

Indian Constitutional Perceptive Of Taxation

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ABSTRACT: The Constitution of India is the incomparable law of India. It sets out the system characterising basic political standards, builds up the structure, techniques, forces and obligations of government organizations and sets out major rights, order standards and the obligations of natives. A Tax assessment alludes to obligatory or coercive cash accumulation by a demanding expert, as a rule an administration. The expression "tax assessment" applies to a wide range of automatic duties, from pay to capital increases to domain charges. In spite of the fact that tax collection can be a thing or verb, it is normally alluded to as a demonstration; the subsequent income is generally called "charges." Constitution is the establishment and wellspring of forces to enact all laws in India. Parliament, and additionally State Legislatures gets the ability to enact different laws from the Constitution just and in this manner each law must be inside the vires of the Constitution. Discussing the tax assessment laws and the elucidation of tax assessment laws, each legal counsellor or an expense proficient rehearsing tax collection laws must comprehend the fundamental arrangements of Constitution identifying with tax assessment including the forces of Parliament and State Legislatures to administer in regards to demand and gathering of duty, the limitations forced by our Constitution on such powers, passages concerning tax assessment in Central List i.e List-1 and State List i.e List-2 of Seventh Schedule to Constitution of India. The objective of the paper is to know about the constitutional perspectives in taxation.

Date of Submission: 11-09-2017

Date of acceptance: 29-09-2017

I. INTRODUCTION

“Taxation” is the essential type of pay for generally Governments. This permits expanded Governmental use and consequently, as Justice Holmes of the House of Lords put it, gave the citizens progress. In this way, it might be said, impose is the cost of being allowed to appreciate the framework gave by the Government and it is the cost of human advancement.

All laws and official activities are subordinate to the Constitution. To shape clear comprehension of the essential ideas identifying with tax assessment laws one must comprehend the significant arrangements of the Constitution, as the ability to require and gather charge by State Governments or Union Government originates from the Constitution as it were. One thing must be remembered that there is dependably a protest behind each law and that question at last exists to accomplish the articles listed in the Preamble of our Constitution, which keeps running as under:

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens:

JUSTICE, social, economic and political;

LIBERTY, of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity;

and to promote among them all

FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, DO HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

While translating each law one needs to remember the question behind the law, if any arrangement of the law or any regulatory activity or any understanding of the law crushes the protest of such law for which it is being enacted and therefore is not as per the Constitution then it is illicit, void and ultra vires of the Constitution.

II. CONSTITUTIONAL PROVISIONS

Article 246(1) of Constitution of India states that Parliament has exclusive powers to make laws with respect to any of matters enumerated in List I in Seventh Schedule to Constitution(i.e Union list).

Article 246(3) provides that State Government has exclusive powers to make laws for State with respect to any matter enumerated in List II of Seventh Schedule to Constitution(i.e. State List).

Parliament has restrictive forces to make laws in regard of issues given in Union List and State Government has the elite locale to enact on the issues containing in State List.

There is yet another rundown i.e List III (called simultaneous rundown) in the Seventh Schedule to the Constitution. In regard of the issues contained in List III both the Central Government and State Governments can practice forces to enact. If there should arise an occurrence of Union Territories Union Government can make laws in regard of the considerable number of passages in all the three records.

Rundown III of Seventh Schedule(i.e Concurrent rundown) incorporates sections like Criminal law and Procedure, Trust and Trustees, Civil Procedures, financial and social arranging, exchange unions, altruistic foundations, value control industrial facilities, and so forth. There is no Entry as to tax, in the Concurrent List; it only contains an Entry relating to levy fees in respect of matters specified in List III other than court-fees. In order to determine whether a tax was within the legislative competence of the legislature which imposed it, it is necessary to determine the nature of the tax, whether it is a tax on income, property, business or the like so that the Entry under which the legislative power has been assumed could be ascertained.

On the off chance that there is a contention between the laws enacted by State Government and Central Government in regard of passages contained in Concurrent rundown, law made by Union Government wins.

However there is one exemption to this administer, if law made by State contains any arrangement disgusting to prior law made by Parliament, law made by State Government wins, on the off chance that it has gotten consent of President. Indeed, even in such cases, Parliament can influence crisp law and change, to rescind or fluctuate law made by State.

Presently gives up through the Entries in Union rundown and State list significant to Taxation.

Union List:

Entry No. 82 – Tax on Income other than agriculture income.

Entry No. 83 – Duties of customs including export duties.

Entry No. 84 – Duties of excise on Tobacco and other goods manufactured or produced in India except alcoholic liquors for human consumption, opium, narcotic drugs, but including medicinal and toilet preparations containing alcoholic liquor, opium or narcotics.

Entry No. 85 – Corporation tax

Entry No. 92A – Taxes on sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of Interstate trade or commerce.

Entry No. 92B – Taxes on consignment of goods where such consignment takes place during Inter-State trade or commerce.

Entry No. 92C – Tax on services

Entry No. 97 – Any other matter not included in List II, List III and any tax not mentioned in List II or List III.

State List:

Entry No. 46 – Taxes on agricultural income.

Entry No. 51 – Excise duty on alcoholic liquors, opium and narcotics.

Entry No. 52 – Tax on entry of goods into a local area for consumption, use or sale therein (usually called Octroi or Entry Tax).

Entry No. 54 – Tax on sale or purchase of goods other than newspapers except tax on interstate sale or purchase.

Entry No. 55 – Tax on advertisements other than advertisements in newspapers.

Entry No. 56 – Tax on goods and passengers carried by road or inland waterways.

Entry No. 59 – Tax on professionals, trades, callings and employment.

There are also certain restrictions which have been imposed in our Constitution on the powers of State Governments and Union Government. So far indirect tax especially the tax on sale and purchase of goods is concerned certain restrictions imposed in Constitution are provided here below:

Article 286(1) – State Government cannot impose tax on sale or purchase during imports or exports; or tax on sale outside the State.

Article 286(2) – Parliament is authorized to formulate principles for determining when a sale or purchase takes place (a) outside the State (b) in the course of import or export.[sections 3,4,5 of CST Act, 1956 have been legislated under these powers].

Article 286(3) – Parliament can place restrictions on tax on sale or purchase of goods declared as goods of special importance and the State Government can tax such declared goods subject to these restrictions[section 14, 15 of CST Act, 1956 imposes restrictions and conditions on the power of State Governments to levy tax on declared goods.]

Article 301- Trade, commerce and inter -course through out the territory of India shall be free, subject to provisions of Article 302 to 304 of Constitution.[Entry tax in Haryana was held as ultra vires of article 301 by Punjab & Haryana High Court in Jindal Strips Ltd. v State of Haryana and others, (2007) 29 PHT 385 (P&H)].

Article 302 – Restriction on trade or commerce can be placed by Parliament in the public interest.

Article 303(1), 303(2) – No discrimination can be made between one State and another or give preference to one State over another. Such discrimination or preference can be made only by Parliament by law to deal with situation arising from scarcity of the goods.

Article 304 – State can impose tax on goods imported from other States or Union territories, but a State cannot discriminate between goods manufactured in the State and goods brought from other States.

Proviso to article 304 provides that State legislature can impose reasonable restrictions on freedom of trade and commerce within the state in public interest. However, such bill cannot be introduced in State Legislature without previous sanction of the President.

Article 265 – No tax shall be levied or collected except by authority of law.

Article 300A – No person shall be deprived of its property save by authority of law.

III. CONSTITUTIONAL LIMITATION OF TAXATION

Aside from the constraint by the division of the saddling power between the Union and State Legislature by the applicable Entries in the administrative Lists, the exhausting energy of either Legislature is especially subject to the accompanying confinements forced by specific arrangements of our Constitution:

- (1) It must not contradict Art.13.
- (2) It must not preclude rise to assurance from claiming the laws, must not be biased or subjective .(Art.14)
- (3) It must not constitute an absurd confinement upon the privilege to business.(19(1)(g))
- (4) No assessment should be required the returns of which are exceptionally appropriated in installment of costs for the advancement or upkeep of a specific religion or religious category (Art.27).
- (5) A State Legislature or any specialist inside the State can't charge the property of the Union.(Art.285)
- (6) The Union can't impose the property and pay of a State (Art.289).
- (7) The energy of a State to demand impose at a bargain or buy of products is liable to Art.286.
- (8) Save in so far as Parliament may, by law, generally give, a State might not assess the utilization or offer of power in the cases indicated in Art.287

IV. CONCLUSION

The Government has attempted to accomplish the target of social welfare by giving different motivations to training, wellbeing, lodging, investment funds, benefits plans, gifts, senior subjects and ladies assesses, and producing work and so forth. These motivating forces are apparent as these are connected with the fundamental necessities of a typical man. Be that as it may, if there should arise an occurrence of a few motivating forces the money related roof is by all accounts outlandish or low as it has not been changed since quite a while e.g. restorative costs, enthusiasm on self involved lodging credit, sparing plans. The above articles of the Constitution are vital in connection to tax assessment and must be profoundly comprehended by each duty proficient. Another framework will likewise mean the appropriation of focal government assets to nearby specialists should be assessed and balanced. The trust that nearby specialists with bring down expense bases ought not miss out because of any such move in framework, while holding important neighborhood adaptability in levels of nearby tax collection. Nearby specialists will likewise need adequate means under the new framework to moderate dangers by overseeing variances in incomes over the monetary cycle, in-year and amid holes between obligation emerging and receipt of installment.

The trust this is an ideal opportunity to change neighborhood tax collection. They have led more top to bottom examination of potential types of assessment accessible than any time in recent memory to educate wrangle about and the development of nitty gritty recommendations. They have inferred that there is nobody perfect expense however we have demonstrated that there are methods for planning a superior assessment framework. There is currently a genuine prospect of starting a program to make neighborhood tax assessment

more attractive – more dynamic, more steady, more effective and all the more locally enabling. Elucidation of each law, legitimacy of subordinate enactment's and regulatory activities must be judged out of sight of the arrangements of Constitution. Thus these are the constitutional provisions with is relating to the taxation in India.

IOSR Journal Of Humanities And Social Science (IOSR-JHSS) is UGC approved Journal with Sl. No. 5070, Journal no. 49323.

R.Kalaivani “Indian Constitutional Perceptive Of Taxation.” IOSR Journal Of Humanities And Social Science (IOSR-JHSS) , vol. 22, no. 09, 2017, pp. 75–78.