BRIEF CASE ● M J ANTONY

A weekly selection of key court orders

Deviation from tender conditions allowed

The authorities can deviate from the conditions for sale by tender if the terms are not essential parts of the offer. In such cases, strict literal compliance is not required, the Supreme Court has stated in its judgment in Om Prakash vs Ramesh Chand. Setting aside the judgment of the Himachal Pradesh High Court, the apex court stated that conditions in advertisement inviting bids could be classified into two categories — those which lay down the essential conditions of eligibility and the others which are merely ancillary or subsidiary to the main object to be achieved. In the first case the authority may be required to enforce them rigidly. In the other cases it is open to the authority to deviate from and not to insist upon the strict literal compliance of the condition in appropriate cases. The dispute in this case arose when the Himachal tourism department invited bids for outright purchase of sites located at three places. One party succeeded in getting a site for a café, which was contested by a rival. The letter of intent in favour of the winning party was challenged on the ground that no reserved price was set and the condition regarding submission of annual turnover and net worth for last the three years was not complied with by the winner. The Supreme Court rejected these contentions stating that it was a case of outright purchase of the site and "there was no continued existence of any particular level of financial parameters on part of the bidder, except the ability to pay the price as per his bid."

SC settles decades-old tax dispute

It is a sign of the times that an income tax assessment case took 32 years to be finally decided by the Supreme Court last month. The revenue authorities ultimately won on the point whether the case was time-barred taking the various provisions of the Income Tax Act. In the appeal case, CIT vs Saurashtra Cement & Chemical Industries, the assessment year was 1981-82. In terms of Section 153 of the Act, the time limit for completion of the assessment is "at any time after the expiry of two years from the end of the Assessment Year." However, the dispute over the cut-off date was carried to the Gujarat High Court, which decided the appeal in 2005. The taxmen appealed and it took a decade to get the final word from the Supreme Court which stated that the high court erred. In a similar appeal from the Allahabad High Court, moved by Saraya Sugar Mills, the company won its argument. The apex court settled the difference between the two high courts over computation of the limitation period.

Cement firms spar over 'Ultra'

The Bombay High Court has rejected the objection made by Ultratech Cement Ltd against Dalmia Cement Bharat Ltd using the word "ultra" on its products. Ultratech alleged that the word was its trade mark and therefore the rival company was guilty of trade mark violation and "passing off". It alleged that the Dalmia Ultra mark was identical and deceptively similar to Ultratech. Dalmia Cement countered that there was no monopoly on the word "ultra" and the word was descriptive. Dalmia used the word "ultra", prefixing it with Dalmia, and therefore there was no likelihood of confusion among the consumers. The high court agreed with Dalmia and stated that "no individual trader can possibly monopolise the term 'ultra'. Prima facie the word cannot be distinctive of any particular trader's goods... If someone uses the word 'ultra' as a prefix or in combination with other words/features, there cannot be any cause to complain."

GST: Preparing for tax litigation

Though the draft model GST law is still work in progress, tax experts share their insights on the likely litigation landscape under the proposed indirect tax regime

Commercial disputes may arise if existing contracts not updated

The hope of the goods and services tax (GST) being implemented has revived with the model GST law being put out in the public domain for comments and the support of virtually every state for the GST in the last empowered committee meeting.

The model GST law with 184 sections and four schedules is longer than each of the laws relating to indirect taxes that the GST seeks to subsume. But it is still incomplete.

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There is a mention of another schedule in the charging section, but this unnumbered schedule is yet to be made available. Some of the schedules also mention the list therein is only indicative, revealing the model GST law is still a work in progress.

While many of the existing areas of dispute may continue, I see potential for new avenues opening up for disputes between taxpayers and tax authorities. Let me illustrate:

■ The GST seeks to tax supply of goods and services. The question of whether a supply will be supply of goods or of service will remain contentious if and so long as there is a tax rate differential between goods and services.

■ While the classification scheme has not been clearly spelt out in the model GST law, so long as the rate structure is not simplified and unified, there can be disputes regarding classification of goods between tariff items having different rates. Similar will be the position in case of services.

■ The model GST law seeks matching of documents between supplier and receiver for allowing input tax credit (ITC). In case of a mismatch and where the supplier has not made the tax payment, the ITC shall be reversed with interest. But what if the mismatch is on account of, say, some system glitches? The receiver should not be disallowed the ITC so long as he can establish his eligibility to take credit otherwise.

■ The provision relating to valuation is quite complex and contains a number of specific inclusions and exclusions. But it requires clarity on the circumstances to reject transaction value between two unrelated parties, valuation for captive consumption, valuation of services between branch and head office, valuation in case of cost allocation of common services, and trade or volume discounts and business practices, which are potential areas of dispute and litigation.

■ Elaborate provisions have been made for transition from the existing law. But still the question remains unanswered about eligibility to credit on certain pre-GST taxes such as credit of excise duty or service tax in respect of duty-paid invoices lying with the erstwhile value-added tax (VAT) dealer, or of credit of central sales tax- and excise duty-paid stock held by the trader.

■ There is no discussion on how the area-based exemptions and other time-bound exemptions or concessions will be grandfathered. Otherwise, there could be a challenge on the grounds of promissory estoppel.

When there is a change in law, commercial disputes may arise between parties if adequate clauses are not included in the contracts according to the new law.

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ROAD AHEAD: GST reforms are expected to broaden the tax base, simplify and harmonise the tax structure and help create a seamless national market by removing inter-state trade barriers