the assessee's own case earlier, in provisional assessment of 2009-10, the same question was answered by the Tribunal holding that the subsidy would not be part of the sale transaction liable for any tax under the U.P. Tax Act. The said order of the Tribunal was upheld by the HC. Accordingly, assessee's appeal against the revision was allowed and revision dismissed.

P.J. Banan v. Commissioner C.T. Lko (2015) 50 PHT 429 (All)



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