



All India Federation of Tax Practitioners

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AIFTP TIMES

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FEDERATION NEWS

J. K. Ranka, Secretary General

FORTHCOMING PROGRAMMES	
Date & Month	Programme
2nd October, 2010	National Executive Committee Meeting at Chennai
2nd & 3rd October, 2010	Two Days National Tax Conference at Chennai
7th, 8th & 9th October, 2010	Nani Palkhivala Memorial National Tax Moot Court Competition at Mumbai
23rd October, 2010	Half Day Workshop on Competition Commission at Mumbai
11th December, 2010	National Executive Committee Meeting at Indore
11th & 12th December, 2010	Two Days National Tax Conference at Indore
8th & 9th January, 2011	Two Days National Tax Conference at Ahmedabad

HALF DAY WORKSHOP ON "COMPETITION COMMISSION – ADVANTAGE TO TAX PRACTITIONERS"

All India Federation of Tax Practitioners – Western Zone jointly with Bombay Chartered Accountants' Society and Chamber of Tax Consultants will be organizing a half day workshop on "Competition Commission – Advantage to Tax Practitioners" on Saturday, 23rd October, 2010 at Mumbai.

The further details including venue, time and speakers will be published in next issue of AIFTP Times and will also be hosted on our website i.e. www.aiftponline.org

Kindly book your dates for the above Conference.

Harish N. Motiwalla
Chairman, AIFTP (WZ)

FOR QUERIES PLEASE CONTACT ANY OF THE FOLLOWING OFFICE BEARERS

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REPORT ON FULL DAY WORKSHOP ON “INVESTMENT IN INDIA – TAX AND REGULATORY ASPECTS” AT MUMBAI ON 7TH AUGUST, 2010

By Harish N. Motiwalla, Chairman, AIFTP (WZ)

All India Federation of Tax Practitioners – Western Zone organized a Full day workshop on “Investment in India – Tax and Regulatory Aspects” on 7th August, 2010 at M. C. Ghia Hall, Fort, Mumbai.

Topics covered in the said workshop were as under:-

1. Overview of FEMA, Residential Status and Types of Transactions under FEMA.
2. Important Definitions under FEMA.
3. Investment by PROI:
 - a. FDI Policy and Direct Investment Scheme.
 - b. Portfolio Investment Scheme by FII & NRIs.
 - c. Investment by NRIs (including immovable property) on a Non-Repatriation basis.
4. Taxation of Non-Residents in India:
 - a. Residential Status under Income-tax Act, 1961.
 - b. Scope of Income.
 - c. Provisions of Section 9.
 - d. Special Scheme of NRI Taxation.
5. Income of Foreigners in India.
6. Presumptive Taxation of Non-Residents.
7. Provision of Tax Treaty & its application.

S/Shri Dilip J. Thakar, Vispi Patel, Dhishat B. Mehta, Paresh P. Shah, Naresh Ajwani, Pradip Kapasi & Harish N. Motiwalla, Chartered Accountants addressed the above-mentioned workshop.

The workshop was attended by around 65 delegates and they appreciated the papers presented by the above learned speakers.

Proforma for Members' Directory

The members are requested to check Proforma for Members' Directory which has been published in our AIFTP Times for the month of July & August, 2010 at page no. 11 of both the issues or are requested to download the same from Federations website i.e., **www.aiftponline.org**.

**TWO-DAYS NATIONAL TAX CONFERENCE ON 2nd & 3rd OCTOBER, 2010 AT CHENNAI
ORGANISED JOINTLY BY ALL INDIA FEDERATION OF TAX PRACTITIONERS (SZ),
REVENUE BAR ASSOCIATION, CHENNAI, SOCIETY OF AUDITORS, CHENNAI &
CHAMBER OF INDIRECT TAXES PROFESSIONALS, CHENNAI.**

VENUE : HOTEL SAVERA, Dr. RADHAKRISHNAN SALAI, CHENNAI- 600 004

PROGRAMME

DAY 1 – OCTOBER 2, 2010 (SATURDAY)

8.55 am to 10 am	Inauguration of the National Tax Conference by the Hon'ble Mr. Justice P. Sadasivam, Judge, Supreme Court of India* Presided over by the Hon'ble Mr. Justice M. Y. Iqbal, Chief Justice of the Madras High Court*
10 am to 10.15 am	Coffee Break
10.15 am to 11.30 am	1st Technical Session Topic : Salient features of Direct Tax Code Chairman : Mr. V. Ramachandran, Senior Advocate, Chennai Speakers : Dr. K. Shivaram, Advocate, Mumbai, Mr. Harish N. Motiwalla, Chartered Accountant, Mumbai
11.30 am to 12.45 pm	2nd Technical Session Topic : Amendment by the Finance Act, 2010 to the CST Act, 1956 & controversies regarding exemption under Section 6(2) of the said Act Chairman : Mr. M. L. Patodi, Advocate, Kota Speaker : Mr. Vinayak Patkar, Advocate, Mumbai
12.45 pm to 1.30 pm	Lunch
1.30 pm to 2.45 pm	3rd Technical Session Topic : Teething Problems in the implementation of the Goods & Service Taxes Chairman : Mr. Bharatji Agrawal, Sr. Advocate, Allahabad Speaker : Mr. P. C. Anand, Chartered Accountant, Chennai
2.45 pm to 4.00 pm	4th Technical Session Topic : Current controversies in Service Tax Chairman : Mr. Vikram Nankani, Advocate, Mumbai Speaker : Mrs. Jayashree, Advocate, Bengaluru
4 pm to 5 pm	Felicitation
6.30 pm	National Executive Committee Meeting followed by dinner

DAY 2 : OCTOBER 3, 2010 (SUNDAY)

8.15 am to 9 am	Breakfast
9 am to 10.15 am	5th Technical Session Topic : Tax Issues in IFRS Chairman : Dr. M.V.K. Moorthy, Advocate, Hyderabad Speaker : Mr. Chinnaswamy Ganesan, Chartered Accountant, Chennai
10.15 am to 10.30 am	Coffee Break
10.30 am to 11.45 am	6th Technical Session Topic : International Taxation Chairman : Mr. P. P. Parikh, Vice President, ITAT Speaker : Mr. T. P. Ostwal, Chartered Accountant, Mumbai
11.45 am to 12.30 pm	Lunch
12.30 pm to 2.30 pm	Brain Trust Session Trustees: Chairman : Mr. N.M. Ranka, Senior Advocate, Jaipur Trustees : Mr. P. C. Joshi, Advocate, Mumbai Mr. T. N. Seetharaman, Advocate, Chennai Mr. M. L. Patodi, Advocate, Kota Mr. Rajendra Kumar, Chartered Accountant, Chennai
2.30 pm to 3.30 pm	Valedictory Address by Hon'ble Mr. R. V. Easwar, President, ITAT
3.30 pm to 3.45 pm	Tea Break

* confirmation awaited

REGISTRATION FEES

Rs. 2,000/- for early birds till 18th September, 2010
 Rs 2,500/- for Members; Rs. 3,000/- for non-Members

Rs. 10,000/- for Patrons (2 delegates free)
 Rs. 25,000/- for Maharaj (2 delegates and one page Souvenir free)
 Rs. 1,000/- for each accompanying guest/spouse

Cheques to be drawn in favour of **"Revenue Bar Association, Chennai"**

Outstation delegates to pay only by Demand Draft payable at Chennai.

Mr. K.J. Chandran, Chairman, Seminar Committee

Off.: 044-2499 0526, 044-2499 1698 & 044-2498 3135 • Res: 044-2435 2311

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Mr. R. Meenakshisundaram, Secretary, Seminar Committee

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Mr. G. Bhaskar, Treasurer, Seminar Committee

Off: 044-2824 0128 • Mobile: 0-9444061639

Sl. No.	Name, Address and Tel. No. of the Hotel	Tariff
1	Hotel Savera (Venue of the Conference) No.146, Dr. Radhakrishnan Salai, Chennai – 600 004. Tel. No. : 044-2811 4700	Single room : Rs. 4,000/- + tax Double room : Rs. 4,500/- + tax Check-out time: 12 noon
2	Hotel New Woodlands (Next door to the venue) No. 72-75, Dr. Radhakrishnan Salai, Chennai – 600 004. Tel. No. : 044-2811 3111	Single room : Rs.1,750/- (incl. taxes) Double room : Rs. 2,250/- (incl. taxes) Deluxe Single room : Rs. 2,030/- (incl. taxes) Deluxe Double room : Rs. 2,450/- (incl. taxes) Check-out time: 12 noon
3	Hotel Maris (less than 1 km. from the venue) No. 11, Cathedral Road, Chennai – 600 086 Tel. No. : 044-2811 0541	A/C Double room : Rs. 2,010/- (incl. taxes) Check-out time: 24 hrs.
4	Hotel Ramada Raj Park Inn (less than 1 km. from the venue) No.180, T.T.K. Road, Chennai – 600 018 Tel. No. : 044-4225 7777	Single room : Rs. 3,600/- + tax Double room : Rs. 4,400/- + tax Check-out time : 24 hrs.
5	Hotel Palmgrove (less than 3 kms. from the venue) No. 13, Kodambakkam High Road, Chennai – 600 034. Tel. No.: 044-2827 1881	Double room : Rs. 1,800/- + tax Deluxe Double room : Rs. 2,200/- + tax Check-out time: 24 hrs.
6	Hotel Swagath (less than 2 kms. from the venue) No. 243, Royapettah High Road, Chennai – 600 014 Tele. No. : 044-2813 2971	Single room : Rs. 776/- (incl. taxes) Double room : Rs. 1,125/- (incl. taxes) A/C Double room : Rs. 1,350/- (incl. taxes) Check-out time : 24 hrs.

7th NANI PALKHIVALA MEMORIAL NATIONAL TAX MOOT COURT COMPETITION

Organised by



ALL INDIA FEDERATION OF TAX PRACTITIONERS

jointly with



**INCOME TAX APPELLATE
TRIBUNAL BAR ASSOCIATION,
MUMBAI**

in
association
with



**GOVERNMENT LAW COLLEGE,
MUMBAI**

The National Tax Moot Court Competition is scheduled to be held on 7th, 8th & 9th October, 2010. The venue for the above Moot Court Competition is as under:-

- i) Inauguration at Government Law College on 7th October, 2010 by Judge of Bombay High Court from 5.30 p.m. onwards.
- ii) Preliminary Rounds on 8th October, 2010 at ITAT, Mumbai (Competition will be judged by the Members of ITAT, Mumbai and Professionals)
- iii) Semi-finals on 9th October, 2010 at ITAT, Mumbai (Competition will be judged by the Members of ITAT, Mumbai)
- iv) Final on 9th October, 2010 at Rangaswar Hall, 4th Floor, Y. B. Chavan Pratisthan, Mumbai (Competition will be judged by the Judges of Bombay High Court) from 6.00 p.m. onwards.

Expected colleges across India are around 25.

Research Paper

The topic for this year's Research Paper is:

'Cross-border business reorganization – The Indian Perspective'

- Comparative Study
- Legal structuring
- Tax implications (Direct tax)
- Regulatory framework
- Reference to Proposed Direct Tax Code

Students may refer to the following Publications as guidelines for the Research Paper:

- International Fiscal Association – Cahier 2010
- Mergers and Acquisitions by Bombay Chartered Accountants Society
- CCH India/Butterworths publications
- Income-tax Act, 1961

Invitation has been sent to around 120 Law Colleges across India

DIRECT TAXES

Ajay R. Singh, Paras Savla, Rahul Hakani & Rangesh Banka
Advocates

SUPREME COURT

1. Exemption – Optional Early retirement scheme – S. 10(10C)

The amounts received by retiring employees of the Reserve Bank of India opting for the Optional Early Retirement Scheme are eligible for exemption from income tax under sec. 10(10C) of the Act.

Chandra Ranganathan and Others vs. CIT (2010) 326 ITR 49 (SC)

2. Capital or revenue receipt – Liquidated damages for delay in supply of plant and machinery

Liquidated damages received by assessee from supplier for delay in supply of plant and machinery were directly and intimately linked with the procurement of a capital asset; i.e., cement plant and the same was a compensation for sterilization of the profit earning source and, therefore, it was a capital receipt.

CIT vs. Saurashtra Cement Ltd. (2010) 233 CTR 209 (SC)

3. TDS – Payment to non-resident – Payment of hire charges of vessels to non-resident by way of adjustment of fish catch – S. 195

In the instant case, assessee chartered two fishing vessels from ES, a non-resident company. Charter fee was to be paid in terms of money; i.e., US Dollar, "payable by way of 85 per cent of gross earning from the fish sales". Chartered vessels with the entire catch were brought to an Indian port.

So long the catch was not apportioned, the entire catch was the property of the assessee and not of ES. It is only after ES was given its share of 85 per cent of the catch, it did come within its control. Thus, ES effectively received the charter fee in India and this being the first receipt in the eye of law, it is chargeable to tax.

Kanchanganga Sea Foods Ltd. vs. CIT & Anr. (2010) 233 CTR (SC) 1

4. Business expenditure – Differential payments to cane growers – S. 37

In determining whether the differential payments made by the assessee, a co-operative society manufacturing sugar, to the cane growers after

the close of the financial year or after the date of the balance sheet would constitute an expenditure under section 37 of the Act, and whether such differential payment would, applying the real income theory, constitute an expenditure or distribution of profits. It was held that the AO has to take into account the manner in which the business works, resolutions of the State Govt, the modalities and the manner in which the State advised price (SAP) and the statutory minimum price (SMP) are decided, the timing difference which will arise on account of the difference in the accounting years, etc. In a given case, if the assessee has made a provision in its accounts, then the AO has to enquire whether such provision is made out of profits or from gross receipts and whether such differential payment is relatable to the cost of sugarcane or whether it is relatable to the division of profits amongst the members of the society. One of the points which will also arise for determination by the AO will be on the theory of overriding title in the matter of accrual or application of income. Therefore, in each case the AO has to decide the question whether the obligation is attached to the income or to its source.

DCIT vs. Shri Satpudi Tapi Parisar SSK Ltd. (2010) 326 ITR 42 (SC)

HIGH COURT

5. Income from House Property – Business income or income from property – S. 22

Income would be business income if dominant purpose was commercial activity and it would be income from property if dominant object was to lease property

Nutan Warehousing Company P. Ltd. vs. DCIT (2010) 326 ITR 94 (Bom)

6. Special deduction – Interest income – S. 80HHC

90 per cent of gross interest received to be reduced for purposes of sec. 80HHC

Ambattur Clothing Co. Ltd. vs. ACIT (2010) 326 ITR 245 (Mad)

7. Capital gains – Full value of consideration – S. 50C

Sale of property to a Government concern. The valuation by stamp duty authorities higher was than consideration received by assessee. Application for reference to valuation cell under sec. 50C.

Assessment order adopting valuation of stamp duty authorities without waiting for valuation of valuation cell, not valid.

(2010) 326 ITR 229 (Mad) *N. Meenakshi vs. ACIT*

8. Rejection of accounts – Fall in gross profit – S. 145(3)

No defects found in accounts - Absence of stock register alone not a ground to infer that accounts inaccurate or incorrect.

(2010) 326 ITR 223 (Del) *CIT vs. Smt. Poonam Rani*

TRIBUNAL

9. Charitable Trust – Registration – S. 12AA

While granting registration to a Charitable Trust or institution, the powers of the CIT are limited to examination as to whether or not the objects of the trust are charitable in nature and examination about the genuineness of the activities, when genuineness of the activities is not in doubt, the CIT was not justified in refusing the registration under section 12AA, on irrelevant grounds.

Saint Kabir Educational Trust vs. CIT (2010) 41 DTR 267 (Asr.)(Trib.)

10. Income from House Property – Fair rental value – Interest free deposit – S. 23(1)(a)

Benefit derived by assessee from interest free deposit can be taken into consideration for determination of

fair rental value under section 23(1)(a). Since, the property in question was not subject to Rent Control Act, annual letting value was not to be restricted to standard rent as per Rent Control Act.

ITO vs. Baker Technical Services (P) Ltd. (2010) 125 ITD 1 (Mum.)(TM)

11. Appeal – High Court – New ground – S. 260A

Pure question of law can be raised before the High Court though not raised before the Tribunal.

CIT vs. Jundal Equipments Leasing and Consultancy Services Ltd. (2010) 325 ITR 87 (Delhi)

12. Deduction of tax at source – Grant of Certificate – S. 197

Rejection of application under section 197 without assigning cogent reasons was not justified, especially when it had been accepted for earlier year.

Infrastructure Development Authority vs. CIT (2010) 232 CTR 353 (Patna)

13. Reassessment – Validity – Jurisdiction – (S. 292B) – S. 147

Where reopening proceedings are initiated by the Assessing Officer not having jurisdiction, the reassessment made in pursuance to such notice by the Assessing Officer is illegal and invalid.

K. B. Kumar (Dr.) (Mrs.) vs. ITO (2010) 41 DTR 423 (Del.) (Trib.)

SUBSCRIPTION RATES UP TO 31-3-2011

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	Admission	500/-	500/-	500/-	500/-
	Subscription	5,000/-	7,500/-	11,500/-	15,000/-
	Total	5,500/-	8,000/-	12,000/-	15,500/-

Note: Members may download the membership form from the website of AIFTP., i.e., www.aiftponline.org

INTERNATIONAL TAXATION

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

AUTHORITY OF ADVANCE RULINGS

1. Make available – Article 12 – India –Australia DTAA

The authority ruled that the applicant, a tax resident of Australia, had just evaluated and assessed the capabilities, competence, potential and infrastructure possessed by the Conformity Assessment Bodies ('CAB') in India in the light of certain set standards and parameters. The fact that the CAB was apprised of its shortcomings and deficiencies, if any, and that the CAB is given an opportunity to rectify, if possible, do not reasonably lead to the inference of making available the skills, technical knowledge etc. possessed by the applicant. Therefore, income could not be taxed as fees for technical services under Article 12 of India-Australia Treaty.

Joint Accreditation Systems of Australia and New Zealand [2010-TII-28-ARA-Intl]

2. Computer software – Not royalty – Explanation 2 to section 9 (1) (vi) of the Income-tax Act, 1961

The authority ruled that the provision of section 115A cannot be interpreted to mean that the transfer of any rights could only be in respect of the computer software without reference to copyright. It is reasonable to interpret the word 'copyright' to qualify not only the 'book' but also the 'computer software'. If the transfer of computer software, *per se* was contemplated to fall within the definition of royalty, it should have been stated so in the definition clause (v) contained in Explanation 2 to section 9(1)(vi). Also, the sum payable to the assessee does not amount to royalty or fees for technical services within the meaning of Article 12 of DTAA.

Geoquest Systems B V [2010-TII-29-ARA-Intl]

3. Fees for Technical Services and Royalty – Article 12 of India-Singapore Treaty

The authority ruled that by providing comments and suggestions after reviewing the strategies and plans developed by assessee, giving suggestions

to improve the product developed by it so as to bring it in line with the common practices followed by other group entities across the globe, and other support services (assuming they are technical or consultancy services), assessee was not enabled to apply the technology contained therein i.e. the technology, knowledge, skills, etc. possessed by the service provider or technical plan developed by the service provider. Therefore, payment made could not be treated as fees of technical services in tax treaty between Indian and Singapore.

It was also ruled that the payments made for access to the system hosted in Singapore were for availing of the facility provided by AXA Asia Region Center Pvt. Ltd. and it could not be said that assessee had been conferred any right of usage of the equipment located abroad, more so when the server was not dedicated to assessee. And, therefore, payment could not be treated as royalty under Article 12.3 of the treaty.

Bharati AXA General Insurance Corporation Ltd. [2010-TII-30-ARA-Intl]

TRIBUNAL

4. Permanent Establishment – Articles 5(1), 5(2) and 5(5) of the India-Germany DTAA

In this case, Daimler Chrysler India Pvt. Ltd. ('DCIL') was merely acting as a post office between the assessee (Daimler Chrysler AG) and the customers. Sale of cars to the customers by the assessee was on principal-to-principal basis. The risk of diminishing in value or damages to the cars was to the account of customers, after it left the assessee's manufacturing facility in Germany. DCIL had no authority to conclude any deal. The assessee had no presence in India. Thus, it was held that DCIL does not constitute a Permanent Establishment of the assessee under Articles 5(1), 5(2) and dependent agency PE under Article 5(5) of the India-Germany DTAA.

DDIT vs. Daimler Chrysler A.G. [39 SOT 418 (Mum)]

INDIRECT TAXES

SALES TAX DECISIONS

P. C. JOSHI, Advocate

(A) Entries to Schedule

1) Scrabble – Not a puzzle

The Supreme Court while deciding Appeals under the Central Excise and Tariff Act, 1985 held that 'scrabble' was a broad game and was not a puzzle and therefore it would be covered by heading No. 95.04.90 relating to articles of funfare table or parlour quiz, etc. and not by 95.03 which covered toy models, etc.

Pleasant Time Products & Anr. vs. Commissioner of Central Excise, Mumbai (2010) 55 STA P.189

2) Deodorants – Not cosmetics

The West Bengal Taxation Tribunal held that the word 'deodorant' would include both body as well as mouth deodorant and therefore could be covered by Entry 54(ii) of Schedule iv under the West Bengal Sales Tax Act, 1994 liable to be taxed at 17% and not cosmetics as held by the authorities.

J.K. Helene Curtis Ltd., vs. Deputy CCT, Corporate Division, West Bengal & Ors. (2010) 55 STA Pg.20. Vol. 56 No.1

3) Industrial fans – Machinery

The West Bengal Tax Tribunal, while considering the petition under the West Bengal VAT Act 2003, held that Industrial fans used as machinery in Tea processing Industries was covered by the term 'Machinery' as contained in Sr. Nos. 1 & 2 of Entry 54 (B) of Part 1 of Schedule 'C' and liable to be taxed at the rate of 4%. In that regard the Tribunal also held that it was necessary to comply with the entries in Central Excise Tariff code as the external aid can be taken only when the language of the statute raised some doubt, not otherwise.

Smt. Asima Hazra vs. Commissioner of SalesTax, West Bengal & Ors. (2010) 56 STA P. 31

4) d-sona gum care powder – Ayurvedic medicine

The Gujarat VAT Tribunal in a very detailed judgment running into more than 40 printed pages of the journal, held that the above-mentioned products was an Ayurvedic medicine under the entry 28A (I) of Schedule II of the Gujarat VAT Act, 2003 and was not covered by residuary entry as determined by the Authority.

M/s. Darshana Pharma vs. State of Gujarat Vol.49 (Part 1V) July 2010 STJ P. 265

5) Aluminium properzi – Primary metal

The Supreme Court while deciding the challenge to the judgment of the Allahabad High Court held that the entire foundation for reopening the assessment vanished when the Supreme Court confirmed the earlier judgment of the Allahabad High Court in case of Hindalco. Under the said judgment the production properzi – redrawn rods from aluminium ingots were covered by Entry 24 relating to primary metal of aluminium, the goods related to provisions under the U.P. Trade Act.1948. The Supreme Court in that case also referred to its earlier judgment in case of Hind Aluminium Corporation Ltd.

Jai Vijai Metal Udyog Pvt.Ltd. vs. Commissioner of Trade Tax, U.P. Lucknow (2010) NTN Vo. 43 P. 301

6) Fish oil

The Finance Commissioner of Haryana Government while clarifying a query held that fish oil used as poultry feed supplement is covered by Entry 102 (1) of Schedule 'C' appended to the Haryana VAT Act and the rate of tax is 4%.

JS Querist – M/s. Nova Trading Company, Panipat Source (2010) 36 PHT 90

(B) Goods

The Allahabad High Court held that sale of standing green trees by an auction, amounted to selling of timber or wood that was agreed to be severed before delivery as contemplated in the definition of the term goods u/s 2(d) of the U.P. Trade Tax Act.

Chandramani Kant Singh vs. Trade Tax Tribunal Bench III, Lucknow and Others (2010) 36 PHT 399

(C) Interpretation

The Supreme Court held that the regulatory measures under a fiscal statute was integral part of the charging provision. Therefore, one cannot read the Act, segregating the machinery provision from that of charging provision.

Kamal Kumar Agarwal vs. C.C.T West Bengal & Ors. (2010) 18 KTR 279 (SC)

(D) Manufacture

(1) LPG bulk to small cylinder

The Kerala High Court held that the purchase of LPG in bulk from oil refineries and transporting it in tankers or lorries to its factory, storing the same

in large storage tanks and then filling up the small cylinder did not result into emergence of a new product, different from the gas purchased. Therefore, the entire activity did not amount to manufacture as defined under the Kerala General Sales Tax Act 1963.

Koldy Petroleum (India) Ltd. vs. State of Kerala (2010) 18 KTR 297 (Ker)

(2) Twisting & Texturising

The Supreme Court while deciding an appeal under the provisions of Income-tax Act held that its judgment in the case of Swastik Processors (2007) 209 ELT 163 under the provisions of Central Excise Act was not applicable to the facts of the case. In the instant case, Partially oriented yarn (POY) was a semi finished product which was converted into a texturised yarn by reason of a techno mechanical process and therefore confirming the judgment of the High Court, it was held that the process amounted to manufacture for the process of Sec. 80-1A of the Income Tax Act, 1961.

CIT, Mumbai vs. Emptee Poly Yarn P.Ltd. (2010) 55 STA P.199

(3) Marble blocks to slabs & tiles

The Supreme Court while considering the provisions of Sec. 80-1A Income-tax Act, 1961 held that conversion of marble blocks, by sawing into slabs and tiles and thereafter polishing the same amounted to manufacture or production of an article and therefore the Assessee was entitled to the benefit of sec. 80-1A of the Income-tax Act, 1961.

Income Tax Officer, Udaipur vs. Arihant Tiles & Marbles P. Ltd. (2010) 55 STA P.1

(E) Penalty

The Patna High Court considering the provisions of Ss.54(2) & 54(4) of the Bihar VAT Act, 2005 held that no penalty for delayed submissions of the Audit report was imposable where the Assessee concerned was not eligible to any tax nor any such tax was due, from him, simply because the Auditors report was delayed.

Birla Corporation Ltd. vs. State of Bihar (2010) NTN (Vo. 430 P. 217.

Penalty u/s 10A of Central Sales Tax Act, 1956

The Allahabad High Court followed the judgment of the Supreme Court in the case of *Mohd. Ekram Khan & Sons 136 STC 515 (SC)* and held that when the spare parts of the vehicle purchased on 'C' Form for resale but were used for replacement of the faulty/defective part during the warranty period without any consideration, amounted to sale of such parts and

therefore there was no misuse of 'C' form for the purpose of Sec.10 A penalty under CST Act.

Commissioner Trade Tax, U.P. Lucknow vs. Kanpur Tractors Pvt. Ltd. (2010) 36 PHT 406

(F) Purchase tax

The Gujarat High Court while deciding several tax appeals held that the purchase tax u/s 15B of the Gujarat Sales Tax Act was not attracted for the purchases made from a new Industry having sales tax exemption under notification issued by the State Government under the provisions of Gujarat Sales Tax Act, 1969. Such goods were not 'taxable' as defined under sec. (2)33 of the Act. The Hon'ble High Court therefore reversed the judgment of the Tribunal in each of the appeals concerned.

Deepak Ltd. vs. State of Gujarat Vol. 49 (Part 1V) July 2010 STJ P.307

(G) Res judicata

The Punjab and Haryana High Court held that when the Department did not challenge the order of the Tribunal for the later years, (which were in favour of the Assessee), it cannot challenge the same issues for the earlier years in view of the fact that the orders pertaining to subsequent years were allowed to attain finality by the Revenue.

State of Haryana vs. Shree Cement Ltd. Gurgaon Vol. 49 (Part 1V) July 2010 STJ P.192

(H) Reassessment

(1) Larger period not applicable

In the case before the Bombay High Court, the Assessee was assessed in regard to certain transactions claimed by the Assessee as in the course of import, to be that of local sales. Thereafter the said original Order of Assessment was challenged before the First Appellate authority who accepted the submission of the Assessee holding that the transaction in question were not that of local sale. After the decision of the appeal, the appropriate authority sought to revise the original Assessment order under the Central Sales Tax Act. After hearing and considering all the judgments and submissions made before him on behalf of the Assessee, the Revision Authority dropped the Revision proceedings. It was thereafter that the original Assessing authority proceeded to reassess those transactions under the provisions of Central Sales Tax Act by taking help of the larger period of 8 years on the footing that the transactions in question were not shown in the return under the CST Act. Such a Notice was challenged as barred by limitation by Assessee, contending that when in the original assessment the relevant documents were scrutinized for holding the transaction to be that of local sale, there was

no question of any suppression or concealment. The notice for reassessment was challenged before the Hon'ble High Court under Article 226 of the Constitution. After hearing both the parties, the Hon'ble High Court held that there was no case for larger period to be made applicable and therefore the reassessment notice issued beyond 5 years but before 8 years was held to be barred by limitation. The same was quashed and set aside.

Jayshree Tea & Industries vs. Commissioner of Sales Tax & Ors. Writ Petition No.1789 of 1999 decided on 5th. August, 2010

(2) Reassessment

The Haryana Tax Tribunal, while interpreting sec.17 of the Haryana VAT Act, 2003 in regard to the reassessment, held that the reassessment contemplated the Assessing authority to reassess the tax liability of the dealer for the concerned year and therefore it was not restricted to the liability on the turnover that had escaped assessment. It also observed that once the law required that the whole turnover for the year was to be reassessed all issues were open with the result, the Assessee also can raise an issue that he could have raised at the time of the original assessment.

Paliwal Fibres Pvt. Ltd., Panipat vs. State of Haryana (2010) 36 PHT 344 (HTT)

(I) Sale

The Finance Commissioner while clarifying u/s 56(3) of the Haryana VAT Act held that the Work Order received from Government for supply, erection, testing and commissioning of diesel sets or pump sets were in the nature of sale and VAT @ 12.50% was payable by the Querist.

He also clarified that the Assessee can purchase the goods for resale against the Form 'C' for resale of the Diesel Generating Sets.

Querist - M/s. Dimpy Pumps P. Ltd. Bahadurgarh (Haryana) (2010) 36 PHT 91 JS

(2) Intra ocular lens insertion

The Kerala High Court held that the supply of intra ocular lens by the Hospital to the patients in the course of cataract operation by replacing natural lens with the intra ocular lens, amounted to a sale and therefore taxable. As regards the rate of tax, Entry 145 of the Kerala General Sales Tax Act referred to medical implants liable to be taxed @ 8% at the point of first sale u/s 5 of the Act.

Comtrust Eye Hospital vs. Addl. Sales Tax Officer 1, III Circle, Kozhikode and Others (2010) 36 PHT 408 (Ker)

(J) Stereotype orders

The Central Sales Tax Appellate authority held that adopting stereotyped orders of earlier years for the later years depicts complete non-application of mind and therefore was set aside.

Ansa Cosmochems vs. State of Tamil Nadu & State of Kerala 2010) 18 KTR 263

(K) Works Contract

The Allahabad High Court held that the goods required to be used in the works contract after its receipt from other State, by stock transfer, were inter-State transactions covered u/s 3(a) of the CST Act and therefore no tax under the local Act was payable on such transfers.

Commissioner of Trade Tax U.P. Lucknow vs. Advance Spectra Tee (P) Ltd. Ghaziabad. (2010) NTN Vo. 43 P.231

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