

Contents

PAGE

1

BACKGROUND OF INTERPRETATION OF STATUTE

1.1	Need for Interpretation of statute	1
1.2	Purpose of Interpretation of statute	3
1.3	Court cannot legislate - It cannot fill obvious omission or lacuna	4
1.4	Only Court is authorised to interpret law, not executive	8
1.5	Presumptions in Interpretation	9
1.6	General Scheme of an Act	9
1.7	Sources of law	11

2

BASIC RULES OF INTERPRETATION OF STATUTE

2.1	Introduction	14
2.2	Literal Rule of Interpretation	15
2.3	Rule of Purposive Construction	20
2.4	Mischief Rule of Interpretation	32
2.5	Rule of Harmonious Construction	34
2.6	Golden Rule of Interpretation	41

3

SUBSIDIARY RULES OF INTERPRETATION

3.1	Background	46
3.2	Conflict in different Laws	46
3.3	<i>Contemporanea Expositio</i>	51
3.4	<i>Ejusdem Generis</i>	54

CONTENTS

I-6

PAGE

3.5	<i>Expressio unius est exclusio alterius</i>	57
3.6	<i>Generalia specialibus non derogant</i>	58
3.7	<i>Noscitur a sociis</i>	60
3.8	Pith and substance	63
3.9	Reading down of a provision	64
3.10	'Subject to' and 'notwithstanding'	67
3.11	Trade Parlance theory	67

4

—

GENERAL PRINCIPLES OF INTERPRETATION

4.1	Some interpretation principles	72
4.2	Deeming Provision in law	72
4.3	Reading 'and' as 'or' and <i>vice versa</i>	78
4.4	Reading may as shall/must and <i>vice versa</i>	79
4.5	Interpretation consistent with International Law	83
4.6	Same words normally bear the same meaning in the same statute	84
4.7	Different words will have different meanings	85
4.8	Term judicially interpreted or terms used in legal sense	86
4.9	Interpretation which makes some words redundant, otiose, nugatory or superfluous should be avoided	87
4.10	Interpretation which would make the provision redundant or unworkable should not be preferred	89
4.11	Efforts should be made to validate a provision	89
4.12	Fundamental change in law is not assumed unless expressed	89
4.13	Law to be interpreted as ongoing law - Changes and progress in technology can be considered	90
4.14	Interpretation ensuring moral values	93
4.15	Accounting entries cannot determine true character of a transaction	93
4.16	Accounting principles should be normally adopted	94
4.17	Sympathy has no role in interpretation of statute	94
4.18	Incorporation of provision in another Act	94
4.19	Negative words generally mean provision mandatory	98

	PAGE	
4.20	What cannot be done directly cannot be done indirectly	99
4.21	Power can be exercised only in the way prescribed	99
4.22	Two wrongs do not make one right	100
4.23	Doctrine of Desuetude	100
4.24	Doctrine of Restitution	100
4.25	Law is to take care of majority case - Not exceptional cases	101

5

STRICT VERSUS LIBERAL CONSTRUCTION

5.1	Distinction between strict and liberal construction of Statute	102
5.2	Strict interpretation in taxation provisions - No equity in tax laws	102
5.3	Penal statute to be strictly construed	103
5.4	Liberal construction in case of beneficial legislation	105
5.5	Distinction between strict and liberal view is reducing	110
5.6	Interpretation favouring revenue in case of exemption or exception	112
5.7	Illustrations of liberal and strict constructions	112

6

INTERPRETATION OF DEFINITIONS

6.1	Words defined in Act	114
6.2	Purpose of definition clause	114
6.3	Inclusive and Exhaustive definitions	116
6.4	That is to say	121
6.5	Interpretation of some other terms used in definition	122
6.6	Definitions/expressions in other Acts	123

7

RETROSPECTIVE AMENDMENT BY LEGISLATURE

7.1	Amendment of law with retrospective effect	126
-----	--	-----

CONTENTS

I-8

PAGE

7.2	Vested rights can be affected if amendment retrospective	127
7.3	Parliament must specify that amendment is retrospective	130
7.4	Validating law can be retrospective	133
7.5	Validating Act with retrospective effect	136
7.6	Declaratory/Explanatory Act can be retrospective	137
7.7	Procedural amendments may be retrospective	141
7.8	Clarificatory amendments are retrospective	144
7.9	<i>Explanation</i> added later can be retrospective	145
7.10	Amendment not retrospective merely because part of the requisites for its action are prior to its passing	145
7.11	Amendment to Act reducing penal provisions can have retrospective effect	146

8

—

INTERPRETATION OF CONSTITUTION

8.1	Constitution is supreme law	147
8.2	Basic structure of Constitution cannot be altered	147
8.3	Constitution should be interpreted in broad manner and as ongoing law	150
8.4	Interpretation of Entries in Constitution in respect of power of Legislature	152
8.5	Power to tax and power to regulate/regulate in Schedule VII are different matters	158
8.6	Presumption of constitutionality of a statutory provision	159
8.7	No <i>mala fide</i> or <i>malice</i> can be attributed to legislature	162

9

—

INTERPRETATION OF TAX LAWS

9.1	Nature of a tax	163
9.2	Any compulsory exaction under statute is in nature of tax	164
9.3	Difference between tax, penalty and interest	165
9.4	Essential Components in levy of taxes	165
9.5	Taxable event	166

	PAGE
9.6 Aspect theory of taxation	168
9.7 There is no equity in tax - Tax provisions are to be construed strictly	169
9.8 Ambiguity in taxing statute in favour of assessee	174
9.9 Interpretation of international treaties - Tax treaties between countries to be liberally construed	176
9.10 There is no ' <i>quid pro quo</i> ' (i.e. in return) in taxation	176
9.11 Penalty provisions in tax laws	176
9.12 No <i>res judicata</i> or estoppel in taxation	179
9.13 Different exemptions to different categories or classes permissible	181
9.14 Wide latitude in taxation matters	184
9.15 Excessiveness of a tax	189
9.16 Double Taxation	189
9.17 Measure is irrelevant to determine nature of tax	191
9.18 Difference between tax and fee	194
9.19 Taxes do not impose restriction on Inter-State Trade and Commerce	198
9.20 Regulatory measures or measures imposing compensatory taxes	199
9.21 Tax payable even if business is illegal	200
9.22 Charging section and its computation form a complete code, charge fails if there is no machinery provision for assessment/valuation	201
9.23 Tax Evasion, Tax Avoidance and Tax Planning	203
9.24 Canons of Taxation	208

10

PROVISIONS OF EXEMPTION FROM TAX

10.1 Background	209
10.2 Strict construction of exemption notification	209
10.3 Burden of proof on party claiming exemption	213
10.4 Purposive interpretation of exemption notification	214
10.5 Strict interpretation at first stage but not at later stage	217

CONTENTS

I-10

PAGE

10.6	Relevance of End Use in exemption notification	219
10.7	Relevance of Customs Tariff for interpretation of Exemption Notification	221
10.8	Other principles of interpretation	222

11

PROCEDURAL PROVISIONS - INTERPRETATION

11.1	Mandatory and Directory Procedures	226
11.2	Procedure prescribed should be normally followed	226
11.3	Provisions normally directory for public functionary but mandatory for private rights	229
11.4	Lapses in technical procedures are condonable	230
11.5	Distinction between mandatory and directory procedures	233
11.6	Procedural statutes are for advancement of justice	234
11.7	Strict procedure requirements in some cases	236
11.8	Even mandatory provision can be waived if for his own benefit	236
11.9	Every procedure deemed to be permitted unless specifically prohibited	237

12

ADMINISTRATIVE LAW

12.1	Principles while interpreting administrative actions	238
12.2	Principles of Natural Justice	238
12.3	Promissory Estoppel	259
12.4	Doctrine of Sovereign Immunity	265
12.5	Doctrine of Necessity	269
12.6	Power to do includes all incidental powers	269
12.7	Proportionality Doctrine	270
12.8	Doctrine of Legitimate Expectation	271
12.9	Wednesbury Principle	274
12.10	Doctrine of <i>de facto</i>	276
12.11	One sided Standard forms of contract	276
12.12	Presumption that official acts done in accordance with law	277

13**DELEGATED LEGISLATION OR
SUBORDINATE LEGISLATION**

13.1	Delegation of powers by Legislature	278
13.2	Rules, Regulations and Notifications	279
13.3	Rules cannot override provisions of Act	281
13.4	Rules cannot be made and notification cannot be issued with retrospective effect unless specifically provided	283
13.5	Essential legislative functions cannot be delegated	284
13.6	Limited use of rules in interpretation of main Act	287
13.7	Delegated power cannot be further delegated	289
13.8	Effective date of Notification	291

14**DEPARTMENTAL CIRCULARS AND
TRADE NOTICES**

14.1	Trade Circulars and Trade Notices	295
14.2	Circulars against provisions of law not binding on courts and tribunals	297
14.3	Circulars binding on officers and the department in administrative capacity	298
14.4	Department itself cannot go against the circular	299
14.5	Circulars reducing rigors of law	301
14.6	Circular not binding if there is contrary judgment of Supreme Court or High Court	302
14.7	Circulars issued under delegated powers are legally binding even if source of power is not mentioned	302
14.8	Department cannot change view simply because other view is possible	303

15**INTERPRETATION OF WILL,
DEED OR CONTRACT**

15.1	Background	304
15.2	Interpretation of a deed or contract	305
15.3	Interpretation of a will	307

16**GENERAL CLAUSES ACT, 1897**

16.1	General provisions applicable to all Acts	309
16.2	Some definitions in the Act	310
16.3	Repeal of Act	310
16.4	Computation of time	313
16.5	Singular includes plural	314
16.6	Meaning of Service by Post	314
16.7	Construction of notifications, etc., issued under enactments	317

17**AIDS IN INTERPRETATION OF STATUTE**

17.1	Assistance in Interpreting Law	319
17.2	Internal Aids in Interpretation	319
17.3	External Aids for Interpretation	338

18**BINDING EFFECT OF JUDGMENTS**

18.1	Effect of earlier judgments in interpreting a Statute	347
18.2	Judicial Discipline of following Precedents	349
18.3	Binding effect in case of conflicting judgments	354
18.4	Department can file appeal even if it accepts decision in one case	359
18.5	How the judgment is binding	361
18.6	Judgments which are not binding	367
18.7	Judge-made Laws	372
18.8	Over-ruling of own earlier Judgments by Court	373
18.9	Binding effect of Judgments of High Courts	381

19**LAW LEXICON & LEGAL MAXIMS**

19.1	Legal thinking	385
SUBJECT INDEX		425