Legal Decisions*

DIRECT TAXES

1. Manish Maheshwari and Others vs. ACIT and another (SC) 23/02/2007

Income Tax Act, 1961, s. 158BC - Interpretation of - Search and seizure - Whether the notice dated 06.02.1996 satisfies the requirements of s. 158BD of the Act? - Held, conditions precedent for invoking the provisions of s. 158BD are required to be satisfied before the provisions of the said chapter are applied in relation to any person other than the person whose premises had been searched or whose documents and other assets had been requisitioned under s. 132A - Notice does not record any satisfaction on the part of the Assessing Officer - Documents and other assets recovered during search had not been handed over to the Assessing Officer having jurisdiction in the matter - Appeals allowed.

2. CIT-V, New Delhi vs. Nu-Cork Products Private Limited (Del) 15/02/2007

Income Tax – s. 80-IA, Income Tax Act, 1961 - SSI - Deduction - Substantial question of law - Assessee claimed deduction under s. 80-IA - Assessing Officer declined the assessee's claim - CIT confirmed the order of Assessing Officer - Tribunal vide its impugned order reversed the finding of CIT holding that the assessee was entitled for deduction for ten years from the date of start of its production, and the year under consideration was well within a period of 10 years from the first year from which the assessee was entitled for deduction under s. 80-IA - Tribunal further held that in the earlier assessment year, the assessing officer has allowed the deduction and the rule of consistency which applies to the Income Tax proceedings has to be followed - Held, since the assessee was a small scale industrial undertaking and started its production on 2nd January, 1992, so the assessee is entitled for deduction for the assessment year 2001-02 - No substantial question of law arises for consideration.

3. CIT, Delhi-II (Central) vs. Kulwant Rai (Del) 13/02/2007

Income Tax – ss. 158BC, 260-A, Income Tax Act, 1961 - Block assessment - Search - Substantial question of law - During search one agreement to sell and cash seized from the premises of the assessee - Assessing Officer added 50% of the earnest money amount in the hands of the assessee on the ground that the money was equally shared by assessee and his brother and treated the cash as unexplained cash - Appeal filed by the assessee dismissed by CIT(A) - On appeal, the Income Tax Appellate Tribunal decided in favour of Assessee - Whether any substantial question of law arises - Assessee had not signed the agreement in question - Assessee submitted that the cash remained from the withdrawal from his bank account from time to time - Cash flow statement furnished by the assessee rejected - Held, since the assessee had not signed the agreement, no liability can be attributed qua that agreement towards the assessee since he was not a party to the agreement - Mere fact that the agreement was found in the possession of the assessee does not lead us anywhere - No material relied upon by the assessing officer or CIT to support their view that the entire cash withdrawals must have been spent by the assessee - Impugned order upheld - Order of Tribunal does not give rise to a substantial question of law.

4. CIT, Chennai vs. Dr.K.Senthilnathan (Mad) 07/02/2007

Income Tax Act, 1961 - Appeal against the order of Income Tax Appellate Tribunal - Search of assessee's residence and business premises conducted from 23.11.2000 to 14.3.2001 and a block assessment was framed for the block period 1.4.1990 to 22.11.2000 - Appeal against order of Commissioner of Income-tax (Appeals) levying surcharge on 28.3.2003 at

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17% on the tax payable - Tribunal held that since the proviso to s. 113 which clarifies surcharge in cases of block assessments was introduced with effect from 1.6.2002, surcharges would be applicable only if the search took place after that date - Held, no illegality in the order of the Tribunal - Appeal dismissed.

5. Virtual Soft Systems Limited vs. CIT, Delhi-I (SC) [2007 (159) TAXMAN 155] 06/02/2007

Income Tax Act, 1961, s. 271(1)(c) - Penalty - 'in addition to any tax'/'total income' - Meaning of, - Explanation 4 to s. 271(1)(c) with effect from 1.4.1976 - Held, penal provision has to be construed strictly and narrowly and not widely or with the object of advancing the object and intention of the Legislature - Amended s. 271 (1)(c) as amended by the Finance Act, 2002 with effect from 1-4-2003 being in the nature of a substantive amendment would be prospective, in the absence of any indication to the contrary - Prior to its amendment by Finance Act, 2002 in the absence of any positive income and no tax being levied, penalty for concealment of income could not be levied - 'Total income' can only connote a positive figure and prior to the 2003 Amendment, Explanation 4(a) to s. 271(1)(c) required the computation to be done with reference to 'total income' - Computation in the case of a loss making assessee can not be made - 'in addition to any tax payable' can only be understood as the words 'additional income-tax' - Computation can not be made because there is no total income, and because the computation can not be made, the charge cannot be levied - Impugned order set aside.

6. CIT, Delhi vs. Ram Honda Power Equip (Del) [2007 (158) TAXMAN 474] 12/01/2007

Income Tax Act, 1961, ss. 56, 80HHC(1), 80HHC(3), (4C)(baa) - Interpretation - Finance Act, 1983 - Deduction in respect of profits retained for export business - Export out of India is of goods or merchandise manufactured by the assessee - (1) Does the expression 'profits derived from such export' occurring in sub-section (3) read with Explanation (baa) restrict the profits available for deduction in terms of sub-section (1) to only those items of income directly relatable to the business of export?; (2) Does the expression 'interest' in Explanation (baa) connote net interest, i.e., the gross interest income less the expenditure incurred by the assessee for earning such income?; (3) If the expression 'interest' implies net interest, then should netting be allowed where the interest income is computed to be business income? - (1) determination of the nature of interest income; (2) issue of netting of interest; (3) is netting allowable on business income - Held, interest earned on fixed deposits for the purposes of availing credit facilities from the bank, does not have an immediate nexus with the export business and therefore has to necessarily be treated as income from other sources and not business income; (2) Once business income has been determined by applying accounting standards as well as the provisions contained in the Act, the assessee would be permitted to, in terms of s. 37 of the Act, claim as deduction, expenditure laid out for the purposes of earning such business income - 'Interest' in clause (baa) of the Explanation connotes 'net interest' and not 'gross interest'; (3) Where, as a result of the computation of profits and gains of business and profession, the assessing officer treats the interest receipt as business income, then deduction should be permissible, in terms of Explanation (baa) of the net interest i.e., the gross interest less the expenditure incurred for the purposes of earning such interest.

7. KLM Royal Dutch Airlines vs. Assistant Director of Income Tax (Del) [2007 (159) TAXMAN 191] 12/01/2007

Income Tax Act, 1961, ss. 90, 139, 148 - Powers of the assessing officer to assess or reassess the income - Assessee had filed its return of income under s. 139 declaring a 'nil taxable income' and consequently seeking a refund of tax deducted/ deposited - Exemption under s. 90 had been claimed in respect of income earned from 'technical handling' - Notice under s. 148 issued - Again, assessee filed its return of income once again declaring nil taxable income - Although, no order of assessment had been finalised by the assessing

officer, he invoked s. 147 - Writ petitions filed challenging initiation of re-assessment proceedings; quashing the impugned notice and for quashing the re-assessment proceedings initiated in pursuance to the notice - No assessment has been framed - Whether the pending proceedings under s. 147/148 are palpably devoid of jurisdiction and hence are liable to be terminated - Held, reassessment must invariably be preceded by conclusion of the original proceedings - While assessment proceedings remain inchoate, no 'fresh evidence or material' could possibly be unearthed and if any such material or evidence is available, there would be no restrictions or constraints on its being taken into consideration by the Assessing Officer for framing the current assessment - It is evident that, faced with severe paucity of time, the Assessing Officer had attempted to travel the path of s. 147 in the vain attempt to enlarge the time available for framing the assessment, which is not permissible in law - Since the assessing officer was duty-bound to conclude the assessment before resorting to s. 147, it is our bounden duty to issue a writ of Certiorari as to bring these legal proceedings to a definitive halt.

8. CIT, Bhopal vs. Ralson Industries Limited (SC) [2007 (158) TAXMAN 160] 04/01/2007

Income Tax Act, 1961, ss. 154, 263 - Interpretation of the provisions of s. 154 vis-à-vis s. 263 - Rectification of mistake - Revision of orders prejudicial to revenue - Held, scope and ambit of a proceeding for rectification of an order under s. 154 and a proceeding for revision under s. 263 are distinct and different - An order of rectification can be passed on certain contingencies, it does not confer a power of review - Jurisdiction under s. 154 is only to be exercised when there is an error apparent on the face of the record - Only because an order of assessment has undergone rectification at the hands of the Assessing Officer, the same would not mean that the revisional authority shall be denuded of exercising its revisional jurisdiction - Doctrine of Merger in such a case will have no application - Initiation of a proceeding under s. 263 can not be held to have become bad in law only because an order of rectification was passed - Impugned judgment set aside.

9. Ishikawajma-Harima Heavy Industries Limited vs. Director of Income Tax (SC) [2007 (158) TAXMAN 259] 04/01/2007

Income Tax Act, 1961, ss. 5(2), 9(1)(i), 9(1)(vii), 241(Q)(1) - Appellant a non-resident assessee - Imposition of tax on income arising from a business connection - Payment for the offshore and onshore supply of goods and services was in itself clearly demarcated - Supply segment and service segment have been specified in different parts of the contract - Contract executed in India - Scope of work included supply of equipment, materials and facilities - Held, the very fact that in the contract, the supply segment and service segment have been specified in different parts of the contract is a pointer to show that the liability of the appellant thereunder would also be different - By entering into a contact in India, although parts thereof will have to be carried out outside India would not make the entire income derived by the contractor to be taxable in India - Whether the income that arises out of the said transaction would be required to be proportioned to each of the territories or not - Held, income arising out of operation in more than one jurisdiction would have territorial nexus with each of the jurisdiction on actual basis; it may not be correct to contend that the entire income 'accrues or arises' in each of the jurisdiction - As the permanent establishment's non-involvement in this transaction excludes it from being a part of the cause of the income itself, thus there is no business connection - Entire transaction having been completed on the high seas, the profits on sale did not arise in India - If any services have been rendered by the head office of appellant outside India, only because they were connected with permanent establishment, even in relation thereto, principle of apportionment shall apply.

10. Kachwala Gems vs. Joint Commissioner of Income Tax, Jaipur (SC) [2007 (158)

TAXMAN 71] 14/12/2006

Income Tax Act, 1961- ss. 144 - Best judgment assessment - Assessing Officer noticed defects in the books of account, rejected the same and resorted to best judgment assessment- Assessing Officer further held that the assessee has shown bogus purchases in order to reduce the gross profits - In appeal, the CIT upheld most of the findings of the Assessing Officer, but reduced the gross profit from 40 per cent to 35 per cent - In further appeal, the Tribunal had given further relief to the assessee and reduced the gross profit rate to 30 per cent - Held, as bogus purchases is a finding of fact, the Court can not interfere with the same in the present appeal - As cogent reasons have been given by the income tax authorities for rejection of the books of account, there is no reason to take a different view - In a best judgment assessment, there is always a certain degree of guess work - It is the assessee himself who is to blame as he did not submit proper accounts.

11. S.A. Builders Limited vs. CIT (Appeals), Chandigarh (SC) [2007 (158) TAXMAN 74] 14/12/2006

Income Tax Act, 1961 – s. 36(1)(iii) - Interest on borrowed loans - Allowability - Assessee borrowed the fund from the bank and lent some of it to its sister concern (a subsidiary) on interest free loan - Assessing Officer disallowed proportionate interest relating to the amount out of the total interest paid to the bank since the assessee had diverted its borrowed funds to a sister concern without charging any interest - On appeal, the CIT partially accepted the claim of the assessee - Both the assessee as well as the revenue filed appeals before the Tribunal and the Tribunal allowed the appeal of the revenue - Appeals filed by the assessee in the High Court were dismissed - Appellant submitted that there is no direct nexus between the amount borrowed by the appellant-assessee from the bank and the loans advanced by the appellant-assessee to its sister concern, as no amount was so advanced by raising an interest bearing loan - Held, an expenditure is allowable as a business expenditure, if it was incurred on grounds of commercial expediency - Neither the High Court nor the Tribunal nor other authorities have examined whether the amount advanced to the sister concern was by way of commercial expediency - Where a holding company has a deep interest in its subsidiary, and hence if the holding company advances borrowed money to a subsidiary and the same is used by the subsidiary for some business purposes, the assessee would ordinarily be entitled to deduction of interest on its borrowed loans -Impugned orders set aside.

12. American Hotel and Lodging Association Educational Institute vs. Central Board of Direct Taxes (Del) [2007 (158) TAXMAN 146] 24/11/2006

Income Tax Act, 1961, s. 10(23C)(vi) - Petitioner branch office of a non-profit organization set up in America carrying on educational activities - On an application filed by the head office, the Authority for Advance Rulings concluded that the petitioner was carrying on purely educational activities or activities relating to provision of educational facilities and hence fulfilled the conditions precedent to the applicability of s. 10(22) - Central Board of Direct Taxes rejected the application for initial approval of exemption under s. 10(23C)(vi) - Head office and the branch office are really one entity, one subordinate to the other - (1) Whether the amounts generated by the Petitioner in India are its income or not; (2) whether the income generated by the petitioner is required to be applied by it in India for obtaining approval from the prescribed authority under s. 10(23C)(vi) - Held, (1) petitioner generated income in India, and if it had some surplus, it remitted the amount to America; (2) application of the income is required to be in India for the purposes of s. 10(23C)(vi) - Parliament introduce s. 10(23C)(vi) precisely to limit the exemption from taxation to only such educational institutions which fulfil the prescribed conditions with regard to application and accumulation of income - Impugned order upheld.

13. Gowardhan Das and Sons vs. CIT (P&H) [2007 (288) ITR 481] 28/09/2006

Income Tax Act, 1961, s. 22 - Reference - Assessability - Rental income from letting out open plinths - Income Tax Officer held that the income was rightly taxable under the head 'Income from other sources' - On appeal, the Assistant Commissioner held that the income should be assessed as 'Income from property' - On further appeal, the Tribunal held that the head was rightly classifiable under the head 'Income from other sources' - Whether the Income Tax Appellate Tribunal was right in law in holding that the rental income from letting out open plinths is assessable under the head 'Income from other sources' and not under the head 'Income from house property' - Held, kutcha plinths on open land can not be termed as house property - Property from which income was derived, was neither building nor land appurtenant thereto within the meaning of s. 22 - No building having been let out, there is no question of treating the rent received for letting out of land only as income from house property.

14. CIT vs. Nellai Trading Automobile Agency (Mad) [2007 (288) ITR 557] 23/08/2006

Income Tax Act, 1961, s. 271(1)(c) - Penalty - Imposition - Concealment of income - Assessing Officer found certain discrepancies in the quantitative particulars of stock in the invoices and also that the same were not accounted for under sales or in the closing stock as on the last day of the accounting year - Assessing Officer levied a penalty under s. 271(1)(c) - On appeal, the Commissioner allowed the appeal holding that it was not a fit case for levy of penalty - On appeal by the Revenue, the Tribunal dismissed the appeal - (1) Whether the Tribunal was right in deleting the penalty under s. 271(1)(c) when the assessee has undisputedly concealed the particulars of his income and furnished inaccurate particulars of such income; (2) Whether the Tribunal was right in holding that the explanation, that the stock received was not included in their inventory as they remained unpacked, is sufficient to avoid penal action under section - Revenue contended that omission to admit the correct stock was deliberate and the penalty under s. 271(1)(c) has been correctly levied - Held, the first appellate authority as well as the second appellate authority found that the explanation offered by the assessee was a reasonable one and came to the conclusion that there was no intention to conceal the income and that it was a genuine mistake because there is no falsehood in the explanation offered by the assessee - Impugned order upheld - No substantial question of law.

15. CIT vs. Statronics and Enterprises Private Limited (Guj) [2007 (288) ITR 455] 22/08/2006

Income Tax Act, 1961, s.32A - Reference - Deduction-Additional depreciation-Assessee-company engaged in the business of data processing system designing and software development and supply. While completing the assessments, Assessing Officer allowed certain deductions to the assessee-company - Commissioner held that since the computers were installed in the office premises, additional depreciation was not admissible on the same and extra shift allowance for triple shift to the data processing equipment was also not admissible - On appeal, the Tribunal held that data processing and printout would certainly be a thing produced by the assessee and was entitled to the deduction under s. 32A and the computer machinery installed by the assessee is plant and machinery, as a natural corollary, the assessee would be entitled to the additional depreciation - Whether the Tribunal is right in law in holding that (1) the investment allowance and additional depreciation is allowable on computers; (2) data processing and print out would certainly be a thing produced by the assessee even if not a thing manufactured by the assessee and thereby the assessee company is entitled to deduction under s. 32A; (3) computer machinery installed by the assessee company are plant and machinery as a natural corollary and thereby the additional depreciation is entitled to the assessee - Held, the words 'office premises' though would be covering

office, but industrial premises would not come within the office premises if the said premises are used for data processing - Office premises are used as industrial premises for production of the data processors - Questions answered against the interests of the Revenue.

INDIRECT TAXES

Excise & Customs

1. Share Medical Care vs. Union of India and Others (SC) 23/02/2007

Customs - Appellant-Society imported certain medical equipments for the use in its charitable hospital - Claim of exemption under Notification No. 64/88-Cus dated March 1, 1988, by which exemptions were granted to hospital equipments imported by specified category of hospitals (charitable) subject to certification by Directorate General of Health Services - Whether the appellant could claim exemption under category 3 and non-consideration of the said application by the Deputy Director General (Medical) is in consonance with law? - Held, initially the appellant claimed exemption under category 2 of exemption notification which was granted - That, however, does not mean that the appellant could not claim exemption under category 3 - Even if an applicant does not claim benefit under a particular notification at the initial stage, he is not debarred, prohibited or estopped from claiming such benefit at a later stage - Appeal allowed.

2. Triveni Chemicals Limited vs. Union of India and Another (SC) [2007 (207) ELT 324] 15/12/2006

Excise - Central Excise Act, 1944, s. 11B - Central Excise and Customs Laws (Amendment) Act, 1991, s. 3 - Refund - Entitlement - Excess duty - Disputed classification - Application for refund rejected by the Assessing Authority - Appeal filed by the appellant for refund allowed by the Collector of Central Excise - Despite several representations amount not refunded - Writ petition filed by the appellant dismissed - Whether s. 11B, as amended by s. 3 of the Central Excise and Customs Laws (Amendment) Act, 1991 would be applicable - Held, as no further appeal was filed against the order of the appellate authority, the order has attained finality - It was obligatory on the part of the concerned authorities to comply with the order passed by the Collector in view of the doctrine of judicial discipline – s. 11B did not apply to a case where the proceeding had come to an end before coming into force of the said amending provision - High Court was not correct in opining that the appellant was bound to prove that the incidence of duty was not passed on to its customers - Impugned judgment set aside.

3. Shree Ambica Steel Industries vs. CCE, Chandigarh-II (P&H) [2007 (207) ELT 656] 27/11/2006

Excise - Central Excise Rules, 1944, r. 57-I, Central Excise Act, 1944, ss. 11A and 11AA, - Modvat - Wrongly availed - Show Cause Notice issued alleging that, the assessee wrongly availed modvat credit in respect of goods which were never manufactured by the assessee - Adjudicating Officer directed the assessee to pay duty with interest and penalty - On appeal, the appellate authority affirmed the finding of the adjudicating authority - On further appeal, the Tribunal through its brief order, upheld the impugned order but set aside penalty and held that simple purchase of raw material under duty paid invoices as claimed by the assessee was not enough for claiming Modvat credit when the assessee failed to prove use of inputs in relation to manufacture of goods which was the statutory requirement - Assessee submitted that the order of the Tribunal was a non-speaking order - Held, both the adjudicating as well as the appellate authority had minutely examined the matter - Impugned orders are not vitiated on the ground that the same were perverse or had not considered the view point of the assessee - No substantial question of law arises.

4. CCE, Delhi-III vs. Myron Electricals Private Limited (P&H) [2007 (207) ELT 664] 21/11/2006

Excise – Central Excise Rules, 1944, rr. 52AA, 174 - Circular No. 441/7/99 dated 23.2.99

- Notification No. 7/99-CE - Modvat - Inputs -Department issued a show cause notice disputing the claim of the assessee on the ground that the registered dealer had stopped functioning from the registered premises -Adjudicating authority confirmed the demand and imposed penalty which was upheld by the appellate authority - Tribunal accepted the appeal of the assessee holding that payment of duty, receipt of inputs and use of inputs in the final product stood proved and as per clarification from the Board, credit could not be disallowed, once payment of duty and receipt and use of inputs was established - Whether a manufacturer can avail credit on inputs on the strength of invoices issued by a dealer from the premises other than for which Central Excise registration has been granted under r. 174 read with r. 52AA - Held, Circular No. 441/7/99 dated 23.2.99 as well as Notification No. 7/99-C.E. amended r. 57G to the effect that if the goods were received and payment of duty and use thereof was verifiable, credit could not be denied merely on the ground that the documents did not contain all the particulars - No substantial question of law arises.

5. Commissioner of Central Excise Ludhiana vs. Avon Cycles Limited (P&H) [2007 (5) STR 258] 20/11/2006

Excise – Central Excise Act, 1944, s. 11A, - Limitation - Extended period - Invocation - Substantial question of law - Assessee guilty of wilful suppression of facts with an intent to evade payment of duty - Assessee submitted that in the process of execution of civil contract, manufacture of excisable goods was not involved - Claim of the assessee was rejected, on the ground that though in execution of civil contract, manufacture of excisable goods may not be involved, a case for invoking extended period of limitation was held to have been made out - Tribunal accepted the claim of the assessee - Ratio in Mahindra & Mahindra Ltd v. CE, Aurangabad, Chandigarh, Kanpur and Chennai 2005 (190) E.L.T. 301 (Tri.- LB): 'It is also to be noted that there was no demand of duty on such items till the amendment of heading 73.08 w.e.f. March 1990. Thus, during most of the period impugned in these appeals, the appellants activity did not attract excise duty at all' - Held, it can not be held that the assessee had suppressed the facts entitling the revenue to invoke extended period of limitation - No substantial question of law arises for consideration.

6. CCE, Jalandhar vs. Mukerian Paper Limited (P&H) [2007 (207) ELT 648] 20/11/2006

Excise - Central Excise Rules, 1944, r. 57AG - Notification No. 6/2000 - Show-cause notice issued asking for reversal of credit in respect of inputs lying in stock under process when the assessee started clearing goods without payment of duty - On appeal, the appellate authority upheld the demand of duty, but reduced the quantum of penalty - The Tribunal dismissed the appeal filed by the assessee - Whether the Tribunal was correct in allowing credit utilized by the parties before availing exemption Notification No. 6/2000 based on quantity of clearances, when the same credit relates to inputs lying in stock or used in finished excisable goods lying in stock on the date when the option for exemption was exercised especially in view of specific provisions r. 57AG - Revenue did not prefer any appeal before the Tribunal against the decision of the appellate authority which had reduced the penalty - Held, as the revenue did not prefer any appeal before the Tribunal, it was, thus, not aggrieved by the order of the appellate authority which had reduced the penalty - No substantial question of law arises for consideration.

7. Commissioner of Customs vs. Shiraj International (P&H) [2007 (207) ELT 665] 17/11/2006

Customs – Customs Act, 1962, s. 114A - Wilful evasion - Penalty - Reduction - Assessee claimed the benefit of Special Additional Duty (SAD) of customs in respect of its import - The claim was disallowed and apart from demand of duty, interest was charged and penalty was imposed - On appeal, the Tribunal noticed that the benefit which had been taken by

the assessee was not attracted, but the amount of penalty was reduced - Whether CEGAT can reduce the mandatory penalty imposed under s. 114A which is equal to duty demanded - Held, penalty is provided for a wilful evasion and the same could be equal to the duty or interest, as provided in the statute - As in the order of the Tribunal, the finding of wilful evasion has not been recorded, the difference of amount involved is not significant - Question of law sought by the revenue does not requires reference to this Court for opinion.

8. Finolex Cables Limited vs. CCE, Goa (CESTAT) [2007 (5) STR 261] 13/11/2006

Excise - Central Excise Rules, 1944, r. 57F - Cenvat - Eligibility - Pre-meditated purpose of exports - Circular No. 283/118/96-CX., dated 31-12-1996 - Appellant received orders for export of 'continuous cast copper wire rods 8 mm', an input used for the manufacture of their final product - Appellants procured continuous cast copper wire rods in excess of their requirement for use in their production and the excess goods were exported along with their finished products - Excess procured inputs were exported by them after paying duty - Department took the view that the quantity received in excess of the requirement could not be treated as inputs eligible for taking Cenvat credit - Held, if the manufacturer were to export without payment of duty under bond, he was eligible to export and he was also eligible to retain and use the duty on the inputs which have gone into manufacture of the product - If he had chosen to export on payment of duty, he would be eligible for rebate on duty - Board's circular clearly envisages that exports under claim for rebate and export under bond should be at parity - Impugned order set aside.

SERVICE TAX

9. Indian Farmers Fertilizer Co-Operative Limited vs. Commissioner of Central Excise, Bareilly (CESTAT) [2007 (5) STR 281] 26/12/2006

Service Tax – Finance Act, 1994, ss. 69, 73 - Service Tax Rules, 1994, r. 2(l)(d)(iv) - R&D Cess Act, 1986 -Consulting engineer services - Composite agreement in respect of the 'know-how' - Adjudicating Authority held that the services were definitely in the nature of consulting engineer services and hence taxable - On appeal, the Commissioner upheld the order -Agreement referred to 'technical information', which was to comprise of technical data, besides referring to 'technical assistance' - Held, the agreement stipulated not only supply of technical knowledge, but also rendering of engineering services in connection with the designing and implementation of the project of the appellant - Amount of consideration which is relatable to technical assistance rendered, in whatever form, was required to be subjected to service tax and only the part of consideration that related to the licensed use of technical information and processes, was required to be considered as the consideration in respect of the transfer of the intellectual property in the know-how, not amenable to service tax - Amount of consideration which is relatable to the services provided as consulting engineer are taxable - Appeal partly allowed.

10. Ravi Paints and Chemicals Limited vs. CCE, Chennai-I (Mad) [2007 (5) STR 182] 01/12/2006

Service Tax - Pre-deposit - Waiver - Assistant Commissioner sanctioned a refund of an amount which was in excess of the amount originally claimed by the appellant and rejected at an earlier stage of appeal - Show cause notice issued to the appellant for recovery of the excess amount erroneously sanctioned to the appellant - Appellant reiterated his claim before the original authority but the same was rejected - Appeal preferred before the Commissioner was also rejected on the ground of non-compliance of the order in the stay application to pre-deposit for entertaining the appeal - On further appeal, the Tribunal directed the appellant to pre-deposit the amount - Appellant filed a writ petition before the High Court wherein the Commissioner was directed to dispose of the appeal on merits - Appeal preferred

by the appellant before the Commissioner was again dismissed - Whether the Appellate Tribunal was justified drawing inference on questions relating to fact and act as an original authority without giving a proper opportunity to the appellant to explain the same - Held, appellant directed to pay 50% of the disputed amount - Matter remitted back to the file of Commissioner of Central Excise.

11. Paras Advertising and Marketing Services Private Limited vs. Commissioner of Service Tax, Ahamedabad (CESTAT) [2007 (5) STR 205] 10/11/2006

Service Tax - Finance Act, 1994, ss. 75, 75A, 76, 77, 78 - Pre-deposit - Waiver - Appellant entered into an agreement with another company to render services as 'market organizer of its products for the promotion, sale and distribution' - Commissioner held that the appellant was rendering services as C&F agent and confirmed a demand besides imposing penalty and interest - Appellant contended that they were only functioning in advisory capacity and have not directly functioned as C&F agents - Held, no prima facie strong case has been made for waiver of deposit of duty demanded - Directions issued for depositing pre-deposit.

12. Honda Motor Company Limited vs. Commissioner of Service Tax, Delhi (CESTAT) [2007 (5) STR 195] 08/11/2006

Service Tax - Recovery - Pre-deposit - Waiver - Issue regarding know-how in the context of service tax - Show cause notice issued to the appellant wherein it was alleged that the appellant have provided taxable service under the category of 'consulting engineer' without registering and also it failed to remit service tax - The Commissioner, on the basis of the material on record and keeping in view the terms of the agreement, held that the appellant was liable to pay tax - Held, directions issued for depositing Rs. 5 lakhs and on the amount being so deposited, there shall be waiver of pre-deposit of the remaining amount of tax and penalty payable under the impugned order, during the pendency of the appeal.

OTHERS

1. State of Arunachal Pradesh vs. M/s Damani Construction (SC) 28/02/2007

Arbitration and Conciliation Act, 1996 - Respondent entered into a contract agreement with the State of Arunachal Pradesh in Public Works Department for executing the contractual work of construction of road bridges - Delay in execution of the work - Arbitrator passed an interim award - Application for setting aside the award together with an application under s. 5 of the Limitation Act for condonation of delay - High Court held that order passed by the Deputy Commissioner in condoning the delay was not correct - Appeal against - Held, when the award dated 12.10.2003 was passed the only option with the appellant was either to have moved an application under s. 34 within three months as required under s. 34(3) or within the extended period of another 30 days - Reply sent by the arbitrator does not entitle the appellant a fresh cause of action so as to file an application under s. 34(3) of the Act, taking it as the starting point of limitation from the date of reply given by the arbitrator i.e. 10.4.2004 - Appeals dismissed.

2. National Thermal Power Corporation Limited vs. Siemens Atkeingesellschaft (SC) 28/02/2007

Arbitration and Conciliation Act, 1996 - Counter claim filed against claim for compensation for the delay for executed contractual work - Arbitral Tribunal held part of counter claim did not survive as evidenced by Minutes of the Meeting (M.O.M.) - Appeal against partial award on ground that the arbitrators' refusal to go into the merits of counter claim amounted to declining jurisdiction in terms of sub-section (2) of s. 16 of the Act - Held, what the Tribunal has found is that in view of the M.O.M. wherein the various claims of either party were thrashed out and settled, party could not pursue most of the claims set out in the counter claim, it is not a decision by the Arbitral Tribunal either under s. 16(2) or Section 16(3) of the Act and High Court rightly held appeal not to be maintainable under s. 37(2)(a) - Appeal dismissed.

3. Vibhu Bhakru vs. Standard Chartered Bank, India Bank Card Centre, Bangalore (NCDRC) 20/02/2007

Consumer Protection Act, 1986 - Complainant was issued a Credit Card - Recovery of dues - Complaint claiming compensation for mental agony and trauma suffered by him, for the unfair trade practice as well as loss of reputation, his credit worthiness because of his name having been put on the defaulters list in the Industry Wide Negative Bureau - Held, Conduct of the O.P Bank amounts to the grossest kind of deficiency in service on the part of the O.P. Bank and unfair trade practice as well as flagrant breach of terms of the contract as to the mode of recovery of dues and non-settlement of dispute for several months and rather had put the complainant on defaulters' list which has the effect of causing irreparable and irreversible damage to the reputation of a person, his credibility and financial standing and creditworthiness - Imposed a punitive damages of Rs. Ten Lakhs to be deposited in favour of "State Consumer Welfare Fund (Legal Aid)" and award Rs. 20,000/- (Twenty Five Thousand) as a compensation to the complainant - Direction given to all banks - Complaint disposed of.

4. Messrs Kumar Motors, Bareilly vs. Commissioner of Sales Tax, Uttar Pradesh (SC) 02/02/2007

Sales Tax – s. 2 (e-1), 3-AAAA, U.P. Sales Tax Act, 1948 - Purchase Tax - Levy - Appellant had purchased 'Vikram three wheeler Chassis' upon issuing III-A form and did not pay any purchase tax in respect of the purchases - Appellant was held to be liable to pay purchase tax on the premise that upon mounting the body of auto rickshaw on the chassis and sale having not been made on the same condition and form, purchase tax was leviable - Appellant contended that having regard to the provisions contained in s. 3-AAAA, no purchase tax is payable as the condition remained the same - Whether mounting of the body of the auto rickshaw on the chassis would amount to 'manufacture' - Held, in terms of Form III-A, goods once sold to a registered dealer must be sold in the same form and condition in which he had purchased - Sales made by the assessee of chassis with mounted body would be selling a product which is in different condition from the chassis or the body - Would be liable to purchase tax under s. 3-AAAA(a).

5. M/s B.G. Shirke Construction Technologies Private Limited vs. Additional Commissioner of Commercial Taxes (SC) 02/02/2007

Sales Tax – Karnataka Sales Tax Act, 1957 - ss. 8A(5)(a), 24(1) - Notification No.FD.43. CSL 94(iv) dated 31.3.1994 - Contravention - Penalty - Whether tower cranes fall under the ambit of the term "industrial inputs" - Appellant, whose main activity is construction of mass houses purchased tower cranes from another registered dealer and had availed concessional rate of tax at 4% by producing declaration Form No.37 - Assessing authority held that the nature of the business activity carried on by the assessee was not one of manufacturing or processing of goods for sale and, therefore, it has contravened the specified conditions under the notification, and raised a demand - On appeal, the appellate authority allowed the appeal and set aside the orders passed by the assessing authority - On appeal by the Revenue, the Additional Commissioner of Commercial Taxes came to the conclusion that the first appellate authority was not justified in allowing the appeal, but reduced the amount of penalty was reduced by 50% - On further appeal, the High Court upheld the order - Appellant contended that a narrow construction has been put on the expression 'industrial input' and by giving a broader interpretation, the appellant was entitled to get the benefit of the notification - Tower Cranes can not be considered as industrial inputs for use either as a component part or as a raw material of any other goods - Levy of penalty of Rs. 5 lakh. ❐