

Legal Decisions*

DIRECT TAXES

1. *Virtual Soft Systems Limited vs. CIT, Delhi-I (SC) (06/02/2007)*

Income Tax Act, 1961 - High Court held that the Tribunal was not right in deleting the penalty imposed under s. 271(1)(c) merely on the ground that the total income of the assessee was assessed at a minus figure/loss - Appeal against - Held, it is held that 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 - Appeal allowed.

2. *CIT, New Delhi vs. R.N. Kumar (Del) (24/01/2007)*

Income Tax - Sections 148, 260-A, Income Tax Act, 1961 - Reopening assessment and addition - Substantial question of law - On receipt of information from ADI, notice under Section 148 issued to the Assessee - Assessee did not file any return - Assessing Officer issued notice under Section 142(1) and the reassessment was done by making addition on account of cash credits appearing in the books - Reason stated for addition was that a hundi broker, through whom these amounts have been received, indulged in 'Hawala' transaction - Issue of reopening the assessment and addition travelled up to the Tribunal and the Division Bench of the Tribunal upheld the action and set aside the assessment to be framed afresh - Appellant contended that the order of Income Tax Appellant Tribunal was contrary to the facts and law since the Assessing Officer had specifically carried out the enquiry and in spite of various opportunities, the assessee could not establish the identity, genuineness or creditworthiness of the creditors - Assessee had established the credits and the Assessing Officer being satisfied, did not make any addition in the original proceedings - Assessee did not know any of the creditors personally - Held, since the loans was

not taken directly by the assessee, the helplessness shown by him to produce the parties or tell their present whereabouts could not be termed as non-cooperation, particularly, when the matter was more than 20 years old - As no fault can be found with the view taken by the Tribunal, the order of Tribunal does not give rise to a substantial question of law.

3. *S.K. Industries Private Limited and others vs. DGIT (Inv) (DEL) (19/01/2007)*

Income Tax - Sections 132(1)(a), (b), (c), 153A, Income Tax Act, 1961 - Simultaneous search - Legality - Writ Petition was filed challenging the legal propriety of the search conducted, on the ground (a) for the non-existent reasons to believe on the lines stated in Section 132(1)(a), (b) and (c) of the Act; (b) that the assessment proceedings initiated under Section 153A pursuant to the search are illegal - Appellant contended that a mere suspicion, in contradistinction to the belief that circumstances envisaged under Section 132 of the Act exist, should not be the motivation for authorising and conducting a search, and there must be objective criteria or information having a direct nexus or live link to the persons subjected to a search in order to justify such action being carried out by the Revenue, which action invariably has a socially deleterious impact on the persons subjected to it - Revenue contended that there was sufficient information to entertain a reasonable belief that circumstances envisaged under Section 132 existed - Held, provisions relating to search and seizure in section 132 and rule 112 can not be regarded as violative of articles 19(1)(f) and (g) - Maze of commercial dealings between various companies owned by the Group, of which the petitioners appear to be an integral and inseparable part, was sufficient justification for a simultaneous search being conducted on all the businesses - Not possible to conclude that the Department had initiated a roving

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enquiry to allay or satiate their suspicions - Sufficient material to come to an objective as well as subjective reasonable belief that a search under Section 132 was justified and necessary - Search was not in the nature of a roving or fishing enquiry - Costs imposed.

4. *B.M. Gupta and Sons vs. ACIT, New Delhi (DEL) (17/01/2007)*

Income Tax - Section 5 (1) (a), 260A, Income Tax Act, 1961 - Section 25(B), Finance Act, 2000 - Rent arrears - Income from house property - Appellant received arrears of rent during the financial year on account of arrears of rent for the previous year - Appellant contended that the arrears were damages and mesne profits received in the compromise settlement between the appellant and the tenant - Commissioner of Income Tax as well as the Appellate Tribunal did not agree with the contentions of the appellant - Whether sum of arrears was in the nature of mesne profits and not arrears of rent and could not be brought to tax under the head 'income from house property' - Ratio in *Commissioner of Income Tax vs. Ms. Sadhna Chadha*, 270 ITR 534 - Held, arrears of rent would attract the provision of s. 5(1)(a) - Arrears of rent are to be assessed in the year to which they relate and not in the year of actual receipt - Impugned orders upheld.

5. *CIT, Delhi and Others vs. Ram Honda Power Equip and Others (Del) (12/01/2007)*

Income Tax Act, 1961 - Interpretation of s. 80HHC - Whether 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?; Whether 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? - Held, in computing what the profits derived from exports for the purposes of 80HHC(1) read with 80HHC(3) are, the nexus test has to be applied to exclude that which does not partake of profits that can be said to have been

derived from the business of exports - Order accordingly.

6. *KLM Royal Dutch Airlines vs. Assistant Director of Income Tax (Del) 12/01/2007*

Income Tax Act, 1961, s. 148 - Re-assessment proceedings initiated against assessee - Petition for quashing impugned Notice under s. 148 - Held, initiation of proceeding under s. 147 of the Income Tax Act, 1961 was irregular and illegal on the ground that Returns of Income having been filed and since no order of assessment had been finalised by the AO, there was no scope for invoking s. 147 - Pending proceedings are quashed - Petitions allowed.

7. *Ishikawajma Harima Heavy Industries Limited vs. DIT, Mumbai (SC) (04/01/2007)*

Income Tax Act, 1961 - Offshore supply and offshore services - Issues are (a) the taxation of the price of goods supplied, by way of offshore supply price of which is specified in Ex. D, Clause 2.1; and (b) the taxation of consideration paid for rendition of services described in the contract as offshore services at Ex. D. - Held, distinction between the existence of a business connection and the income accruing or arising out of such business connection is clear and explicit - Permanent establishment's non- involvement in this transaction excludes it from being a part of the cause of the income itself, and thus there is no business connection - Only such part of the income, as is attributable to the operations carried out in India can be taxed in India - Transfer of property in goods as well as the payment, were carried on outside the Indian soil, the transaction could not have been taxed in India - Appeal partly allowed.

8. *CIT, Madurai vs. Indian Ocean Garnet Sands Company Private Limited, Tuticorin (Mad) (02/01/2007)*

Income Tax Act - Assessing Officer disallowed the claim of the assessee in respect of replacement expenditure on magnetic roll separator and treated the same as capital expenditure - Whether Tribunal was right in allowing a deduction of the amounts spent on

replacement of machinery as revenue expenditure?; Whether replacement of independent complete machinery can be treated as revenue expenditure?; Whether Tribunal was right in deciding the issue without going into the concept of block of asset? - Held, expenditure on replacement of machinery is revenue expenditure and therefore, the Tribunal was right in allowing the claim of the assessee - No claim for depreciation was ever made before any authorities either by the assessee or by the Revenue to consider the question of block of assets nor was there any necessity to do so - No substantial question of law arises - Appeal dismissed.

9. *CIT vs. Assam State Book Production and Publication Corporation Limited (Gau) [2007 (288) ITR 352] (13/11/2006)*

Income Tax - Section 10(22), Income Tax Act, 1961 - Exemption - Assessee-respondent, a Government company is engaged in production and publication of books - Assessee claimed exemption from payment of income tax under s. 10(22), which the Assessing Officer declined to accept - On appeal, the Commissioner rejected the appeal by holding that the assessee does not fulfill either of the criteria and as such the exemption under s. 10(22) of the Act can not be allowed - On further appeal, the Tribunal was of the opinion that the assessee was an educational institution and as such its income is to be exempted under s. 10(22) - Appellant contended that the assessee-respondent was a profit earning corporation and was neither an university nor an educational institution within the meaning of s. 10(22) - Respondent contended that it was an educational institution existing solely for educational purposes - Whether the assessee can be treated as an educational institution existing solely for educational purpose and not for the purposes of profits within the meaning of the provision of s. 10(22) of the Act - Held, activities carried on by the assessee-respondent like production, printing and publication and sale of books and other commercial activities are not activities of an educational institution established solely for educational purposes within the meaning of s. 10(22) - In the absence of training activities, the provision of s. 10(22) of the Act are not applicable to any firm or corporation - Assessee-respondent not an educational institution - Impugned orders quashed.

10. *Jayashree Tea and Industries Limited vs. CIT and Others (Cal) [2007 (288) ITR 386] (10/11/2006)*

Income Tax - Section 143, Income Tax Act, 1961 - Leave encashment - Liability - Mistaken entry - Assessee-appellant did not claim any deduction on account of leave encashment which they might have to pay to their employees under the scheme - Assessment was complete and the assessee accepted

the same by not preferring any appeal from the order of assessment - The Supreme Court in *Bharat Earth [2000] 245 ITR 428 (SC)* held that such a liability on account of leave encashment was a liability in praesenti and such liability could not be termed as contingent liability and the assessee was entitled to get appropriate deduction by making a debit entry in their profit and loss account - Assessee applied for revision before the Commissioner within the statutory period of limitation, but the Commissioner dismissed the revisional application by holding that the benefit of the judgment could not be applied retrospectively - Appellant-assessee filed a writ petition, which was dismissed by the single judge on the ground that extending the benefit of the judgment would amount to double benefit and further directed reopening of the assessment for other assessment years - Whether the assessee-appellant was entitled to the benefit of the decision for the particular assessment year where assessment had been completed prior to delivery of the judgment in case of *Bharat Earth [2000] 245 ITR 428 (SC)* - Held, such decision could have been made applicable in case such revisional application was pending as on the date of delivery of the apex court decision - Impugned order of Commissioner upheld and that of the single judge directed reopening of the assessment for other assessment years set aside.

11. *Raj Kumar Chaurasia vs. CIT (All) [2007 (288) ITR 329] (30/10/2006)*

Income Tax - Sections 115JA, 271(l)(c), Income Tax Act, 1961 - Penalty - Concealment of income - Bad and doubtful debts - Assessee split his business income with his wife - Investments introduced by the applicant remained unexplained and were offered by the applicant himself to be added in his income - Penalties imposed by Income Tax Officer - On appeal, the Appellate Assistant Commissioner deleted the penalties - In his revised order, the Commissioner of Income Tax (Appeals) again cancelled the penalties imposed by the Income-tax Officer and held that the initial burden was on the assessee to explain that the difference between the returned income and the assessed income

did not represent the assessee's concealed income - On further appeal, the Tribunal upheld the action of the assessing authority in imposing penalty and held that the business carried on by the applicant in the name of his wife was the business carried on by the applicant - Held, onus lies upon the assessee to prove that the difference between the assessed income and the returned income has not been concealed by him nor there has been any fraud or gross or wilful neglect on his part to give correct particulars of his income - In the penalty proceeding, neither any fresh material nor any evidence has been placed before the authorities nor any other plausible explanation had been offered by him to show that there was no gross or wilful neglect on his part nor there was any fraud in not disclosing the correct income - Penalty proceedings are not vitiated.

12. *Maimunabai Usman and Others vs. Appropriate Authority and Another (Bom) [2007 (288) ITR 359] (09/10/2006)*

Income Tax - Section 269UD(1), Income Tax Act, 1961 - Undervaluation - Compulsory acquisition - Petitioners entered into an agreement to sell their flat - Filed Form No. 37-I for approval of the transaction - Show Cause notice received as to why an order should not be made under s. 269UD(1) - Petitioners attended before the appropriate authority and cited two instances of transaction in the same building, one being identical to the one involved in the present transaction - Appropriate authority passed an order holding that there was an undervaluation and, therefore, directed compulsory acquisition of the flat - Held, as per the calculations reflected in the order of the appropriate authority, there is no undervaluation to the tune of 15 per cent involved in the present petition - Impugned order set aside.

13. *Joint Commissioner of Income Tax and others vs. Usha Martin Industries Limited and others (ITAT) [2007 (288) ITR(AT) 63] (06/10/2006)*

Income - Section 115JA, Income tax Act, 1961 - Schedule VI, Companies Act, 1956 - Doubtful debts, advances and investments - Whether to be treated as unascertained liabilities

- Provision for doubtful debts had been deducted by the assessee for computation of book profit under s. 115JA - Assessing Officer determined the book profit as per s. 115JA and charged the tax on the book profit as per s. 115JA - Commissioner of Income Tax reversed the action of the Assessing Officer - Whether the provisions made for doubtful debts, advances and investments fall within the purview of adjustments under section 115JA - Appellant submitted that the provision for doubtful debts has rightly been deducted by the assessee for computation of book profit under s. 115JA and, therefore, the action of the Assessing Officer in adding back such provision holding the same as unascertained liability was not correct - Held, s. 115JA has an overriding effect upon the other provisions of the Income Tax Act - Assessing Officer does not have the jurisdiction to go behind the net profit shown in the profit and loss account except to the extent provided in the Explanation and thereafter the Assessing Officer has to make adjustment permissible under the Explanation given in s. 115JA - Provision for bad and doubtful debt is the provision for diminution in the value of asset - Once the provision is not for any liability, the question whether the liability is ascertained or unascertained does not arise - Clause (c) of the Explanation to s. 115JA would not be applicable in respect of provision for bad and doubtful debts - If the provisions made by the assessee for depreciation, renewals and diminution in the value of the assets are for any known liability, if it is in excess of the amount which is reasonably necessary for the purpose for which the provision is made, the excess shall be treated as a 'reserve' and not a 'provision' - Impugned order upheld.

14. Sangam Enterprises vs. Commissioner of Income Tax (All) [2007 (288) ITR 396] (03/10/2006)

Income Tax - Section 271(1) (a), Income Tax Act, 1961 - Penalty - Search and seizure - Undisclosed profit - Assessee showed income below the taxable limit for unregistered firm - Total income assessed by the Assessing Officer was much above the taxable limit - Tribunal

deleted the penalty only on the ground that the element of *mens rea* was not established - Assessee contended that the additions which converted the non-taxable income as taxable can not bring the assessee's case within the purview of s. 271(1)(a), because there was reasonable cause preventing the assessee from filing the return in time - Revenue contended that the assessee could not be said to be prevented from reasonable cause from filing the return in time as it was a search and seizure case where the unexplained capital and extra profit could be added only after incriminating documents were recovered - Held, the present case related to the assessment year when the Explanation had been substituted in 1976, which contained the deeming provision and the element of *mens rea* has been dispensed with - After the insertion of Explanation 1 to s. 271(l)(c), if the explanation offered by the assessee regarding the additions is either found to be false and remained unsubstantiated, the additions so made are deemed to be the concealed income, and therefore, the penalty provisions are attracted - Tribunal has completely misdirected itself in cancelling the penalty.

INDIRECT TAXES

Excise & Customs

1. CC, Mumbai vs. Vishal Exports Overseas Limited (SC) (12/02/2007)

Customs Act, 1962, s. 114 - Duty Entitlement Pass Book (DEPB) Benefit/Scheme - Assessee exported 4.8 lakh pieces of coffee mugs - Assistant Commissioner of Customs proceeded against assessee by alleging that the assessee had mis-declared the FOB value at US \$3.40 (Rs.150/-) per piece - Assistant Commissioner held that the goods were liable to be confiscated and the penalty also ordered - Tribunal set aside the orders of the authorities - Appeal against - Held, from the orders of the first and the appellate authorities nothing can be found to hold that the FOB price was excessive or not genuine - Accepted findings of the Tribunal in the absence of any concrete evidence having

been put to support the contention of counsel that the FOB price is inflated - FOB price is supported amply by the BRCs with which no fault is found - Appeal dismissed.

2. CC (Port), Kolkata vs. J.K Corporation Limited (SC) (02/02/2007)

Customs Act, 1962 - Whether customs duty would be payable on the purchase price of the goods by adding the value of licence and technical knowhow, etc. to the value of the imported goods? - Appeal by revenue - Held, what would be excluded for computing the assessable value for the purpose of levy of custom duty, inter alia, has clearly been stated that any amount paid for post-importation activities - No part of the knowhow fee was to be incurred by the respondent herein either for the purpose of fabrication of the plant and machinery or for any design - No case has been made out that the sale price of the imported plant and machinery had been under-stated - Appeal dismissed.

3. Rajesh Kumar Sharma vs. Union of India and Others (SC) (02/02/2007)

Customs Act, 1962 - Petitioner applied for compounding of an offence - Compounding Authority allowed the application and imposed compounding amount of Rs. 10, 00, 000/- - Writ petition against - Plea that compounding amount as fixed is beyond the permissible limit - Held, crucial words in the Rule are "whichever is higher" - Interpretation given by petitioner that the word "up to" applies to both 20% of the market value of the goods or Rupees Ten Lakhs is clearly unacceptable - Petition dismissed.

4. Satish Gupta vs. Union of India and Others (Del) (24/01/2007)

Customs Act, 1962; Customs House Agents Licensing Regulations, 1984 - Description of the goods was not as per the declaration filed in the shipping bills - Goods were overvalued to claim the higher rate of drawback - Penalty of Rs.1 lac on appellant Director of Agent company - Appeal against - Held, agent is duty bound to exercise due diligence to ascertain the correctness of information which he imparts

to his client with regard to work relating to clearance of cargo and shall also ensure that all documents prepared or presented by agent on behalf of his client are strictly in accordance with the export orders relating therein - Since, very beginning the Appellant knew that the goods were mis-declared by the exporter and higher value was also mentioned to draw higher rate of duty drawback no merit in this appeal - Appeal dismissed.

5. Suchitra Components Limited vs. C.C.Ex., Guntur (SC) (17/01/2007)

Appeal directed against the final order passed by the Customs, Excise & Service Tax Appellate Tribunal-Held, Relied on *Commissioner of Central Excise, Bangalore versus M/s. Mysore Electricals Industries Ltd., reported in 2007 (204) E.L.T. 517* wherein it is held that a beneficial circular has to be applied retrospectively while oppressive circular has to be applied prospectively - when the circular is against the assessee, they have right to claim enforcement of the same prospectively - Appellant is liable to pay the duty from 29.8.1990 i.e. from the date of issue of the show cause notice and not from 1.3.1990 as ordered by the Tribunal - Appeal allowed.

6. Colgate Palmolive (I) Private Limited vs. CC, Mumbai (CESTAT) [2007 (207) ELT 133] (23/10/2006)

Excise - Valuation - Assessable value - Related persons - Enhanced as the authorities concluded that the importer and the supplier were related companies and as the price was only meant for group company transaction, it can not be considered as arms length price - Original adjudicating authority observed that since the importer was paying royalty and technical know-how fees to the holding company, it was to be considered for enhancing the assessable value - Appellant submitted that the fact that the importer and the supplier were related persons, can not lead to rejection of the transaction value unless there are evidences to show that the relationship has influenced the price - Held, inter-company price list can not be considered to be a factor that such price list does not reflect the correct sale value in the absence

of any tangible and possible evidence - As the royalty charges were not related for the development of the product under import, the same could not constitute an element of the assessable value for the imported product which is in fully finished form - Impugned order set aside.

7. *Ashnoor Textiles Mills Limited vs. C.C.Ex. (Adjudication) (P & H) [2007 (207) ELT 179] (12/10/2006)*

Excise - Section, Central Excise Act, 1944 - Article 226 of the Constitution of India, 1950 - Jurisdiction - Pending matter - Application moved by the petitioners for seeking further directions by the Court in the proceedings pending before the adjudicating authority - Comprehensive directions have already been issued - Held, petitioners are interested in delaying the proceedings and are seeking directions to control the day to day proceedings before the Adjudicating Officer, which does not

fall within the jurisdiction to be exercised by the Court under Article 226 of the Constitution of India - Application an attempt to either seek review of the earlier order passed by the Court or to delay the proceedings.

8. *Pooja Enterprises vs. Commissioner of Central Excise and Customs, Vapi (CESTAT) [2007 (207) ELT 264] (10/10/2006)*

Excise -Rule 57-I, Central Excise Rules, 1944 - Section 11A(2), Central Excise Act, 1944 - Modvat - Natural justice - Violation - Non-supply of documents - Appellant issued show cause by the respondent for alleged fraudulent Modvat credit - On appeal, the Commissioner, Central Excise & Customs confirmed all the allegations and demanded Modvat credit while imposing penalties - On further appeal, the Tribunal remanded the matter back to the Commissioner - Despite personal visit and correspondence between the appellant and

the departments office, the appellant was nor provided with large number of important documents - Commissioner once again passed an ex parte order confirming the demands - Department submitted that no manufacturing activity took place - Held, the Commissioner erred in coming to such conclusion without proper enquiry - As there is no satisfactory evidence on record to negate the contention of non-supply of documents, the adjudicating authority has denied the principles of natural justice whereby the defence of the appellants is prejudiced - As the Department did not object for payment of the duty on clearances of the final product, although according to the Department no manufacturing activity took place, the duty amount which has been received amounts to effective reversal of the credit availed - Impugned order suffers both on the ground of violation of principles of natural justice and as well as on the ground of revenue neutrality - Impugned order set aside.

9. *In Re : Orissa Industries Limited (SCCE) [2007 (207) ELT 312] (11/09/2006)*

Excise - Section 32E, Central Excise Act, 1944 - Rule 8(4), Central Excise Rules, 2002 - Settlement Commission -Appellant could not pay the amount of duty within 30 days - Deputy Commissioner forfeited the facility of paying excise duty in installments and directed the applicant to pay duty consignment-wise by debiting from PLA for a period of two months - During the period when the applicant was under orders to pay duty only by debiting PLA, the applicant used Cenvat credit a/c for payment of duty - Show Cause Notice issued stating that the act was to be deemed as removal without payment of duty - During pendency of appeal, the applicant filed the Application under Section 32E for an early resolution of dispute, admitting additional liability and stated that an equivalent amount was re-credited into their Cenvat account - Held, applicants have already deposited money against demand of duty and accepted liability to the extent of the entire amount - Applicants co-operated fully with the Commission and by making true and

full disclosure of their duty liability, accepted and agreed to adjust the entire amount of duty out of the amount paid - Cases settled with terms and conditions.

Service Tax

10. *Siemens Limited vs. State of Maharashtra and Others (SC) [2007 (5) STR 3] (01/12/2006)*

Payment of cess - Whether High Court in exercise of its jurisdiction under article 226 of the Constitution of India would interfere with a demand directing payment of cess? - Held, statutory authority has already applied its mind and has formed an opinion as regards the liability or otherwise of the appellant - If in passing the order the respondent has already determined the liability of the appellant and the only question which remains for its consideration is quantification thereof, the same does not remain in the realm of a show cause notice - Matter is remitted to the High Court.

11. *C.C.Ex., Delhi-V vs. Indian Oil Corporation Limited (P&H) [2007 (5) STR 84] (16/11/2006)*

Central Excise Act, 1944 - Appeal under s. 35(G) of the Central Excise Act against the order of the CEGAT - Whether the penalty under Section 11 AC is mandatory and equal to the duty demanded or the authority has discretion to impose lesser penalty? - Revenue contended that the authority has no discretion to impose less penalty - Held, since assessee is a public sector undertaking and having regard to the fact that no finding had been recorded by the Tribunal that THE assessee had intention to evade the payment of duty - NO substance in the appeal.

12. *In Re : Premier Ispat Limited (CCEA) [2007 (5) STR 150] (15/11/2006)*

Finance Act, 1994 - Appellants were also engaged in providing services of C&F agent and were receiving commission from their principal as remuneration - were liable to pay Service Tax @ 5% of the value of remuneration received according to the Revenue - whether the service for procuring order for the principal

in consideration of commission is taxable under the C&F agent service - Appellant has pleaded that their services provided by them are not in the nature of clearing & forwarding operation but are covered under Business Auxiliary Service - Under Section 65(25) of the Act, C&F Agent means any person who is engaged in providing any service either directly or indirectly connected with clearing and forwarding operation in any manner to any other person and includes a consignment agent - CBEC Circular No. 37-B No.2/1/2002-ST dated 24-4-2002, further clarified that a C&F Agent carries out all the activity in respect of the goods right from the stage of their clearances from the premises of the principal to its storage - Appellants have only procured orders for his principal- Mere procuring of orders by an agent on commission basis would not amount to providing services of C&F Agent, within the meaning of Section 65(25).

13. Bajaj Auto Finance Limited vs. C.C.Ex., Pune (CESTAT) [2007 (5) STR 139] (02/11/2006)

Finance Act, 1994 - Application for waiver of pre-deposit of service tax as a result of a holding that since the applicant were engaged in hire-purchase finance, they were liable to service tax under Section 65(10) of Chapter V of the Finance Act, 1994 - means "financial leasing services including equipment leasing and hire-purchase by a body corporate" - Held that prima facie the nature of the transaction between the applicants and their customers is a hire-purchase finance transaction - Hire-purchase and hire-purchase financing are not synonymous - waive pre-deposit of service tax and cess and penalty and stay recovery thereof pending the appeal.

OTHERS

1. Union of India and Another vs. S.K. Goel and Others (SC) (12/02/2007)

Service - Seniority - Held, observations of the High Court are wholly unjustified inasmuch as the post of Commissioner of Customs and

Central Excise is a post required to be filled up on selection made strictly on the basis of merit - No judicial review of DPC proceedings, which are ordinarily conducted in accordance with the standing government instructions and Rules is warranted - DPC enjoyed full discretion to devise its method and procedure for objective assessment of suitability and merit of the candidate being considered by it - Interference by the High Court is not called for - Appeal allowed.

2. Gomzi Active vs. Reebok India Company and Another (SC) (02/02/2007)

Suit seeking permanent injunction against the respondents by restraining them from using their product logo/trade mark "I am what I am" and for payment of damages and for rendition of accounts - Not granted temporary injunction - Appeal against - Held, issues have already been framed and the High Court had directed disposal of the suit within a period of six months from the date of order - Proper course would be to direct the concerned Court to dispose of the matter as early as practicable, preferably within four months, as issues are stated to have been already framed - Appeal disposed of.

3. P. Jayaraj vs. R. Saroja (Mad) (01/02/2007)

Negotiable Instruments Act, 1881 s. 138 - Trial Judge come to a conclusion that the accused is not guilty to warrant conviction acquitted the accused from the charges levelled against - Whether the Judgment of the trial Court is perverse and against the provisions of law to warrant any interference from this Court? - Held, to warrant conviction under s. 138 complainant must prove that there was a debt created by the accused and was in existence and to discharge the said debt, a cheque was drawn by the accused and when the cheque was presented in the bank for realisation, it was dishonoured by the bank saying there was no sufficient funds in the account of the drawer - No reliance can be attached to Ex P7 because it does not contain signature of the accused or any other details - Not find any reason to interfere with the findings of the trial Judge - Appeal dismissed.□