

Communique

NEWS LETTER FOR PRIVATE CIRCULATION AMONG THE LEGAL FRATERNITY

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Part 5

Tax Structure Needs Simplification

—Justice A. J. Sadashiva

Justice A. J. Sadashiva called upon the Sales Tax Department and the Sales Tax Practitioners to work towards simplification of tax structure. He said that the passing of every year tax structure is getting complicated as more and more new goods and articles are being added / deleted from the schedule of items leviable for tax.

While pointing out that economic progress of the country was dependant upon the tax raised through various agencies Justice Sadashiva regretted that the matter was not being looked at from a national perspective. Elaborating this aspect he opined that each section of society is only interested in finding ways and means to safeguard its own interest and little attention is being paid to look at it from a national perspective.

Justice Sadashiva expressed these views after inaugurating the one day State Level Seminar on "Relationship between Sales Tax Department, Tax Payers and Tax Consultants" held in Bangalore under the aegis of the Karnataka Tax Consultants' Association. His Lordship also stated that the country's economy was passing through a critical phase and if the same situation continues the country would have to bow to the dictates of rich nations.

FKCCI President Mr. B. V. Rajashekhar Reddy who presided over the seminar was of the opinion that

unfortunately there has been a distrust than understanding and co-operation among the Department, Tax Payers and Tax Practitioners. He felt that in the light of the changing economic scenario and liberalisation of economy there should be an open dialogue among the three sections of Tax Collectors, Tax Payers and the Tax Consultants to reduce the irritants and to establish mutual trust, understanding and goodwill.

Mr. V. R. Radhakrishna, Addl. Commissioner of Commercial Taxes (HQ), Karnataka who was the Chief guest in the seminar underlined that co-operation should be the basis among all the three sections of the "tax family" with a view to sort out misgivings, if any. Welcoming the guests to the seminar Mr. S. K. Nahar, President of K T C A, in his initial remarks called for formation of Tax Associations involving the people with a view to demistify the tax system.

Other speakers of the seminar included D. R. Balaji Singh, JCCT (Admn), G. S. Gopalakrishna, DCCT (AIT), S. Narayana, E. R. Indrakumar and K. P. Kumar, Advocates, J. Crasta and Mehta, representing Tax Payers.

Obituary

□ On 10 - 7 - 93 B. Shivashankar, Advocate, Devanahalli, passed away.

Subba Reddy Re-elected

Mr. K.N. Subby Reddy has been re elected as the President of AAB for the period 1993-95. This is the fourth consecutive victory of Mr. Subba Reddy to the office of the President Mr. A.G. Shivanna and Mr. C. Benjamin have been elected as the General Secretary and Treasurer of the Association for the first time.

The other office bearers are as follows : City Unit: H.P. Leeladhar, Vice President, M.K. Jagadeesha, Joint Secretary. Magistrate Court Unit: S.R. Lakshminarayana Setty, Vice-President: S. Murthynath, Joint Secretary. Mayo hall Unit: Bhaktavachala, Vice-President, B. Krishnappa, Joint Secretary. Election to the posts of Vice President and Joint Secretary of the High Court Unit have been deferred.

The following have been elected as the Governing Council Members ; City Unit : Ms. V. Jayalakshmi, Smt. B.V. Nalini, V. Manjunath. A.M. Ramaiah, P. Reddy Nagendra kumar, H.R. Vishwanath, S. Jayanna, Sampige C. Mahadeva Murthy, V.S. Shivaramu and D.G. Chinnappa Gowda. High Court Unit: Ms. A.N. Shanthala, N.P. Amruthesh, S.A. Kalagi, A. Lobo, K. Vijayakumar, Mallikarjuna S. Mylar and V.C. Patil. Magistrate Court Unit: B. Basavaraju, H.V. Venkataramana Gowda and N. Udaya Kumar. Mayo Hall Unit : K.T. Pemmaiah, V.S. Kandaswamy and M.N. Shivakumar.

News Spectrum

□ Closely on the heels of permitting Mr. Kapil Sibbal, Counsel for Justice. V. Ramaswamy to appear before the Lok Sabha it had the opportunity of hearing Mr. Milon Bannerjee, Attorney-General of India, on 4-8-93 regarding the powers of the Central Election Commissioner under Article 324 (6) of the Constitution of India. After independence this was the third occasion when Attorney-General appeared before Lok Sabha and apprised it with their views on constitutional issues.

□ Recall that a few years ago our Supreme Court gave a ruling that the street hawkers and the pavement dwellers have a fundamental right of livelihood and as such they cannot be arbitrarily prevented / evicted from the pavements. Closely on the lines of this Judgment recently a Federal Appeals Court in Newyork ruled that the beggars had the right to ask money from the passers by on the sidewalks.

News Focus

□ On 30.7.93 Prof. T. Ramesan, former Principal, Central College, Bangalore, addressed the members of AAB.

□ On 5.8.93 Sri Chandulal, the Bangalore City Police Commissioner, inaugurated a Seminar sponsored by AAB on the topic "Compulsory Wearing of Helmets by Two-wheel Vehicle drivers." Prof. S. M. Channabasavanna Director. NIMHANS, Bangalore, was the other speaker.

You can't live without lawyers and certainly can't die without them
- J. H. Ghote

Experiments and Experience

The recent re-allocation of work done in the Bangalore City Civil Court has created more problems to the lawyers and the litigants than it was hoped to solve. Even in the past re-allocation of work was resorted to in the City Civil Court and a study of any results such re-allocation has achieved, if any, was required to be undertaken before embarking upon the latest experiment. Obviously such an in-depth study seems to have not been undertaken at this juncture.

Any re-allocation of work involves both temporary and long term problems in the matter of disposal of the cases not with standing the bonafide intentions of such experiment. As such it is desirable that such experiments are carried out sparingly that too when it is certain that the desired result would be achieved.

With the establishment of the Bangalore City Civil Court in the Bangalore Metropolitan Area during 1980 it was reasonably expected that the two tier legal remedy would drastically cut down the longevity of the over all litigative process besides expediting the disposal of the suits presented before the City Civil Courts. Care was also taken to see that the City Civil Courts are presided over by the District Judges who have had good experience as members of the subordinate judiciary and or as lawyers. However, these reasonable expectations have been substantially belied in as much as the number of cases pending before the Bangalore City Civil Courts have steadily increased during the past twelve years or more. Perhaps, an indepth study as to the causes responsible for such mounting arrears coupled

with the study of City Civil Courts in other Metropolis may be required to be undertaken by the administration before hoping to provide a speedy and efficacious adjudicative process.

□ Over the past two months it is noticed that a single judge of the High Court is assigned the task of attending to all Civil Revision Petitions. As a result the court will have atleast two cause lists one for HRC and the other for Non HRC Revisions. However, the practice in the past was different in as much as the two kinds of CRPs were handled by different judges. While it is not known as to the reason for effecting this vital change it is suffice to state that the new system has created problems for lawyers and litigants.

The new system has considerably increased the work load of the Court. Further the lawyers have to wait for substantial portion of the day before one court. It is to be noted here that while the non HRC CRPs consume practically the morning session of the Court's time other lawyers whose cases are in the HRC category will have to wait before this court since both the cause lists are issued for morning as well as afternoon sessions. Instead, it might be examined whether separate cause lists can be issued for morning and afternoon sessions one containing the HRC and the other non HRC Revisions even if it is required to be handled by a single judge. Alternately the old system of allowing different judges handling HRC and non HRC cases can be restored.

These measures will go a long way in mitigating the problems faced by the lawyers and the litigants.

BOOK REVIEW

L. S. Venkatakrisna, Advocate

The Code of Civil Procedure, 1908, Second Edition, by Prof. V. Narayana Swamy. S B C Law Publications, Calico bound, Price Rs. : 360.

The Code of Civil Procedure, 1908 as amended by amending Act, 1976, is a brilliant piece of legislation of lasting scholarship. The arrangement of the Civil Procedure Code is a novel one. It consists of two parts—the first containing provisions which are more or less of a substantive character and the second containing provisions which relate to 'matters of mere machinery'. The sections which form the body of the Code, constitute the first part. The Rules and Orders included in Schedule I constitute the second part.

Justice T. L. Venkatarama Iyer – former Judge of the Supreme Court of India – has delivered fourteen law lectures on the subject 'A key to practice—being a summary of the Code of Civil Procedure'. In his inimitable style the learned judge has said that the C. P. Code has to be mastered by all practicing lawyers and judges to efficiently and effectively handle the innumerable cases of 'civil nature' which crop up in the day-to-day litigations in the Courts of India. It is widely believed that a lawyer who has acquired a knowledge of the C. P. Code will have the finesse of clarity, effectiveness and sophistication in the treatment and conduct of the cases in any Court or Tribunal. The C. P. Code, as a tool in the hands of the practicing lawyers, provides specific answers in the matter of procedure and conduct of the cases.

Prof. V. Narayanaswamy, in embarking upon the compilation of the case law on the C. P. Code of the Supreme Court from 1950 - 1993 and the High Court of Karnataka

from 1956 - 1993, has turned out a stupendous work evidencing sincerity and dedication, backed by his vast experience as a practicing lawyer and as an academician of repute. It may not be an exaggeration to say that his dedicated work of five years in the compilation of the case law on the C. P. Code has earned him a pride of place among group of authors who have had inspiration from D. F. Mulla, a legendary jurist of revered memory and repute.

The C.P. Code is very voluminous containing 158 Sections, 51 Orders and innumerable Rules. It is well nigh impossible to remember each and every section and Rules, muchless the plethora of case law which have been churned out by the various High Courts and the Supreme Court. Therefore, with a view to make the reading and understanding of the subject and application of the decided cases of the Supreme Court and the High Court more purposeful, the learned author has appropriately and meticulously compiled the case law in keeping with the changed scenario of litigations in our country.

While dealing with Section 9 of C.P. Code an attempt has been made to show the different varieties of the suits of civil nature. The citations of the cases are also very appropriate. Similarly citations under Section 11 C.P. Code vis-a-vis Section 9 drive home the distinction with clarity. The practicing lawyers' difficulty in finding out the right place of suing has been to a large extent solved with the clear citations

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Bofors Case

Swiss Federal Court Clears the deck

By its judgment dated 12.7.93 the Swiss Federal Court (Supreme Court) upheld the validity of the letters-rogatory sent by the Indian Court calling for legal assistance from the Swiss Federal Bureau in unravelling the names of recipients of commission from Bofors in connection with 155 mm Howitzer gun deal it had with India. The Court ruled that the letters rogatory conforms to the Swiss criminal law.

Rejecting the contentions raised by the appellants viz the Swiss Authorities are bound by the secrecy of Swiss Bankings laws. The Court ruled that the Swiss Authorities are legally obliged to comply with of the legal requirements, the letters rogatory. The Federal Bureau of Switzerland expressed its opinion that before the end of this year all details concerning the accounts of the recipients of commission can be furnished to the Indian authorities.

Lawyers desert Court

On 14.7.93 Lawyers at Madhugiri boycotted Court proceedings in protest against the illegal detention of Puttaramaiah, Advocate, by the Sub-Inspector of police of Huliurdurga.

Library Block Inaugurated

On 24.7.93 Justice S.B. Majmudar, the Chief Justice of the High Court of Karnataka, inaugurated a new Library Block at the Mayo Hall Unit. Mr.K.N. Subba Reddy presided over the function. Justice S.A. Hakeem was present during the function.

Book Released

On 26.7.93 Mr K.N. Subba Reddy released the Karnataka Land Revenue Digest, Part II, compiled by Prof. V. Narayana Swamy. Mr. M.S. Bhujanga Rao, former president of the AAB and a senior member of Bangalore Bar, presided.

Around the Courts

□ Muslim Women (Protection of Rights on Divorce) Act, 1986 :

A single judge of the Kerala High Court held that a divorced Muslim Woman was not entitled to claim the rights under Muslim Women (Protection of Rights on Divorce) Act, 1986 for a reasonable and fair provision and maintenance from her former husband in case the dissolution of their marriage had been done by a mutually agreed document. The High Court set aside the order of the Magistrate who had ordered the husband to pay Rs.21,000 to the wife.

Mytheen Vs. Sophiya, DD
12 7 93

Humour in Courts

□ The following exchange took place during closing arguments in a Court room :

Prosecutor : "I believe the law is commonsensical, and I believe this case be based on commonsense",
Defence Counsel : "Your Honour, I am going to object to that. I believe the Court will instruct the Jury what the law is, and Commonsense is nowhere in the law"

Judge : "Objection sustained"

□ A grand old man had a long-running dispute with a neighbour. He finally decided to see a lawyer to determine the legal aspects of the controversy. After the old man gave the lawyer one sided version of the dispute the lawyer assured him that the case was air-tight and asked when he want to start the legal proceedings.

"Never", said the grand old man "I gave you his side of the story".

BOOK REVIEW

(from page 2)

concerning the jurisdiction of the courts. The case law on the Discovery and Inspection of the documents and the calculation of interest in money suits have been well arranged. While culling out the case law, particular care has been taken to weed out the "Deadwood". In the matter of execution, discharge and satisfaction of the Decrees under Section 47 C.P. Code, enough care has been taken to cite cases concerning money decrees, mortgage suits, property suits, declaratory suits in relation to order 21 C.P. Code.

While dealing with the Second Part of the Code, which is essentially a procedure under Schedule I, the learned author has dealt with all the cases of utmost importance and application starting from parties to the suits, provisions regarding law of pleading, amendment of pleadings, production of documents and the cases concerning the provisions of appeals (Order 41 and 43 C.P. Code), Revision Petitions under Section 115 C.P. Code and Review Petition under Order 47 read with Section 114 C.P. Code, provision concerning the execution of the decrees under Order 21, compromise petitions under Order 23, prohibitory orders under Order 38. and the equitable injunctive reliefs have all received a detailed treatment in the citation of varieties of cases, each interlinked with the subject. However, the cases specially concerning the prohibitory orders under Order 38 and the injunctive reliefs under Order 39 under different heads could have been listed to make it more specific and informative. Besides, the learned author has also given in detail the amendments introduced after 1976, including the Karnataka amendments.

This compilation of the case law of the Code of Civil Procedure is by any standard a work of great utility. Highly informative, it is bound to be of great assistance to both the Bar and the Bench as a ready reckoner with the latest case law.

(Prof. L. S Venkata Krishna is a teaching faculty member of the B M S Law College Bangalore — Editor)

Supreme Court

□ On the Essential Commodities Act, 1955 : In a recent judgment the Supreme Court has held that Special Courts set up under the Essential Commodities Act have the power of Judicial Magistrate under the Criminal Procedure Code. The Court ruled that the Special Courts can stop an investigation if it is not completed within 6 months of the arrest of the trader who has been charged with hoarding commodities in violation of the Act. This position will also apply to all summons cases, the Court said.

It is to be noted that under Section 167(5) of the Criminal Procedure Code the further investigation can be ordered to be stopped into the offence unless the officer investigating satisfies the Magistrate that for special reasons and in the interest of justice the continuation of the investigation beyond the period of 6 months is necessary.

The State of West Bengal Vs Falguni Dutta.

Miscellany

□ Sri G.R. Shivakumar, Advocate, has been elected as the Hon. Secretary of Divyajyothi Credit Co-operative Society Ltd., III Block, Jayanagar, Bangalore - 11 for the year 1993-94.

□ On 30.7.93 P.N. Nanjarreddy, Advocate, opened his law chamber at No.187 & 188, I Floor, 10th Cross, Cubbonpet Main Road, Bangalore 560 002.

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