

Mid Semester Test: August 2017

Constitutional Law III

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**
Course: **Constitutional Law III**
(Centre State Relations, Emergency and Amendments)
Semester-V (Batch: 2015-20)

Mid Semester Test: August- 2017

Date: 23rd August, 2017

Duration: 2 hours

Max. Marks: 30

Instructions:

- Read the questions properly and write the answers in the given answer book.
- The respective marks for each question are indicated in-line.
- Do not write any thing on the question paper.
- Indicate correct question numbers in front of the answers.
- No questions or clarifications can be sought during the exam period, answer as it is, giving reason, if any.

Q.1 Zinc Co Ltd. is a Public Limited Company incorporated under The Companies Act, 1956 having its registered office at Z-2345, Sector-111, GIFT City Road, Gandhinagar, Gujarat. The company has challenged the Constitutional validity of Section 66A of Finance Act, 1994. Zinc Co Ltd., has also prayed that their company is not liable to pay Service Tax on the commission/fee paid to the company located in USA, for promoting and marketing its services in USA. Zinc Co Ltd. is a 100% export oriented unit for manufacture of software. It is engaged in e-publishing services, such as data capturing, data conversion, typesetting, formatting, paging, indexing etc. and exports the same to its customers in USA. Zinc Co Ltd., is engaged in editing and setting the contents of the books, which are received from USA. Zinc Co Ltd., entered into an agreement with M/S Transnational Ltd., a company incorporated in USA for promoting and marketing of its business activities in USA.

**Marks
(10)**

The Service Tax was introduced in India in the year 1994 under Finance Act, 1994, which was further amended in the year 2006 and Section 66A was inserted, which reads as follows:

66A. Charge of Service Tax on services received from outside India:

(1) Where any service (a) provided or to be provided by a person who has established a business or has a fixed establishment from which the service is provided or to be provided or has his permanent address or usual place of residence, in a country other than India, and,

(b) Received by a person (hereinafter referred to as the recipient) who has his place of business, fixed establishment, permanent address or usual place of residence, in India, such service shall, for the purposes of this section, be taxable service, and such taxable service shall be treated as if the recipient had himself provided the service in India, and accordingly all the provisions of this Chapter shall apply:

Provided that where the recipient of the service is an individual and such service received by him is otherwise than for the purpose of use in any business or commerce,

and accordingly all the provisions of this Chapter shall apply:
Provided that where the recipient of the service is an individual and such service received by him is otherwise than for the purpose of use in any business or commerce, the provisions of this sub-section shall not apply:
Provided further that where the provider of the service has his business establishment both in that country and elsewhere, the country, where the establishment of the

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provider of service directly concerned with the provision of service is located, shall be treated as the country from which the service is provided or to be provided.

(2) Where a person is carrying on a business through a permanent establishment in India and through another permanent establishment in a country other than India, such permanent establishments shall be treated as separate persons for the purposes of this section.

Explanation 1:- A person carrying on a business through a branch or agency in any country shall be treated as having a business establishment in that country.

Explanation 2:- Usual place of residence, in relation to a body corporate, means the place where it is incorporated or otherwise legally constituted.

The Service Tax of INR. 80, 64, 825/- with interest of INR. 3,45,600/- was demanded on the Zinc Co Ltd., as charges paid to foreign company for upgrading software and also online support services. Besides the tax, service charge of INR. 1, 31,147/- with interest of INR. 10,074/- was demanded alleging professional fee paid to the foreign company.

Zinc Co Ltd., challenged the Taxation before High Court of Gujarat. However, court rejected the petition against that decision, an Appeal has been filed before Supreme Court of India. Decide the Appeal.

Q.2 Representation of States in Parliament, Amendment to the Constitution, Structure of Judiciary and Judicial Authority are very important criteria in determining the federal character of a Constitution. Explain these criteria by identifying them in the manner as explained in the Constitutions of United States America, and compare it with India and Canada. (10)

Q.3 Mr. Jignesh and Mr. Nagendra (Petitioners) are the owners of agricultural lands in the State of Rajasthan. They also hold agricultural land in Rajkot in the State of Gujarat. Section 6(3A) was inserted by the Rajasthan Agricultural Lands Ceiling (Amendment) Act, 2014. It lays down that for computing the ceiling area of a person in the State of Rajasthan, his holding in another part of India has also to be taken into account. In respect of said provision, notices were issued by the State of Rajasthan for reopening the ceiling cases. Section 6(3A) of the Act is reproduced hereunder: (05)

Section 6(3A):- Where any person holds any land in any other part of the India, outside the state, then of the area of land so held by him in such other part, not exceeding the maximum area of land which such person is entitled to hold in such other part of India under any law, if any, relating to ceiling on land, used or capable of being used for agricultural purposes, shall be excluded from the ceiling area in excess of which a person is not entitled to hold land under this section and the extent of land determined after so excluding such area shall in relation to such person, be deemed to be the ceiling area, to be held by him in this State.

of which a person is not entitled to hold land under this section and the extent of land determined after so excluding such area shall in relation to such person, be deemed to be the ceiling area, to be held by him in this State.

Provided that where any such person disposes of, at any time before the determination of ceiling area under this Act, any land or part thereof so held by him any other part of India outside the state in accordance with the provisions of law in force in such part, the area equal to the land or part thereof so disposed of shall not be excluded while determining the ceiling area, to be held by him in this State.

Petitioners have challenged the Amended provision. Decide the Constitutionality of the said provision.

- Q.4 Explain the facts, arguments of Plaintiff and Defendant and the Reasoning of the Supreme Court of India on the decision of *State of West Bengal v Union of India* AIR 1963 SC 1241. (05)

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