

# Taxation Jurisprudence – Legal Principles

S.V. Kasi Visweswara Rao  
Joint Commissioner (ST)

# Outline

- How to read law?
- General Principles of Interpretation.
- How to read tax laws?
- What are principles of interpretation of taxation statute?
- What are the legal maxims relevant to taxation?
- What are the general principle of law applicable to taxation?

# How to read Law?

- Substantial law – Acts of Legislature
- Procedural law – Machinery provisions in Rules.
- Notifications – Exemptions – Public Interest
- Circulars – Binding on Officials
- Clarification – Binding on All.
- Advance Rulings – Binding on All.
- Judge made law – Judicial precedence

# Reading of a Statute

- Section
  - Sub-Section
  - Clause
  - Sub-Clause
  - Proviso
  - Explanation
  - Illustration/Example
- Rule
  - Sub-Rule
  - Clause
  - Sub-Clause
  - Proviso
  - Explanation
  - Illustration/Example

## Section 4

(1) Save as otherwise provided in the Act, every dealer registered or liable to be registered as a VAT dealer shall be liable to pay tax on every sale of goods in the State at the rates specified in the Schedules.

- (2) Every dealer, who has not opted for registration as a Value Added Tax dealer and who is registered or liable to be registered for Turnover Tax, shall pay tax at the rate of one percent (1%) on the taxable turnover in such manner as may be prescribed.

- The Sub-Section (2) was substituted by Act No 4 of 2009 dated 03-03-2009 w.e.f 01-05-2009 (G.O MS No 495 Rev (CT-II) Dated 30-04-2009). The earlier Sub-section (2) reads as "(2) Every dealer who has not opted for registration as a VAT dealer and who is registered or liable to be registered for TOT or whose taxable turnover in a period of twelve (12) consecutive months exceeds Rs.5,00,000/- (Rupees five lakhs only) but does not exceed Rs. 40,00,000/- (Rupees forty lakhs only) shall pay tax at the rate of one percent (1%) on the taxable turnover in such manner as may be prescribed."

- (3) Every VAT dealer shall pay tax on every sale of goods taxable under the Act on the sale price at the rates specified in the Schedules III, IV and V, subject to the provisions of Section 13.

- (4) Every VAT dealer, who in the course of his business purchases any taxable goods from a person or a dealer not registered as a VAT dealer or from a VAT dealer in circumstances in which no tax is payable by the selling VAT dealer, shall be liable to pay tax at the rate of four percent (4%) on the purchase price of such goods, if after such purchase, the goods are:

- (i) used as inputs for goods which are exempt from tax under the Act; or

- (ii) used as inputs for goods, which are disposed of otherwise than by way of sale in the State or dispatched outside the State otherwise than by way of sale in the course of inter-State trade and commerce or export out of the territory of India; or

- (iii) disposed of otherwise than by way of consumption or by way of sale either within the State or in the course of interstate trade or commerce or export out of the territory of India:

- Provided that wherever a common input is used to produce goods, the turnover, taxable under this sub-section, shall be the value of the inputs, proportionate to the value of the goods, used or disposed of in the manner as prescribed under this section:

- Provided further that in respect of purchase of goods specified in Schedules III and VI, the VAT dealer shall be liable to pay tax at the rates specified for such goods in the respective Schedules.

# Judicial Precedence

- ***Ratio decidendi*** – Reasoning factor in decision.
- ***Stare decisis*** – Lower Court bound by decision of Higher Court.
- ***Obiter dicta*** – Statement of law not required for decision.
- Article 141 of Constitution of India 1950.
- ***Per incuriam*** – Decision made without reference to stare decisis.
- ***Sub silentio*** - Decision made without application of stare decisis.

# Principles of Interpretation of Tax Statutes

- *ut res magis valeat quam pereat* – Interpretation should not make any part of statute redundant.
- *generalia specialibus non derogant* – Special law overruled general law.
- Last law to prevail when the reconciliation not possible.
- *Non obstante clause* – Notwithstanding anything contain in the Act.
- *May vs. Shall*

# Principles of Interpretation of Tax Statutes

- ***Promissory Estoppel / Res judicata*** in Taxation – Not applicable in Taxation – Each Assessment is distinct.
- ***contemporanea expostio*** – Interpretation by enactment / judicial decision / long professional usage to be accepted as true – Point of finality – Not to reactivate stale issue beyond a point.



# Principles of Interpretation of Tax Statutes

- Literal construction.
- Strict construction vs. beneficial construction.
- Harmonious construction.
- Mischief Rule/Heydons Rule.
  1. What was the law before the making of the Act,
  2. What was the mischief or defect for which the law did not provide;
  3. What is the remedy that the Act has provided, and
  4. What is the reason of the remedy.

# Principles of Interpretation of Tax Statutes (Entries)

- ***Exhaustive vs. Illustrative*** – Words - that is to say, like and including.
- **End user test**
- ***Ejusdem generis*** – Where there are general words following particular words, the meaning of the general word is drawn from the particular word.
- ***Noscitur a sociis*** – Where two or more words susceptible to analogous meaning are used together they are deemed to be used in a cognate sense.

# Principles of Interpretation of Tax Statutes (Entries)

- ***Expressio unius est exclusio alterius*** – Express mention of one thing implies exclusion of another.
- ***Vigilantibus, non dormientibus, jura subveniunt*** – Law helps only the vigilant.
- Theory of Merger.
- Theory of colourable device.
- Theory of referential legislation.

# Principles of Interpretation of Tax Statutes (Entries)

- *Penalty*
- *mens rea – actus rea –*
  - 1) Intention to commit the crime,
  - 2) Its preparation,
  - 3) Attempt to commit the crime,
  - 4) Its commission.
- Statutory liability -

# Principles of Natural Justice

- *audi alteram partem* – hear the other side.

***Thank you***