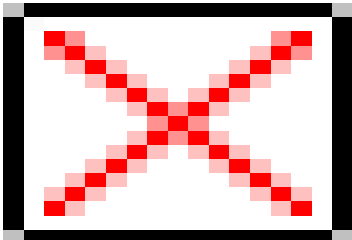


Proposal for CESTAT Hyderabad Bench is Seven Months Pregnant - Delivery in Ninth Month Not Assured - CESTAT President



TIOL-DDT 2123

10.06.2013

Monday

ADDRESSING

a meeting of the FAPCCI at Hyderabad on Saturday, Justice Goda Raghuram, the CESTAT President said that the proposal to start a CESTAT Bench at Hyderabad is seven months pregnant but he was not sure of a safe delivery in nine months. He said that he had strongly pursued for more benches of the CESTAT as more than 90,000 cases are pending. He was confident of getting at least four new benches as the Finance Minister himself was very keen on starting more Benches to release the Revenue locked up in litigation. There is a feeling that the CESTAT and ITAT together hold the key to the Consolidated Fund of India.

In his highly intellectual speech laced with succinct humour, the President cautioned that sanction of a bench is different from a functional Bench. There were problems in getting Members selected for the Tribunal as the selection of Judicial Members was a long drawn out procedure and involves antecedents' verification. Regarding Technical Members, because of the anticipated cadre review, whereby many Commissioners and Chief Commissioners are likely to get higher scales, not many of these officers may opt for becoming a Member of the CESTAT as there is tremendous drudgery in the job without commensurate perks. Till the additional Benches are functional, the President promised to have frequent Circuit Benches in cities like Hyderabad.

Cost Analysis of New Benches:

He said the Government should not be unduly worried about the cost of establishing new Benches as it is part of the constitutional requirement of not levying taxes except by the authority of law and these tribunals are required to test the issues connected with the levies. He drew a comparison with posting soldiers at Kargil. He said in the last sixty five years there was a war for only ten days in Kargil. If we go by the cost benefit analysis, we should not post soldiers in Kargil and lose kargil, but this is not the way things are done.

Training of DRs:

The President said that he is planning to organise judicial training programmes for the Authorised Representatives from the Department so that the Department's case is properly and judicially represented. He plans to invite sitting or retired High Court and Supreme Court Judges and maybe use the services of the National Judicial Academy for this purpose. He said that the Revenue Secretary has supported this plan and it will be implemented soon.

Adjudication by Departmental officers

. While there is a complaint that departmental adjudication is totally in favour of the department, he said the problem is the absence of judicial training and understanding. Law has evolved over years of experience, but when an adjudicator at the level of AC sees a provision for the first time, he feels that he has discovered something new and he is the only one to analyse and interpret the provision. He said that a person who sees the latest version of Sholay without having seen the earlier version may feel what he has seen is fantastic. He said as a young lawyer, he also felt that he was the first one to analyse a provision of Law.

Service Tax is ATM for the Government - from others' accounts:

The Justice compared Service Tax to an ATM. Whenever the Government wanted money, it introduces a new provision; it is as simple as using an ATM card withdrawing money from others' accounts. He said that Service Tax being a new levy, issues are not settled. He cited a

particular case where GMR entered into an agreement with Honda Motor whereby Honda sponsored GMR's Delhi Daredevils in the IPL League cricket matches. Sponsorship in relation to sporting events was excluded from the purview of Service Tax during that period. The Commissioner held that what Honda sponsored was GMR and since GMR is not a sporting event, they were not covered under the exclusion and so were liable to pay Service Tax. The Justice wondered why anyone would sponsor GMR if not for the Cricket.

In this case, Justice Raghuram had remarked, "The conclusion recorded by the adjudicating authority was based on a fundamental misconception of the purpose of the sponsorship agreement; the reasons recorded by the adjudicating authority are misconceived and unsustainable." In an identical case, the judge observed, "

The adjudicating authority cannot engraft its own policy choices and preferences to the legislatively conferred immunity. The above analysis of the adjudication authority, creative as it goes, defies comprehension." **We will bring you the cases tomorrow.**

Continuation of Stay beyond 365 days:

Referring to a Member's apprehension to the recent amendment that a stay granted by the Tribunal would lapse on completion of 365 days, the President said that the decision of the Supreme Court in **Kumar Cotton Mills** - [2005-TIOL-42-SC-CESTAT](#) would still apply and the CESTAT will still have the power to extend the stay beyond 365 days as it did in the earlier period when the stay was valid only for 180 days.

Quote of the Speech: Knowledge is a progressive elimination of ignorance.

Cost Inflation Index

AS

per Section 48 of the Income Tax Act, for calculating capital gains, indexed cost of acquisition is to be deducted from the sale consideration to arrive at the taxable gains. And the Government is to notify a cost inflation index (CII). The government has now notified **939** as the cost inflation index for 2013-14.

Want to know the indices for the previous years? Here they are.

Sr.No	Financial Year	CII	Sr.No	Financial Year	CII	Sr.No	Financial Year	CII
1	1981-82	100	12	1992-93	223	23	2003-04	463
2	1982-83	109	13	1993-94	244	24	2004-05	480
3	1983-84	116	14	1994-95	259	25	2005- 06	497
4	1984-85	125	15	1995-96	281	26	2006-07	519
5	1985-86	133	16	1996-97	305	27	2007-08	551
6	1986-87	140	17	1997-98	331	28	2008-09	582

7	1987-88	150	18	1998-99	351	29	2009-10	632
8	1988-89	161	19	1999-00	389	30	2010-11	711
9	1989-90	172	20	2000-01	406	31	2011-12	785
10	1990-91	182	21	2001-02	426	32	2012-13	852
11	1991-92	199	22	2002-03	447	33	2013-14	939

[Income Tax Notification No. 40/2013, Dated: June 06, 2013](#)

VCES, 2013 and a recent Preventive case

WE received this mail from an exasperated Netizen -

"Sir, I am registered with the Central Excise department and paying my taxes diligently. Yesterday, officers from the Central Excise Department (Preventive) visited my office to conduct a Service Tax enquiry. By the end of the day, the Preventive party informed me that upon going through my records, their intelligence has proved right - and that is I should have paid Service Tax but which I have not been paying for the past many years and one major item was Service Tax in respect of the annual maintenance contracts of the products manufactured and sold by me. Statements were recorded and I braced myself for the worst.

I had heard about arrest provisions introduced this year and did not want to invite the ire of the officers and face imprisonment so offered to pay the Service Tax dues along with interest, penalty etc.

Incidentally, in the morning I had seen and read some advertisements in the daily newspaper issued by the Service Tax Department about Voluntary Compliance Encouragement Scheme.

When I showed them the advertisements and said that I would be more than happy to opt for this Voluntary Compliance Encouragement Scheme for the period from October 2007 to December, 2012, they said that I AM NOT ENTITLED TO DECLARE AND PAY MY DUES UNDER THIS SCHEME FOR THIS "EVASION" HAS BEEN DETECTED BY THEM.

I went through these advertisements many more times but found that there was nothing which supported the view being taken by the Preventive Officers. Now, they have threatened me with a Show Cause Notice for the five year period and also mandatory penalties and interest. I was also told to make spot payments. I said, as agreed, I would pay the entire amount along with interest etc. but within a day or two.

After they left my premises I went through the VCES, 2013 advertisements and the scheme in the Finance Act, 2013.

I found that the definition of "tax dues" given in the Finance Act, 2013, as reproduced below does not debar me from making any declaration and payment even if it is a Preventive case -

"(e) "tax dues" means the service tax due or payable under the Chapter or any other amount due or payable under section 73A thereof, for the period beginning from the 1st day of October, 2007 and ending on the 31st day of December, 2012 including a cess leviable thereon under any other Act for the time being in force, but not paid as on the 1st day of March, 2013."

Further, I am not hit by the provisions of section 106(1) or for that matter 106(2) of the Finance Act, 2013 as neither any SCN has been issued to me as on the 1 st March, 2013 nor any audit/inquiry/investigation had been initiated and which was pending as on 01 st March, 2013.

So, even if the Preventive department manages to issue a SCN in a short time from now, I would still be eligible to file the declaration, pay the dues and get the immunity.

I am sure that many assessees like me or for that matter the non-filers or stop-filers may have also faced such an uncomfortable situation recently and would like to know whether my stand is correct.

I request **DDT**

to carry my plea in its column and seek the views of the netizens and also request the Central Board of Excise and Customs to educate me and all others on the issue."

Hardly anyone pays income tax in India

THE

BBC reported yesterday that Tax avoidance is a big issue in India, where only 3% of the country's 1.2 bn people pay income tax. One factor is that around 400 m people are simply too poor to pay taxes, but India's collection system is also notoriously poor and its tax rules complex to follow. Outright tax evasion by the super rich and many of those on middle incomes is also a major problem. Agriculture is exempt and two-thirds of Indians live in rural areas. A large chunk of the economy is also informal, unorganized labour, for which it's harder to collect taxes. Many argue that some of the country's financial problems would be solved in one fell swoop, if this massive tax hole could be filled.

This report seems to have approval of the CBDT as for some visuals, BBC says, "Courtesy, Income Tax Department".

Further the CBDT Website states:

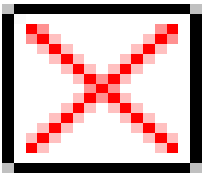
"BBC World News Channel will telecast a story on Income Tax Collections in India at 11 am and 10 pm on Sunday, 9th of June, 2013, and at 6 am on Monday, 10th of June, 2013, as part of India Business Report Show.

The story will also be telecast on Monday, 10th of June, 2013, as part of World Business Report all day.

It is requested that the programme may be viewed by all concerned."

Does CBDT endorse the view that we are a Nation of tax evaders ?

Jurisprudent^{tiol} - Tuesday's cases



Service Tax

Sponsoring Delhi Daredevils is sponsoring in relation to a sporting event - not taxable at the relevant time: CESTAT

THE appellant Hero Motorcorp in an agreement with GMR Sports Pvt. Ltd agreed to sponsor the GMR team called 'Delhi Daredevils' in the tournament conducted under auspicious of BCCI/IPL. The agreement in issue (between GMR and the appellant) clearly constitutes sponsorship. That is also the admitted position, since that is the basis for initiation of proceedings leading to the assessment of the appellant's liability to service tax under provisions of Section 65(105) (zzzn). Since the sponsorship agreement, falls within the exclusionary clause i.e. the clause, which excludes sponsorship services in relation to sports events, the appellant is clearly immune to the charge of service tax.

Income Tax

Whether when partners in a firm make capital contribution in a company by relinquishing rights and such a company is succeeded by another company, which finally sells entire share-holding at book value, such transactions can be construed as colourable device to avoid capital gains tax - NO: ITAT

THE

issue before the Bench is - Whether when partners in a firm make capital contribution in a company by relinquishing their rights and such a company is succeeded by another company, which finally sells entire share-holding at book value, such a series of transactions can be construed as colourable device to avoid capital gains tax. And the answer favours the assessee.

Customs

Goods cleared in DTA by SEZ - Refund of SAD cannot be denied on ground that supplies in DTA are not "imports" for the purpose of Notification No 102/2007 Cus dated 14.09.2007: CESTAT

SUPPLY

of goods from and to SEZ is always a subject matter of different interpretations leading to various disputes. When the revenue demanded export duty on supplies made to SEZ by treating them as "exports", the same was set aside by the High Court of Gujarat in [2009-TIOL-674-HC-AHM-CUS](#) and upheld by the Supreme Court in [2010-TIOL-50-SC-SEZ](#), by holding that the definition of export under SEZ cannot be imported into Customs Act for imposing export duty.

Now, the revenue seeks to deny the refund of SAD (Additional duty of Customs) paid by an SEZ Unit on supplies made in DTA, on the ground that the same cannot be treated as "Imports" for the purpose of extending the benefit of refund under provisions of Notification No 102/2007 Cus dated 14.09.2007.

See our Columns Tomorrow for the judgements

Until Tomorrow with more **DDT**

Have a Nice Day.

Mail your comments to vijaywrite@taxindiaonline.com