All India Federation of Tax Practitioners

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(For Members only)

Volume 5 - No. 9 | September 2014

FORTHCOMING PROGRAMMES

Date & Month	Programme	Place
6-9-2014	One Day Tax Conference (Western Zone)	Anand
26-9-2014	Annual General Meeting of AIFTP	Mumbai
19-12-2014	National Executive Committee Meeting	Jaipur
20, 21-12-2014	National Tax Conference (Central Zone)	Jaipur

NOTICE OF ANNUAL GENERAL MEETING

Notice is hereby given that the Annual General Meeting of the All India Federation of Tax Practitioners will be held on Friday, the September 26, 2014 at 6.00 p.m. at 215, Rewa Chambers, 31, New Marine Lines, Mumbai – 400 020 to transact the following business:-

A G E N D A

1. To read and approve the minutes of last Annual General Meeting held on September 20, 2013 at Mumbai.
2. To read and approve the minutes of Extraordinary General Meeting held on December 25, 2013
3. To receive and adopt the Annual Report of the National Executive Committee of AIFTP for the year 2014.
4. To consider and adopt the Audited Accounts of AIFTP for the year ended 31st March, 2014.
5. To appoint Auditors for the year 2014-15 and to fix their honorarium.
6. To transact any other business with the permission of the Chair.

Place : Mumbai
Date : August 26, 2014

Harish N. Motiwalla
Secretary General

Notes:

1. The Annual Report and the Audited Profit and Loss Account and Balance Sheet will be circulated to the National Executive Committee Members by e-mail.
2. Accounts for the year ended 31st March, 2014 and the report of the National Executive Committee can be collected from the office of the Federation from September 22, 2014 onwards between 11.30 a.m. and 5.00 p.m. The accounts and reports can be made available to the members through e-mail on request to the office.
3. If there is no quorum by 6.00 p.m., the meeting will be adjourned by half an hour and the members present at such adjourned meeting shall form the quorum.

FOR ANY QUERIES MEMBERS MAY CONTACT ANY OF THE FOLLOWING OFFICE BEARERS

Name	Mobile	Tel. (O)	Fax	E-mail
National President — J. D. Nankani, *Adv.*	9821034867	022-22841717	22831717	jagdish@nankanis.com
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Treasurer — CA. Janak K. Vaghani	9324680306	022-22821978	-	janak.vaghani@gmail.com

FULL DAY NATIONAL SEMINAR ON DIRECT & INDIRECT TAXES AT ANAND

All India Federation of Tax Practitioners (WZ) and The Anand VAT (Sales Tax) Bar Association along with All Gujarat Federation of Tax Consultants, The Gujarat Sales Tax Bar Association and Central Gujarat Chamber of Tax Consultants cordially invite you to "Full Day National Seminar" on Direct & Indirect Taxes, at the Elecon Hall, G.I.D.C., Vithal Udyognagar, Anand. The seminar is scheduled on 6th September, 2014 (Saturday) to enable all the professional brothers and corporate executives to attend.

For more details please visit aiftp website www.aiftponline.org or contact
Mr. Vipul B. Joshi, Chairman, AIFTP (WZ) Mobile No. 9820045569
Ajay Shah, Seminar Chairman, Mobile No.: 9426033929

ANNOUNCEMENT

Concessional Subscription for www.taxmann.com

We are glad to inform you that we have worked out concessional subscription for www.taxmann.com for AIFTP members vide letter No. A-1777 dated 12-1-2013.

www.taxmann.com will be available to AIFTP Members at Just ₹ 4,500/- per year (otherwise priced at ₹ 8,800/-). This arrangement is for 3 years with 10% increment in the offer price above at the end of each year. The agreement is renewable after expiry of 3 years at same terms and conditions etc.

The website http://www.taxmann.com/ – is a Complete Data Base on Direct Tax Laws since 1886, Corporate Laws since 1913, CST & VAT, Excise & Customs.

It will also provide updates on GOODS & SERVICES TAX, Reporting of nearly New 4500 cases in 2014, Reporting more cases than all other Websites & Journals put together, always updated Acts/Rules/Forms/Circulars & Notifications on ST & VAT/Service Tax/Excise & Customs, as well as Commentaries and Articles (details of features are enclosed).

MEMBERS OF AIFTP ARE REQUESTED TO TAKE BENEFIT OF OUR UNDERSTANDING WITH TAXMANN.

RENEWAL SUBSCRIPTION TO AIFTP JOURNAL

Dear Members,

We have posted bill for renewal subscription of AIFTP Journal on 3rd March, 2014. Members are requested to send the DD or Cheque in favour of "All India Federation of Tax Practitioners" payable at Mumbai as early as possible.

Members can also download the subscription Form from our website; i.e., **www.aiftponline.org** and send us the subscription.

Thanking you,

For All India Federation of Tax Practitioners

JANAK VAGHANI
Treasurer

***Note:* Members who have not paid the subscription for AIFTP Journal for the year 2014-15 will not receive the journal from July 2014 onwards.**

VOLUNTERS FOR DIGESTING THE CASE LAWS FOR AIFTP JOURNAL

We invite our members who desire to digest the case laws for AIFTP Journal to please e-mail us at aiftp@vsnl.com

DIRECT TAXES

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

HIGH COURTS

1. S. 80-IB : An "industrial undertaking" can be formed by taking Plant & Machinery on hire, Not necessary for the assessee to "own" the Plant & Machinery. Departments tendency to try to unsettle matters strongly disapproved

The argument of the department that if an assessee does not own plant and machinery, it cannot be an industrial undertaking is extreme and misconceived. S. 80-IB permits an undertaking to be formed by 'hire' of plant and machinery and does not require the assessee to own the same. A film production unit formed by engaging cameraman, editor, sound technicians and using their equipment for filming, processing, sound recording and mixing machines on contract basis is an "industrial undertaking" eligible for S. 80-IB deduction.

CIT v. Jyoti Prakash Dutta (Bombay High Court) Source : www. itatonline.org.

2. S. 80-IB : If the undertaking satisfies the conditions for eligibility in the initial year, it must get deduction for 10 years can security – due to growth & investment SSI going outside of the purview of definition as SSI Irrelevant

There is no indication in s. 80-IB that the conditions stipulated therein has to be fulfilled by the assessee in all the 10 years. When once the benefit of 10 years, commencing from the initial year, is granted, if the undertaking satisfy all these conditions initially, the undertaking is entitled to the benefit of 10 consecutive years. The argument that, in the course of 10 years, if the growth of the industry is fast and it acquires machinery and the total value of the machinery exceeds ₹ 1 crore, it ceases to have the said benefit, do not follow from any of the provisions. It is true that there is no express provision indicating either way, what would be the position if the small scale industry ceases to be a small scale industry during the said period of 10 years. Because of that ambiguity, a need for interpretation arises. If we keep in mind the object of the Legislature providing for these incentives and when a period of 10 years is prescribed, that is the period, probably, which is required for any industry to stabilise itself. During that period the industry not only manufactures products, it generates employment and it adds to the wealth of the country. Merely because an industry stabilises early, makes profits, makes future investment in the said business, and it goes out of the definition of the small scale industry, the benefit u/s 80-IB cannot be denied. If such a literal interpretation is placed on the said provision, it would run counter to the very object of granting incentives. It would kill the industry. Therefore keeping in mind the object with which these provisions are enacted, keeping in mind the industrial growth which is required to be achieved, if two interpretations are possible, the courts have to lean in favour of extending the benefit of deduction to an assessee who has availed the opportunity given to him under law and has grown in his business. Therefore we are of the view, if a small scale industry, in the course of 10 years, stabilises early, makes further investments in the business and it results in its going outside the purview of the definition of a small scale industry, that should not come in the way of its claiming benefit u/s 80-IB for 10 consecutive years, from the initial assessment year.

Ace Multi Axes Systems Ltd v. DCIT (Karnataka High Court) Source : www.itatonline.org

3. S. 153A: No addition can be made in respect of an unabated assessment which has become final if no incriminating material is found during the search

Once it is held that the assessment finalised on 29-12-2000 has attained finality, then the deduction allowed u/s 80HHC would attain finality. In such a case, the AO, while passing the independent assessment order u/s 153A could not have disturbed the assessment order which has attained finality, unless the materials gathered in the course of the proceedings u/s. 153A establish that the reliefs granted under the finalised assessment were contrary to the facts unearthed during the course of s. 153A proceedings. In the present case, there is nothing on record to suggest that any material was unearthed during the search or during the s. 153A proceedings which would show that the relief u/s 80HHC was erroneous. In such a case, the AO, while passing the assessment order u/s 153A could not have disturbed the assessment order finalised on 29-12-2000 relating to s. 80HHC deduction and consequently the CIT could not have invoked jurisdiction u/s 263.

CIT v. Murli Agro Products Ltd. (Bombay High Court) Source : itatonline.org

4. S. 23(1)(a): Entire law on determination of "annual value" explained

The department argument that the municipal rateable value cannot be accepted as a *bona fide* rental value of the property and it must be discarded straightway in all cases. There cannot be a blanket rejection of the same. If that is taken to be a safe guide, then, to discard it there must be cogent and reliable material;

The market rate in the locality is an approved method for determining the fair rental value but it is only when the AO is convinced that the case before him is suspicious, determination by the parties is doubtful that he can resort to enquire about the prevailing rate in the locality. The municipal rateable value may not be binding on the AO but that is only in cases of afore referred nature. It is definitely a safe guide;

CIT v. Tip Top Typography (Bombay High Court) Source : www. itatonline.org.

TRIBUNALS

5. S. 14A & Rule 8D cannot be applied in a mechanical manner. Disallowance cannot exceed expenditure claimed as a deduction

The assessee had debited direct expenses on account of dematerialisation and STT in the capital account and not in the Profit and Loss account. The AO had presumed that the assessee had must have incurred some expenditure under the heads Salary, telephone and other administrative charges for earning the exempt income. It is further found that the total expenditure claimed by the assessee for the year is about 13 lakhs and the AO had made a disallowance of about ₹ 16 lakhs. He has just adopted the formula of estimating expenditure on the basis of investments. But, the justification for calculating the disallowance is missing. The assessee had not claimed any expenditure in its P&L account and so the onus was on the AO to prove that out of the expenditure incurred under various heads were related to earning of exempt income. Not only this he had to give the basis of such calculation. In any manner disallowance of ₹ 16.35 lakhs as against the total expenditure of ₹ 13 lakhs claimed by the assessee in P&L account is not justified. Rule 8D cannot and should not be applied in a mechanical way. Facts of the case have to be analysed before invoking them. Consequently the disallowance is deleted (Justice Sam P. Bharucha 53 SOT 192 (Mum.) referred)

ACIT v. Iqbal M. Chagala (ITAT Mumbai) Source : www.itatonline.org

6. S. 14A/ Rule 8D: No disallowance can be made if there is no exempt income. Cheminvest (SB) & CBDT Circular are not good law

No doubt in *Cheminvest Ltd. v. ITO 121 ITD 318 (SB)* the Special Bench of the Tribunal has held that disallowance u/s 14A can be made even in the year in which no exempt income has been earned or received by the assessee. This decision of Special Bench of the Tribunal has been impliedly overruled by the decisions of High Courts in *Shivam Motors P Ltd. (All HC), CIT v. Corrtech Energy Pvt. Ltd (Guj HC), CIT v. Delite Enterprises (Bom HC), CIT v. Lakhani Marketing (P&H HC), CIT v. Winsome Textiles Industries Ltd 319 ITR 204 (P&H)* where it has been held that when there is no exempt income and no claim for exemption, s. 14A and Rule 8D have no application and no disallowance can be made.

ACIT v. M. Baskaran (ITAT Chennai) Source : www. itatonline.org

7. S. 14A & Rule 8D: Investments in subsidiaries to be excluded while computing disallowance

The investments made by the assessee in the subsidiary company are not on account of investment for earning capital gains or dividend income. Such investments have been made by the assessee to promote subsidiary company into the hotel industry. A perusal of the order of the CIT(A) shows that out of total investment of ₹ 64.18 crore, ₹ 63.31 crore is invested in wholly owned subsidiary. This fact supports the case of the assessee that the assessee is not into the business of investment and the investments made by the assessee are on account of business expediency. Any dividend earned by the assessee from investment in subsidiary company is purely incidental. Therefore, the investment made by the assessee in its subsidiary are not to be reckoned for disallowance u/s 14A r.w.r. 8D. The AO is directed to re-compute the average value of investment under the provisions of Rule 8D after deleting investments made by the assessee in subsidiary company

EIH Associated Hotels Ltd v. DCIT (ITAT-Chennai)

8. S. 57(iii): Interest paid on a loan taken to avoid premature encashment of a fixed deposit is deductible against the interest earned on the fixed deposit

To protect the interest earnings from fixed deposits and to meet her financial needs, when an assessee raises a loan against the fixed deposits, so as to keep the source of earning intact, the expenditure so incurred in wholly and exclusively to earn the fixed deposit interest income. The authorities below were apparently swayed by the fact that the borrowings

were triggered by assessee's financial needs for personal purposes and, by that logic, the borrowing cannot be said to be wholly and exclusively for the purposes of earning interest income, but what this approach overlooks is whether the expenditure is incurred for directly contributing to the beginning of or triggering the source of income or whether the expenditure is for protecting, and thus keeping alive, that source of income, in either case it is expenditure incurred wholly and exclusively for the purpose of earning that income. The assessee indeed required that money, so raised by borrowing against the fixed deposits, for her personal purposes but that's not relevant for the present purposes. The assessee could have gone for premature encashment of bank deposits, and thus ended the source of income itself, as well, but instead of doing so, she resorted to borrowings against the fixed deposit and thus preserved the source of earning. The expenditure so incurred is an expenditure incurred wholly and exclusively for earning from interest on fixed deposits. We are alive to the fact that in the case of a business assessee, and in a situation in which the borrowings against fixed deposits were resorted to for use in business, consideration for end use of funds so borrowed would be relevant because the interest deduction is claimed as a business deduction u/s 36(1)(iii). That aspect of the matter, however, is academic in the present context as the limited issue for our consideration is whether or not, on the facts before us, the interest on borrowings against the fixed deposits could be said to protect the interest income from fixed deposit interest and thus, incurred wholly and exclusively for the purposes of earning such income.

Raj Kumari Agarwal v. DCIT (ITAT Agra) source : itatonline.org

9. Bogus purchase : A.O. cannot make addition on the basis of declaration made by the VAT department as a Hawala Dealer

AO had made the addition as one of the suppliers was declared a hawala dealer by the VAT Department. He could have called for the details of the bank accounts of the suppliers to find out as whether there was any immediate cash withdrawal from their account, no such exercise was done. Transportation of good to the site is one of the deciding factors to be considered for resolving the issue. The FAA has given a finding of fact that part of the goods received by the assessee was forming part of closing stock. The order of the FAA does not suffer from any legal infirmity and there are not sufficient evidence on file to endorse the view taken by the AO. So the addition made on the suspicious purchase and on the basis of the VAT department declared hawala dealers was not sustainable.

DCIT v. Shri Rajeev G. Kalathil dated 20-8-2014, ITA No. 6727/Mum/2012, A.Y. 2009-10

Hearty Congratulations

Hearty Congratulations to the newly elected office bearers of Jajpur District Tax Bar Association, Jajpur, Odisha for the period 2014-16.

President	:	Shri Bibekananda Mohanty
Vice President	:	Shri Durbadala Basu
Secretary	:	Shri Prafulla Kumar Samal
Asst. Secretary	:	Shri Prasanta Kumar Guru
Treasurer	:	Shri Dilip Kumar Mallick

We wish them all the success.

Advertisement Tariff for AIFTP Journal (W.e.f. 15th July, 2013)

	Particulars	Per Insertion
1.	Quarter page	₹ 1,500/-
2.	Ordinary half page	₹ 2,500/-
3.	Ordinary full page	₹ 5,000/-
4.	Third cover page	₹ 7,500/-
5.	Fourth cover page	₹ 10,000/-

There shall be Discounts on bulk advertisements.

Membership of AIFTP as on 28-8-2014

Life Members

	Associate	Individual	Association	Corporate	Total
Central	0	796	23	3	822
Eastern	3	1168	35	3	1209
Northern	0	958	17	0	975
Southern	1	901	13	6	921
Western	4	1718	33	16	1771
Total	8	5541	121	28	5698

INDIRECT TAXES

SALES TAX

D. H. Joshi, Advocate

1. Condonation of delay

A Huge delay of 1,205 days is preferring the appeal by Revenue, except mentioning various dates and throwing burden of delay upon Office of the Government Pleader. The Dept. miserably failed to give any acceptable and cogent reason for delay. In the case of *Lanka Venkateswarlu AIR 2011 SC 1199, Supreme Court* held that while considering application for condonation of delay u/s 5 of Limitation Act, the Courts do not enjoy unlimited and unbridled discretionary powers. All discretionary powers, especially judicial powers, have to be exercised within reasonable bounds, known to law. The SC further observed that concepts such as liberal approach, justice oriented approach, substantial justice cannot be employed to jettison the substantial law of limitation especially, in cases where the court concludes that there is no justification for delay. Applying the said decision of the Supreme Court, the High Court refused to condone the delay, hence, appeal dismissed.

State of Gujarat v. Swet Zink Ltd. (2014) 25 STJ 65 (Guj.)

B Section 5 of the Limitation Act, 1963. This statute of limitation has left the concept of 'sufficient cause' delightfully undefined. In each and every case, the Court has to examine whether delay in filing the special new petitions stands properly explained. This is the basic test which needs to be applied.

Super Metal, Faridabad v. State of Haryana & Ors. (2014) 48 PHT 263 (P&H)

C Law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying rights of parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time.

JRM Steels Pvt. Ltd., Panipath v. State of Haryana And Ors. (2014) 48 PHT 307 (P&H)

2. Gross turnover

The lease rental received or receivable during the tax period only held as a right to use goods, was the turnover forming part of sale price.

G.E. Money Financial Services (P) Ltd. v. State of Haryana (2014) 48 PHT 322 (HTT)

3. Input Tax Credit (ITC)

Production of declaration forms VAT C-4 at appellate stage. The dealer was entitled to produce the same together with tax invoices before the Appellate Authority, to enable it to claim ITC.

Carrier Aircon Ltd. v. State of Haryana (2014) 48 PHT 261 (P&H)

4. Interpretation of entries – Duty Credit Scrips

1. The question posed before the Commissioner of Commercial Tax, u/s 70 of the Chhattisgarh VAT Act, 2005, was whether duty credit scrips sold and purchased in the market for valuable consideration whether they were goods.

2. The learned Commissioner following *Vikas Sales Corporation v. CCT (2005) 5 STJ 56 (SC), NTN 80 (SC)* held that duty credit scrips are goods and liable to tax at 14% under Schedule II of the said Act.

B. ANAND VISHAL + FOLIAR (ORGANIC MANURE)

The applicant u/s 70 of the Chhattisgarh Value Added Tax Act, 2005 requested the Commissioner to determine the tax payable on Anand Vishal + Foliar (Organic Manure), which comprises the following elements:

(i) Organic six sea weed extract 90%

(ii) Sea weed gel 9.6%

(iii) Surface Active agent 0.4%

2. The applicant produced evidence thus: (i) Seed biology lab. School of life sciences, Prop. Pt. Ravishankar Shukla University, Raipur, certifying that the above product was used for agriculture and forestry purpose. These products were containing organic six liquid, sea weed gel and Humic acid and both the products were bio organic manure.

3. Considering the above evidence, the Commissioner held that it falls at Sl. No. 37 of Schedule 1 and not liable to tax.

BEC Fertilizers, Bhilai (2014) 25 STJ 133 (CCT, CG)

5. Karnataka Luxuries Tax Act, 1979

The question posed to the High Court in the Revision Petitions was whether the respondent-assessee was liable to pay luxury tax on the charges collected for the services rendered in the Banquet / Conference Hall and Business Centre in Hotel to guests / residents or others. In the facts and circumstances of the case, and after relying on 3 Supreme Court

judgments, a Karnataka High Court held in the affirmative by allowing the revision petitions of the Dept.

State of Karnataka v. M/s Piem Hotels Ltd. (Taj Residency), Bengaluru & Ors. 2014-15 (19) KCPJ 115

6. Precedent

Declaration of law by High Court. Tribunal bound to follow the same is not open for the Tribunal to opine contrary view to the judgment of the High Court.

State of Karnataka v. Kitchen Appliances India Ltd. (2014) 22 KTR 328

7. Pre-owned car – Meaning and scope

Pre-owned car means a car purchased or acquired for re-sale by a car dealer liable to pay tax from a person who owned the car as a consumer. It is only then that it could be the first sale of pre-owned car by a dealer liable to pay tax under the Act.

G.E. Money Financial Services (P) Ltd. v. State of Haryana (2014) 48 PHT 322 (HTT)

8. Processed vegetables or fruits

All items of vegetables and fruits that undergo any form of processing so long such items have an acceptable degree of similarity, would deserve to be classified as items of processed vegetables or fruits.

Pachranga Syndicate Pvt. Ltd. v. State of Haryana (2014) 48 PHT 257 (P&H)

9. Refund – Notification reducing rate of tax retrospectively

In this case, refund arose due to notification issued reducing the rate of tax retrospectively resulting into excess tax collection. Dealer claimed refund of excess tax collected from 8% to 4% w.e.f. 1-1-2000. Notification provided for payment of collected tax and prohibiting refund of tax already paid. Assessing authority passed assessment orders directing excess tax paid by dealer to be adjusted towards surcharge/tax of future years. Thereafter, finding mistake in the order, assessing authority rectified assessment order for the year 1999-2000 and rejected dealer's request for refund of excess tax paid. Thereupon, the single Bench and Division Bench of the High Court held that the dealer is not entitled for refund of tax already paid. The Apex Court held it as proper. Refund results in undue monetary advantage to the dealer. Therefore, rectification order rejecting the claim of refund is justified. While delivering the judgment, the Apex Court considered sections 5, 10 and 43 of the KGST Act, 1963; Govt. Notification G.O. (P) No. 12 / 2000 / TD dt. 5-2-2000 published as SRO No. 127 / 2000.

Yesyem Arecanut Co. and Ors. v. State of Kerala and Ors. (2014) 22 KTR 335 (SC)

10. Seizure of goods – Customs Duty paid

In this case, the dealer imported goods against bill of entry and custom duty paid. However, Form No. 38 was not found with the goods at the time of detention of goods under the U.P. Value Added Tax Act, 2008. Section 50 r/w Form No. 38, already issued in advance and it was to be handed over to the transporter before making an entry inside the State of U.P. However, it was submitted along with reply to show cause notice issued by the mobile squad authority. Tribunal on appeal noticing duly filled Form 38 submitted before seizure of goods, questioned goods have been imported from outside the country against bill of entry and due custom duty has been paid by the dealer which cannot be considered as concealment by the dealer. Hence, appeal was allowed and seizure order was setaside and goods released without demand of security.

Blaze Printing Ink Pvt. Ltd. v. CCT, U.P. (2014) NTN 55 (5) Tribunal 82.

11. Stock transfer – Production of 'F' forms

Production of 'F' forms covering transactions for 2 months by the dealer. Allowance of stock transfer by the AO for one month and disallowance for other month – whether justified.

The W.B.C.T. Appellate & Revisional Board following Calcutta High Court judgment (2013) STA 194 and after analysis of Rule 12(5) proviso of the CST (Registration & Turnover) Rules, 1957, held that claim against 'F' forms were allowable even if it covers stock transfer effected in more than one month.

Castrol India Ltd. v. Addl. Commissioner, C.T., West Bengal (2014) STA Vol. 63 (6) Page 27.

12. Tax period

The tax period in terms of rule 2(zf) of the rules means a period of time usually a month, a quarter, half-year or a year for which tax payable by a dealer is quantified.

G.E. Money Financial Services (P) Ltd. v. State of Haryana (2014) 48 PHT 322 (HTT)

13. The powers of discretion

The exercise of power in bad faith renders the decision invalid. While exercising the discretion, the authority has to maintain independence and impartiality. The authority upon whom discretionary power has been conferred, cannot act at the dictates of higher and other authority. When the discretion is conferred upon the authority, it is that authority who has to exercise discretion by its own mind and after taking into consideration all relevant factors keeping in view the object of conferring such a discretion.

It should not be influenced by improper motive or improper purpose.

Narendrakumar Gupta v. Keshavlal and Ors. (2014) NTN Vol. 55 263 (All)

14. Works Contract vis-a-vis States power

Karnataka Power Transmission Corp. Ltd. (KPTCL) awarded to appellant / contractor, a turnkey project for supply, erection, testing and commissioning of ash handling plant. The contractor was obliged to procure materials from manufacturers of Karnataka, who were to met certain qualifying requirements. Due to non-availability of such qualifying manufacturers in the State, with written permission from KPTCL, contractor procured certain material from outside the State and sold the same to KPTCL as inter-State sale. Revenue contended that in the contract there was no stipulation of inter-State movement of goods, and, therefore, such supplies cannot be treated as inter-State sale. The Karnataka High Court held that in the instant case, though the contract of sale did not provide that goods be moved from other States, but, for the purpose of section 3(a) of the CST Act, it is not necessary that contract of sale itself should provide for movement of goods or that movement of goods must be occasioned in accordance with the terms of contract of sale. In the present case, movement of goods from one State to another definitely was an incident of the contract and, therefore, it is an inter-Sale sale which the State has no legislative competence to levy tax under the State Act. Hence, appeal was allowed.

Asea Brown Boveri Ltd. v. State of Karnataka (2014) 25 STJ 20 (Kar.)

15. Works Contract

Contract for imparting computer education in High Schools in the State, including leasing of computer hardware, software and connected accessories on 'Build, Own, Operate and Transfer (BOOT)' basis. The contract was of 5 years, and at the end of the contract period computers, accessories and books were to be transferred free of cost without any consideration. The Dept. treated the said transaction as of works contract and levied tax on computer hardware, software and connected accessories treating the same as a deemed sale thereof. Petitioner challenged the levy by filing writ petition on the ground that it was a contract for rendering of service, and that there was no consideration for transfer of computers, etc. at the end of the contract. The A.P. High Court by following Larsen and Toubro case (2013) 23 STJ 501 (SC); 65 VST 1 (SC) rejected the said contention of the petitioner stating that the traditional decisions regarding substance of contract have lost their significance. For sustaining levy of tax on deemed sale involved in a works contract 3 conditions must be fulfilled – (i) there must be a works contract, (ii) goods should have been involved in execution of works contract, and (iii) property in those goods must be transferred to a third party either as goods or in some other form. Since these conditions were satisfied in the present case, therefore, no interference is warranted with the impugned orders. Accordingly writ petitions dismissed.

NIIT Ltd. v. Dy. Commissioner (C.T.), Hyderabad & Ors (2014) 25 STJ 67 (A.P.)

Non-receipt of the Times must be notified within one month from the date of publication, which is 4th of every month.

Associate Editor of AIFTP Times : Mr. Deepak R. Shah

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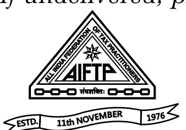

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