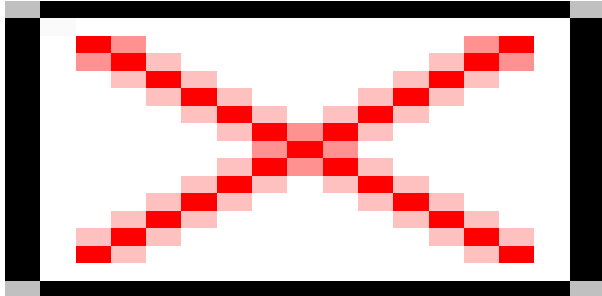


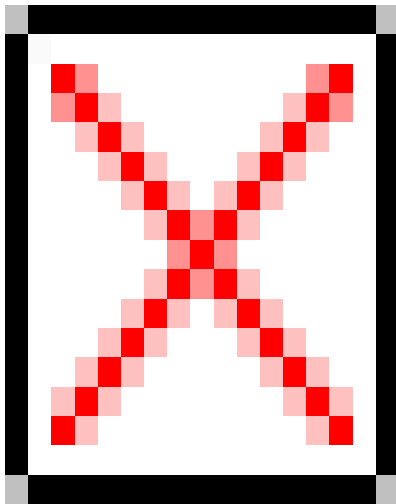
DDT in Limca Book of Records - Fourth Time in a Row



TIOL-DDT 2562

20 03 2015

Friday



YOUR DDT has entered the Limca Book of Records - AGAIN - in the [2015 edition](#)

as the longest running daily online column on tax matters. This is the longest running daily column by a single author on any matter in any publication. This is the fourth time in a row that DDT has entered the Limca Book of Records.

As the citation shows, DDT had completed 2385 issues by June 30, 2014. That is the cut-off date for Limca Book of Records for entries for the year 2015. After that date, **DDT** has come out with nearly 200 issues, as today's DDT is numbered 2562.

DDT is grateful for all the support from the Netizens, the Government and colleagues, who made this possible. **DDT** will continue its pursuit relentlessly, with your support - We are not to make records, but to make the records straight for you.

Jurisprudential - from Supreme Court

DDT brings you a glimpse of a few recent tax cases decided by the Supreme Court recently.

CVD - Import of saloon cars used as taxis - Importer = manufacturer?

Is an importer entitled to avail a Central Excise exemption notification available to a manufacturer? This was the question before the Supreme Court in two appeals filed by the Revenue as well as the assessee. Strangely in this case, two Benches of the CESTAT, Mumbai and Delhi gave contradictory decisions. The Mumbai decision was in favour of the importer and the Delhi Bench decision was against. In both the cases the assessee was the same.

There was a Central Excise notification which allowed a 10 percentage points exemption to saloon cars used as taxis. As it would not be known at the time of clearance whether the car would be used as a taxi or not, the exemption worked on a refund procedure. After the car got registered as a taxi, the manufacturer could seek a refund of this 10 percentage amount. Now the question is whether an importer is eligible for this concession when he imports a car for use as a taxi. The department was of the view that only a manufacturer was eligible to enjoy this concession.

The Mumbai Tribunal held that the importer was eligible and relied on the judgement of the Supreme Court in

Thermax Private Limited v. Collector of Customs (Bombay) - [2002-TIOL-683-SC-CUS-LB](#), in which it was observed, we have to forget that the goods are imported, imagine that the importer had manufactured the goods in India and determine the amount of excise duty that he would have been called upon to pay in that event.

Thus, if the person using the goods is entitled to the remission, the importer will be entitled to say that the CVD should only be the amount of concessional duty and, if he has paid more, will be entitled to ask for a refund.

Interestingly, the Delhi Bench of the CESTAT relied on the same **Thermax**

judgement of the Supreme Court to hold that the benefit is not available to an importer. The two Benches understood the same Supreme Court judgement in two opposite ways.

Strangely the Delhi Bench was aware of the Mumbai decision in the assessee's own case, but refused to follow it.

So, here was a taxi owner who was told that the Customs Law in Mumbai is different from the one in Delhi, for the same imported car though he was told that Mumbai and Delhi happened to be in the same country - India and both the Customs Act and Central Excise Act loudly proclaim that they extend to the whole of India.

Against the Bombay decision, the Revenue is in appeal and against the Delhi decision, the importer is in appeal to the Supreme Court.

The Supreme Court observed "

It is obvious that the purpose of exemption Notification No. 64/93-CE was to extend benefits to the importers of saloon cars to use the said cars for tourist taxis. Going by the spirit and the objective behind this Notification, the irresistible conclusion would be to apply the principle of Thermax Private Limited in the present case as well."

The Supreme Court upheld the decision of the Mumbai Bench of the Tribunal and quashed the decision of the Delhi Bench. Remember the Delhi Bench had refused to follow the Mumbai Bench decision!

The Supreme Court held that assessee shall be entitled to refund of 10% CVD paid by him.

He imported the cars in March 1996 - nineteen years ago and the Supreme Court has granted him the refund now. Even now the battle is not over; it is not guaranteed that he will get his refund - they can now raise the question of unjust enrichment; the cars were not sold but used by the importer as taxis, but that will not prevent the department from arguing that the incidence of duty has been passed on to every passenger who used the taxi and this taximan will be asked to prove that it was not so.

This judgement was delivered by the Supreme Court yesterday. We bring it to you today. Please see [Breaking News](#).

Sales Tax - Commissioner sets aside the administrative order of the Addl. Commissioner - Supreme Court agrees.

In this case an Additional Commissioner of Sales Tax by an administrative relief order condoned the delay in the matter of the registration of the appellant. The Commissioner of Sales Tax, set aside the administrative relief order of the Additional Commissioner. The High Court upheld the order of the Commissioner. The assessee who is a dealer under the Bombay Sales Tax Act, 1959, dealing with the sale of certain foreign and country liquor, filed an appeal in the Supreme Court in 2007.

The Supreme Court held,
we do not see any good ground to interfere with the judgment and order passed by the High Court. Accordingly, the civil appeal is dismissed.

Please see [2015-TIOL-24-SC-CT](#)

Grounded Kingfisher Airlines in flying colours. What about Hero Honda? In [2014-TIOL-1631-CESTAT-MUM](#)

, the appellant Kingfisher Airlines appealed against the order whereby the demand was confirmed on the ground that the appellant is liable to pay service tax on sponsorship service. The appellant had received sponsorship service from BCCI. The Tribunal held that the issue is now settled in case of ***Hero Honda Motors Ltd.*** [2013-TIOL-871-CESTAT-DEL](#)

in which the Tribunal held that sponsorship of sporting events are excluded from the purview of Service Tax.

Revenue took the matter in appeal to the Supreme Court. The Supreme Court on 16th March 2015 dismissed the Revenue Appeal observing, "***Having gone through the records of the case and hearing learned counsel for the appellant, we are of the considered opinion that the appeal, being devoid of any merit, deserves to be dismissed and is dismissed accordingly.***"

Do you know what happened to the Hero Honda case? Another interesting episode in the maze of Indian taxation!

Against the order of the CESTAT, the Government went in appeal to the High Court. The High Court held that it was a question of taxability and the appeal did not lie to the High Court and so dismissed it.

Against the High Court order, the Government went in SLP to the Supreme Court. The case came up for hearing in the Supreme Court recently and then the Government realised its folly. Instead of appealing against the CESTAT order, the Government had filed an SLP against the High Court order. During the hearing, the Attorney General sought the permission of the Court to withdraw the Special Leave Petition with liberty to file appropriate appeal. The Supreme Court granted liberty to file appropriate appeal, within 45 days' time from 27/01/2015. Perhaps the Government has filed this appeal by now.

Isn't this whole exercise a misuse of the judicial system by the very Government which is supposed to be a model litigant?

First they did not know where to file the appeal. After losing the appeal in the High Court, instead of filing an appeal in the Supreme Court, they filed an SLP. They knew that the time to appeal to Supreme Court was long over. They subverted this lapse by filing an SLP and gaining a fresh time to file the appeal. Brilliant babus at work to defeat the system by all means!

In any case, now that the Supreme Court has dismissed the Revenue appeal in Kingfisher , which was entirely based on ***Hero Honda*** , Revenue should fairly submit to the Supreme Court that it has no case.

CBDT Chairman 'soft launches' "National Judicial Reference System"

THE CBDT has embarked upon an ambitious project called "National Judicial Reference System" (NJRS).

NJRS is a computerized repository of all judgments and pending appeals related to Direct Tax cases at ITATs, High Courts and the Supreme Court. It will have intelligent search facilities and work flows for officers of the department engaged in litigation work to enable the department to closely monitor appeals as well as to carry out research and analysis on various issues. The NJRS repository currently has records for over 2.5 lakh appeals filed and 1.45 lakh orders/judgements.

An initial version of the NJRS has been 'soft launched' by the Chairperson, CBDT yesterday i.e. 19th March.

In the final version of the NJRS application, the departmental users will get the following additional facilities: Â·

1. Facility to view the appeal documents being scanned at the Regional Scanning Centres (RSCs)
2. Dashboard for display of jurisdiction specific information about cases in various courts.
3. Provision for case specific communication between officers engaged in assessment work and those engaged in litigation work

4. Alerts for users about new messages received from other users.
5. Calendar for display of cases fixed in the various courts on any particular date
6. Facility to carry out research and prepare case notes.
7. Facility to enter and maintain a case diary for day to day case proceedings.
8. Functionality to identify related cases for bunching of appeals. Facility to mark appeals for priority attention
9. Facility for data analysis and generation of reports. Facility for users to upload articles on litigation issues
10. Facility for uploading the finalized CSRs
11. Facility for High Court Cells to maintain record of appeals allocated to standing counsels.
12. Facility to the DGIT (L & R) office for online processing of SLP proposals.

DIRECTORATE OF INCOME-TAX (LEGAL & RESEARCH) F. No.DIT (L&R)-II/NJRS/XV/2014-15/ Dated: March 19, 2015

Until Monday with more DDT

Have a nice weekend.

Mail your comments to vijaywrite@tiol.in