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We wish all our Readers & Members
Merry Christmas & Prosperous New Year

All India Federation of Tax Practitioners
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39TH FOUNDATION DAY CELEBRATION AT NOIDA, NCR-DELHI ON 15TH NOVEMBER, 2014 ORGANISED BY AIFTP (NZ)

Shri N. M. Ranka and Shri Bharat Ji Agrawal, Past Presidents inaugurating the function by lighting of lamp. Also seen from left to right: S/Shri S. R. Wadhwa, Arvind Sharma, Dr. O. P. Sharma, Mukul Gupta and Arvind Shukla.

Dignitaries on Dais. From left to right: S/Shri M. L. Patodi, Past President, Mukul Gupta, Vice President (NZ), Bharat Ji Agrawal, Past President, Hon'ble Mr. Justice Rajesh Bindal, Judge, Punjab & Haryana High Court, Dr. O. P. Sharma, Eminent Scholar from Gayatri Parivar, Shantikunj, Haridwar, N. M. Ranka, Past President and Arvind Shukla, Chairman, AIFTP (NZ)

Dignitaries addressing the gathering

Shri Mukul Gupta

Shri M. L. Patodi

Shri Bharat Ji Agrawal

Shri N. M. Ranka

Dr. O. P. Sharma

Hon'ble Mr. Justice Rajesh Bindal

Shri Balram Sangal, Past Chairman, AIFTP (NZ) honoured by Shri Bharat Ji Agrawal

Shri S. R. Wadhwa, Past Chairman, AIFTP (NZ) honoured by Shri N. M. Ranka

Smt. Prem Lata Bansal, Past Chairperson, AIFTP (NZ) honoured by Shri M. L. Patodi

Section of Audience

Mrs. Ranka, Mrs. Arvind Shukla and Mrs. V. P. Gupta

Musical Concert – Melodies of Golden Era

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Tribute to Hon'ble Justice Shri V. R. Krishna Iyer

15-11-1915 — 4-12-2014

President of AIFTP and Editorial Board of the Journal records with heavy heart the passing away of eminent jurist, Justice Shri V. R. Krishna Iyer on 4th December, 2014 and pay their great tribute to this revolutionary judge of the Apex Court and pray to Almighty to bestow eternal peace on the departed noble soul.

To recall briefly the colourful life journey of late Justice Shri Vaidyanathapura Rama Krishna Iyer (popularly known as Krishna Iyer), he was born in a conservative Tamil Brahmin family to leading criminal lawyer V. V. Rama Iyer in 1915 at Thalassery, near Cochin. Educated at Madras Law College and started his legal practice in 1937 under the guidance of his father. In his early practice, appeared for workers and farmers and experienced their poverty, pain and working conditions from close quarters. In 1952, became Member of the Madras Legislative Assembly. He recommenced legal practice in 1959. Thereafter in 1965, he lost the assembly election and focused his attention again on legal practice. Recognising his contribution in law and practice, he was appointed as Kerala High Court Judge on 2nd July, 1968. He was a Member of Law Commission during 1971-1973. He was sworn in as a Supreme Court Judge on 17th July, 1973 and retired at the age of 65 on 14th November, 1980. In 1987, he contested unsuccessfully for the post of President of India against late R. Venkataraman.

After scoring a fruitful century of life, the end came after a brief illness.

About his sterling achievements volumes could be written. Shri Harish Salve, former Solicitor General of India, while offering his heartfelt tribute to him in TOI dated 5th December, 2014 wrote – ***"My generation, who learned from him what the Supreme Court was all about, considered his body – as well as soul and his wisdom – to be immortal."***

Among other things, Justice Krishna Iyer will always be remembered for :

- First SC Judge with a political background, he was appointed a Minister in the E. M. S. Namboodiripad Govt. in Kerala;

- He was a versatile genius and one of the main architects of free-India's judiciary. Moreover, he was the pioneer judge who had paved way for the judicial activism by giving a ruling that the complaint received by judges can be treated as a petition and, thus, introduced the concept of 'Public Interest Litigation';

- On 24th June, 1975, he as a vacation Judge of the SC, upheld the Allahabad HC verdict which found Smt. Indira Gandhi guilty on charges of misuse of Govt. machinery for her election campaign. He also ordered all privileges that Gandhi received as an M.P. be stopped, and that she be debarred from voting. However, she was allowed to continue as PM. This ultimately led to the national emergency declaration;

- He defined bail jurisprudence in favour of undertrials when he laid down that – "bail, not jail is the rule" and was averse to preventive detentions as a general rule;

- He wrote judgments in a flowery language and in his particular style that has been outstanding as well as envy of not just other jurist, writers on legal literature, but students of English literature. He was a specialist in coining words too and powerful ones at that. None had this achievement so far. He will also be ever remembered for the remarkable books which he authored on jurisprudence which won him international acclaim. As a Judge, he was not interested in redesigning Constitutional remedies but to address Constitutional aberrations. In the open Court, while hearing a Sales Tax Reference Hon'ble Justice D.P. Madan (As he then was) remarked that to understand the meaning of words used in judgments of late Justice Krishna Iyer one has to refer to dictionary, such was the lucid apt and powerful language by the Departed soul.

- He would be remembered for his all round contribution to the society as a minister, jurist, writer and Constitutional expert. In this context, Justice K. N. Kurup of Kerala HC said: ***"Iyer's contribution was multi dimensional in as much as, he has made immense contribution to social justice, law, human rights, prison reforms, legal aid etc." He further said: "Iyer made section 133 of CRPC into a veritable weapon while dealing with the lapses of the administration. In the famous 'Ratlam Municipality case', he commented on the lapses of the Municipality on cleanliness and public hygiene. Thereby, he brought environmental issues to the focus of the judiciary";***

- In recognition of his all round qualities, and, in particular his integrity, devotion of duty and the deep concern for the general welfare of society, few would dispute the fact that he richly deserved the **'Padma Vibhushana'** National Award which was bestowed upon him;

- After his retirement from the Apex Court, he was always in the forefront of all the major social agitations in Kerala and it is no co-incidence that at the time of his death, he left a grand legacy of over 100 books on a variety of subjects;

- To recall his great concern that the consumer should not be hit by paying sales tax on a transaction either by excess collection or on which no tax was payable in law, but State forfeited the same, he authored a landmark judgment in the case of *R. S. Joshi, STO, Gujarat v. Ajit Mills Ltd. And Anr. (1977) 40 STC 497 (SC),* which was heard by Constitutional Bench comprising 7 judges including him, and the majority judgment was written by him, Justice P. S. Kailasam delivered a separate judgment, in the said judgment, the court concluded that – ***"in strict legality, once the money was forfeited to the State, there was no obligation to make it over to the purchaser, but in the welfare orientation of the State and certain Constitutional emanations left unexplored, such an obligation should be voluntarily undertaken by the State. The Court further observed that the Maharashtra legislation had a better sense of equity, the dealer being absolved from purchaser's claim and Government squarely undertaking to repay them and expected Gujarat to legislate not to forfeit but also to be fair to the dealer and buyer."*** This landmark judgment holds the field even today. This conclusion also indicates that as early as in 1977, he applied, in the facts and circumstances of the case; "purposive" interpretation test.

- In the case of *Indian Chamber of Commerce (1976) 1 SCC 324,* while determining the meaning of the expression "Charitable purpose" u/s. 2(15) of the IT Act, 1961, Justice Krishna Iyer observed : "….. we appreciate the involved language we use, but when legislative draftsmanship declines to be simple, interpretative complexity becomes a judicial necessity". Therefore, should the laws be written in plain English ?

- By heart he was a writer too. He wrote 'forewords' to many classic law books. In a foreword accorded to the book titled – 'Interpretation of Fiscal Statutes in India' authored by Sukumar Mukhopadhyay as back as 1990, he *inter alia* wrote the following classic para:

The law-abiding class obey the biblical mandate: ***"Render therefore unto Caesar the things which are Caesar's. But the question arises what is truly due to him (the State) under the law? This turns on an interpretation of the relevant fiscal statute, not as the judge fancies nor as taxing department desiderates but as read and decoded according to rules of reason and justice sanctioned by precedents of the highest judiciary."***

To end, we are pleased to dedicate and record this writing in the ever-lasting memory of a great jurist of India, namely, V. R. Krishna Iyer.

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Fundamental Duties and Constitutional Perceptions

Hon'ble Mr. Justice Dipak Misra
Judge, Supreme Court

Our organic constitution fundamentally lays emphasis on certain well-recognised constitutional precepts with the sacrosanct purpose of sustenance and endurance of elevated paradigms, norms and values regard being had to the central purpose of good governance in a welfare republic. The core of the constitutional order lays stress on rule of law which is the pillar of a sound democracy. Constitutional morality, constitutional trust and constitutional governance constantly running through the entire scheme and spirit of the foundation reflect the collective conscience. Our compassionate Constitution is an inclusive one and it is clear from various Articles enshrined under Chapter III of the Constitution i.e., the Chapter relating to Fundamental Rights. Speaking about the fundamental duties the Constitution Bench in M. Nagraj[1] has succinctly stated:-

> "That it is a fallacy to regard Fundamental rights as a gift from the State to its citizens. Individuals possess basic human rights independently of any Constitution by reason of the basic fact that they are members of the human race. These are fundamental rights. It confirms their existence and gives them protection. Its purpose is to withdraw certain subjects from the area of political controversy to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts."

From the aforesaid passage it is vivid that Fundamental Rights enshrined in our Constitution are natural, necessitous and epitome of human endeavour to establish human rights. The Supreme Court in a series of decisions have applied expanded ambit and horizon of Fundamental Rights through the process of judicial interpretation. The Court has taken aid of certain concepts from Universal Declaration of Human Rights, 1948. The incorporation of Fundamental Rights in the Constitution is essentially to usher in and stablise democracy and the individual growth in its fullest bloom. That apart, it is in consonance with the solemn resolve stated in the Preamble.

The "Fundamental Rights" lay accent on citizens and they are at the centre stage and the State is accountable to its citizens. Right to equality, right to freedom, right against exploitation, right to freedom of religion, cultural and educational rights, right to property in the limited sense in present time and have their immense signification their enforcement basically imposes limitations and restrictions on the Government and to uplift the citizenry concept in a democratic body polity. The initial perception of the Fundamental Rights engrafted under Articles 14 and 21 has undergone a sea change through the interpretative process. The approach to the same is the process of expansion to give them a real meaning both conceptual as well as pragmatic. Such expansion sometimes is regarded as judicial activism but fundamentally they are in the realm of judicial creativity.

Having put the Fundamental Rights on the high pedestal it is obligatory to stress that the Fundamental Rights guaranteed by the

1 *M. Nagraj v. Union of India : (2006) 8 SCC 212*

Constitution are not absolute. Individual rights, however basic they are, cannot override national security and general welfare for, in the absence of national security and general welfare, individual rights are themselves not secure. Freedom of speech does not mean freedom to instigate a mob to cause violence; freedom of movement does not mean freedom of settlement or even movement to "sensitive areas". The Constitution has made express provisions dealing with such limitations of Fundamental Rights so that those who seek to enjoy the rights may also realise the obligations accompanying them.

The limitation of Fundamental Rights can be well understood if one would take the concept of liberty because liberty is conceptually inherent in the dignity of an individual. Many thinkers and philosophers have made significant utterances about liberty. Bolingbroke spoke, "Liberty is to the collective body, what health is to every individual body. Without health, no pleasure can be tasted by man; without liberty, no happiness can be enjoyed by society."

Patrick Henry thundered, "is life so dear, or peach so sweet, as to be purchased at the price of chains and slavery? Forbid it, Almighty God! I know not what course others may take, but as for me, give me liberty, or give me death!"

Almost two centuries and a decade back thus spoke Edmund Burke:

> "Men are qualified for civil liberty, in exact proportion to their disposition to put moral chains upon their own appetites; in proportion as their love to justice is above their rapacity; in proportion as their soundness and sobriety of understanding is above their vanity and presumption; in proportion as they are more disposed to listen to the counsel of the wise and good, in preference to the flattery of knaves. Society cannot exist unless a controlling power upon will and appetite be placed somewhere and the less of it there is within, the more there must be without. It is ordained in the eternal constitution of things that men of intemperate minds cannot be free. Their passions forge their fetters."

Similar voice was echoed by E. Barrett Prettyman, a retired Chief Judge of US Court of Appeals:

> "In an ordered society of mankind there is no such thing as unrestricted liberty, either of nations or of individuals. Liberty itself is the product of restraints; it is inherently a composite of restraints; it dies when restraints are withdrawn. Freedom, I say, is not an absence of restraints; it is a composite of restraints. There is no liberty without order. There is no order without systematised restraint. Restraints are the substance without which liberty does not exist. They are the essence of liberty."

Though our Constitution lays enormous stress on the liberty of an individual yet the same is not absolute. Emphasising the concept of liberty, the Court in Rashmi Rekha Thatoi,[2] has observed that the thought of losing one's liberty immediately brings in a feeling of fear, a shiver in the spine, an anguish of terrible trauma, an uncontrollable agony, a penetrating nightmarish perplexity and above all a sense of vacuum withering the very essence of existence. It is because liberty is deep as eternity and deprivation of it, infernal. Maybe for this the protectors of liberty ask, "How acquisition of entire wealth of the world would be of any consequence if one's soul is lost?" It has been quite often said that life without liberty is eyes without vision, ears without hearing power and mind without coherent thinking faculty. It is not to be forgotten that liberty is not an absolute abstract concept. True it is, individual liberty is a very significant aspect of human existence but it has to be guided and governed by law. Liberty is to be sustained and achieved when it sought to be taken away by permissible legal parameters. A court of law is required to be guided by the defined jurisdiction and not deal

2 *Rashmi Rekha Thatoi anr v. State of Orissa and Ors. : (2012) 5 SCC 690*

with matters being in the realm of sympathy or fancy.

In Ash Mohammad,[3] while discussing the concept of liberty and the legal restrictions which are founded on democratic norms, the Court observed that the liberty of a person should not be lightly dealt with, for deprivation of liberty of a person has immense impact on the mind of a person. Incarceration creates a concavity in the personality of an individual. Sometimes, it causes a sense of vacuum. Needless to emphasise, the sacrosanctity of liberty is paramount in a civilised society. However, in a democratic body polity which is wedded to the rule of law, an individual is expected to grow within the social restrictions sanctioned by law. The individual liberty is restricted by larger social interest and its deprivation must have due sanction of law. In an orderly society, an individual is expected to live with dignity having respect for law and also giving due respect to others' rights. It is a well-accepted principle that the concept of liberty is not in the realm of absolutism but is a restricted one. The cry of the collective for justice, its desire for peace and harmony and its necessity for security cannot be allowed to be trivialised. The life of an individual living in a society governed by the rule of law has to be regulated and such regulations which are the source in law subserve the social balance and function as a significant instrument for protection of human rights and security of the collective. It is because fundamentally laws are made for their obedience so that every member of the society lives peacefully in a society to achieve his individual as well as social interest.

I shall presently dwell upon the fundamental duties and stress how the courts have Constitutionally perceived it. The founding fathers of the Constitution of India had encapsulated in a most vibrant manner in the Preamble of the Constitution the feelings, the needs, the desires and aspiration of a great country. Many eminent jurists on many an occasion, opined that Fundamental Rights enshrined in Part-III of the Constitution of India have inbuilt obligation therein. To elaborate: it has been expressed that rights and duties co-exist. Article 51A was brought by an amendment so that the citizens should not deviate from the path or pave the way of transgression of the national value, and unitedly stand together to reconstruct the nation as an ideal one where a citizen does not claim to enforce his right but also solemnly adheres to perform the duty.

The Constitution casts a duty on every citizen to abide by the Constitution and respect the Constitutional values. Under this Article many other behavioural patterns and duties are expected from the citizen. It is because the concept of duty is embedded in the highest tradition of the Indian culture, thought, literature, history and philosophy. True it is, the duties which have been incorporated in the Article 51A of the Constitution are not enforceable unless the Parliament or the State Legislature makes the law in regard for its enforceability but it can be indubitably stated that the rights flow from duties when well-performed. The great political philosopher Harold Laski long back had said that the rights are related to functions and are given only in return for some duties to be performed. Rights are conferred on the individuals not for their individual upliftment but also for social and collective good. In this context, I may profitably quote what the Father of the Nation had said in this regard:

> "The true source of right is duty. If we all discharge our duties, rights will not be far to seek. If leaving duties unperformed we run after rights, they will escape us like will-o-the-wist, the more we pursue them, the farther they will fly."
>
> "I learned from my illiterate but wise mother that all rights to be deserved and preserved come from my duty

3 *Ash Mohammad v. Shiv Raj Singh alias Lalla Babu and another : (2012) 9 SCC 446*

> well done. Thus the very right to live accrues to us when we do the duty of citizenship of the world. From this one fundamental statement, perhaps it is easy enough to define duties of men and women and correlate every right to some corresponding duty to be first performed. Every other right can be shown to be a usurpation hardly worth fighting for."

Initially it listed ten duties and by 86th Amendment Act, 2002 entire duties was included with effect from 1-4-2010. Prior to the Constitutional Amendment the Court in Chandra Bhavan Boarding and lodging[4] observed that It is a fallacy to think that under our Constitution there are only rights and no duties. While expressing the view that the rights conferred under Part III are fundamental, the directives given under Part IV are also fundamental in the governance of the country and they are complimentary and supplementary to each other. The provisions of Part IV enable the legislatures and the Government to impose various duties on the citizens. The provisions therein are deliberately made elastic because the duties to be imposed on the citizens depend on the extent to which the directive principles are implemented.

Though the constitutional amendment was brought in during a different climate and initially perceived with some sort of skepticism yet it has been regarded as an excellently drafted part in our Constitution. The Supreme Court and High Courts have taken recourse to the various facets of the said Article to develop certain concepts in different jurisprudence.

In Rural Litigation and Entitlement Kendra & Ors.[5] the Court ruled:-

> "Preservation of the environment and keeping the ecological balance unaffected is task which not only governments but also every citizen must undertake. It is a social obligation and let us remind every Indian citizen that it is his Fundamental Duty as enshrined in Article 51A(g) of the Constitution."

In *Sachidanand Pandey and another*[6] emphasising on the duty of the Court while dealing with the problem of ecology it has been observed that whenever a problem of ecology is brought before the Court, it is bound to bear in mind Article 48A and Article 51A(g) which proclaims it to be the Fundamental Duty of every citizen of India "to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures". It has been further observed that when the court is called upon to give effect to the Directive Principles and the Fundamental Duties, the Court is not to shrug its shoulders and say that priorities are a matter of policy and so it is a matter for the policy-making authority.

In M. C. Mehta[7] while adverting to the grave consequences of the pollution of water and air and the need for protecting and improving the natural environment the Court opined that it has been considered as a duty under Clause (g) of Article 51A of the Constitution and, therefore, it is the duty of the Central Government to direct all the education institutions throughout India to teach at least for one hour in a week lessons relating to the protection and the improvement of the natural environment including forests, lakes, rivers and wildlife in the first ten classes. The Central Government shall get text books written for the said purpose and distribute them to the educational institutions free of cost. Children should be taught about the need for maintaining cleanliness commencing with the cleanliness of the house both inside and outside, and of the streets in which they live.

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4 *Chandra Bhavan Boarding and Lodging Bangalore v. The State of Mysore and Another : (1969) 3 SCC 84*

5 *Rural Litigation and Entitlement Kendra & Ors. v. State of Uttar Pradesh & Ors : (1986) Supp. SCC 517*

6 *Sachidanand Pandey and another v. State of West Bengal and others : (1987) 2 SCC 295*

7 *M. C. Mehta v Union of India and Others : AIR 1988SC 1115*

While developing the concept of precautionary principle in M. C. Mehta's case[8] (popularly known as the Taj Mahal Case), the court referred to Articles 47, 48A and 51A(g) to emphasise the Constitutional mandate to protect and improve the environment. In the said case it was directed that the industries causing pollution should change over to natural gas as an industrial fuel, and if they cannot get gas connections they should stop functioning with the aid of coke/coal. In T. N. Godavaraman Thirumalpad[9] while referring Article 47 that imposes duty on the State to improve public health as its primary duty it was observed that Article 51A(g) also imposes "a Fundamental Duty" on every citizen of India to protect and improve the natural "environment" and the word is of broad spectrum which brings within its ambit "hygienic atmosphere and ecological balance".

While discussing about excellence in civil services in *Mohan Kumar Singhania*[10] the Court while dealing the fact situation where the officers in All India Services when not taking the training seriously resulting in deterioration of the service and service rule amended so as to give weightage to the training and penalise the failure. When the constitutionality of the amendment in the rules was called in question the Court upheld the validity of the amendment and in that context observed that Clause (j) of Article 51 commands that it is the duty of every citizen of India to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement and, thereafter, the effort taken by the Government in giving utmost importance to the training programme of the selectees so that this higher civil service being the topmost service of the country is not wasted and does not become fruitless during the training period is in consonance with the provisions of Article 51A(j).

In *Yamuna Shanker Misra*[11] while highlighting the object of writing the confidential report and making entries in the character roles the Court ruled that it is for the purpose to give an opportunity to a public servant to improve excellence. Article 51A(j) enjoins upon every citizen the primary duty to constantly endeavour to prove excellence, individually and collectively, as a member of the group.

In *Rajendra Singh Verma*[12] eminence was placed on the primary duty of the citizen for constant endeavour to prove his excellence. It has been observed that the officer entrusted with the duty to write CR has a public responsibility and trust to write the CR objectively, fairly and dispassionately while giving, as accurately as possible the statement of facts on an overall assessment or performance of he subordinate officer.

In *George Philip*[13] while accentuating on individual excellence and collective achievement the Court referred to Clause (j) and opined that the purpose cannot be achieved unless the employees maintain discipline and devotion to duty. Courts should not pass such orders which instead of achieving the underlying spirit and objects of Part IVA of the Constitution has the tendency to negate or destroy the same.

Clause (a) of Article 51A casts a duty on every citizen to respect the National Flag and National anthem. In *Naveen Jindal*[14] the Supreme Court approved the decision of a Division Bench of Andhra Pradesh High Court in A. Satya Phaneendra[15] the High Court had issued certain directions with regard the selling of tri-colour cloth resembling the National Flag being sold as handkerchiefs. The High Court had referred to Emblems and Names (Prevention of Improper

8 *M. C. Mehta v. Union of India and others : AIR 1997 SC 734*
9 *T.N. Godavarman Thirumalpad (Through K. M. Channappa) v. Union of India and others : (2002) 10 SCC 606*
10 *Mohan Kumar Singhania and others v. Union of India : 1992 Supp (1) SCC 594*
11 *State of U.P. v. Yamuna Shanker Misra and another : (1997) 4 SCC 7*
12 *Rajendra Singh Verma v. Lt. Governor (NCT of Delhi : (2011) 10 SCC 1*
13 *Govt. of India & Anr. v. George Philip : AIR 2007 SC 705*
14 *Union of India v. Naveen Jindal and Another ; (2004) 2 SCC 510*
15 *A. Satya Phaneendra v. S.H.O. Kovad (PS) Nalgonda : (2004) 2 SCC 510*

Use) Act, 1950 and the Prevention of Insults to National Honour Act, 1971 and observed that the Provisions of the Act having regard to the purpose and object thereof, must be given strict construction and further they also must be construed in the context of Article 51A (a) of the Constitution of India.

In Ramlila Maidan Case[16] the Court observed in profundity that there has to be a balance and proportionality between the right and restriction on the one hand, and the right and duty, on the other. It has been stated that it will create an imbalance, if undue or disproportionate emphasis is placed upon the right of a citizen without considering the significance of the duty. The true source of right is duty. When the courts are called upon to examine the reasonableness of a legislative restriction on exercise of a freedom, the fundamental duties enunciated under Article 51A are of relevant consideration. Article 51A requires an individual to abide by the law, to safeguard public property and to abjure violence. It also requires the individual to uphold and protect the sovereignty, unity and integrity of the country. All these duties are not insignificant. I have highlighted this aspect as the Fundamental Duties chapter has been taken aid of in the interpretative process and with the passage of time Courts are harping on the concepts from which it can draw strength for ascription of reason.

The compassion towards animals also gets reflected in the Constitutional perspective as inhered in this part and same has been heavily placed reliance upon in *Mirzapur Case*[17] to sustain the law pertaining a ban on cow's slaughter. However, it may be clarified in *Akhil Bharat Goseva Sangh*[18], the Court declined to declare Sections 5 and 6 of the Andhra Pradesh Prohibition of Cow Slaughter and Animal Preservation Act, 1977 as *ultra vires* which permitted slaughter of buffalos and cows on certain conditions.

In *Animal Welfare Board of India*[19] the Court was concerned with regard to animals under our Constitution in the context of Jallikattu, and Bullock-cart races, in the State of Tamil Nadu while interpreting the provisions of the Prevention of Cruelty to Animals Act, 1960 is has been opined that based on ecocentric principles rights of animals have been recognised in various countries. While dealing with the concept of compassion for living creatures as enshrined under Clause (g) and humanism under Clause (h) Court opined that both the Clauses to be read into the PCA Act. While issuing directions the Court incorporated a direction which is as follows:-

> "AWBI and the Governments should take steps to impart education in relation to humane treatment of animals in accordance with Section 9(k) inculcating the spirit of Articles 51A(g) & (h) of the Constitution."

Presently I shall highlight how the Fundamental Duties have been put in a high pedestal in AIIMS Student Union[20]. While addressing to the issue of reservation in AIIMS the court opined:-

> "Almost a quarter century after the people of India have given the Constitution unto themselves, a chapter on Fundamental Duties came to be incorporated in the Constitution. Fundamental Duties, as defined in Article 51-A, are not made enforceable by a writ of court just as the Fundamental Rights are, but it cannot be lost sight of that "duties" in Part IV-A Article 51-A are prefixed by the same word "fundamental" which was prefixed by the founding fathers of the Constitution to "rights" in Part III. Every citizen of India is fundamentally obligated to develop a scientific temper

16 *Ramlila Maidan Incident, In re : (2012) 5 SCC 1*
17 *State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat : (2005) 8 SCC 534*
18 *Akhil Bharat Goseva Sangh v. State of A.P. and others : (2006) 4 SCC 162*
19 *Animal Welfare Board of India v. A. Nagaraja & Ors.*
20 *AIIMS Student Union v. AIIMS and others : AIR 2001 SC 3262*

> and humanism. He is fundamentally duty-bound to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievements. State is, all the citizens placed together and hence though Article 51-A does not expressly cast any fundamental duty on the State, the fact remains that the duty of every citizen of India is the collective duty of the State. Any reservation, apart from being sustainable on the Constitutional anvil, must also be reasonable to be permissible. In assessing the reasonability, one of the factors to be taken into consideration would be — whether the character and quantum of reservation would stall or accelerate achieving the ultimate goal of excellence enabling the nation constantly rising to higher levels. In the era of globalisation, where the nation as a whole has to compete with other nations of the world so as to survive, excellence cannot be given an unreasonable go-by and certainly not compromised in its entirety. Fundamental duties, though not enforceable by a writ of the Court, yet provide a valuable guide and aid to interpretation of Constitutional and legal issues. In case of doubt or choice, people's wish as manifested through Article 51-A, can serve as a guide not only for resolving the issue but also for constructing or moulding the relief to be given by the Courts. Constitutional enactment of Fundamental Duties, if it has to have any meaning, must be used by Courts as a tool to tab, even a taboo, on State action drifting away from Constitutional values."

I have quoted in *extenso* this passage for it has really laid immense accent on the conception of Fundamental Duties and how the Constitutional Courts can perceive it. To put it differently, there is a perceptual shift herein and it has to be recognized.

In *Delhi Jal Board Case*[21] the Delhi Jal Board had not provided measuring meters on the basis of which the consumers are required to pay charges. The core issue was payment of amount on actual consumption on the backdrop, 'accuracy is the twin brother of honesty, inaccuracy, of dishonesty'. The High Court of Delhi referred to Clause (j) and interpreting the term 'achievement' said it has to be understood in a broader and larger context including achievement in the field of understanding of the morality of economic and political growth of a nation. The collective cannot only think of its Fundamental Rights totally brushing aside the conception of duty. A nation constantly rises to a higher level if the citizens act with responsibility as per the existing law. If the citizens take recourse to same maladroit efforts to have something without payment, it is the betrayal of the national value.

In conclusion I would like to say that Fundamental Duties are alpha and omega for the upliftment of this country. They have the potentiality to enrich the national honour and epitomise the citizenry dignity. None should forgot India i.e., Bharat is a country of great culture. In 'Shashtras' this great country has been described as:-

"ASMAD DESHA PRASUTASYA
SAKASADAGRA JANMAMAH
SWAM SWAM CHARITRAM SCHIKSERAN
PRITHIVYAM SARVA MANAVAN."

Not for nothing, in one of the ancient epics of India it has been so said:

"APE SWARNAMAYI LANKA NA ME ROCHATE LAKSHMAN JANANI JANMABHUMISCHA SWARGADAPI GARIYASI."

It is the sacred obligation of every individual to take a pledge to be wedded to the Constitutional duties. This is such a pledge no one can conceive of any divorce, that is the value, and that is the solemn norm.

[Source: Speech delivered at R.C. Ghiya Memorial Lecture at Jaipur on 20-9-2014]

21 *Rajinder Nagar Welfare Assn. v. Delhi Water Board and Ors.*


Interpretation of Statutes: the doctrine or Ejusdem Generis/ Noscitur a Sociis

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Ejusdem Generis (pronounced as "eh-yousedem generous") is a Latin term which means "of the same kind." Where a law lists specific classes of persons or things and then refers to them in general, the general statements only apply to the same kind of persons or things specifically listed. For example: if a law refers to automobiles, trucks, tractors, motorcycles and other motor-powered vehicles, "vehicles" would not include airplanes, since the list was of land-based transportation. The term 'Ejusdem Generis' in other words means words of a similar class. The rule is that where particular words have a common characteristic (i.e. of a class) any general words that follow should be construed as referring generally to that class; no wider construction should be afforded.

It is presumed that a statute will be interpreted so as to be internally consistent. A particular section of the statute shall not be divorced from the rest of the Act. The Ejusdem Generis rule applies to resolve the problem of giving meaning to groups of words where one of the words is ambiguous or inherently unclear.

Normally, general words should be given their natural meaning like all other words unless the context requires otherwise. But when a general word follows specific words of a distinct category, the general word may be given a restricted meaning of the same category. The general expression takes its meaning from the preceding particular expressions because the legislature by using the particular words of a distinct genus has shown its intention to that effect. This principle is limited in its application to general word following less general word only. If the specific words do not belong to a distinct genus, this rule is inapplicable. Consequently, if a general word follows only one particular word, that single particular word does not constitute a distinct genus and therefore, Ejusdem Generis rule cannot be applied in such a case. Exceptional stray instances are, however, available where one word genus has been created by the courts and the general word following such a genus given a restricted meaning. If the particular words exhaust the whole genus, the general word following these particular words is construed as embracing a larger genus. The principle of Ejusdem Generis is not a universal application. If the context of legislation rules out the applicability of this rule, it has no part to play in the interpretation of general words. The basis of the principle of Ejusdem Generis is that if the legislature intended general words to be used in unrestricted sense, it would not have bothered to use particular words at all.

The Supreme Court in Amar Chandra v. Collector of Excise[1], has laid down the following five essential elements of this rule:

(1) the statute contains an enumeration of specific words;

(2) the subjects of enumeration constitute a class or category;

1. AIR 1972 SC 1863

(3) that class or category is not exhausted by the enumeration;

(4) the general terms follow the enumeration; and

(5) there is no indication of a different legislative intent.

The rule of Ejusdem Generis must be applied with great caution, because, it implies a departure from the natural meaning of words, in order to give them a meaning on a supposed intention of the legislature. The rule must be controlled by the fundamental rule that statutes must be construed so as to carry out the object sought to be accomplished. The rule requires that the specific words are all of one genus, in which case, the general words may be presumed to be restricted to that genus.

For example, the words 'or otherwise' are generally used as ancillary to the specific proposition which precedes them.

Case where the rule of Ejusdem Generis was applied

The Supreme Court in *Maharashtra University of Health and others v. Satchikitsa Prasarak Mandal & Others*[2] has examined and explained the meaning of Ejusdem Generis as a rule of interpretation of statutes in our legal system. While examining the doctrine, the Supreme Court held that the expression Ejusdem Generis which means "of the same kind or nature" is a principle of construction, meaning thereby when general words in a statutory text are flanked by restricted words, the meaning of the general words are taken to be restricted by implication with the meaning of restricted words.

The Supreme Court has further held that the Ejusdem Generis principle is a facet of the principle of 'Noscitur a sociis'. The Latin maxim Noscitur a Sociis contemplates that a statutory term is recognised by its associated words. The Latin word 'sociis' means 'society'. Therefore, when general words are juxtaposed with specific words, general words cannot be read in isolation. Their colour and their contents are to be derived from their context. But like all other linguistic canons of construction, the Ejusdem Generis principle applies only when a contrary intention does not appear.

The principle of Ejusdem Generis has also been discussed in *Commissioner of Income Tax, Kolkata v. Smifs Securities Ltd*.[3]. Section 32 of the Income-tax Act, 1961 allows depreciation on both tangible and intangible assets and clause (ii) thereof enumerates intangible assets on which depreciation is allowable. The assets which are included in the definition of 'intangible assets' given in clause (ii) are know-how, patents, copyrights, trademarks, licenses, franchises, etc., and any other business or commercial rights of similar nature are also included. Goodwill is a bundle of rights which included, inter alia, patents, trademarks, licenses, franchises, etc. Therefore, all these rights are similar to the rights under goodwill. Applying the principles of Ejusdem Generis the meaning has to be extended to the phrase 'other business or commercial rights of similar nature'.

Case where the rule of Ejusdem Generis was not applied

In *State of Bombay v. Ali Gulshan*[4], the question was whether the appellant was entitled under Section 6(4)(a) of the Bombay Land Requisition Act, 1948, to requisition, as for a public purpose, premises for housing a member of a foreign consulate. The sub-section provided that the State Government may requisition for the purpose of a State or any other public purpose. The High Court held that the words 'any other purpose' should be read Ejusdem Generis with the purpose of the State that accommodation

2. AIR 2010 SC 1325
3. [2012] 348 ITR 302 (SC)
4. AIR 1955 SC 810

for a member of the foreign consulate staff is a 'purpose of the Union' and hence the State Government was not entitled to requisition. Allowing the appeal, the Supreme Court held: 'With great respect, we are constrained to say that the Ejusdem Generis rule of construction, which found favour in the Court below for reaching the result that the words 'any other public purpose' are restricted to a public purpose which is also a purpose of the State, has scarcely any application. Apart from the fact that the rule must be confined within narrow limits, and general or comprehensive words should receive their full and natural meaning unless they are clearly restrictive in their intendment, it is requisite that there must be a distinct genus, which must comprise more than one species, before the rule can be applied.'

Where the preceding words do not belong to a distinct genus, the rule of Ejusdem Generis does not apply. For instance, in *N.A.L.G.O. v. Bolton Corporation*[5], the words 'or otherwise' had to be interpreted in the definition of a 'workman' as any person who has entered into a work under a contract with an employer whether the contract be by way of manual labour, clerical work or otherwise: The court refused to apply the principle of Ejusdem Generis saying the preceding words manual labour' and 'clerical work' did not form a distinct category to be called a genus.

In *Lilavati Bai v. State of Bombay*[6] the petitioner, the widow of a tenant of a certain premises, was not residing in it at the time. The respondent requisitioned the premises under Section 6(4)(a) of the Bombay Land Requisition Act, 1948 for providing accommodation to a Government servant. The petitioner challenged the requisition on the ground that the premises was not vacant within the meaning of the explanation attached to the section according to which a vacancy will exist when the tenant 'ceases to be in occupation' upon termination of his tenancy, eviction or assignment or transfer in any other manner of his interest in the premises or otherwise: According to her the expression or otherwise should be construed Ejusdem Generis with the expressions preceding it. The Supreme Court held that the rule has no application in the present instance because the expressions preceding the words or otherwise are not species of the same nature, and therefore, do not belong to any identifiable genus. Assigning the natural meaning to the words used in the enactment it is clear that the expression or otherwise is intended to include all cases not covered by the preceding expressions. This interpretation is quite consistent with the object of the legislation.

In *Jagdish Chandra Gupta v. Kajaria Traders (India) Ltd.*[7], interpretation of the words 'or other proceeding' in the phrase 'a claim of set off or other proceeding to enforce a right arising from contract' appearing in Section 69 of the Partnership Act, 1932 was discussed. The Supreme Court did not apply the principle of Ejusdem Generis because the preceding words /a claim of set off did not constitute a genus. The court also observed that interpretation Ejusdem Generis or Noscitur a Sociis need not always be made when words showing particular classes are followed by general words. Before the general words can be so interpreted there must be a genus constituted or a category disclosed with reference to which the general words can and are intended to be restricted.

In *Grasim Industries Limited v. Collector of Customs, Bombay*[8], the Supreme Court held that no words or expressions used in any statute can be said

5. (1943) AC 166
6. AIR 1957 SC 521
7. AIR 1964 SC 1882
8. AIR 2002 SC 1706, (2002) 128 STC 349 (S.C.)

to be redundant or superfluous. In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words. No provision in the statute and no word in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used. It is said that every statute is an edict of the legislature. The elementary principle of interpreting any word while considering a statute is to gather the mens or sententia legis of the legislature. Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the Court to take upon itself the task of amending or alternating the statutory provisions. Wherever the language is clear the intention of the legislature is to be gathered from the language used. While doing so what has been said in the statute as also what has not been said has to be noted. The construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided.

Conclusion

Thus one can conclude that the canons of interpretation is like a guide to the courts/ judges. By using right canon of interpretation at the right time the courts ensure that ambiguous statutes are interpreted as per the intent of legislature as far as possible.

Ejusdem Generis is one of those canons of statutory interpretation, which is used when certain general term with wide scope of meaning follows certain specific terms. We should also know that just because there is specific terms and general word in a statute this canon of interpretation cannot be used. There are certain conditions that need to be fulfilled. First of all, as mentioned above there should be certain specific terms which is followed by some general term. If the general term is followed by specific term this principle cannot be used. Similarly, the specific words should form certain class or genus. It means, one should be able to categorise the specific words that precede general word into certain group. Similarly, the category that is formed should not be exhaustive and the judge also has to make sure that they do not go against the legislative intent while using this principle. If the above conditions are followed then one can use the principle of Ejusdem Generis.

[Source: Article published in the CD of National Tax Conference held on 23-24 August at Nagpur]

ANNOUNCEMENT

This is to inform you that Book Corporation of Kolkata has graciously expressed to our members, discount of 40% on the following publications:

1. "International Taxation – A Basic Study" authored by P. V. S. S. Prasad & Sampath Raghunathan. The price of the said publication is ₹ 695/-.

2. "Commentary on Hindu Undivided Family" authored by N. M. Ranka & R. K. Patodia. The price of the said publication is ₹ 675/-.

Service Tax implication on redevelopment of Housing Society building

CA. Rajkamal Shah

Redevelopment of a co-operative society building has become a complex and contentious issue under service tax. In city like Mumbai where availability of land is scarce and the life of the building is reduced to 40-50 years on account of many of the buildings built on salt or marshy land, the demolition and re-construction becomes necessary. This has raised pertinent issue under income tax, stamp duty, service tax and other laws. In this article, attempt is made to discuss service tax implications particularly after introduction of negative list based taxation under service tax. The issue needs to be examined from the point of view of the housing society, its members and developer as each one of them have different implications, more often than not resulting into multiple taxation without the benefit of set off of credit.

Procedure of Re-development

1. The society having decided about carrying out redevelopment of the existing building by demolishing and constructing a new building it has to pass a resolution in General Body Meeting, appoint a Project Management Consultant, calling of tenders and selection of developer etc. as prescribed under the rules and circulars issued by the Dy. Registrar of Co-operative Societies under the authority of Maharashtra Co-operative Society Act and rules made thereunder from time to time. These are not discussed here as it is not the object of the article.

2. Flow of transactions and documentation

Once decided the following documents are entered between the society/members on one hand and the Developer on the other hand:

- Development agreement (DA) – normally a tripartite agreement
- Alternate accommodation agreement with the members
- Agreement with the members for allotment of flat in the new building as per the DA and may be with additional area if purchased by any member from the developer from free sale area, albeit at a discount
- Agreement to sale with purchasers of new flats in the new building from free sale area allotted to the Developer by the society

It is to be kept in mind that in case of co-operative housing society the land is either owned or leased to the society and the members are pseudo owners by virtue of membership of the society. It is important to take into consideration these documents minutely before arriving at the liability of service tax, income tax, stamp duty etc. It is necessary to examine each document in every case as though similar in concept, the terms could vary from case to case which could have different repercussion on taxability.

Applicability of service tax – Important terms of DA:

Development Right Agreement (DA)

- Transfer of development right by the society, i.e. the development potential of the land area viz., balance FSI, loading of TDR. The stamp duty is paid on the value prescribed in the Ready Reckoner and the DA is registered. Normally land owned / leased by the society is not transferred to the Developer except that the Developer is entitled to construct and deal with the unutilised portion of the FSI. He is also allowed to purchase at its cost but in the name of the society, TDR and load the same on the society's land.
- The developer is obliged at his cost and risk to demolish and re-construct the existing building along with additional area to be provided to the existing members as per the terms of DA. The building plans to be approved and necessary clearance to be obtained from the municipal authorities. The developer to construct additional area in the same building or adjacent building depending on the land area and sale such area in one or more units to the outsiders and appropriate the consideration.
- Free sale area is the area the Developer is left with after deducting the area of re-constructed building for the existing members (which we shall call re-hab area as per the terms of DA) from total development potential of the land.
- The developer to provide alternate accommodation or compensation for obtaining accommodation for each member and also to provide brokerage for arranging alternate accommodation, transfer or shifting allowance, etc.
- The developer to provide cash compensation (hardship allowance) to the existing members and/or corpus fund to the society to ward off increased municipal tax, maintenance charges etc on account of new building coming into existence.
- The society to accept and admit new members who has purchased flats from the developer from free sale area.
- To provide for grant of power of attorney to the developer on behalf of the society to carry on the necessary procedures, obtaining plan approvals for re-construction of the building, occupation and building completion certificate etc.

Developer's agreement with members

- To provide for alternate accommodation or compensation for obtaining such accommodation for a specified period and the delayed period in case the project gets delayed.
- To provide for brokerage, transport/ shifting allowance, hardship allowance, etc.
- To undertake to allot new flats with additional area in the newly constructed building as per DA (re-hab flats) and further such additional area as may be purchased by existing members.

Developer's agreement with new purchasers

- This is normally a regular sale agreement or sale deed for sale of flats from the free sale area. The sale proceeds to the purchaser is appropriated by the Developer to recoup the cost of re-construction of the existing building including the free sale area and profit for undertaking the business risk.

Service tax implications on redevelopment of society building

Service tax liability is to be examined from the following angles:

- Nature of taxable service

- Valuation of service
- Timing of payment of service tax
- Rate of tax
- Availment and utilisation of CENVAT Credit

Service tax implication on developer

Nature of taxable service – service to the society and / or members is Works Contract Service as the developer enters into the shoes of contractor and undertakes to demolish and re-construct the existing building. The definition of Works Contract Service as provided u/s. 65B (54) is as under:

> *"works contract" means a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any movable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property".*

The CBEC in education guide issued on 20.6.2012, has clarified in para 6.2.2 that "Re-construction undertaken by a building society by directly engaging a builder/developer will be chargeable to service tax as works contract service for all the flats built now".

When a person undertakes construction on the immovable property belonging to somebody else, he is a works contractor. This is because in case of a society redevelopment project, the developer does not get title to the land pertaining to the existing constructed portion. However, so far as extra or additional area to be constructed which constitute saleable portion, the developer is entitled to development right and becomes 'developer' in true sense as he is in a position to sell the flats to outsiders and the value include value of individual portion land. Thus, the developer acts in dual capacity, i.e. as a "works contractor" so far as the society and the members are concerned and as "developer" so far as the new purchasers are concerned.

The term, 'immovable property' is not defined under the service tax legislation. For this purpose, one may have to go to the definition given in The General Clauses Act. Cl. 26 of General Clauses Act defines 'immovable property' to include "land, benefit to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth".

Value of works contract service by developer – Consideration by way of granting of development right, unascertainable?

Having said that the developer provides Works Contract Service to the society, the value of consideration is generally indeterminable as what the developer gets in turn is by way of development right of the saleable portion. The DA generally do not provide value of the development right. The development right is a right arising out of the land which consists of bundle of rights within. The valuation of such right is a complex issue as it depends on the value of potentiality of balance construction on the land. Further, in the city like Mumbai the municipal law allows additional construction by purchasing transferable development right (TDR). Allowing such TDR to be loaded on the existing land is also a part of consideration. Certain additional area is also to be allowed after paying a premium to the municipal authorities (popularly known as fungible FSI or tit- bit area). The developer on his part is required to make certain payments like hardship allowance or compensation for alternate accommodation, brokerage and transport or shifting allowance to the members and corpus fund to the members/ society. The value of consideration is thus a complex issue and easily ascertainable.

A view prevails that the transfer of development right is subject to levy of stamp duty and the

ready reckoner issued by the State governments prescribe such rates from time to time. The value for the purpose of stamp duty should therefore be considered for the purpose of service tax. However, if one goes into details of stamp duty valuation arbitrary value is provided with certain percentage for loading of TDR etc. Further, many elements like compensation to the members/society, corpus fund, alternate accommodation and other allowances are also included in it. In fact, these are the allowances given out by the developer and cannot be considered as consideration received. Unlike income tax law, the service tax law does not statutorily recognise adoption of such valuation method.

Alternate view on value of "unascertainable" consideration

In case of any service of which the consideration is unascertainable, sub-cl. (iii) of S.67 (1) provides for determination in pursuance of Service Tax (Determination of Value) Rules, 2006 (Valuation rules). Sub-rule 3 of these rules gives option to the service provider to determine the value in the following manner:

a) "When the gross amount charged is the sole consideration, the value shall be equivalent to the gross amount charged for similar service provided to any other person in the ordinary course of trade",

b) "When the value cannot be determined as above, the service provider shall determine the equivalent money value of such consideration which is not less than the cost of provision of service".

In case of provision of works contract service in relation to redevelopment of building, it is highly improbable that there can be similarity of service. Though Circular No. 151/2/2012 – ST dtd. 10-2-2012, specified that value of similar flats sold by the developer is to be adopted, it is not a correct preposition as service tax is leviable on value of actual consideration received by the service provider. The value of flats given to the members merely represent construction cost and not value of land which in any case belongs to the members/society and never required transfer to the developer. In case of flats sold to others, the value includes the value of undivided portion of the land. Further, numerous factors like prevailing rate of FSI, TDR, type of construction, location etc. defers to a large extent. While ruling out similarities of service for the purpose of valuation, it would be upon the service provider to value the cost of provision of service as per his books of account as provided in Cl. 3(b) above. Such value would include direct, indirect, administration, finance and most of the cost but not all like marketing cost. For abundant caution, it is advisable to obtain a certificate of such valuation and the same should be regarded as gross value charged for the purpose of S. 67.

Timing of payment of service tax

As discussed a view is prevalent that the value of consideration is in form of development right. Such development right is received by the developer at the time of entering and registering DA, even before the start of redevelopment project. The point of taxation would be the date on which such right crystallises. For example, vacant and peaceful possession of each unit of the building is required to be given to the developer for the purpose of demolition and re-construction as an essential condition of DA. Hence, until such possession is given the grant of development right does not get crystallised. Service tax in full may become payable even before the flow of service begins. This may give rise to the cash flow issues as utilisation of CENVAT credit is postponed to the date when the free sale area flats are sold and service tax becomes payable.

Alternate view on timing of payment of service tax

A view can be taken that works contract service is regarded as "continuous supply" of service

under the Point of Taxation Rules, 2011[1]. The payment of service tax in such a case would arise when service is regarded to be completed as per the terms of the agreement. Normally DA provides that the service in relation to existing members/society would complete only when the possession of newly constructed flat is given to them i.e. atleast not before the occupancy certificate is received. Not only this, it is also provided in DA that possession from the free sale area cannot be given to the new purchasers before the existing members are put in the possession of their flats. In such a scenario, liability of payment of service tax can be said to arise only when the possession is given to the existing members. The cash flow issue and utilisation of CENVAT credit does not arise in such a situation.

Rate of tax

The redevelopment of existing building would be regarded as 'original construction'. As per R. 2A(c)(ii)(A) of Service Tax (Determination of Value) Rules, 2006 (Valuation Rules), in case of works contract entered into for execution of "original works", service tax shall be chargeable on 40% of the total amount charged for the works contract. The term, 'original work' is defined under Explanation 1 to mean (i) all new constructions; (ii) all types of addition and alterations to abandoned or damaged structure on land that are required to make them workable and (iii) erection, commissioning or installation of plant etc. Thus, the effective rate of tax would be 4.944% on the value of works contract.

Availment and utilisation of CENVAT credit:

The developer provides Works Contract Service to the existing members/society. Under the valuation rules the service provider is allowed to take CENVAT credit of input service and duty paid on capital goods used for providing taxable service. Thus, the developer can take CENVAT credit of service tax/duty paid other than on inputs and once the credit is availed, the same can be used for payment of service tax for providing taxable output service which may be on sale of flats from free sale area, subject to the provisions of CENVAT Credit Rules, 2004. In most of the cases the same sub-contractors providing works contract service or labour is used and no separate records are maintained for the sub-contractor's service used for constructing the members' portion and free sale portion. However, such bifurcation is not required for the purpose of claiming Cenvat credit. Thus the CENVAT credit of input service and capital goods can be taken for members' portion and construction of new flats.

It is important to note that CENVAT credit for the unsold portion at the time of obtaining BCC (Building Completion Certificate) needs to be reversed as this portion of CENVAT credit cannot be said to be used for providing taxable output service. Such portion can be worked out on *pro-rata* basis on the unsold area to the total area of the re-constructed building.

Service Tax implication on members / society

As we have seen, the members and also the society are entitled to certain benefits on account of redevelopment of their building. Apart from the fact they get new building along with additional area as per the terms of DA, they also get some cash compensation as mentioned earlier. As is known, service tax is payable by a service provider and therefore it is necessary to determine that whether the members and/or the society receiving the benefits are providing any service. Generally in lieu of new building which they get for themselves, they grant development right to the developer in terms of construction of free sale area.

Grant of development right or a piece of land is nothing but right arising out of immovable property, or rather it is one of the right arising out of bundle of right that the land is capable of. Under the Transfer of Property Act, 1882, any right arising

1. Notification No. 38/2012 – ST dtd. 20-6-2012

out of the land is immovable property. Transfer of such right cannot be regarded as service. Therefore, it is not correct to regard grant of development right as service provided by the members / society. It is to be noted that the view prevalent in the department is that the transfer of development right is a 'service'. However, the author does not agree with this proposition. However, litigation on this may not be ruled out.

Issue may arise on account of cl. (e) of S. 66E, a Declared Service. This service seeks to bring in its fold an activity of, "agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act". Whether can it be said that the members receiving consideration in form of hardship allowance or the society receiving consideration in form of corpus fund are providing any service under this clause. In other words, is it possible to say that the members/ society receive consideration for tolerating certain inconvenience *inter alia*, on account of demolition and re-construction of the building. In view of the author it may not be so since the redevelopment is undertaken at the instance of the members/society who wish their old building to be converted into new and they may also get some additional area. It can be stated that all the allowances received by the members / society constitute consideration for a single deliverable i.e. transfer relinquishment of right in the immovable property. All this is part and parcel of DA and cannot be taken into account in isolated manner and in bits and pieces to carve out different elements from that. Therefore, it is far-fetched to consider the compensation received by the members / society as a consideration for any service provided by them to the developer. The impugned clause has to be interpreted strictly and in isolated manner. For example, right of way is given to somebody for a consideration or in case of a non complete clause. Any broader view of this clause will result into over-riding all provisions of taxability as they would be rendered redundant of such interpretation of this clause is adopted, it would mean that only this clause would be suffice to bring all transactions within the ambit of service tax.

Service tax implications on re-development project prior to 30-6.2012:

In the law prevailing before 1.7.2012, (introduction of negative list based taxation) service tax on concerned service was levied under 'Construction of Complex Service' or 'Works Contract Service' as defined u/s. 65(105)(zzzh) or u/s. 65(105)(zzzza). The term "residential complex" was defined u/s. 65(91a). However, construction of complex for 'personal use' was specifically excluded from the definition. Thus, redevelopment of the society building for the members' portion was not taxable.

The Central Board of Excise and Customs (CBEC) *vide* their circular 151/2/2012 – ST dtd. 10-2-2012, clarified that re-construction undertaken by a building society by directly engaging a builder/developer will not be chargeable to service tax as it is meant for personal use of the society/its members.

It is pertinent to note that service tax on re-development project for which POT has arisen prior to 1-7-2012 would not be liable to be taxed. The same would hold good even if the construction is started on or after 1-7-2012 but the development right effectively received before that.

Sale of additional area to the members and sale of flats to the new purchasers

In this case the developer acts in the capacity of a 'builder' or 'developer' and liable to be taxed if any consideration is received prior to issue of the completion certificate. The rate of tax would be 3.09% or 3.708% of the consideration depending on the built up area up to 2000 sq. ft or above or gross value consideration of ₹ 1 Cr. or above.

Conclusion

It can be seen that service tax on redevelopment of housing society is a complex issue with so many ifs and buts into it. The law is emerging and no clarity prevails on the value of consideration and timing of payment. The

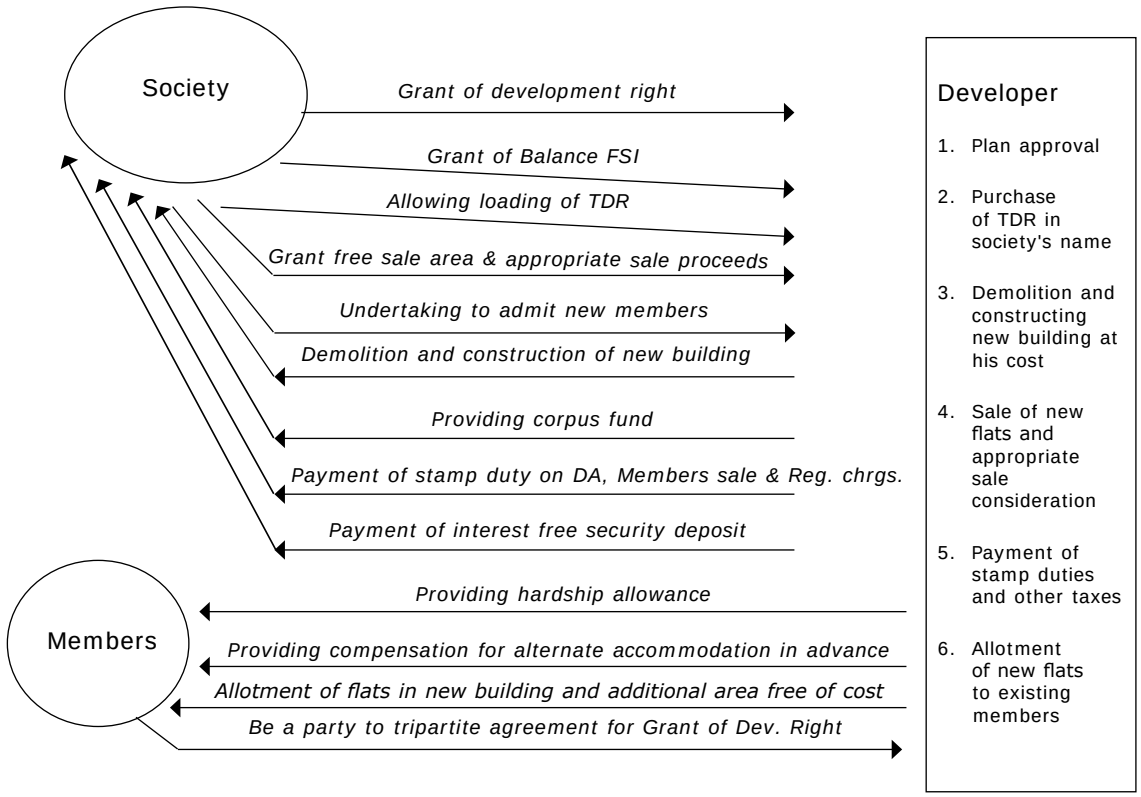
Government should come out with clear cut guidelines on the subject or the developers shall be saddled with huge liabilities leading to long drawn litigation not only between the department and developers but also between the developers on one side and society and members on the other side. This does not augur well when it is avowed objective of the Government to replenish old and dilapidated buildings with the new buildings in the cities and avoid mishaps of crushing and killing the inhabitants overnight. The Government should encourage much needed redevelopment activity by providing sufficient incentives. Instead the Government has created a very complex situation where no stakeholder is sure about his / her impending harsh and unjust liability and the same may ultimately be settled after prolonged litigation by the Apex Court.

It is important to note that VAT may not apply in case of redevelopment of society building as so far as existing members are concerned as it is barter kind of situation. However, VAT would apply in case of additional area purchased by the members and in case of new purchasers. Further, contractors / sub-contractors to the developers would be liable to VAT and service tax as it amounts to works contract.

This article may be treated as thought provoking in this new arena / field of taxation. The stakeholders should take considered view on the alternatives suggested for discharge of service tax liability after minutely examining the terms of re-development agreement.

Flow chart of transactions in redevelopment of Housing Society Building

Flow of activity and consideration:




Taxability of Works Contract under Service Tax

CA Rajiv Luthia & CA Jinal Shah

Background

In the present world, customers are expecting umbrella/basket services from the vendors, making business transaction very complex from taxation point of view. These transactions include sales of goods as well as services embedded therein. It is virtually impossible to segregate sales or service portion of these transactions. As a result, the valuation of these transactions for payment of service tax and VAT has turned out to be complex.

Composite transactions are those transactions which involve transfer of goods beside provision of services, commonly known as works contract. Hon'ble Supreme Court in the case of *Gannon Dunkerley & Co. [(1958) 9 STC 353 (SC)]* has laid down a ratio that sales tax cannot be levied on indivisible Works Contract, since these transactions are not transactions of mere sale of goods. That is; property in chattel must pass in the form it is demanded by the customer. The Government thereafter, through 46th Amendment to the Constitution of India, introduced concept of "deemed sale of goods" by inserting Article 366(29A). Powers are given to state to levy tax on portion of goods involved in transaction of works contract.

The service tax department attempted to levy service tax on the service portion of the works contract transaction in the year 1998. In the case of *Daelim Industrial Company Ltd., Hon'ble Delhi CESTAT [2003-TIOL-110]* held that in turnkey works contracts, the service portion cannot be vivisected from the contract value for levying service tax. Hon'ble Supreme Court endorsed the view taken by the Hon'ble CESTAT by rejecting Revenue's SLP against the said decision.

The above decision was followed in the case of Larsen & Toubro Ltd. Thus the attempt of the department to levy service tax on the service portion of the works contract failed.

On the other hand, Larger Bench of Delhi CESTAT in the case *BSBK Pvt Ltd [(2010) 18 STR 555]* held that rejection of SLP by the Apex Court in Daelim's case cannot be construed as affirmation of the judgment on merit. The turnkey contract can be vivisected for levy of service tax on the service component of the contract. However, the said decision of LB is yet to be tested at higher forum.

Birth of the new category of taxable service viz "Works Contract Services"

The Hon'ble Finance Minister in his Budget speech of year 2007, proposed to bring within the ambit of service tax net, certain specified composite transactions and sought to levy service tax on the service portion involved in the execution of these transactions under the category of "Works Contract Services". The FM in his budget speech pronounced in Para 154 as under:

"State Governments levy a tax on transfer of property in goods involved in execution of works contract. The value of services on works contract should attract service tax. Hence I propose levy of service tax on services involved on execution of works contract."

The "Works Contract Services" were brought to service tax net w.e.f. 1st June, 2007. Section 65(105)(zzzza) of the Finance Act, 1994 defines the "taxable service" under the category of Works Contract services, to cover following specified contracts :

(a) Erection, commissioning or installation of :
- plant, machinery, equipment or structures, whether pre-fabricated or otherwise,
- installation of electrical and electronic devices,
- plumbing, drain laying or other installations for transport of fluids,
- heating, ventilation or air-conditioning including related pipe work, duct work and sheet metal work,
- thermal insulation,
- sound insulation,
- fire proofing or water proofing,
- lift and escalator, fire escape staircases or elevators; or

(b) construction of a new building or a civil structure or a part thereof, or of a pipeline or conduit, primarily for the purposes of commerce or industry; or

(c) construction of a new residential complex or a part thereof; or

(d) completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to (b) and (c); or

(e) turnkey projects including engineering, procurement and construction or commissioning (EPC) projects

The Works Contract transactions in relation to roads, airports, railways, transport terminals, bridges, tunnels and dams were excluded from the coverage of taxable service.

Whether the transactions covered in the newly introduced category "Works Contract Services" were taxable prior to 1st June, 2007?

The Hon'ble Finance Minister vide Finance Act, 2007 introduced 7 new categories of taxable service including "Works Contract Services" w.e.f. 1st June, 2007. The moot question here is whether service tax is leviable on the transactions of works contract for the period prior to its introduction.

All the 5 types transactions covered within the definition of taxable service under Works Contract were already covered under the either of following categories of services and liable to service tax :

(i) Commercial or industrial construction services [w.e.f 10th September, 2004]

(ii) Construction of residential complex services [w.e.f. 16th June,2005]

(iii) Erection, commissioning or installation services [w.e.f. 1st July,2003]

In following cases, the judicial forums have pronounced that the works contract transactions are leviable for service tax only after 1st June, 2007 :

- *Indian Oil Tanking Ltd. [2010-TIOL-1015-CESTAT-MUM]*
- *Diebold Systems (P) Ltd. [(2008) 9 STR 546 – CESTAT –CHENNAI]*
- *Air Liquid Engineering India Pvt. Ltd. [(2008) 9 STR 486 – CESTAT –BANGALORE]*
- *Turbotech Precision Engineering Pvt. Ltd. [2010-TIOL-498-HC-KAR-ST]*

On the other hand, in the following decisions judicial forum have taken contrary view and held that transaction of works contract were taxable even prior to 1st June, 2007 :

- *Sunil Hi-tech Engineers Ltd[2009 TIOL 1867-CESTAT - MUMBAI].*
- *Alstom Project India Ltd [2011 TIOL 459-CESTAT- DELHI].*
- *Instrumentation Ltd [2011 TIOL 607-CESTAT- DELHI].*
- *Larsen & Toubro Ltd [2013 TIOL 1138-CESTAT - MUMBAI].* The L&T decision is referred to Third Member on account of difference of opinion and yet to reach finality.

In view of above contrary decisions, the taxability of composite contracts is still vexed till matter reaches to finality.

Valuation provisions for determining taxable value of services till 30th June, 2012

There were 2 options laid down by law for determining the value of taxable services under "Works Contract services" namely :

a) **Under rule 2A of the Service Tax (Determination of Value) Rules, 2006:** The value of taxable services shall be gross amount charged for works contract less value of goods transferred in the execution of the works contract and VAT/ Sales tax. The service tax is to be discharged at the normal rates on the value so determined. The CENVAT credit can be availed on input services and capital goods. However, where VAT has been paid on actual value of transfer of property in goods, then such value adopted for purpose of payment of VAT shall be taken as value of transfer of property in execution of works contract.

b) Composition scheme under Works Contract notified vide notification no. 32/2007- ST dated 22nd May, 2007:

- The service tax is to be levied at concessional rate of 4% (2% up to 28th Feb, 2008) on the gross contract value excluding VAT. The service provider opting for this scheme has to exercise it before making payment of service tax for the particular contract & the option so exercised shall be applicable for the entire works contract and shall not be withdrawn until the completion of the said works contract. The CENVAT credit can be availed on input services and capital goods. The rate of composition was enhanced to 4.8% w.e.f. 1st April, 2012.

- Hon'ble Andhra Pradesh High Court in the case of Nagarjuna Construction Co. Ltd. v. GOI (2010) TIOL 403 held that the service provider is not entitled to avail the benefit of composition scheme if the service tax is paid by him prior to 1st June,2007 under the relevant existing taxable services.

The above verdict of Hon'ble AP High Court is upheld by the Hon'ble Apex Court [2012-TIOL-107-SC-ST]

- The Works Contract (Composition scheme for payment of service tax) Rules, 2007 were amended w.e.f. 7th July, 2009 so as to include the value of all the goods used in or in relation to the execution of works contract, whether supplied under any other contract for a consideration or otherwise. Thus, value of free material supplied by the client/service receiver was to be included in the gross value of taxable services for levying service tax, discharged under composition scheme.

Service Tax Provisions for Works Contract transactions Post Negative List Regime i.e. 1st July, 2012 :

With a view to simplify & streamline, the Government vide Finance Act, 2012 has brought sea change in the levy by introducing a "comprehensive approach" (negative list) w.e.f 1st July, 2012. The term "Service" is defined in Section 65B(44) under the new regime.

The taxability of works contract transactions is covered under clause "h" of section 66E listing Declared Services. The said clause creates a deeming fiction for leviability of service tax on the Service portion in the execution of a works contract.

DEFINITION OF WORKS CONTRACT – SECTION 65B(54)

"Works contract" means a contract wherein:

i) transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, and

ii) such contract is for the purpose of carrying out

- construction,
- erection,
- commissioning,
- installation,
- completion,
- fitting out,
- repair,
- maintenance,
- renovation,
- alteration

of any moveable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property;

Point of taxation for works contract transactions:

- Rules 3(a) & 3(b) of Point of Taxation Rules, 2011 provides that in case of "Continuous Supply of Service" where the provision of the whole or part of the service is determined periodically on the completion of an event in terms of contract, which requires the receiver of service to make any payment to service provider, the date of completion of each such event as specified in the contract shall be deemed to be the date of completion of provision of service.
- CBEC vide Circular No.144/13/2011-ST dated 18th July, 2011 has clarified the term "Completion of Service" to mean that all the other auxiliary activities such as measurement, quality testing etc. besides the physical part of providing prime service also to be completed, which enable the service provider to be in a position to issue an invoice. However such auxiliary activities shall not be flimsy or irrelevant grounds for delay in issuance of invoice.
- Rule 2(c) of POTR, 2011 defines "Continuous supply of service" means any service which is provided, or agreed to be provided continuously or on recurrent basis, under a contract, for a period exceeding 3 months with the obligation for payment periodically or from time to time or where the Central Government, by a notification in the official gazette prescribes provision of a particular service to be a continuous supply of service, whether or not subject to any condition. Central Government has notified Works Contract service transactions as "Continuous supply of Services" for point of taxation.
- Further, CBEC vide Circular No 162/13/2012-ST dated 6th July, 2012 has clarified that point of taxation in respect of taxable works contract in progress on 1st

July, 2012 would be determined as per the provisions of Rule 4 as if there is change in effective rate of tax. It is clarified that following would be considered as "change in effective rate of tax" in respect of a works contract

(i) the change in the portion of total value liable to tax in respect of works contract other than original works (The Works Contract Composition Scheme, 2007 was omitted w.e.f. 1st July, 2012 thereby service tax payable under Composition Scheme @ 4.8% on the total value of contract till 30th June, 2012 is required to be discharged @ 12% of 60% of value of total amount charged for works contract thereby effective rate of service tax of 7.2% of the value of contract).

(ii) Exemption granted to certain works contracts w.e.f. 1st July, 2012 which were earlier taxable.

(iii) Taxability of certain works contracts which were hitherto exempted.

(iv) Change in the manner of payment of tax from composition scheme under the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 to payment on actual value under clause (i) of rule 2A of the Service Tax (Determination of Value) Rules, 2006.

It is also clarified that following would not be considered as "change in effective rate of tax" in respect of a works contract

(i) works contracts earlier paying service tax @ 4.8% under composition scheme and now required to pay service tax @ 12% on 40% of the total amount charged, keeping the effective rate again same at 4.8% (as only the manner of expression has been altered).

(ii) works contracts which were outside the scope of taxation (and not merely exempted) but have become now taxable e.g. construction of residential complex comprising of 2 to 12 residential units, construction of buildings meant for use by NGOs etc. (Rule 5 of the Point of Taxation Rules, 2011 shall apply to such services.)

Valuation of Works Contract Services w.e.f. 1st July, 2012 [Rule 2A of Service Tax (Determination of Value) Rules, 2006]

- Works Contract (Composition Scheme for payment of Service Tax) Rules, 2007 are rescinded w.e.f. 1st July, 2012.
- In the negative list regime, what is made taxable is the service portion in the execution of works contract as per Section 66E(h). In order to determine the value of service portion in the execution of a works contract, Rule 2A is substituted w.e.f 1st July, 2012
- The value of service portion in execution of works contract services is required to be ascertained as follows :
  - It shall be gross amount charged less value of property in goods transferred (where VAT is paid or payable on actual value of property in goods transferred, such value shall be taken as value of property in goods transferred).
  - In case the value has not been determined as above then, then contracts are required to be classified as under :-

    I. ORIGINAL WORKS

    - all new construction
    - all types of additions and alterations to

abandoned or damaged structures on land that are required to make them workable;

- o erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise.

II. WORK RELATING TO GOODS

Contract entered into for maintenance or repair or reconditioning or restoration or servicing of any goods

III. OTHER WORKS

Contract for maintenance, repair, completion and finishing services such as glazing, plastering, floor and wall tiling, installation of electrical fittings of an immovable property.

The service tax is required to be paid as under based on the nature of works contract transaction.

Nature of works contract	ST payable on following % of contract value	Effective Rate
Execution of "Original Works"	40%	4.944%
Maintenance or repair or reconditioning or restoration or servicing of any goods	70%	8.652%
In case of other works contract not covered above including maintenance, repair, completion & finishing services such as glazing, plastering, floor & wall tiling, installation of electrical fittings of immovable property	60%	7.416%

- The term "total amount" is defined to mean the sum total of gross amount and the value of all goods, excluding the VAT, if any, levied on goods and services supplied free of cost for use in or in relation to execution of works contract under the same contract or any other contract.
- Where the value of goods or services supplied free of cost is not ascertainable, the same shall be determined on the basis of fair market value of the goods or services that have closely available resemblance.
- CENVAT Credit of duty paid on capital goods and service tax paid on input services is eligible under the works contract services.

Amendment w.e.f. 1st October, 2014 [Notification 11/2014-ST dated 11th July, 2014]:

The 3rd category as mentioned in the table herein above is omitted. Service tax shall be payable on 70% of the total amount charged for the works contract for :

(i) maintenance or repair or reconditioning or restoration or servicing of any goods; or

(ii) maintenance or repair or completion and finishing services such as glazing or plastering or floor and wall tiling or installation of electrical fittings of immovable property.

Reverse Charge Provisions – [Notification 30/2012-ST dated 20th June, 2012]

- As per Section 68 (1) of the Finance Act, 1994, generally, the service provider is liable to pay tax in respect of taxable services rendered. However, in respect of notified taxable services, service tax shall be paid in the prescribed manner in terms of Section 68 (2) of the Finance Act, 1994
- For the period post 1st July, 2012: Central Government vide Notification No 30/2012-ST dated 20th June, 2012 has prescribed works contract services under Section 68 (2) for the purposes of reverse charge mechanism. The service tax is to be discharged on works contract transaction by both service provider & service receiver in prescribed proportion i.e. on 50% of taxable value when:
  - The said services are provided by either :
- Individual
- HUF
- Partnership Firm (including LLP, AOP)
  - And the service is received by Business Entity registered as body corporate located in taxable territory.
- The service recipient has the option of choosing the valuation method as per choice, independent of valuation method adopted by the service provider.
- Business entity is interpreted in Section 65B (17) to mean any person ordinarily carrying out any activity relating to industry, commerce or any other business or profession.

Transactions under works contract not subjected to service tax:

- Vide Mega Exemption Notification no. 25/2012- ST dated 20th June, 2012 following services are exempted from levy of whole of Service Tax U/s. 66B of the Finance Act, 1994

Sr. No.	Nature of Exemption (w.e.f. 01/07/2012)	Exemption upto 30/06/2012
12)	Services provided to the Government or local authority or a Governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of – (a) a civil structure or any other original works meant predominantly for use other than for commerce, industry or any other business or profession;	• Construction of road, airport, railway, transport terminal, bridge, tunnel, long distance pipeline & dam was excluded from the definition of "commercial or industrial construction services" as well as "works contract services". • Construction of port/other port was exempted under Notification No.25/2007-ST dated 22nd May, 2007
	(b) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);	• "works contract services" in respect of canals, other than those primarily used for the purpose of commerce or industry, was exempted under Notification No.41/2009-ST dated 23rd October, 2009.

Sr. No.	Nature of Exemption (w.e.f. 01/07/2012)	Exemption upto 30/06/2012
	(c) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; (d) canal, dam or other irrigation works; (e) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal; or (f) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause 44 of section 65B of the said Act	• Management, Maintenance or Repair of roads was exempted under Notification No.24/2009-ST dated 27th July, 2009. • Management, Maintenance or Repair of bridges, tunnels, dams, airports, railways &transport terminal was exempted under Notification No.54/2010-ST dated 21st December, 2010. • Construction of hospitals &educational institutions for Government or local authority are only exempted. In case the same are constructed for others, no exemption.
13)	Services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of,- (a) A road, bridge, tunnel, or terminal for road transportation for use by general public; (b) A civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awas Yojana; (c) A building owned by an entity registered under Section 12 AA of the Income tax Act, 1961(43 of 1961) and meant predominantly for religious use by general public; (d) A pollution control or effluent treatment plant, except located as a part of a factory or a structure meant for funeral, burial or cremation of deceased;	• Construction services provided to Jawaharlal Nehru National Urban Renewal Mission & Rajiv Awaas Yojana were exempted under Notification No.28/2010-ST dated 22nd June, 2010. • Construction of roads which are not for general public use for e.g. construction of roads in a factory, residential complex etc. would be taxable
14)	Services by way of construction, erection, commissioning or installation of original works pertaining to,- (a) An airport, port or railways, including monorail or metro; (b) single residential unit otherwise as a part of a residential complex;	• Repairing of airport, which hitherto was exempted under Notification No. 54/2010-ST dated 21st December, 2010, would now be taxable. • Services mentioned in clauses (d) & (e) were exempt under Notification No.12/2010-ST dated 27th February, 2012.

Sr. No.	Nature of Exemption (w.e.f. 01/07/2012)	Exemption upto 30/06/2012
	(c) low-cost houses up to a carpet area of 60 square metres per house in a housing project approved by competent authority empowered under the "Scheme of Affordable Housing in Partnership" framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India; (d) post- harvest storage infrastructure for agricultural produce including a cold storages for such purposes; or (e) mechanized food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages;	
25)	Services provided to Government, a local authority or a governmental authority by way of- (a) carrying out any activity in relation to any function ordinarily entrusted to a municipality in relation to water supply, public health, sanitation conservancy, solid waste management or slum improvement and upgradation; or (b) repair or maintenance of a vessel or an aircraft[1] The said entry is amended w.e.f. 11th July, 2014 to read as "services provided to Government, a local authority or a governmental authority by way of water supply, public health, sanitation conservancy, solid waste management or slum improvement and upgradation".	• No service tax was leviable on most of the services listed in clause (a) under the selective approach. Services listed under clause (b) were exempt under Notification No. 31/2010-ST dated 22nd June, 2010
29)	Services by the following persons in respective capacities (h) sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt	

Conclusion

The issues & intricacies involved in the levy of works contract services & its valuation being very complex, will take it's own time to settle down at higher forums. One needs to look into the facts of each case before determining the leviability of service tax under works contract services.

[Source: Article published in the CD of National Tax Conference held on 23-24 August at Nagpur]

1. Omitted w.e.f. 1st April, 2013 by Notification No.3/2013-ST dated 1st March, 2013

An Update on GST Scenario and connected Issues – FM trying hard to seal a deal

D. H. Joshi, *Advocate*

I. GST bill to be tabled in winter session of Parliament

Showing clear intent in reforming India's indirect tax regime within a time frame, Finance Minister Mr. Arun Jaitley said on 17-11-2014 that the Government would bring in the Goods and Service Tax (GST) Bill in the upcoming winter session of Parliament. The FM made the said announcement at the Citibank Investor Summit at New Delhi. Parliament is schedule to convene next Monday for the month-long winter session. Last week, the Empowered Committee of State Finance Ministers on GST met at Delhi and expressed hope that new tax regime could be implemented by proposed date i.e. April 1, 2016, notwithstanding States' differences with the Centre over some key provisions (source: ET dated 18th November, 2014). As per ET news dated 15th December, 2014, FM is going to meet Empowered Committee on GST on 15th and 16th December, 2014 to build consensus for the GST in view of the fiscal room created by the crash in crude oil prices has given Jaitley space to walk the extra mile in his bid to assure States they will not lose any revenue once the single levy is imposed, replacing plethora of indirect taxes imposed by the Centre and States. Further, still it does not work, then, Government is ready to go ahead with States who hold out for political reasons. However, he is confident to end the deadlock.

II. GST SOP to be part of the Constitution Amendment Bill

The Centre has agreed to include compensation to be paid to States for Goods and Service Tax (GST) roll-out as part of the Constitution Amendment Bill. "The compensation structure would form a part of the Bill. It will be paid in tranches to the States," an official said. A consensus on this crucial issue will make it easier for the Centre to introduce GST Bill in the winter session of Parliament. The official further said that the Finance Ministry has floated a draft cabinet note on the GST for inter-ministerial consultation. "The first tranche of compensation to States will be made available in the upcoming session," the official added. Further, the official added that further discussions would be needed on revenue-neutral GST rate and threshold limit for imposing the levy.

2. As regards taxation of petroleum products, the Centre has proposed to the States that it be made part of GST Bill. The States, according to him, would get six months to vet the GST Bill in the Assemblies after its passage by Parliament.

3. While a sub-committee on GST has suggested that the revenue-neutral rate of GST be pegged at about 27%, the States are yet to decide on it. It had suggested State's GST at 13.91% and Central GST at 12.77%.

4. Differences remain on threshold limit for levying GST with States demanding that annual turnover for imposing the levy be ₹ 10 Lakh and Centre demanding it to be at ₹ 25 Lakh.

5. The GST will subsume indirect taxes like excise duty and service tax at Central level and VAT on the States front, besides local levies. *(Source: PTI, Business Standard dt. 18-11-2014)*

III. Policy issues analysed by the Central Government

The Centre is against keeping the threshold limit at ₹ 10 lakh for levying GST and wants the Committee on dual control to take a final view on the matter after detailed discussions. The Centre in a communication to State Finance Ministers has suggested that the meeting of the Committee on dual Control, 'Threshold and Exemptions', be convened at the earliest for "detailed discussion and analysis" of the issues concerning threshold limit. It has argued that the limit be kept high as the cost of collection of revenues from small traders and dealers is disproportionately high as compared to the revenue collected from them. *(Source: PTI)*.

IV. Hon'ble PM Modi to convene first NDC meet in December 2014

Having initiated a series of reforms and launched some of his pet social projects, PM Modi is getting ready to take States on board in his National Development Plan as promised.

2. The Government will next month convene a meeting of the National Development Council – all CMs are part of it – to arrive at consensus on key issues such as the structure of a new institution that would replace the Planning Commission, Goods and Services Tax and the Land Acquisition Act. It will be the first meeting of NDC since Mr. Modi took over as PM in May 2014. The previous meeting was held in December 2012 to get 12th plan approved. The PM is toying with the idea of enabling an atmosphere where States would compete among themselves for funds based on performance, and may use the meeting to seek State's view. There can be no other forum but the NDC to deliberate on the possibility of higher budgetary allocation to states which perform better than others.

V. Global GST average is @16.4%, that is a good guide

As the Centre and States inch closer to an agreement on the Goods and Services Tax (GST), there is yet no clarity on a revenue-neutral rate, one that would leave revenues no worse off. A committee has proposed a tentative range of rates extending up to 27%. This is ridiculous. Instead, it makes sense for the Centre and States to settle for a lower GST rate when all taxes levied on goods and services are merged into one. A GST of 16-18% can be revenue neutral if the tax base is widened and only a minuscule evade tax. That will happen with GST and the rationale is simple. GST captures value addition across the production chain, and across various sectors. Audit trails will be created when a manufacturer claims credit for all the taxes paid on inputs. These trails will help widen the tax based and contain evasion, including direct taxes, making the case for a lower rate of GST compelling.

2. Statistics about GST rates vary across countries. Globally, average VAT rate is about 16.4%. Multiple rates also are not detrimental to GST, given that tax credits will be available across the value chain and

on inter-State transactions. In the European Union, VAT rates vary across member-States, and it has worked well. In India, a task force appointed by the 13th Finance Commission had recommended a single rate of 12%, comprising 7% for State GST and 5% for Central GST. The model of these rates assumed that all taxes will be subsumed by GST, and exemptions will be minimal. Ideally, that is the way to go forward.

3. Unfortunately, till date, the States are reluctant to include petroleum products in GST. Subsuming several levies will cut-out the cascade of multiple taxes that these products bear, lower retail prices, lead to efficiency gains and faster growth. A firm guarantee by the Centre to compensate States for any revenue loss would remove any petty objections to include petro-fuels in the GST net. The Centre, therefore, must have the confidence that the tax will vastly widen the tax base. More importantly, the point is to end once and for all the hesitation on any score on introduction of GST finally.

VI. E-commerce or Business

E-commerce or business is increasing manifold. There are opportunities in global market in terms of the number of people who earn their living out of it in the country, textile comes second only to agriculture. It is also a unique productive activity wherein the schism between employer and employee does not exist. The "euphoria" over the scorching pace of e-commerce market in India will last about 18 months as things begin to settle down and "reality" sets in, Future Group Chief Mr. Kishore Biyani, said recently.

2. Mr. Biyani has recently partnered with global e-tailing giant 'Amazon' to sell merchandise exclusively online. Known as a pioneer of Indian Retail Chains, Biyani had criticised Flipkart and other e-commerce firms in India for under-cutting the market and selling products at below the cost price, saying that it would hurt other retail channels. According to him, the euphoria so created should last for 6-18 months. Then it will be over. Estimated to be a $3billion segment, the Indian e-commerce sector has been growing at a massive pace with players like Snapdeal and Flipkart raising well over $4 billion from range of investors including Angel and private equity firms.

3. The above e-commerce business has already attracted the attention of Karnataka's Commercial Taxes Dept., which has proposed a set of amendments to its VAT Act, 2003 which if cleared by the legislature might well signal the end of American e-commerce giant Amazon's business in the State. The Dept. has sought to bring e-commerce firm under the definition of "dealer" and proposed amendments to sections 8 and 22 of the VAT Act. The section 8 is about the 'agents', liability to pay tax while section 22 deals with the liability on the part of dealers to register with VAT Authorities. If the State Government were to accept these proposals and effect changes by pushing through an amendment bill, Amazon may have little choice but to exit Karnataka because the FDI regulations do not allow the 'Seattle-Head quartered firm' to register either as a dealer or as an agent.

4. The said e-commerce giant which reported global revenues of $74.5 billion last year, does not directly sell products in India. Instead, it connects buyers and sellers through its portal, amazon.in. It woos local merchants into partnership by offering them nation-wide market, modern warehousing and packaging services for their products.

5. In view of the above, many State Governments are planning to follow the footpath of Karnataka Government. to tax e-commerce business.

VII. E-commerce may come under the Consumer Protection Act, 1986

Already Cabinet Note proposes creation of authority with search and seizure powers. The Consumer Affairs Dept. has moved the above proposal to bring e-commerce and direct selling under the Consumer Protection Law. Moreover, teleshops and e-tailers fail to take back defective items and return the amount paid by customer within a month even after a request is made, action can be initiated against them. The said move will directly impact e-tailers such as Flipkart, Amazon, Makemytrip, Bookmyshow, etc.

2. However, there is a catch in the proposal. It says an "electronic intermediary shall not be said to have engaged in 'unfair trade practice', if it facilitates manufacturers, traders and other persons, who used such electronic intermediary for advertising, selling or providing goods or services". Informed sources said this has been done to differentiate between those who actually sell goods/services and those who just work as marketing entities, though there is a section of people who believe this provision will be "exploited" by e-tailers.

3. Considering the above aspect of the matter, consumers can file a case or complaint only if they have a cash-memo or a bill, there is also a proposal to make it mandatory for sellers to provide such transaction records.

4. Importantly, in order to ensure that consumer rights are enforced and protected, the Cabinet Note proposes setting up a 'Consumer Protection Authority', which will have powers to act against marketing of products and services that are unsafe and hazardous. The note further provides a ban on persons affiliated to political parties joining consumer forums. Furthermore, the note provides that no advocate by either party in consumer forums can represent, unless the value of goods or services i s more than ₹ 2 Lakh and the case is very technical.

5. So, the life of end consumers buying either goods or services is going to be extremely complicated in view of the concept of modern taxation i.e. GST or e-commerce coupled with Consumer Protection Act, which is poorly administered right from 1986.

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Date & Month	Programme	Place
17-1-2015	Full Day Seminar on Appellate Procedures under Income-tax, MVAT and Service Tax	Mumbai

Questions & Answers

CA. H.N. Motiwalla

Query No. 1 – Distribution of stock by firm

M/s. GE is a registered partnership firm in the business of property development. It holds certain residential flats / office premises, which are not yet sold and which are held as stock-in-trade. Out of such properties, it intends to distribute certain premises among the partners at book value, by journal entries. It wants to know –

(i) What are the implications under the Income-tax Act, 1961 and under Stamp Duty / Registration Act?

(ii) Will it make any difference if the distribution takes place upon dissolution? How accounts are to be settled?

(iii) What will be the character of the property received in the hands of the partners?

As regards the balance stock remaining with the firm, it desires to know what are the implications under Income-tax Act, 1961 and Wealth Tax Act, 1957?

Answer

(i) Section 45(4) of the Income-tax Act, 1961 would not be applicable, as M/s. GE is holding properties as stock-in-trade.

Now, as per the query M/s. GE want to distribute the stock-in-trade to its partners. In other words, the partners would withdraw the stock from business. In *Sir Kikabhai Premchand v. CIT [24 ITR 506]*, the Supreme Court has held that withdrawal of stock from business would be at cost and no profit or loss arises from such withdrawal.

However, from April 1, 2014, section 43CA has been introduced under the Act, which provides that consideration received or accruing as a result of the transfer by an assessee of an asset (other than a capital asset), being land or building or both, is less than the value adopted or assessed or assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer, then such stamp duty value is taken as full value of consideration for the purpose of computing income under the head "Profits and gains of business or profession". In this case there is no consideration, hence this section may not be applicable. However, the same would be chargeable in the hands of partners, being individuals, under section 56(2)(vii) of the Act at stamp duty value.

Under the Income-tax Act, a firm and partners are separate and distinct entities. So, when stock is withdrawn by the partners, it would be considered as transfer. As per the Transfer of Property Act, the transfer would be an act of the parties or of the law, by which the title to the property is conveyed from one person to another. So, when stock is withdrawn by the partners; title to the properties would be conveyed from a firm to the partners. Hence, stamp duty would be payable.

(ii) Yes, if properties being stock-in-trade, distributed to partners on dissolution, would be taxable in the hands of the firm at market value as per *A.L.A. Firm v. CIT [189 ITR 285 (SC)].*

(iii) The character of the properties in the hands of partners would depend upon

antecedent and dominant purpose of the partners.

(iv) The balance stock after distribution in the hands of firm would be valued at cost or market value whichever is lower. Profit or loss for the purpose of taxation would be determined on that basis. Further, wealth tax is not applicable to the firm.

Query No. 2 – Section 14A

Mr. S. is holding certain shares on investment account as well as stock-in-trade. For A.Y. 2013-14, he has not received any dividend income on the shares held as investment.

A. The Assessing Officer wants to invoke section 14A read with Rule 8D with respect to all the shares. Mr. S. wants to know:

(i) Whether section 14A applies when the shares are held as stock-in-trade?

(ii) Whether section 14A applies when no tax free dividend income is received during the year?

B. The Dept. now intend to apply/follow the Circular No. 5/2014 dated February 11, 2014 issued by the CBDT, as per which the disallowance u/s. 14A is required to be made even in absence of any exempt income received during the year.

Answer

- As per *ITO v. Daga Capital Management Pvt. Ltd [312 ITR (AT) Mumbai (SB)]*, section 14A is applicable to both i.e. when the shares are held as stock-in-trade and investment.
- In *Godrej and Boyce Mfg Co. Ltd. v. DCIT [328 ITR 81]* the Bombay High Court has held that the expression "income which does not form part of total income" is confined to section 10 and attract the disallowance u/s. 14A. The expression must receive its plain and grammatical construction and refers to income which is not includible in computing the total income of the assessee under the Act. So, if no tax free dividend income is received during the year, section 14A is not applicable as per
- The CBDT circular is binding on the Income tax authorities except CIT(A) in exercise of his appellate functions. The *Supreme Court in UCO Bank v. CIT [237 ITR 889]* has held that the circular issued under this section cannot affect the assessee in an adverse manner.

Query No. 3 – Deduction by co-operative bank

a) A co-operative bank wants to take accident group insurance for its members. Whether premium paid on the insurance for members can be debited to Profit & Loss account of the bank? Will it be allowed by the Income Tax Department?

Answer

The following conditions should be complied to claim deduction u/s. 37 of the Act.

i) The expenditure should not be of the nature described in sections 30 to 36.

ii) It should have been incurred in the accounting year.

iii) It should be in respect of business which was carried on by the assessee and the profits of which are to be computed and assessed and should be incurred after business is set up.

iv) It should not be in the nature of personal expenses of the assessee.

v) It should have laid out or expended wholly and exclusively for the purpose of such business.

vi) It should not be in the nature of capital expenditure,

Thus from the query it is not clear how the bank will establish that it is for the purpose of the business and incurred wholly and exclusively for the purpose of such business; even bank debits to its profit & loss account. See *Meattles Ltd. v.*

CIT [68 ITR 79 (Del)] and *CIT v. Khodidas Motiram Panchal [161 ITR 99 (Guj).*

b) *Is there any restriction or limit on refreshment/ gift paid to members whoever attends an annual general meeting? Can it be questioned by the AO?*

Answer

In case of listed companies, SEBI prohibits giving gifts to the share holders in AGM. However SEBI permits light refreshment, tea, coffee etc. to share holders in AGM.

Generally, the AO allows the expenses incurred at AGM, if it is reasonable and for the purpose of business.

In *CIT v. Tirrihannah Co. Ltd. [195 ITR 393]* the Calcutta High Court in case of Tea Manufacturing Company, has held that distribution of tea samples to share holders present at AGM and complimentary tea packets to the directors and friends to popularise the product is allowable deduction as it was for the purpose of business.

Query No. 4 – Construction of Residential House

'A' constructed residential house within 3 years of sale of long-term asset. First year investment made was of ₹ 70 lakhs and filed return u/s. 139(1). Balance ₹ 70 lakhs invested in next two years. No investment in Capital Gain Account Scheme. Whether exemption u/s. 54 available?

Answer

From the facts, it is clear that 'A' is constructing a residential house for which he must have taken estimate from the architect /developer for construction of residential house. Now, if he keeps balance of ₹ 70 lakhs in separate bank account or in any other account and not necessary in Capital Gain Account Scheme, he would be appropriating the said amount towards the construction of residential house and he would be entitled to claim exemption u/s. 54(2)

Section 54(2) reads as under:

"The amount of the capital gain which is not appropriated by the assessee towards the purchase of the new asset made within one year before the date on which the transfer of the original asset took place or which is not utilised by him for the purchase or construction of new asset before the date of furnishing the return of income under section 139, shall be deposited by him before furnishing such return….".

Thus, reading the aforesaid section it is clear that the said section would come into play when the amount is not appropriated. Once the amount is appropriated, then, the section would not come into play.

Questions & Answers

C. B. Thakar, *B.Com., L.L.B.F.C.A., Advocate*

Input Tax Credit (ITC) vis-à-vis turnover

"Query No. 1
The facts of the query and the queries are reproduced below:

A Developer in the City of Mumbai entrusted the job of construction contract to a Contractor with the following conditions:–

1) The contract was entered in 2009

2) As per the terms of contract the contractor has to complete the construction within 7 years.

3) All the plants were supplied by Developers.

4) The remuneration of the contractor shall be 5%. Net profit to be charged on the materials purchased – labour paid and other administrative expenses incurred.

5) The contractor shall raise the final invoice after completion of project giving the details of all expenses of materials purchase and labour charges paid plus 5% as his remuneration.

6) The contractor shall charge VAT on the cost of materials supplied plus 5% profit and shall claim input credit on the purchase side of materials purchased.

7) The developers shall pay advance on Account as and when required, but the BILL can be submitted only after completion of work.

8) Since no Bill is received till today the Developer has not claimed any input credit.

However, the contractor has filed all VAT Return and claimed input credit for the VAT paid on purchases, but the Dept has raised the following issues.

a) Dept. says that 2009-10, 2010-11, 2011-12 etc. since there is no Billing to Developer we cannot grant set off or input credit because no sales are effected.

b) In Final year say 2015-16 also no set-off shall be granted because all the purchases are effected earlier years and since no purchases are made in 2015-16 no input credit can be granted."

Reply
The issues are under Maharashtra Value Added Tax Act, 2002 (MVAT Act, 2002). The brief legal position required to be considered in relation to the given issues can be examined as under.

ITC is allowable as per the scheme of section 48 read with rules under the MVAT Rules, 2005.

Normally ITC is allowable on the basis of purchases irrespective of disposal. However, allowability of ITC depends upon certain negative clauses and restrictive clauses. The said negative clauses and restrictive clauses are given in rules 53 & 54. Rule 53 (6) is relevant to the issue. The said rule is reproduced below for ready reference.

"53 (6) If out of the gross receipts of a dealer in any year, receipts on account of sale are less than fifty per cent of the total receipts,

(a) then to the extent that dealer is a hotel or club, not being covered under composition

scheme, the dealer shall be entitled to claim set off only,

(i) On the purchases corresponding to the food and drinks (whether alcoholic or not) which are served, supplied or, as the case may be, resold or sold, and

(ii) On the purchases of capital assets and consumables pertaining to the kitchens and sale, service or supply of the said food or drinks, and

(b) insofar as the dealer is not a hotel or restaurant, the dealer shall be entitled to claim setoff only on those purchases effected in that year where the corresponding goods are sold or resold within six months of the date of purchase or are consigned within the said period, not by way of sale to another State, to oneself or ones agent or purchases of packing materials used for packing of such goods sold, resold or consigned:

Provided that for the purposes of clause (b), the dealer who is a manufacturer of goods not being a dealer principally engaged in doing job work or labour work shall be entitled to claim setoff on his purchases of plant and machinery which are treated as capital assets and purchases of parts, components and accessories of the said capital assets, and on purchases of consumables, stores and packing materials in respect of a period of three years from the date of effect of the certificate of registration.

Explanation: For the purposes of this sub-rule, the receipts means the receipts pertaining to all activities including business activities carried out in the State but does not include the amount representing the value of the goods consigned not by way of sales to another State to oneself or ones agent."

It can be seen that in relation to dealers other than hotels, the ITC will get restricted, if the turnover of sales is less than 50% of the gross receipts. In the query the said issue is not clear. Irrespective of raising bills for the work-in-progress, if it can be shown that from the reported gross receipts, reported sales receipts are more than 50% then ITC is admissible on all purchases. However, if that is not the position then the ITC will be allowable only in respect of purchases which are sold within six months from the date of purchase. This issue may be examined as per records.

Further, if there are no receipts at all then also stand can be taken that there is nothing to compare and hence also the rule cannot apply and ITC will remain allowable.

The third situation is that there is gross receipts but sale receipts are less than 50%. Since the work-in-progress is not billed, it will not be reflected in the final account as sales. Therefore, this will not be available for calculating the ratio of 50% as against gross receipts. Under such circumstances, ITC will be affected and it will be allowed only to the extent of purchases sold within six months.

It appears that the issue has arisen as work-in-progress is not billed. The further issue is, irrespective of billing and showing in the books, whether still it can be considered as part of the sales receipts for calculating the sales ratio. As per the plain language of the rule, the turnover which is not reflected as turnover on the sale side cannot be considered for the purpose of ratio working. It is no doubt true that there is sale but not reflected in the accounts as sales because of practice of raising the bills at the end of the project. In essence there is sale at the time of incorporating the goods in the contract. Therefore, one may argue that not showing in books is only technical but in real sense there is sales and should be considered. However, this is the matter of interpretation.

It is also fact that ultimately there is sale and not allowing ITC on yearly basis and not in ultimate year also will be unjustified and not intended. In our opinion ITC should be allowed

but it appears that in light of plain language the practical difficulty will arise.

In light of above analysis, it can be said that as per the plain language of the rule the availability of the ITC in the given years, when sales are not booked, may be affected.

The answers to the particular issues are as under:

1. *Whether the Department's contentions is correct?*

Reply: As discussed above, *prima facie* the contention of the department is correct.

2. *If correct, can the contractor raise a performa invoice at the end of every year – Revise all returns and pay difference of VAT and finally adjust in 2015-16?*

Reply: By revising returns, it appears that for sales tax purpose, the sales are admitted and hence for ratio working the said changed situation will be required to be considered. Though, in books the said work is categorised as work-in-progress, there is no prohibition to treat the same as sales as per the MVAT Act. At the most, a reconciliation be given between books figures and as per returns, to clarify the position. The maintenance of the books is as per the policy of the assessee, while sale can take place by transfer of property and can be shown as sales for sales tax purpose and due liability can be discharged on the same and also due ITC can be claimed.

The situation be seen accordingly.

2. ITC vis-à-vis period of availability of ITC

The facts conveyed are as under:

A has purchased Cotton seed in the end of March, 2014 from Maharashtra Cotton Federation against payment of the said purchase of cotton seed.

In turn the Federation has delivered the Cotton seed against D. M. in the month. of March, 2014 only.

But the Federation has issued Sale Bill in the Month of April, 2014 i.e. in the next year.

Now the question arises as to in which Financial Year 'X' is entitled to claim set-off?

Kindly enlighten me on the above query with case laws and circular of Commissioner, if any?

Reply

It can be seen that the issue has arisen because of difference in booking of purchase and sales by the respective parties.

The issue as to when the buyer has booked the purchase in its books is not clear. Generally purchases are booked as per the date of sale invoice and accordingly, it is presumed that in this case also the purchase will be booked by the buyer in April when the invoice is received from Federation. If that is the position then both sale and purchase will fall in one period and accordingly there will not be any difficulty. Meanwhile, if at all for accounting purpose any entry is required at the end of the year for stock purpose then it can be by passing appropriate journal entries towards stock received and amount paid without booking purchase in purchase register in particular vendor's name. Such booking will not be reflected in purchases of March, 2014. In the subsequent year, the above journal entry can be reversed and regular purchase entry can be booked.

It may be clarified that under VAT era, the setoffs are allowed on matching of respective sale/purchase between buyer and seller (J1/J2 of Audit report in Form 704). It is true that simply because of unmatch, set off cannot be disallowed and further enquiry is required to be made about payment of tax on same goods before disallowing set off. However as per the present situation the department will disallow set off on the ground of mismatch which may require further litigation.

The other issue which is also required to be considered is the conditions set out in rule 55

of the MVAT Rules. The said rule is reproduced below for ready reference to the extent required.

"55. Condition for grant of setoff or refund and adjustment of draw-back, setoff in certain circumstances.?

(1) No setoff or refund under these rules shall be granted to a dealer in respect of any amount of tax recovered from him on the purchase of any goods or paid by him or in respect of entry of any goods, –

(a) unless the goods are purchased or entry is effected on or after the 1st April of the year in which the dealer has obtained registration and, –

(1) The goods are treated as capital assets by the dealer and have not been sold before the date of effect of registration, or

(2) The goods are not treated as capital assets and have not been sold or disposed of before the date of effect of registration, or

(3) The goods are not treated as capital assets and have been used or consumed in manufacture and the manufactured goods have not been sold before the date of effect of registration, or

(4) The dealer was a registered dealer at the time of such purchase or entry,

(b) unless such dealer has, –

(i) Maintained a true account in chronological order of all the purchases of goods made by him on or after the appointed day, showing the following details:–

(A) The date on which the goods were purchased;

(B) The name of the selling dealer and his registration certificate number, if registered, from whom the goods are purchased, and the description of the goods;

(C) The number of the tax invoice under which they were purchased;

(D) The purchase price of the goods;

(E) The amount of tax, if any, recovered from him by the selling dealer; …"

As per above condition (4) unless the transaction is entered in the books, the set off cannot be claimed. Therefore, in the given case, since the purchase will be booked in April, on the basis of invoice received in April, as per legal position also the set off should be claimed in April.

Quest – Opinion

Extension of time and granting of time after expiry of time limit for making predeposit

Vinayak Patkar
Advocate

Brief Facts

1. The demand has arisen under the MVAT Act due to mismatch of transactions on the MAHAVIKAS software. The demand under CST Act has arisen due to lost declaration forms. The querist is diligently trying to secure the duplicate forms, however delay is being caused due to the issuing-States.

2. The First Appellate Authority has fixed part-payment for issuing stay. The Tribunal quashed the condition of part-payment with respect to the demand under MVAT Act, since the assessment proceeded without Notice. However, with respect to the pre-deposit under the CST Act, the Tribunal considered the duplicate forms which were received after the First Appellate Authority's pre-deposit order and accordingly reduced the amount of pre-deposit.

3. The querist is in financial trouble and they could pay only some part of the part-payment. Hence, the querist applied for granting of installments, however the same was done 2 months after the time-limit fixed by the Tribunal for making the pre-deposit. The querist urged that the principles underlying the sections 148 and 151 of the Code of Civil Procedure, 1908 would be applicable and the enlargement of time along with installments can be granted. The querist had also pointed out that many duplicate forms have been received after the Tribunal's part-payment order and the demand will reduce significantly.

4. However, the Tribunal rejected the same on the ground that the section 148 of the Code of Civil Procedure was amended recently to impose a ceiling of 30 days for enlarging of time and 2 months have already gone by and hence even if the time-limit of the part-payment order is extended, the same has gone by and hence section 148 is of no use to the querist. Hence, nothing can be done at this stage.

5. After dismissal of this application, the Department attached the bank accounts of the querist for the entire amount of part-payment which was originally fixed by the First Appellate authority after adjusting the amounts already paid towards part-payment.

Query

The querist wants to know whether any relief is possible in Writ jurisdiction of the High Court and on what grounds?

My Opinion

The Writ Jurisidction of the High Court is available whensoever there is no alternate remedy available, or when the invocation of the same is not tenable. I am of the firm opinion, that this case is one of those cases wherein the intercession of the High Court not only under Article 226, but also under Article 227 would be necessary. Article 227 vests supervisory

jurisdiction over the Tribunals in the High Court, and the same is relevant here.

The querist has to challenge the original pre-deposit order of the Tribunal as well as the order rejecting the enlargement of time and the Notices of Attachment which have been issued under section 33(1) of the Maharashtra Value Added Tax Act, 2002. The plea of financial hardship is open to the querist to urge before the High Court for getting the Order of pre-deposit and all consequential proceedings quashed. However, there are some other grounds also which can be urged:

Original Order of Pre-deposit of the Tribunal

A. The demand has arisen purely due to non-production of declaration forms. The declaration forms were lost and the querist is taking all efforts to secure the duplicate copies of the same. It is not the case of the Revenue that the duplicate copies are not admissible as lawful evidence of inter-State sale.

B. I am of the opinion that it is unreasonable that the First Appellate Authority and the Tribunal should even insist on pre-deposit in such a case. The demand is purely on account of missing declaration forms which are very much capable of being secured, even though securing such forms itself is a time-consuming process.

C. The time of the receipt of these duplicates is dependent on the time of issuance by the purchaser-State. The querist has informed me that some of the forms were secured after the First Appellate Authority fixed the original pre-deposit amount. The Tribunal was pleased to consider the same and accordingly reduced the same from the pre-deposit amount. However, after the pre-deposit order, many forms have been received which will reduce the tax liability significantly.

D. I am of the view that is improper, arbitrary and unreasonable that the tax liability which has arisen due to non-production of declaration forms should be stipulated as pre-deposit when the querist is showing diligence in securing the duplicates. No deeper Revenue interest is being served in this case. Such a pre-deposit condition is not really needed as a threat to force the litigant to put his affairs in order: the very fact that the local rate of tax has to be paid on an inter-State sale is a threat enough, and no additional threat is necessary in the form of pre-deposit condition. Finally, the First Appellate Authority will have to accept the duplicates and quash a significant amount of the demand when the First Appeal is heard on merits.

E. It may be pertinent to note that where issues of interpretation etc. are involved, a pre-deposit may be in order. However, where the defect is of evidence, and the defect is easily curable, mandating pre-deposit is not a proper course to follow. In case of lost declaration forms, which defect can be easily cured by securing duplicates, the Appellate Authority has to mandatorily accept them as evidence of inter-State sale and withdraw the tax levied on such sales at local rate.

F. Hence, where a pre-deposit is ordered in case of demand based on curable defects in evidence, such pre-deposit becomes an unholy mechanism for arbitrage in the hands of the Revenue. At present, the querist has secured many forms which will significantly drive down the tax liability, whereas the Revenue is allowed to endlessly sit over the First Appeal.

Application for grant of installments

G. Despite the financial crunch and the improper infliction of pre-deposit in case of lost declaration forms, the querist had filed a Miscellaneous Application before the Tribunal. The querist did not pray for the recall of the entire order of the pre-deposit. The Petitioner had only asked for some more time to comply with the order of pre-deposit and had prayed for grant of installments. However, the Tribunal rejected the same on various grounds which are

based on an improper reading of sections 148 and 151 of the Code of Civil Procedure, 1908.

H. Section 148 of the Civil Procedure Code gives statutory recognition to the inherent power of the Court to extend the time-limit fixed by it, even after the expiry of the time-limit. Section 148 of the Code of Civil Procedure reads as follows:

> "S. 148. Enlargement of time. –
>
> Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code, the Court may, in its discretion, from time to time, enlarge such period, not exceeding thirty days in total, even though the period originally fixed or granted may have expired."
>
> … (Emphasis supplied)

I. The Tribunal erroneously refused to extend the time fixed for making the pre-deposit. The power of the Court to extend time prescribed by it, even after the expiry of the time, is an inherent power and section 148 of the Code of Civil Procedure has merely given statutory recognition to it. It is well-settled that even though the Tribunals are not Courts, they do possess the inherent powers possessed by the Courts which are necessary for regulating their processes and administering justice. Hence, the principles underlying section 148 apply in full force to the matter at hand. The Tribunal has the authority to extend the time-limit fixed for making pre-deposits even after expiry of the time, as a part of its inherent powers.

J. Furthermore the Tribunal's observations *qua* 30 days ceiling on the extension of time under section 148 are based on an entirely incorrect appreciation of the law. The Tribunal erred in applying the 30 days ceiling which has been provided for in the section 148. The 30 days ceiling was introduced recently by way of amendment. As aforesaid, section 148, as originally introduced, merely recognised the inherent power of the Court to extend time even after the same has expired, which was a part of the procedural common law before it was codified by the Common Law Procedure Acts in the United Kingdom and the Code of Civil Procedure in British India. The power of the Court to extend time-limits was not conferred by the statute, but is a power which always inhered in the Courts by virtue of their judicial powers. It is true, that an inherent power can be curtailed or modified by statute, however, such curtailment or modification will be strictly confined to the Courts/Tribunals to which the statute is applicable. The amendment to Section 148 stipulating the 30 days ceiling will only control the powers of the Courts to which the Code of Civil Procedure applies and will not affect the general inherent powers of any other Court/Tribunal to which the Code does not apply.

K. Even otherwise, section 14 of the General Clauses Act would allow the Tribunal to exercise the power of extension of time-limit even after the 30 days period, in case the 30 days ceiling is held to apply to the Tribunal.

L. Furthermore, the Tribunal erred in not considering section 151 of the Code of Civil Procedure. Section 151 of the Code also deals with inherent powers of the Court and the Tribunal also possesses such inherent powers. No question of the 30 days ceiling would arise therein. That section 148 is a special provision dealing with enlargement of time and would hence prevail over section 151 is of no relevance to the querist, since the sections 148 and 151 themselves do not apply to the Maharashtra Sales Tax Tribunal, but only the analogous principles apply.

Notices of attachment

M. Section 33(1) which deals with the powers of attachment et al, uses the word 'may' to qualify the power of the Commissioner to invoke the powers contained in that provision.

The use of the word 'may' coupled with the fact that the provision confers draconian powers on the Commissioner, is an indication that the legislature intended the power to be of a discretionary nature. While recovery is a natural step in the process of levy and collection of tax, the mode of recovery and the timing are very much at the discretion of the Commissioner. Such discretion is controlled by judicious considerations and cannot be exercised in an arbitrary manner. An attachment cannot be levied under the law as a matter of course. The same cannot be exercised mechanically and in a routine manner.

N. Now, the totality of the circumstances should have been sufficient to convince the Commissioner to stay his hands and not levy attachment in the case of the querist who is already financially weak and particularly where the issue is really of declaration forms and where most of the duplicate forms have been received and hence the tax liability had been reduced significantly even on the date of issuing the Notice of Attachment. I am of the considered view that non-production of declaration forms, which is a curable defect of evidence, should not be allowed to attract such a drastic consequence as attachment as a matter of routine.

O. I have also been informed that the attachment has been levied on the total demand confirmed by the First Appellate Authority under the Maharashtra Value Added Tax Act, 2002 as well as the Central Sales Tax Act, 1956 in the original pre-deposit order (after adjusting the pre-deposit already made). The Revenue has not considered the fact that the Tribunal had completely stayed the recovery of the demand under the Maharashtra Value Added Tax Act, 2002 after noticing that no Show Cause Notice was issued before disallowing the set-off to enable the querist to produce confirmations from suppliers. The pre-deposit *qua* the demand under the Central Sales Tax Act, 1956, as noted in the facts earlier, has arisen due to non-production of declaration forms.

P. Firstly, the demand under the Maharashtra Value Added Tax Act, 2002 is vitiated due to want of jurisdiction itself. On the other hand, the demand under the Central Sales Tax Act is a product of curable defect in evidence. Both of these cases are not such in which a *prima facie* view taken by the Tribunal at the stage of pre-deposit is going to change thereafter. The Petitioners have already exhibited diligence in getting duplicate forms and have secured many of them after the pre-deposit order of the Tribunal. Therefore, the Revenue should have considered these factors before exercising his discretion in invoking the draconian recovery measures contained in section 33(1) of the Maharashtra Value Added Tax Act.

Q. Secondly, the Tribunal had granted unconditional stay of the recovery of the demand under the Maharashtra Value Added Tax Act, 2002. The conditional stay on payment of pre-deposit is only *qua* the demand under the Central Sales Tax Act, 1956. Two separate appeals were filed under both Acts and the proceedings and the orders are also separate. The Tribunal has also clearly mentioned that the recovery of the demand under the Maharashtra Value Added Tax Act, 2002 has been stayed unconditionally. Therefore, there is no authority for the recovery of such amount through the Notice of attachment. Such an action is not only unreasonable and arbitrary, but can also be challenged as a crippling invasion of the rights guaranteed under Article 19(1)(g) of the Constitution of India particularly in view of the fact that the querist is financially weak and such haste and haphazard manner of recovery is neither needed nor justified. The ordinary process of law will take care of the Revenue's interest, such extra-ordinary processes need not intervene in this case.

Tax World

SALES TAX

D. H. Joshi, *Advocate*

1. Advocates Act, 1961 – Section 33

U/s 33 of the Advocates Act, r/w Rules 73/79(2)(f) of the U.P. Value Added Tax Act / Rules, the question was whether as per Advocates Act they were only entitled to practice before any court or authority? Persons who were not skilled lawyers or had no knowledge in the field of law, whether could appear before the Authority under the VAT Act? Arguments advanced in that behalf as well as pleadings on records required consideration.

2. Learned Sr. Counsel invited the attention of the court to Section 33 of the Advocates Act, which provided that only advocates are entitled to practice before any court or authority. Therefore, impugned Rule is *ultra vires* of the Constitution. Submission is that under the garb of said rule, persons who are not skilled lawyer or have no knowledge in the field of law, were appearing before the authority under the VAT Act, were spoiling academic atmosphere of the legal profession.

3. Accordingly, Writ petition admitted for consideration. In the meantime, as an interim measure, the court directed the respondents that no person whosoever, could be permitted to advertise in the newspaper or any leaflet, inviting assessees for the purpose of filing of return or arguing before the authority under the VAT Act. Any person, who was not registered as an advocate, shall not be permitted to appear before the authority under the VAT Act.

Tax Lawyers Association lko v. State of U.P. (2014) 49 PHT 304 (All).

2. Clarification & Advanced Ruling

The dealer had sought clarification on 'Foreign Coins' are made of various metals like aluminium, copper, brass, zinc, steel and not from gold or silver and are legal tenders in the respective countries and imported into India as Collector's item for indefinite preservation. However, there being no specific entry for such coins in the Schedule to the TNVAT Act, such coins are treated as unclassified item taxable at 14.5% under Entry No. C-69 of the First Schedule of the said Act.

A.C.A.A.R. 120 / 2012-13 / 30-9-2013 (Act Cell-II 8676/2013) 2014-15 (20) TNCTJ 179.

3. Discount

KVAT Act, 2003. Interpretation of Rule 3(2) regarding determination of total taxable turnover vis-à-vis discount allowed but not disclosed in the sale invoice. Only credit notes were issued to the extent of discount allowed after receiving the sale proceeds. Whether discount allowed after completion of sale is acceptable and eligible for deduction u/r 3(2)? High Court held – in the instant case, discount do not find a place in the tax invoice. So called discount is given after completion of the sale, which is not acceptable and, therefore the Order passed by the Tribunal excluding discount from taxable sales is erroneous. Accordingly, the said Order is set aside and the Order of the First Appellate Authority is restored.

State of Karnataka v. M/s Samsung India Electronics Ltd. 2014-15 (19) KCTJ 193

4. Input Credit

A. KVAT Act, 2003. Section 10 r/w section 17(3) – whether the assessee is entitled to the benefit of input tax deduction credit in respect of consumables as well as goods used in the business of manufacturing and

job work of PCBs ? Held, yes following *State of Karnataka v. Ashok Iron Works Pvt. Ltd. (2014) 78 KLR 376.*

State of Karnataka v. M/s Vinyas Innovative Technological Pvt. Ltd. 2014-15 (19) KCTJ 196.

B. Input tax credit on LPG used as fuel for manufacturing of automobile parts, not allowable. It was required to maintain constant high temperature 85OC to 88OC to melt and harden the raw material and in drilling, turning, welding, stamping, etc. Being specifically mentioned in Schedule E as subject to "Nil" ITC, the request of the appellant to allow the same was not acceptable. Accordingly, appeal failed.

Perfect Wheels (P) Ltd., Gurgaon v. State of Haryana (2014) 49 PHT 371 (HTT)(FB)

5. Inspection of goods while in movement

KVAT Act, 2003. Section 53(2)(b) r/w Rule 157(1)(b) – inspection of goods while in movement – whether the check post officer was justified in levying penalty for not carrying genuine documents while transporting goods. Held on facts, it was leviable. Accordingly, Revision Petition was dismissed.

Sri Mahendra Kumar, Prop. M/s. Veetrag Cargo Corpn. v. The State of Karnataka 2014-15 (19) KCTJ 137.

6. Interpretation of entries

The appellant contended that Plaster of Paris (POP) is nothing but powered gypsum and, therefore, it should be exempt under Entry No. 16 of Schedule A of Punjab VAT Act, 2005 which includes "fertilisers including bio-fertilisers and organic fertilisers, gypsum, pesticides, weedicides, insecticides and fungicides." It was held that is not exempt under Entry 16 as in that entry gypsum was exempt from tax as fertiliser while POP cannot be treated as fertiliser. Therefore, it has been rightly treated as covered by residuary entry taxable at 12.5%. Accordingly, appeal was dismissed.

Prem Enterprises v. State of Punjab and Another (2014) 25 STJ 575.

7. Judicial review

Haryana Value Added Tax Act, 2003, section 35 pertaining to Judicial review. Review on the ground of judicial indiscipline committed by the Tribunal in the year 2004-05. The Tribunal held that the grievance of the State was uncalled for. Every case has its own facts. However, law point may be similar to another case to an extent. The facts in the year 2004-05 were different than those of the year 2005-06. Hence, review petition was dismissed.

State of Haryana v. M/s Karnal Agriculture Industries Ltd. (2014) 49 PHT 493 (HTT)(FB).

8. Limitation

Under the PVAT Act, 2005, assessment for the year 2005-06 was required to be completed within 3 years from the date of filing of the returns by the assessee. Commissioner did not have the power to extend the said period as per section 29(4)(a) although in respect of other assessment years, the Commissioner had the power to do so after issue of proper notice to the assessee and after giving him opportunity to be heard. Accordingly, the Assessment Order was set aside.

Balaji Cotton Mills v. State of Punjab (2014) 49 PHT 288 (PVT).

9. Pre-deposit of tax

Section 62(5) of the PVAT Act, 2005, regarding Pre deposit. Requirement of pre deposit was not necessary to be complied with where the assessment order appealed against was without jurisdiction. In the case of assessment for the year 2005-06, the final assessment order was required to be passed by 20-11-2009 and this period cannot be extended by the Commissioner u/s 29(4) it being specifically, so provided by section 29(4)(A) postulating in clear cut and unambiguous terms that the assessment of the year 2005-06 can only

be made within 3 years from 20-11-2006 and the Commissioner cannot extend that period. Hence, Pre-deposit was not necessary as the Order itself was without jurisdiction and illegal and not enforceable in law.

Josan Foods Pvt. Ltd. v. State of Punjab (2014) 49 PHT 356 (PVT)

10. Sale – Goods returned

West Bengal Sales Tax Act, 1994, section 2(40) (b) r/w Rule 159 – Replacement of drugs and medicines after expiry date. Free replacement of drugs and medicine but not same drugs and medicines which were returned. Whether free replacement of such goods made by the applicant was a sale? Ordinarily such goods should not treated as sale subject to verification of the documents as per direction.

Sri Himanka Kumar Paul v. Addl. Commissioner of CT, West Bengal (2014) STA Vol. 64 Page 288 (WBTT).

11. Sale of used car

KVAT Act, 2003. Section 2(12) definition of "dealer". A timber dealer sold used car which was not his regular business. Assessing authority taxed the sale of used car, but the contention of the timber dealer was that being solitary transaction of sale of car whether it could be taxed at all. High Court held – the car which the dealer sold was a solitary transaction. It had nothing to do with the business carried on by the dealer. It was not sale concerning the business. There was no profit motive in the sale of the said car. Hence, looking to the facts, the Tribunal was justified in setting aside the Order passed by the Authorities holding the sale of a car as a transaction liable to tax.

The State of Karnataka v. Vasavi Wood Industries 2014-15 (19) KCTJ 200

12. Simultaneous proceedings

Sections 406, 419, 420, 465, 467, 468, 471 of the IPC, 1860, whether were maintainable under the provisions of the Punjab VAT Act and the Indian Penal Code, simultaneously? Held, yes. Provisions since are covered under the PVAT Act, 2005, proceedings under different acts in respect of offences committed under the provisions of each act are not barred.

Sharanjit Singh v. State of Punjab (2014) 49 PHT 449 (P&H)

FULL DAY SEMINAR ON APPELLATE PROCEDURES UNDER INCOME TAX, MVAT AND SERVICE TAX

Organised by

ALL INDIA FEDERATION OF TAX PRACTITIONERS ASSOCIATION (WZ)
JOINTLY WITH
TAX PRACTITIONERS' ASSOCIATION, THANE,
SALES TAX PRACTITIONERS ASSOCIATION OF MAHARASHTRA, MUMBAI
AND TAX FRIENDS, MUMBAI

With the recent surge in the litigations under various tax regulations, it has become of prime importance to understand the criticality of the provisions concerning appeals and the procedures for filing appeals at various stages under various taxation laws.

With a view to help the Members, All India Federation of Tax Practitioners (WZ) jointly with the Tax Practitioners Association, Thane, Sales Tax Practitioners Association of Maharashtra, Mumbai and Tax Friends, Mumbai has arranged a full day seminar on Appellate Procedures under Income

Tax, MVAT and Service Tax on Saturday, 17th January, 2015 from 9.15 a.m. to 5.30 p.m. at Satkar Grande, Wagle Estate, near Mulund Check Naka, Thane – 400 604.

Topics	**Speakers**
Appellate Procedures under Income-tax Act, 1961	Adv. K. Gopal
Appellate Procedures under MVAT Act, 2002	CA. Sujata Rangnekar
Appellate Procedures under Service Tax	Adv. Shailesh Sheth

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AIFTP Office : 22006342 / 43
Co-ordinators :
CA. Avinash Lalwani, Chairman, Membership Committee
CA. Vijay Kewalramani, Co-Chairman, Law and Representation Committee

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INCOME TAX APPELLATE TRIBUNAL

STATEMENT SHOWING THE LIST OF SPECIAL BENCH CASES PENDING AS ON 1-12-2014

Sr. No.	**Appeal No.**	**Name of the Assessee**	**Points involved**	**Remark**
	MUMBAI BENCHES			
1.	ITA Nos. 5568 & 5569/M/1995 & 6448/M/1994 A.Ys. 1991-92 to 1993-94	DHL Operations B.V. Netherlands	"Whether, or not, on the facts and in the circumstances of the case and on a proper interpretation of Article 5.5 and Article 5.6 of the DTA (with Netherlands) and having regard to its activities, it can be said that Airfreight Ltd. was the agent of the assessee so that it can be held that the assessee had a PE in India? And if the answer is in the affirmative, whether or not the income from inbound shipments can be treated as attributable to the PE?"	Fixed on 23-2-2015
2.	ITA 5996/M/93 ITA 1055/M/94 ITA 1056/M/94	GTC Industries Ltd.		Fixed on 9-3-2015

Sr. No.	Appeal No.	Name of the Assessee	Points involved	Remark
	DELHI BENCHES			
1.	ITA No. 1976/ Del/2006	M/s C.L.C. & Sons Pvt. Ltd.	"Whether, on the facts and circumstances of the case, assessee is entitled to claim depreciation on the value of all intangible assets falling in the category of "any other business or commercial rights", without coherence of such rights with the distinct genusis/ category if intangible assets like know how, patents, copyrights, trade marks, licences and franchises as defined U/s 32(1) (II) of the I.T. Act."	Fixed after the disposal of Hon'ble High Court in the case of CLC Global Ltd. which is pending before Hon'ble High Court.
2.	ITA No. 1999 & 2000/Del/2008	M/s National Agricultural Co-op. Mkt. Federation of India, New Delhi	"Whether on the facts and circumstances of the case, where claim of damages and interest thereon is deputed by the assessee in the court of law, deduction can be allowed for the interest claimed on such damages while computing business income."	Block for 6th Months
3.	ITA No. 163/ ASR/2003 A.Y.1998-99	Shri Tejinder singh (HUF)	"Whether on the facts and circumstances of the case, consideration claimed to have been received on account of sale of jewellery etc. relating to the disclosures made under VDI Scheme, 1997, can be considered to be the income of the assessee from undisclosed sources under any of the provisions of Income-tax Act, 1961?"	Block for 6th Months.
4.	ITA 502/ Del/2012	Vireet Inv.(P) Ltd. Delhi	"Whether the expenditure incurred to earn exempt income computed u/s. 14A could not be added while computing book profit u/s. 155 JB of the Act"	Fixed on 21-1-2015.
5.	ITA No. 3827/ Del/2009 A. Y. 2006-07	M/s. Suraj Overseas (Pvt.) Ltd.	"Whether on the facts and in the circumstances of the case, the Commissioner of Income Tax (Appeals) erred in law in holding that	Fixed on 16-12-2014.

Sr. No.	Appeal No.	Name of the Assessee	Points involved	Remark
			profit aggregating to ₹ 2,51,50,313/- earned by the appellant from sale of shares and securities held under discretionary assessable under the head "Business Income" as opposed to capital gains returned by the appellant?"	
	KOLKATA BENCHES			
1.	ITA Nos. 1548 & 1549/ Kol/2009 A.Ys. 2003-04 & 2004-05	M/s. Instrumentarium Corporation Ltd.	1. "Whether, on the facts and in the circumstances of the case, no arm's length rate of interest was required to be charged on the loan granted by the non-resident assessee-company to its wholly owned subsidiary Indian company M/s. Datex Ohmeda (Indian) Pvt. Ltd. (Datex)?" 2. "Whether, in the given facts and circumstances of the case, CBDT Circular No. 14 of 2001 [252 ITR (St.) 104] and Taxation Ruling TR 2007/1 issued by Australian Taxation Office are relevant in the context of Transfer Pricing Regulations of India, in particular to the case of the assessee?	Adjourned Sine-die.
			3. "Whether, setting off of loss with future profits and not assessing the interest income in the hands of the assessee on arm's length price will cause real loss to the Govt. exchequer?"	
	CHENNAI BENCHES			
1.	Int. T.A. 101 & 161/Mds/2003 A.Y. 1999-2000 A.Y. 2000-01	M/s Bharat Overseas Bank Ltd., Chennai	"Whether, the amount collected from the borrowers to meet the interest tax liability could be taxed as interest under the Interest-tax Act, 1974?"	Adjourned *sine die*
	AHMEDABAD BENCHES			
1.	ITA 1952/ AHD/2012	Shri Himanshu V. Shah, Ahmedabad	"Whether deduction u/s 80-IA (4) (ii), which is available to BASIC Telecom Services Providers is also available to Franchisee of such Basic Service Providers also, which is only putting EPEX system with out creating infrastructure in the field of Telecom?"	Adjourned *sine die*

Sr. No.	Appeal No.	Name of the Assessee	Points involved	Remark
2.	ITA Nos.2668,2669 & 2670/ Ahd/2012 & C.O. Nos.10, 11, 12/Ahd/2012	The People's Co-op. Credit Society Ltd., Deesa	1."Whether the assessee being a Co-operative Credit Society, in view of its function in providing credit facilities to its members, is into the business of banking and is it not being impeded or hit by the provisions of section 80P(4) of I.T. Act, 1961? Further, in view of section 5 of Banking Regulation Act, 1949 and section 2 of NABARD Act, 1981, whether this Co-operative Credit Society is carrying on the Banking Bank?" Business, and for all practical purposed acting like a Co-operative 2. "Whether a Co-operative Credit Society being providing credit facility to its members can be held as banking function, so as to deny the benefit of section 80P(2)(a)(i) by invoking the provisions of section 80P(4)?"	Adjourned *sine die*
	HYDERABAD BENCHES			
1.	ITA No. 18/H/2012	M/s Jagathi Publication Pvt. Ltd., Hyderabad	To hear & decide entire appeal	Adjourned *sine die*
2.	ITA no. 417 to 419/Hyd/2009	M/s. Matrusri Education Society Hyderabad	"Whether collection of capitation fees/ donation or any money by whatever name it is called i.e. donation, building fund. Auditorium fund etc. etc, over and above the prescribed fee for admission of students by the society which was accounted for and untilised for the propose of object of the society disentitles it from claiming exemption u/s 11 or u/s 10(23C)(vi) of the IT Act?"	Fixed on 19-12-2014

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INCOME TAX APPELLATE TRIBUNAL

Figures of institution, Disposal and Pendency of Appeals as on 1-12-2014.

Bench	No. of Benches	No. of Members	Institution	Disposal	Pendency	SMC Pendency
Mumbai	12	14	543	448	24428	20
Pune	2	04	188	140	4643	31
Nagpur	1	–	43	17	1148	21
Panaji	1	02	31	62	346	3
Delhi	9	13	665	366	18364	193
Agra	1	01	24	0	484	0
Bilaspur	1	–	74	0	1226	12
Lucknow	2	02	51	139	1142	7
Allahabad	1	–	44	0	1425	51
Jabalpur	1	–	25	7	896	32
Kolkata	5	03	154	119	7474	37
Patna	1	–	12	0	837	33
Ranchi (Jharkhand) Circuit Bench	1	–	40	104	439	23
Cuttack	1	–	60	0	1032	24
Guwahati	1	–	7	0	926	92
Chennai	4	05	220	153	3734	35
Bengaluru	3	05	183	113	4326	44
Kochi	1	02	39	85	436	10
Ahmedabad	4	06	279	103	12549	226
Indore	1	–	87	117	1876	22
Rajkot	1	–	54	11	1723	60
Hyderabad	2	04	152	154	2229	9
Visakhapatnam	1	–	33	16	1647	0
Chandigarh	2	02	120	107	2211	12
Amritsar	1	02	62	17	1158	24
Jaipur	2	02	70	82	2388	45
Jodhpur	1	–	27	0	262	5
Total	**63**	**67**	**3287**	**2360**	**99349**	**1071**