

# NATIONAL JUDICIAL ACADEMY



## SEMINAR FOR MEMBERS OF THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL [SE-03]

11<sup>TH</sup> - 13<sup>TH</sup> OCTOBER, 2019

### PROGRAMME REPORT

PROGRAMME COORDINATOR: MS. ANKITA PANDEY  
LAW ASSOCIATE  
NATIONAL JUDICIAL ACADEMY, BHOPAL

## LIST OF RESOURCE PERSONS

<b>S. No.</b>	<b>Name</b>	<b>Designation</b>
<b>1.</b>	Justice Madan B. Lokur	Former Judge, Supreme Court
<b>2.</b>	Justice Dilip Gupta	President, CESTAT
<b>3.</b>	Justice R.V. Easwar	Former Judge, Delhi High Court
<b>4.</b>	Justice C. Hari Shankar	Judge, Delhi High Court
<b>5.</b>	Mr. N. Venkataraman	Senior Advocate
<b>6.</b>	Mr. Sujit Ghosh	Advocate
<b>7.</b>	Ms. N.S. Nappinai	Advocate
<b>8.</b>	Dr. V. Vijaykumar	Vice-Chancellor, National Law Institute University
<b>9.</b>	Mr. R.K. Singh	Former Member (Technical), CESTAT

## **REPORT**

The National Judicial Academy organized Seminar for Members of the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) from 11<sup>th</sup> – 13<sup>th</sup> October, 2019. The objective of the programme was to provide a platform for members to share experiences, insights and suggestions with a panel of distinguished resource persons in the field of taxation and other relevant domain experts. The discussions were held on various issues such as- Constitutional Authority to Tax and Basis of Taxation; Interpretation of Tax Statutes: Core Principles; Appreciation of Evidence including Electronic Evidence in Taxation Proceedings; Principles of Natural Justice and its Application in Tax Assessment proceedings; Endemic Pathologies in Assessment Proceedings: Role of CESTAT; Role of Adjudicators: Balancing the interests of Citizens and Revenue; Judicial Ethics, Judging Skills and Objectivity in Decision Making; and The Art, Craft and Science of Judgement Writing covered in over 8 sessions across three days.

### **DAY 1**

#### **Session 1 - Constitutional Authority to Tax and Basis of Taxation**

**Speakers – Justice R. V. Easwar & Mr. Sujit Ghosh**

**Chair – Justice Dilip Gupta**

The session was initiated by stressing upon the importance of adjudication. It was stated that all the constitutional bodies and judicial officers whether belonging to the tribunal or court of law are equally important in preserving the democratic framework of the State and should have harmony between them. The speaker explained the scope and application of Article 265 of the constitution which states that the ‘levy’ and ‘collection’ must be authorised by law. The session further explored the basic principles of taxation i.e. there must be an enacted law; the law must not have been enacted in abuse of process; the law must not violate fundamental rights; the charging provisions under the said law should be unambiguous and that it must not be read by implication. The session further deliberated upon various aspects of taxation by referring to double taxation, taxation & morality, delegated legislation, retrospective taxation, principles of equity in taxation, surcharge and cess, fee and tax, promissory estoppel and various challenges in tax laws etc. Further, number of cases were discussed including *Kunnathat Thatehunni Moopil Nair v. State of Kerala and Anr.*<sup>1</sup>, *Joginder Singh and Ors. v. Deputy Custodian*

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<sup>1</sup> AIR 1961 SC 552

*General of Evacuee Property and Ors.*<sup>2</sup>, *Sri Srinivasa Theatre and Others v. Government of Tamil Nadu and Others*<sup>3</sup> etc.

## **Session 2 - Interpretation of Tax Statutes: Core Principles**

**Speakers – Justice R. V. Easwar & Mr. Sujit Ghosh**

**Chair – Justice Dilip Gupta**

The session deliberated on the various principles of interpretation when it comes to tax statutes. It was stated that as a matter of rule taxation statutes must always be interpreted strictly and only when there is any ambiguity that purposeful or contextual interpretation must be resorted to. This must also be the case while interpreting a contract and unless fraud is alleged in a contract no judicial authority has any power to go into the presumed intention of the contract. The speaker further discussed the retrospective principle wherein it was asserted that unless otherwise stated all laws are prospective and that only Parliament can make retrospective laws. That is to say, a delegate cannot make a rule with retrospective application as the power is only express and not inherent. Further, it was asserted that there must not be application of principles of equity in tax laws, however if in reading retrospective legislation it leads to hardship and arbitrariness equitable principles can be resorted to in tax matters. In this regard, it was also highlighted that in order to interpret a prior legislation a subsequent legislation on the same subject can be looked into. The speaker also discussed the beneficial rule of construction which provides that when there is no loss to the revenue and only procedural fallacies can be made out then liberal interpretation can be done. Further, it was asserted that rule of update or progressive construction is applied keeping the interest of the revenue and the tax payer on the same pedestal. The speaker also highlighted other significant aspects such as quantification of charge, penalty provisions, judicial discretion, interpretation of precedents etc.

## **Session 3 – Appreciation of Evidence including Electronic Evidence in Taxation proceedings**

**Speakers – Justice R. V. Easwar & Ms. N.S. Nappinai**

**Chair – Justice Dilip Gupta**

The speaker initiated the session with a number of simulation exercises which was based extensively on various case studies. Further, many aspects with respect to the admissibility,

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<sup>2</sup> AIR 1967 SC 1458

<sup>3</sup> (1992) 2 SCC 643

procedures, search & seizure, authorities, certificates, burden of proof in context of electronic evidence were discussed. There took place an intense discussion on the provisions of Customs and Excise Act and the Indian Evidence Act. A number of landmark judgments were discussed in this context: *CEGST Delhi v. M/S Ashutosh Metal Industries*<sup>4</sup>, *Chuharmal v. C.I.T.*<sup>5</sup>, *Poran Mal v. Director of Investigation*<sup>6</sup>, *Pratap Singh v. Director of Enforcement*<sup>7</sup>, *UOI v. CDR. Ravindra V. Desai*<sup>8</sup>, *Sonu v. State of Haryana*<sup>9</sup>, *Anvar P.V. v. P.K. Basheer*<sup>10</sup>, *State (NCT of Delhi) v. Navjot Sandhu*<sup>11</sup>, etc. The speaker further made a comparative analysis between oral and electronic evidence and in this regard the case of *M/S Popular Paints, Chemicals & Ors. v. Commissioner of Central Excise and Customs* was discussed. It was asserted that several important questions with regard to the process of appreciation of electronic evidence have answered in the case of *K. Ramayanan @Appu v. Inspector of Police*<sup>12</sup>.

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<sup>4</sup> Excise Appeal No. E/51658/2017 [SM]

<sup>5</sup> AIR 1988 SC 1384

<sup>6</sup> 93 ITR 505 SC

<sup>7</sup> 155 ITR 166 SC

<sup>8</sup> Criminal Appeal No. 579 of 2016

<sup>9</sup> 2017 (8) SCC 570

<sup>10</sup> (2014) 10 SCC 473

<sup>11</sup> (2005) 11 SCC 600

<sup>12</sup> 2016 SCC OnLine Mad 451

## DAY 2

### **Session 4 – Principles of Natural Justice and its application in Tax Assessment Proceedings**

**Speakers – Mr. N. Venkataraman & Mr. Sujit Ghosh**

**Chair – Justice C. Hari Shankar**

**Co-Chair –Justice Dilip Gupta**

The speaker initiated the session with the assertion that the terms ‘natural’ and ‘justice’ must be understood separately before delving into the various principles of natural justice. The speaker further explained the principles of fairness, impartiality and reasonableness in decision making process. The principle of audi alteram partem and nemo judex in causa sua was also discussed and it was stated that these are applicable to judicial, quasi-judicial as well as administrative proceedings. Emphasis was laid on the case of *Sahara India (Firm) v. Commissioner of Income Tax*<sup>13</sup> and *Olga Tellis and Ors. v. Bombay Municipal Corporation and Ors.*,<sup>14</sup> which elaborated on the concept of the principles of natural justice at length. Another landmark judgment of *M/S Dharampal Satyapal Ltd vs Dy. Commr. Of Cen. Exc. & Ors.*<sup>15</sup>, which detailed on the history of the principles of natural justice was discussed. The session further focused on the evolution of the concept in USA and the process of evolution was divided into three phases i.e. traditional, transitional and modern. In this regard, reference was also made to the *Scott case*, *Ferguson case* and *Ridge v. Baldwin*. In the context of application of the principles of natural justice during proceedings, three important doctrine were explained, Concept of Post Decisional Hearing, Promissory Estoppel Doctrine and the Doctrine of Legitimate Expectation.

### **Session 5 – Endemic Pathologies in Assessment Proceedings: Role of CESTAT**

**Speakers – Mr. N. Venkataraman & Mr. Sujit Ghosh**

**Chair – Justice C. Hari Shankar**

**Co-Chair –Justice Dilip Gupta**

The session focused primarily on procedural difficulties in assessment proceedings. It was opined by the speaker that regular training of officers and clarity of procedural laws is essential for curing the prevalent malfunctions. Other problems that were highlighted during the course

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<sup>13</sup> (2008) 14 SCC 151

<sup>14</sup> (1998) 3 SCC 545

<sup>15</sup> AIR 2015 SC

of the session were lack of sufficient time, friction with superior authorities, pathological bias towards revenue, lack of social equilibrium etc. The speaker further opined that judgments should be reflective and not reactive. The speakers pressed upon the importance of ethical life both personally and professionally. In this regard, it was also suggested that a judge should be neutral while delivering judgements and should focus on the facts and legal provisions pertaining to any particular case rather than its representatives. With reference to Article 141 and 142 of the Constitution it was asserted that the members must apply the principle of hierarchy and discipline of law with utmost caution. It was advised that when there is clear abdication of binding orders by the departmental adjudicators the appellate authority must ensure some consequence either by way of strictures or imposition of costs. In cases where there is a view point different from that of a coordinate bench the disagreement must be recorded with proper reasons. The speaker also discussed the issue of cross examination with reference to Section 9(d) of the Central Excise Act. Further, a number of cases were discussed including *Planned Parenthood v. Casey*<sup>16</sup>, *Ramesh P. Vaghela v. State of Gujarat & Anr.*<sup>17</sup>, *GD Builders v. Union of India*<sup>18</sup>, *Keshavananda Bharti Case*<sup>19</sup>, *Joy v. Regional Transport Authority*<sup>20</sup>.

## **Session 6 - Role of Adjudicators: Balancing the interests of Citizens and Revenue**

**Speakers – Mr. N. Venkataraman & Mr. Sujit Ghosh**

**Chair – Justice C. Hari Shankar**

**Co-Chair –Justice Dilip Gupta**

The speaker began the session with the assertion that the primary role of the adjudicators is to understand and consider the legitimate interest of the citizens while passing their orders. It is essential that there is identification of relevant principles and proper application of mind while adjudicating any matter. The session further explored various cases on workmen compensation, discounts, concept and structure of GST Council and the very need for having such a legislation was scrutinized. Further, the concept of moral justice was deliberated as it is slowly encompassing various fields of law with the caution that morality is a subjective concept and that adjudicators must be compassionate but not charitable. The speaker also discussed the flexibility and independence in functioning of the tribunals in contrast to the regular courts of

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<sup>16</sup> 505 U.S. 833 (1992)

<sup>17</sup> SCA No. 11253 of 2009

<sup>18</sup> [2013 (32) STR 673 (Del)]

<sup>19</sup> AIR 1973 SC 1461

<sup>20</sup> 1999 (105) ELT 275 Ker

law. The session further delved into the role and responsibility of the tribunal in shaping the dimensions of law and guided on various other procedural aspects while balancing the interests of assessee and revenue.

### DAY 3

#### **Session 7 - Judicial Ethics, Judging Skills and Objectivity in Decision Making**

**Speakers – Justice C. Hari Shankar, Dr. V. Vijayakumar & Mr. R.K. Singh**

**Chair – Justice Madan B. Lokur**

**Co-Chair – Justice Dilip Gupta**

The session was academically rich, informative and extensively highlighted the crux and importance of ethics and objectivity in decision making. It was pointed out that the need of judicial ethics came in the recent past due to many factors as earlier, people revered utmost faith in the judiciary. However, the concept is very old and the term ‘ethics’ has been derived from the Greek word ‘ethos’ meaning character. The speaker asserted that ethics is something more than a moral, religious and legal concept referring to the various definitions including those by John Locke, Aristotle, Canadian Law Dictionary, Black Law Dictionary and Justice Thomas of Queensland, Australia. In the context of the Bangalore Principles of Judicial Conduct, 2002, it was stated that the judges should follow: Independence, Impartiality, Integrity, Equality, Propriety, Competence and Due-Diligence while rendering decisions. The meaning and evolution of the concept of judicial ethics was discussed vehemently in the context of U.S and India referring to the Canons of Judicial Ethics, 1925, Code of Judicial Conduct adopted in 1973, Mt. Scopus Declaration on International Standards of Judicial Independence (March, 2008), Second Administrative Reform Commission’s Report on “Ethics in Governance” and the analysis of *Alex Kozinski* on judicial ethics. Several judgements were discussed highlighting the importance of ethics such as *High Court of Judicature for Rajasthan v. Ramesh Chand Paliwal*<sup>21</sup>, *Re S. Mulgaokar*<sup>22</sup>, *Krishnaswami v. Union of India*<sup>23</sup>, *K.P. Singh v. High Court of H.P & Ors.*<sup>24</sup>, *Tarak Singh v. Jyoti Basu*<sup>25</sup>, *Daya Shankar v. High Court of Allahabad*<sup>26</sup>. The challenges and failures on part of the adjudicating bodies while discharging their duties were also discussed.

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<sup>21</sup> (1988) 2 SCC 72

<sup>22</sup> AIR 1978 SC 727

<sup>23</sup> AIR 1993 SC 1407

<sup>24</sup> LPA No. 163 of 2009

<sup>25</sup> (2005) 1 SCC 201

<sup>26</sup> 1987 (3) SCC 1

## **Session 8 - The Art, Craft and Science of Judgement Writing**

**Speakers – Justice C. Hari Shankar, Dr. V. Vijayakumar & Mr. R.K. Singh**

**Chair – Justice Madan B. Lokur**

**Co-Chair – Justice Dilip Gupta**

The session was an extension of the previous session's deliberation on the ethics, skills and objectivity required in the decision making process. There was precise and pointed analysis by the eminent speakers on the art of judgement writing while emphasizing on the reasonability of a judgement. It was asserted that a judgment is of little value if it cannot be understood by a common man. It was suggested that a judgment must be clear, precise, well-structured and must not reflect biases of any kind whether personal or professional. An adjudicator's decision should not sell, deny or delay justice and it should be in the form of a story which portrays a clear message. A judgement must ensure narration of facts, framing of issues, analysis of the evidence and must ensure that the flow of the language is clear, logical and coherent. Lastly, it was suggested a judge must have clear understanding of the submission by parties during proceedings, good navigation skills, be conscious of foreign judgements and be consistent in efforts for producing better judgements.

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