

Legal Notes on Important decisions by the Hon’ble High Court/ Supreme Court.

Sl. No.	Issue/Subject Matter	Reported Court Decisions
1	Levying tax on TIN dealers at check gates	<p style="text-align: center;"><u>Satyam Construction Vrs. STO 2008 (17VST 42(O)).</u></p> <p>“It has been observed that the VAT is being collected in different Unified check gates from registered dealers granted with TIN. Earlier, the Hon’ble High Court in case of Mahamad Habib Ummar Vs. Sales Tax Officer 99 STC 16(O) and in case of Vinayak Store Vs. STO 86 STC at page 43 had deprecated the practice of collection of taxes from the registered dealers at the check gates who are entitled to file return in their respective sales tax circles. The Hon’ble Orissa High Court in recent decision in case of Satyam Construction Vs. STO reported in 2008 (17 VST 42(O) have held that tax on dealers granted with TIN under OVAT Act at check gates is illegal. The decision of the Hon’ble Court is to be scrupulously followed by all concerned.”</p>
2	Blank Declaration	<p style="text-align: center;"><u>ACTO Vrs. Bajaj Electricals Ltd. (2008) 18 VST (SC).</u></p> <p>“It is observed that quite a large number of litigations in check gates are on submission of blank / unsigned /incomplete declarations by the transporter of goods. Incomplete documents lead evasion of tax. In many such cases, Orissa high Court had directed the concerned Sales Tax officers to allow such blank/ unsigned/</p>

		<p>incomplete declarations after making good defects by the transporter of goods. On the subject the Hon'ble Supreme Court in case of Guljag Industries Vs. CTO (2007) 9 VST 1(SC) held as follows:-</p> <ul style="list-style-type: none"> • Declarations are returns • Blank declarations are evidence of evasion of tax • Penalty is leviable on blank declarations • Mens rea is not necessary as penalty is civil in nature <p>The said decision is also followed by Supreme Court in recent decision, ACTO Vrs. Bajaj Electricals Ltd. (2008) 18 VST (SC) in which the court followed the Guljag Industries case mentioned above and distinguished State of Rajasthan Vrs. D.P. Metals 124 STC 611 (SC) on facts. The decisions of Supreme Court should be followed wherever the similar fact arises.”</p>
3	<p>Photo identity card whether works contract or sale</p>	<p><u>Orissa Small Scale Industries Corporation Vrs. State (2009) 23 VST 55(O).</u></p> <p>“The question whether marking of photo identity card on behalf of Election Commissioner of India is a works contract or sale was raised in several assessment and appellate orders by authorities. In many cases, the Treasury Authorities directed the Election Commissioner to deduct tax at source from the payment given to Contractors for making of photo identity card. This issue was examined by the Hon'ble High Court of Orissa in case of Orissa Small Scale Industries Corporation Vs. State (2009) 23 VST 55 (O) in which the Court held that photo identity card is not a commercial commodity and is not meant for sale. Therefore, the question of levying Sales Tax/ OVAT on the above mentioned</p>

		activities does not arise. Since the State has not filed any SLP, the decision of the High Court should be followed by all concerned in the mean time.”
4	Misuse of declarations	<p><u>Indian Aluminum Company Ltd. Vrs. State of Orissa (2009) 22VST 123.</u></p> <p>“ The question whether, branch transfer of finished products, the raw material of which is purchased at concessional rate constitute violation came under judicial scrutiny in case of Indian Aluminum Company Ltd. Vs. State of Orissa (2009) 22 VST 123. The Hon’ble Court, relying on decision of Supreme Court in case of ICI India Ltd. (2007) 10 VST at page-1 decided that the branch transfer of finished product the raw material of which is purchased at concessional rate amounts to violation of declaration. The ratio of the judgment is to be followed by all concerned wherever, the similar fact arises.”</p>
5	REP License whether Goods	<p><u>Yash Overseas Vrs. Commissioner of Sales Tax (SC) reported in (2008) 17 VST (SC) at page 182.</u></p> <p>“REP licenses had always a market. There were people willing to sell and others willing to buy REP licenses at all times. Their innate value coupled with free transferability made REP licenses into a marketable commodity. They were “goods” properly so called having innate value and a ready market.</p> <p>Under the Duty Entitlement Passbook (DEPB) Scheme, an exporter is eligible to claim credit as a specified percentage of the job value of exports made in freely convertible currency. The credit is available against such export products and at such rates as may be specified by the Director General of Foreign Trade by a public notice</p>

		<p>issued in this behalf. The DEPB is exactly the same as REP license. Like the REP license it has an innate value which makes it a marketable commodity. The DEPB credit is also clearly ‘goods’ within the meaning of the sales tax laws.</p> <p>DEPB credit and the REP licenses qualify as ‘goods’ within the meaning of section 2(g) of the Delhi Sales Tax Act, 1975, section 2(xii) of the Kerala General Sales Tax Act,1963, and section 2(13) of the Bombay Sales Tax Act, 1959.</p> <p>The Constitution Bench decision is Sunrise Associates Vrs. Govt. of NCT of Delhi (2006) 145 STC 576 (SC), (2006) 5 SCC 603 does not alter the position in regard to levy of tax on sale of REP license and on that issue the three-judge Bench decision in Vikash Sales Corporation Vrs. Commissioner of Commercial Taxes (1996) 102 STC 106 (SC), (1996) 4SCC 433 continues to hold the field.”</p>
6	Check gate-exit pass	<p><u>Gopal Krishan setty Vs. State of Karnataka (2008) 13 VST 365(SC).</u></p> <p>“The issue whether the penalty can be levied upon the failure of transporters to hand over exit pass of goods was decided by Allahabad High Court in (2008) 14 VST 102 in case of Sankarlal Chuby Vrs. Commissioner of Trade Tax, U.P., Lucknow and further by Supreme Court of India in case of Gopal Krishan Setty Vrs. State of Karnataka (2008) 13 VST 365 (SC). The Allahabad High Court as well as Supreme Court held that failure to submit transit pass at the check gate attracts tax and penalty. Therefore, there should not be any confusion regarding levy of penalty where transporter of goods fails to submit transit pass to the check post authorities.”</p>

7	Whether Bank is a dealer in respect of auction sale of gold.	<p><u>State Bank of Travancore Vrs. CTO (Kerala) (2008) 13 VST 562.</u></p> <p>“The issue whether Scheduled Commercial Banks and other Banks can be treated as a dealer was considered by High Court of Kerala in case of State Bank of Travancore Vrs. CTO (Kerala) (2008) 13 VST 562 and Federal Bank Vrs. State of Kerala (2007) 6 VST 736. In all these cases the High Court of Kerala found that the Banks are dealer in respect of auction sale of gold and are liable to be registered under Kerala VAT Act. The definition of dealer under OVAT Act is parimateria to definition of dealer under Kerala VAT Act. Therefore, the Banks engaged in auction sale of gold and sale of gold coins / bullions are liable to be registered under OVAT Act.”</p>
8	Whether auction sale of Kendu leaves inside State of Orissa is intra-state sale or inter-state sale.	<p><u>Malayagiri Sandal Wood Distillery Vrs. State of Tamil Nadu.</u></p> <p>“The question whether auction sale of Kendu leave inside State of Orissa by OFDC is intra-state sale or Inter-state sale was considered by High Court of Orissa in case of Ashok Biri Vrs. STO , in which the Hon’ble High Court by their order dated. 28.03.2001 decided the same to be inter-state sale. The State has filed SLP renamed as State of Orissa Vrs. K.B. Saha & Sons. Before the Supreme Court of India. The Supreme Court dismissed the SLP filed by the State reported in 9 VST 215. The above mentioned decision was referred to by a party in case of Malayagiri Sandal Wood Distillery Vrs. State of Tamil Nadu before Supreme Court of India. The Supreme Court in their order dated 07.08.2007 held their own judgment in case of State of Orissa Vrs. K.B. Saha & Sons 9 VST</p>

		<p>(SC). In doubt and referred the matter to a larger bench for reconsideration. Not with standing the development, the parties had filed refund application in Orissa High Court in Misc. Case No. 477 of 2008 which was allowed by the High Court. The State had filed SLP bearing No. 22116 of 2007 before the Supreme Court which was allowed and all refund arising from order 9 VST 215 Supreme Court of India in case of State of Orissa Vrs. K.B. Saha & Sons were stayed. Recently the Supreme Court stayed a similar attempt by another respondent- M/s Pataka Biri by their order dated 13.05.2009.</p> <p>Therefore, in view of the development in Supreme Court there should not be any individual attempt to grant refund to the Respondents in State of Orissa Vrs. K.B. Saha's case pending the adjudication by Supreme Court India.”</p>
9	<p>Recovery of Tax-Preference of sales tax dues of States over the dues of the State Finance Corporation.</p>	<p><u>Orissa State Financial Corporation Vrs. State in C.A. No. 1434 of 2003.</u></p> <p>“The question whether dues under Sales Tax Act has precedence over the dues of the State Financial Corporation was decided by Hon’ble Supreme Court of India in Civil Appeal No. 1434 of 2003 by their order dated 25.09.2008. The Hon’ble court found that the point in issue, is squarely covered by a three-judge Bench decision of that Court in the case of State Bank of Bikaner & Jaipur Vrs. National Iron & Steel Rolling Corporation & others (1995) 2 SCC 19-1995(96) STC 612 and a subsequent decision of the Court in the case of Dena Bank Vrs. Bhikhabhai Prabhudas Parekh & Co. & Others 2000 (5) SCC 694. In all these cases the Supreme Court decided that the State dues has overriding power over the dues of the</p>

		Bank, When recovery of dues from a defaulting party is concerned. In many cases, the DRT is ignoring the claims of the Sales Tax Officers when recovery of tax dues from a defaulting is taken up. The above mentioned cases can be cited before the DRT as the said authorities are amenable to declaration of Law by the Supreme Court also.”
10	Transfer of right to use goods.	<p><u>State of Orissa & another Vrs. Asiatic Gases Ltd. reported in (2007) 7 VST 531 (SC).</u></p> <p>“The Question whether rental collected from the customers on account of transfer of right to use bottles, cylinders etc. were dealt variously by the Courts of Andhra Pradesh, Punjab, etc. In which different opinions were expressed on the aspect of transfer of right to use those goods. The issue was treated for the first time in Supreme Court case of State of Orissa & another Vrs. Asiatic Gases Ltd. reported in (2007) 7 VST 531 (SC). Reversing the decision of Orissa High Court reported in 121 STC at page 405 the Supreme Court held as follows:-</p> <p>That medical oxygen or industrial gas could not be sold without containers. The property in those goods could not pass to the customers without containers. Therefore, the containers constitute an integral part of the medical oxygen and industrial gas. Section 2(g) (iv) provided that “sale” shall mean any transfer of property in goods and included the transfer of the right to use such goods. The tax sought to be levied was on the transfer of the right to use goods for consideration and the levy was proper.</p> <p>In a still further development the Supreme Court relying on State of Orissa & another Vrs. Asiatic Gases Ltd. reported in (2007) 7</p>

		VST 531 has dismissed the SLP filed by M/s Tripty Drinks, a dealer of Cuttack II Circle, In view of the above decisions rental collected by parties on transfer of right to use bottles, crates, cylinders, etc. are liable to tax as transfer of right to use goods.”
11	Whether officers deputed to Vigilance Deptt. are authorized to levy sales tax.	<p style="text-align: center;"><u>Sales tax Officers & Others Vrs. M/s Dutta Traders (CIVIL APPEAL No. 7540 OF 2001)</u></p> <p>“The point whether Sales Tax Officers deputed to D.G. (Vigilance), are authorities under the Sales Tax Act, and are capable to exercise power to assess has been considered by Hon’ble Supreme Court of India in cases of Sales Tax officers & Others Versus M/s Dutta Traders (CIVIL APPEAL No. 7540 of 2001). The Hon’ble Supreme Court held that the Sales Tax officers (Vigilance) are competent to compute tax and to release the vehicle u/s 16-D of the said Act. Such computation has nothing to do with the regular assessment U/s 12(4) of the OST Act, 1947. The Court held that there is nothing wrong for the Sales Tax Department to have its Vigilance wing. The Supreme Court held the opinion expressed by the High Court as wrong. The said decision can be squarely applied under Orissa VAT Act and Rules also.”</p>