

COMMITTEE ON SUBORDINATE LEGISLATION

(FOURTEENTH LOK SABHA)
(2004-2005)

FIFTH REPORT

(Presented to Lok Sabha on 18 March, 2005)

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LOK SABHA SECRETARIAT

NEW DELHI

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COMPOSITION OF THE COMMITTEE ON SUBORDINATE LEGISLATION
(2004-2005)

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|-----|------------------------------------|---|-----------------|
| 1. | Shri N.N. Krishnadas | - | <u>Chairman</u> |
| 2. | Shri Omar Abdullah | | |
| 3. | Shri Ajay Chakraborty | | |
| 4. | Shri Bikram Keshari Deo | | |
| 5. | Justice (Retd.) N.Y. Hanumanthappa | | |
| 6. | Shri Ram Singh Kaswan | | |
| 7. | Shri Vijay Khandelwal | | |
| 8. | Shri A. Venkatarami Reddy | | |
| 9. | Shri Chandra Shekhar Sahu | | |
| 10. | Shri Sitaram Singh | | |
| 11. | Shri Bhupendrasinh Solanki | | |
| 12. | Shri Ramji Lal Suman | | |
| 13. | Shri P.C. Thomas | | |
| 14. | Shri Madhu Goud Yaskhi | | |
| 15. | Shri Sudam Marandi * | | |

SECRETARIAT

- | | | | |
|----|----------------------|---|----------------------|
| 1. | Shri John Joseph | - | Additional Secretary |
| 2. | Shri A. Louis Martin | - | Director |
| 3. | Shri Ashok Balwani | - | Under Secretary |

*Nominated w.e.f. 10.11.2004 vide Bulletin Part-II, Para No. 536 dt. 10.11.2004

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INTRODUCTION

I, the Chairman, Committee on Subordinate Legislation having been authorised by the Committee to submit the report on their behalf, present this Fifth Report.

2. The matters covered by this Report were considered by the Committee on Subordinate Legislation at their sitting held on 26. 10. 2004 and 17.11.2004.

3. The Committee took oral evidence of the representatives of the Ministry of Finance (Department of Revenue) on 26 October, 2004 regarding exemption under Section 10(23C)(iv) of Income Tax Act, 1961. The Committee wish to thank the representatives of the Ministry of Finance (Department of Revenue) for appearing before the Committee and giving the information required by the Committee.

4. The Committee considered and adopted this Report at their sitting held on 1 March, 2005

5. For facility of reference and convenience, recommendations/observations of the Committee have been printed in thick type in the body of the Report and have also been reproduced in summary in Appendix I of the Report.

6. Extracts from the Minutes of the Fourth, Fifth & Eighth sitting (2004-2005) relevant to this Report are included in Appendix II & III.

**NEW DELHI;
MARCH,2005
PHALGUNA, 1926 (SAKA)**

**N.N. KRISHNADAS
CHAIRMAN
COMMITTEE ON SUBORDINATE LEGISLATION**

I

ABSENCE OF LIMITATION PROVISION FOR EXEMPTIONS UNDER SECTION 10(23 C) (IV) OF THE INCOME TAX ACT.

On 9 July, 2004, as many as 52 notifications were laid on the Table of Lok Sabha notifying 42 cases for the purpose of exemption under Section 10 (23 C) (iv) of the Income Tax Act. The exemptions related to assessment years as far back as 1986-87. Prof Rasa Singh Rawat, MP raised this issue vide his letter dated 9 July, 2004 (Annexure – I) which was referred to the Committee by the Hon’ble Speaker.

1.2 The list of the above mentioned cases, assessment years for which exemption had been granted and the Tax effect as furnished by the Ministry of Finance (Department of Revenue) are given in Annexure – II.

1.3 Sub-clause (iv) of section 10 (23C) of Income Tax Act reads as under :

Sec.10(23C) (iv) :

“Exemption is available to any other fund or institution established for charitable purposes which may be notified by the Central Government in the Official Gazette, having regard to the objects of the fund or institution and its importance throughout India or throughout any State or States; and

Provided that any notification issued by the Central Government under sub-clause (iv) or (v) shall, at any one time, have effect for such

assessment year or years, not exceeding three assessment years (including an assessment year or years commencing before the date on which such notification is issued) as may be specified in the notification”.

1.4 According to the Department of Revenue, neither the Act nor the Rules prescribe any time limit for the assessee/applicant to file an application under Section 10(23C)(iv). Similarly, no time limit has been prescribed for the Central Government to notify the applicant so as to get the benefit of exemption under the said section.

1.5 When asked how the Ministry of Finance (Department of Revenue) justified grant of exemptions for assessment years pertaining to 1986-87 and so on after a gap of over 16 years, the Ministry stated in a written reply as under :-

“The notification for exemption under section 10(23C) (iv) is granted in cases which satisfy the conditions stipulated therein. These conditions cluster around the basic one – the activity of the applicant. The activity should be charitable within the meaning of Section 2(15) of the Income Tax Act.

Section 2 (15) of the Income Tax Act defines “charitable purpose” that includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility.

Even if an object or purpose may not be regarded as charitable in its popular signification as not tending to give relief to the poor or for advancement of education or medical relief, it would be still included in the expression “charitable purpose” if it advances an object of general public utility [CIT Vs. Andhra Chamber of Commerce, (1965) 55 ITR 722, 728, 729 (SC)]

Further, the eighth proviso to section 10(23C), reproduced supra, states that any notification issued by the Central Government under sub-clause (iv) or sub-clause (v) shall, at any one time, have effect for such assessment year or years, not exceeding three assessment years (including an assessment year or years commencing before the date on which such notification is issued) as may be specified in the notification. Besides, there is no time- limit prescribed under the Income Tax Act/Income Tax Rules for the Central Government to notify an applicant in order to enable the latter to avail the benefit of tax exemption under section 10(23C)(iv) of the Act.

The rationale behind such provision is that the exemption under section 10(23C)(iv) is granted to the institution on the basis of its activity, if the activity continues and the institution or fund is of importance throughout India or throughout any State or States.”

1.6 The Ministry of Finance vide their OM dated 19 August, 2004 justified issue of notification with retrospective effect under the section 10 (23C) (iv) relying on the following opinion of the Ministry of Law :-

“ The notification can be issued at any one time having effect for a period not exceeding three assessment years (including as assessment year or years commencing before the date on which such notification is issued), as may be specified in the said notification u/s 10 (23) and 10 (23C) (iv) of the Income Tax Act.”

1.7 When pointed out that the above opinion only spoke about the number of assessment years for which a notification can have effect and there was nothing in the opinion in support of extending retrospective benefit especially in regard to applications which were

filed retrospectively after over a decade, the Ministry stated in a written reply as under :-

“It is not disputed that the opinion of the Law Ministry, derived from the eighth proviso to section 10(23C) of the Act, mentions about the number of assessment years for which a notification has effect, but it also confirms that benefit of section 10(23C) (iv) can be given retrospectively. Further, neither the Income Tax Act nor the Rules prescribes.

- (i) any time limit for the applicant by which it is required to file an application u/s 10(23C)(iv) ; and
- (ii) any time limit for the Central Government to notify or otherwise, an applicant u/s 10 (23C)(iv).

Finally, the exemption is granted on the activity of the applicant which has to be in line with the relevant provision of the Act. If the activity remains in the earlier years, there is no justification in refusing to grant the notification for exemption under section 10(23C)(iv), provided all other conditions remain satisfied”.

1.8 When enquired whether the Department had not encountered any administrative inconvenience in handling decade old cases, the Ministry stated that while administrative inconvenience in handling old cases was possible theoretically, so far the Department had not encountered any administrative inconvenience as such cases were few in number.

1.9 To a query whether absence of any time limit is a lacuna in the Act/Rules, the Ministry stated in a written reply :

“No. In our view these provisions have been kept as such in order to give exemption to genuine cases of charitable activities of institutions/funds having importance throughout India or throughout any State or States”.

1.10 During oral evidence on 26.10.2004, a representative of the Department of Revenue stated that those trusts who were enjoying exemptions under 10(23C) (iv) had not been required to file the returns from year to year, but from 1.4.2003, it was compulsory for all those charitable institutions to file their income tax returns every year. The witness also added,

“Sir, earlier, we could re-open the cases for a period of ten years. That period has now been reduced to six years. Now, we can re-open cases only for a period of six years”.

1.11 It is observed in this connection that the limitation provision in Section 149 of the Act which was amended by the Finance Act, 2001 w.e.f. 1.6.2001 reads as under :-

149. No notice under Section 148 shall be issued for the relevant assessment year :-

- (a) if four years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b);
- (b) if four years, but not more than six years, have elapsed from the end of the relevant assessment year unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to one lakh rupees or more for that year.

1.12 Explaining the reasons of grant of exemption u/s 10(23C)(iv) of the Income Tax Act after so many years, the Ministry of Finance stated (19 August, 2004) that sometimes the applicant filed application after lapse of some years (in fact, in the case of Council for Leather Export, Chennai the applicant filed application only on 7.3.2000, for Assessment Years. 1986-87 to 1988-89 that is after a gap of approximately 15 years) and then sometimes the relevant documents/information which had not been furnished by the applicant, was called for by the Central Government/Income Tax Department. Only after the provisions as laid down by the Income-tax Act and Income-tax Rules are fulfilled by the applicant that an exemption is granted.

1.13 It was observed from the information furnished by the Ministry of Finance that the Council for Leather Export, Chennai filed the application for renewal of notification for assessment years 1986-87 to 1988-89 only on 07.03.2000 i.e. after over a decade. To a query whether the Ministry ascertained from the applicant the reasons for taking over a decade for filing the application, the Ministry stated in a written reply as under :-

“No, the Ministry did not specifically ascertain from the Council for Leather Export, Chennai the reasons for taking over

a decade for filling the application. However, from the statement of facts filed by the applicant along with its application, it is seen that the above applicant was earlier notified on 31.08.1999 under section 10(23C) (iv) of the Income Tax Act, 1961 for the Assessment Years 1995-96 to 1997-98. The applicant was filing its Income Tax returns regularly from Assessment Year 1996-97 onwards. However, the applicant was issued notices under section 148 of the Income Tax Act for filing the Income Tax returns for the Assessment Year 1987-88 to 1992-93. Thereafter, the assessments were completed to overcome the limitation pending disposal of the application seeking notification under section 19(23C) (iv).

Since the nature of activity during the Assessment Year 1986-87 to 1988-89 were in line with the provisions of section 10(23C)(iv) of the Income Tax Act, the applicant was notified for tax exemption under the said section”.

1.14 It was further observed from the information furnished by the Ministry of Finance that one applicant viz. West Zone Cultural Centre, Udaipur filed application on 09.09.1996 for assessment years 1998-99 to 2000-01 and another applicant viz. National Stock Exchange Investors’ Protection Fund Trust, Mumbai filed application on 27.03.1996 for assessment years 1996-97 to 1998-99. These applicants were notified on 4 November, 2003 and 15 December, 2003 respectively i.e. after a lapse of over seven years.

1.15 When asked about the reasons for taking over seven years for deciding the above cases, the Department of Revenue stated in a

written reply that in the case of West Zone Cultural Centre, Udaipur, the applicant wrote a letter dated 9.9.96 to the Commissioner of Income Tax, Jodhpur with a copy to the Director General of Income Tax (Exemption), Kolkata. After receiving the letter, the Director General of Income Tax (Exemption), Kolkata sought a report from the Commissioner of Income Tax, Jodhpur. The Commissioner of Income Tax, Jodhpur, by his letter dated 7.10.99, informed the Director General of Income Tax (exemption) that as per his office record, no such letter was received in his office and no such report was pending. He, therefore, requested the DGIT (Exemption) to supply the complete details along with the complete address of the applicant. It is seen from records that the applicant filed its application in the requisite form only on 7.12.99 with CIT, Udaipur. The Chief Commissioner of Income Tax, Udaipur submitted its report to DGIT (Exemption) on 12.9.2001. The DGIT (Exemption), after making enquires and seeking details, submitted his report to Central Board of Direct Taxes on 3.6.2002. The applicant was notified on 4.11.2003.

1.16 As regards the reasons for delay in notification of National Stock Exchange Investors' Protection Fund Trust, Mumbai, the Department stated that the applicant trust applied on 27.3.1996 for initial notification under section 10(23C) (iv) for A Y 1996-97 to 1998 -99. While examining the case, it was observed that the applicant trust did not furnish information regarding certain rules and regulation by which the activities of the Trust (Society) were governed. Accordingly, the Central Board of Direct Taxes issued a query letter dated 7.11.97 to the applicant and the applicant replied to the query of the Board on 5.2.1998. On 8.10.1999, the applicant, National Stock Exchange Investor Protection Fund Trust filed another application for notification under section 10(23C) (iv) of the IT Act for the Assessment Years 1999-2000 and 2001-2002. This application of the applicant was processed first and it was found that the applicant fulfilled all the conditions stipulated under section 10(23C)(iv) of IT Act. The applicant was then notified for Assessment Year 1999-2000 to 2001-2002 on 28th November, 2001. Thereafter, the application for Assessment Year 1996-97 to 1998-99 was processed and after examining the case and the details filed by the applicant, the Trust was notified on 15.12.2003 for AYs 1996-97 to 1998-99."

1.17 On 9 July, 2004, as many as 52 notifications were laid on the Table of Lok Sabha notifying 42 organisations for exemption of Income Tax under Section 10(23C)(iv) of the Income Tax Act which provides for exemption to a fund or institution established for charitable purposes. The exemptions related to assessment years as far back as 1986-87. The Committee feel that grant of exemption to organisations after a gap of as long as 16 years does raise doubts about the rationale and bona-fides of such a step. According to the Department of Revenue, neither the Income Tax Act nor the rules framed thereunder prescribed any time limit either for the assessee to file an application under this category or for the Central Government to notify an applicant under the Section. Absence of a limitation provision is obviously a lacuna in the Act/Rules which should have been suitably got amended by the Department of Revenue on its own initiative. The attempt of the Department to justify this lapse on the plea that the provisions have been kept as such in order to give exemption to genuine cases of charitable activities is hardly convincing as the Ministry's explanation has not addressed the question of prolonged time lag. The Committee would urge the Ministry of

Finance to look into this question afresh and take appropriate steps to incorporate a suitable limitation provision.

1.18 During oral evidence on 26 October, 2004, a representative of the Department of Revenue stated that in June, 2001 the scope for re-opening past cases has been brought down from 10 years to six years implying thereby that the retrospective effect to the notification under Section 10 (23C) (iv) would also be limited to this period of six years. This, however, does not seem to be so. The fact that the Ministry have issued notification under this Section as recently as in March, 2004 giving the benefit of exemption to the assessment years of 1986-87 which dates back to over 16 years clearly shows that the said limitation provision does not apply to notification under Section 10(23C) (iv). The Committee feel that as already recommended in the preceding paragraph , there is a need for making a limitation provision under Section 10(23C)(iv).

1.19 The Committee note that delay in filing of application by the Institutions is one of the reasons for inordinate delay in notification under Section 10(23C) (iv). The Ministry in this connection, cited a case of a Council which filed an application

on 7.3.2000 after a gap of about 15 years for the assessment years 1986 – 87 to 1988 – 89. The Committee hope that such instances would now cease in view of incorporation of a provision w.e.f. 1.4.2003 making it compulsory for the charitable institutions to file their returns every year.

1.20 The Committee find that another reason for delay in notification of charitable institutions for exemption under Section 10(23C)(iv) is the inordinately long time taken by the Department in processing the applications. For instance one applicant viz. West Zone Cultural Centre, Udaipur filed an application on 9 September, 1996 and another applicant viz. National Stock Exchange Investor's Protection Fund Trust, Mumbai filed application on 23.7.1996 and the Department have taken as long as seven years for notifying them. An analysis of reasons advanced by the Department in this regard would show that the Department has been very slow in dealing with the applications, seeking desired information from the applicants and taking a decision in the cases. The Committee wonder whether the Department exercise any check on delays. The Committee desire that some time limit should be fixed for disposal of cases through

Departmental instructions, if not already done and ensure that the instructions are followed strictly in letter and spirit.

1.21 The Committee suggest that normally a Fund or Institution should be notified for exemption under Section 10 (23C) (iv) of the Income Tax Act well before the end of the relevant assessment year. If, for any reason, the Fund or Institution could not be notified in time, the notification should be accompanied by an explanatory memorandum giving reasons for delay in notification.

II

THE MERCHANT SHIPPING (CANCELLATION OR SUSPENSION OF CERTIFICATE OF COMPETENCY) RULES, 2003.

The Merchant Shipping (Cancellation or Suspension of Certificate of Competency) Rules, 2003 (GSR 114 of 2003) were published in the Gazette of India, Part-II, Section 3 (i) dated 8 March, 2003. Rule 5 of these Rules reads as under:-

A. Time limit for disposal of appeals.

2.2 There is a provision in Rule 5 of the Merchant Shipping (Cancellation or Suspension of Certificate of Competency) Rules, 2003 for appeal against order of cancellation/ suspension of certificate of competency by an aggrieved person within 30 days. However, no time limit has been prescribed for disposal of such appeals by the Director General of Shipping.

2.3 The Ministry of Shipping initially stated in this regard (O.M. dated 24 September, 2003) that the situation under which a certificate of competency is cancelled or suspended varies greatly from case to case. The disposal of any appeal, therefore, would depend on its nature and gravity. Accordingly, the time taken for disposal would also vary. The Ministry pleaded that it is, therefore, difficult to lay down time-limit for disposal of the appeal.

2.4 In a similar case, the Ministry of Surface Transport had effected an amendment prescribing a time limit of 90 days for disposal of appeal against any order of the licensing authority in the Rent a Motor Cycle Scheme, 1997 (Para 3.3 of 6th Report of COSL – 13th Lok Sabha). When this case was brought to their notice, the Ministry of

Shipping responded (OM dated 23rd December, 2003) stating that the Ministry have no objection for laying down the time limit of 90 days for disposal of appeal in Rule 5 of the Merchant Shipping (Cancellation or Suspension of Certificate of Competency) Rules, 2003.

B. Interpretation Clause

2.5 According to Rule 5 of the Merchant Shipping (Cancellation or Suspension of Certificate of Competency) Rules, 2003, the decision of the Director General of Shipping on appeals against cancellation or suspension of certificate of competency shall be final. This clause gives an impression that the jurisdiction of the Law Courts has been ousted. When this matter was taken up with the Ministry, it was stated that the words “decision of Director General of Shipping shall be final’ were indicative of finality only in so far as these Rules were concerned and that this would not in any way prohibit any individual approaching Courts of law to redress any grievances, which is a constitutional right.

2.6 One of the oft repeated recommendations of the Committee on Subordinate Legislation has been that interpretation clause should not be so worded as to give an impression of ousting the jurisdiction of the Law Courts. When this was brought to their notice, the Ministry stated (OM dated 23 December, 2003) that the last sentence in Rule 5 was meant to give the required finality to the decision of the Director General as an Appellate Authority and this provision in no way takes out of the jurisdiction of the Courts.

2.7 The Committee observe that Rule 5 of the Merchant Shipping (Cancellation or Suspension of Certificate of Competency) Rules, 2003 enables an aggrieved person to appeal against an order of cancellation or suspension of certificate of competency by the Director General of Shipping within 30 days. However, no time-limit for disposal of an appeal has been prescribed. When this lacuna was pointed out, the Ministry of Shipping have conveyed that they have no objection for laying down a time limit of 90 days for disposal of appeal. The Committee desire that the Ministry should suitably amend the rules to incorporate the time limit regarding disposal of appeals.

2.8 The Committee note that there is also another shortcoming in Rule 5 of the Merchant Shipping (Cancellation or Suspension of Certificate of Competency) Rules, 2003. The rule states that the decision of the Director General of Shipping “shall be final” on matters regarding appeal against cancellation or suspension of the certificate of competency. The Committee feel that this clause gives an impression that the jurisdiction of the Law Courts is being ousted in this matter. According to the Ministry of Shipping, this was meant to give the required finality to the decision of the Director General as an Appellate Authority and the provision would, in no way, take away the powers of or oust the jurisdiction of the Courts. The Committee desire that this interpretation of the Ministry ought to be reflected in the Rules, by suitably amending the wording of the rule to clearly bring out this position.

III

DISCRIMINATION IN THE DURATION OF PROBATIONARY PERIOD

The Farm Machinery Training and Testing Institute (Department of Agriculture and Cooperation) Group 'A' and Group 'B' (Gazetted) Posts Recruitment Rules, 2001 (GSR 140 of 2001) were published in the Gazette of India Part-II Section 3(i) dated 10 March, 2001. On scrutiny of the rules, it was observed that there were two shortcomings in the rules - one regarding probationary period and another regarding improper placement of certain entries.

A. Probationary period

3.2 The recruitment rules prescribed a probation period of 2 years for promotees and 1 year for the direct recruits to the post of instrumentation engineer. Prescription of longer probationary period for promotees as compared to that of direct recruits is against the principle of natural justice particularly considering the fact that promotees possess relevant work experience while it may not be so in the case of direct recruits.

3.3 The Committee have time and again emphasised that the period of probation prescribed for appointees to a post should be the same whether they are appointed by direct recruitment or promotion. In this regard the Committee have recommended in para 5.6 of 6th Report 13(LS) as under:-

“The Committee further observe that the lacunae of similar nature continue to occur in the Recruitment Rules notified by various Ministries/Department inspite of the clear cut guideline on the subject issued by Department of Personnel and Training, and emphasise that the agencies concerned with the approval of Recruitment rules viz. the Department

of Personnel & Training, the Ministry of Law and Justice and the Union Public Service Commission should be more vigilant in future while vetting/approving recruitment rules so as to ensure that the period of probation is correctly prescribed in the recruitment rules in accordance with the existing guidelines so as to avoid delay in carrying out subsequent amendments in the Recruitment Rules.”

3.4 The instructions issued by the Department of Personnel and Training vide their O.M. No. 21011/1/94-Estt. (c) dated 20 April, 1995 also require prescription of uniform probation period for both promotees and direct recruits to a post. When their attention was drawn to the lacuna, the Ministry of Agriculture (Department of Agriculture and Cooperation) agreed to carry out the necessary amendment in the recruitment rules. The Ministry have since issued a notification dated 16.4.2004 in supersession of the earlier Rules and have prescribed a uniform probation period of one year for both direct recruits and for promotees.

3.5 **The Committee observe that the Farm Machinery Training and Testing Institute (Department of Agricultural and Cooperation) Group ‘A’ and Group ‘B’ (Gazetted) Posts Recruitment Rules, 2001 prescribed longer probation period of two years for promotee officers as compared to the probationary period of one year for the direct recruits. The Committee have time and again emphasised in the past that there should be no discrimination in the matter of probationary period between promotees and direct recruits. The Committee note with satisfaction that on this fact being pointed out, the Ministry of Agriculture (Department of Agriculture & Cooperation) have brought out a notification in supersession of the earlier rules amending Col. 10 to provide for a probation period of one year both for the direct recruits and promotees. The Committee urge the Ministry of Agriculture (Department of Agriculture & Cooperation) to**

scrupulously follow the Committee's recommendations and the instructions/guidelines issued by DOPT in future.

B. Improper placement of entries

3.6 Another infirmity observed from the Farm Machinery Training and Testing Institute (Department of Agriculture and Cooperation) Group 'A' and Group 'B' (Gazetted) Posts Recruitment Rules, 2001 was an error under Cols. 6 & 7 of the Schedule in which the entries had been interchanged. Col. 6 was meant for indicating the applicability of benefit to the officers under rule 30 of the CCS (Pension Rules) 1972 and Col. 7 for indicating the age limit for recruits. The entry under Col. 6 of the Schedule, however, displayed the age limit for recruits and Entry under Col. 7 indicated the applicability of benefit under rule 30. When the error was pointed out, the Ministry of Agriculture (Department of Agriculture and Cooperation) initiated necessary action to rectify the mistake.

3.7 The Committee observe that Col. 6 & 7 of the Schedule to the Farm Machinery Training and Testing Institute (Department of Agriculture and Cooperation) Group 'A' and Group 'B' (Gazetted) Posts Recruitment Rules, 2001 displayed wrong entries. On the error being pointed out, the Ministry of Agriculture (Department of Agriculture and Cooperation) have rectified the error by suitably amending the rules vide notification dated 16.4.2004. The Committee expect the Ministry to exercise sufficient care to see that no such mistakes creep again into their notifications.

IV

SHORT TITLE OF THE COMMEMORATIVE COINS ON MAHARANA PRATAP.

The Short title of GSR 432 (E) notified by the Ministry of Finance (Deptt. of Economic Affairs) regarding Commemorative Coins on Maharana Pratap published in the Gazette of India Part-II Section 3 (i) dated 24 May, 2003 is as follows :-

“The Coinage (Standard Weight and Remedy of Commemorative Coins) of the Hundred Rupees (Containing Silver 50%, Copper 40%, Nickel 5% and Zinc 5%), Ten Rupees (containing Copper 75% and Nickel 25%) and One Rupee Ferritic Stainless Steel (containing Iron 82% and Chormium 18 %) coined in honour of “MAHARANA PRATAP” Rules, 2003”

4.2 As the Short-title seemed to be too long describing the entire content rather than indicating the substance, the Ministry of Finance (Department of Economic Affairs) were requested to state whether the Short title could be made really short. Following the reference, the Ministry of Finance (Department of Economic Affairs) in consultation with the Legislative Department of Ministry of Law amended the Short title of the Rule as follows :-

“The Coinage of Hundred Rupees, Ten Rupees and One Rupee coined in honour of “MAHARANA PRATAP” Rules, 2003”.

The above amendment was notified vide GSR 315 E dated 12 May, 2004 and published in Gazette of India Part II Section 3 (i) dated 14 May, 2004.

4.3 The Short title of the Commemorative Coins on Maharana Pratap notified by the Ministry of Finance (Deptt. of Economic Affairs) on 23 May, 2003 was too long to be called a short title. The Short Title read as follows :-

“The Coinage (Standard Weight and Remedy of Commemorative Coins) of the Hundred Rupees (Containing Silver 50%, Copper 40%, Nickel 5% and Zinc 5%), Ten Rupees (containing Copper 75% and Nickel 25%) and One Rupee Ferritic Stainless Steel (containing Iron 82% and Chormium 18 %) coined in honour of “MAHARANA PRATAP” Rules, 2003”

On the matter having been taken up with the Ministry of Finance (Department of Economic Affairs), the Ministry in consultation with the Ministry of Law have amended the Short title to make it short and notified it in the Gazette. The amended Short title reads as follows :

“The Coinage of Hundred Rupees, Ten Rupees and One Rupee coined in honour of “MAHARANA PRATAP” Rules, 2003”

The Committee urge the Ministry to pay attention to all aspects of rule making and to ensure that flaws of this nature do not recur in future.

**NEW DELHI;
March ,2005
Phalguna, 1926(Saka)**

**N.N. KRISHNADAS
CHAIRMAN
COMMITTEE ON SUBORDINATE LEGISLATION**

APPENDIX –I

(Vide Para 5 of the Introduction of the Report)

SUMMARY OF RECOMMENDATIONS MADE IN THE REPORT OF THE COMMITTEE ON SUBORDINATE LEGISLATION

(FOURTEENTH LOK SABHA)

| Sl. No. | Reference to Para No. in the Report | <u>Summary of Recommendations</u> |
|---------|--|---|
| 1 | 2 | 3 |
| 1. | 1.17 | <p>Absence of limitation provision for exemptions under Section 10(23C)(iv) of the Income Tax Act</p> <p>On 9 July, 2004, as many as 52 notifications were laid on the Table of Lok Sabha notifying 42 organisations for exemption of Income Tax under Section 10(23C)(iv) of the Income Tax Act which provides for exemption to a fund or institution established for charitable purposes. The exemptions related to assessment years as far back as 1986-87. The Committee feel that grant of exemption to organisations after a gap of as long as 16 years does raise doubts about the rationale and <u>bona-fides</u> of such a step. According to the Department of Revenue, neither the Income Tax Act nor the rules framed thereunder prescribed any time limit either for the assessee to file an application under this category or for the Central Government to notify an applicant under the Section. Absence of a limitation provision is obviously a lacuna in the Act/Rules which should have been suitably got amended by the Department of Revenue on its own initiative. The attempt of the Department to justify this lapse on the plea that the provisions have been kept as such in order to give exemption to genuine cases of charitable activities is hardly convincing as the Ministry's explanation has not addressed the question of prolonged time lag. The Committee would urge the Ministry of Finance to look into this question afresh and take appropriate steps to incorporate a suitable limitation provision.</p> |
| | 1.18 | <p>During oral evidence on 26 October, 2004, a representative of the Department of Revenue stated during his evidence before the Committee that in June,</p> |

| | | |
|--|------|--|
| | | <p>2001 the scope for re-opening past cases has been brought down from 10 years to six years implying thereby that the retrospective effect to the notification under Section 10 (23C) (iv) would also be limited to this period of six years. This, however, does not seem to be so. The fact that the Ministry have issued notification under this Section as recently as in March, 2004 giving the benefit of exemption to the assessment years of 1986-87 which dates back to over 16 years clearly shows that the said limitation provision does not apply to notification under Section 10(23C) (iv). The Committee feel that as already recommended in the preceding paragraph , there is a need for making a limitation provision under Section 10(23C)(iv).</p> |
| | 1.19 | <p>The Committee note that delay in filing of application by the Institutions is one of the reasons for inordinate delay in notification under Section 10(23C) (iv). The Ministry in this connection, cited a case of a Council which filed an application on 7.3.2000 after a gap of about 15 years for the assessment years 1986 – 87 to 1988 – 89. The Committee hope that such instances would now cease in view of incorporation of a provision w.e.f. 1.4.2003 making it compulsory for the charitable institutions to file their returns every year.</p> |
| | 1.20 | <p>The Committee find that another reason for delay in notification of charitable institutions for exemption under Section 10(23C)(iv) is the inordinately long time taken by the Department in processing the applications. For instance one applicant viz. West Zone Cultural Centre, Udaipur filed an application on 9 September, 1996 and another applicant viz. National Stock Exchange Investor's Protection Fund Trust, Mumbai filed application on 23.7.1996 and the Department have taken as long as seven years for notifying them. An analysis of reasons advanced by the Department in this regard would show that the Department has been very slow in dealing with the applications, seeking desired information from the applicants and taking a decision in the cases. The Committee wonder whether the Department exercise any check on delays. The Committee desire that some time limit should be fixed for disposal of cases through Departmental instructions, if not already done and ensure that the instructions are followed strictly in letter and spirit.</p> |

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|-----------|-----------------------|---|
| <p>3.</p> | <p>3.5</p> <p>3.7</p> | <p>Discrimination in the duration of probationary period (GSR 140 of 2001)</p> <p>The Committee observe that the Farm Machinery Training and Testing Institute (Department of Agricultural and Cooperation) Group 'A' and Group 'B' (Gazetted) Posts Recruitment Rules, 2001 prescribed longer probation period of two years for promotee officers as compared to the probationary period of one year for the direct recruits. The Committee have time and again emphasised in the past that there should be no discrimination in the matter of probationary period between promotees and direct recruits. The Committee note with satisfaction that on this fact being pointed out, the Ministry of Agriculture (Department of Agriculture & Cooperation) have brought out a notification in supersession of the earlier rules amending Col. 10 to provide for a probation period of one year both for the direct recruits and promotees. The Committee urge the Ministry of Agriculture (Department of Agriculture & Cooperation) to scrupulously follow the Committee's recommendations and the instructions/guidelines issued by DOPT in future.</p> <p>The Committee observe that Col. 6 & 7 of the Schedule to the Farm Machinery Training and Testing Institute (Department of Agriculture and Cooperation) Group 'A' and Group 'B' (Gazetted) Posts Recruitment Rules, 2001 displayed wrong entries. On the error being pointed out, the Ministry of Agriculture (Department of Agriculture and Cooperation) have rectified the error by suitably amending the rules vide notification dated 16.4.2004. The Committee expect the Ministry to exercise sufficient care to see that no such mistakes creep again into their notifications.</p> |
| <p>4.</p> | <p>4.3</p> | <p>Short title of the Commemorative Coins on Maharana Pratap (GSR 432-E of 2003)</p> <p>The Short title of the Commemorative Coins on Maharana Pratap notified by the Ministry of Finance (Deptt. of Economic Affairs) on 23 May, 2003 was too</p> |

| | | |
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| | | <p>long to be called a short title. The Short Title read as follows :-</p> <p>“The Coinage (Standard Weight and Remedy of Commemorative Coins) of the Hundred Rupees (Containing Silver 50%, Copper 40%, Nickel 5% and Zinc 5%), Ten Rupees (containing Copper 75% and Nickel 25%) and One Rupee Ferritic Stainless Steel (containing Iron 82% and Chormium 18 %) coined in honour of “MAHARANA PRATAP” Rules, 2003”</p> <p>On the matter having been taken up with the Ministry of Finance (Department of Economic Affairs), the Ministry in consultation with the Ministry of Law have amended the Short title to make it short and notified it in the Gazette. The amended Short title reads as follows :</p> <p>“The Coinage of Hundred Rupees, Ten Rupees and One Rupee coined in honour of “MAHARANA PRATAP” Rules, 2003”</p> <p>The Committee urge the Ministry to pay attention to all aspects of rule making and to ensure that flaws of this nature do not recur in future.</p> |
|--|--|--|

ANNEXURE-I

(Vide Para 1.1)
(Translated Version)

Prof. Rasa Singh Rawat,
Member of Parliament
(Lok Sabha)

1, Harish Chandra Lane,
New Delhi-110 001.

9 July, 2004

Hon'ble Speaker,
Lok Sabha,
Parliament House,
New Delhi.

Subject : Request for clarifications regarding papers laid on the Table of the
House

Sir,

I would like to seek clarification as to the reasons for giving exemption under Section 296 of Income Tax Act, 1961 under serial Nos. 3, 4, 6,8, 9, 13, 15, 17, 20 and 23 of point No. 6 (Revised List of Business dated 9th July, 2004), after 5,6,7 or 8 years and especially under serial No. 17 for assessment year 86, 87, 88 and 89 i.e. after a gap of 18 years.

With regards,

Yours sincerely,
Sd/-
(RASA SINGH RAWAT)
I.C.348

ANNEXURE-II

(Vide Para 1.2)

LIST OF CASES NOTIFIED FOR EXEMPTION AND RELATED DETAILS

| S. No. | S.O. No. | Name of Case | Assessment Years | Tax Effect (in Rs.) | Remarks |
|--------|----------|--|------------------------|---------------------|---|
| 1 | 2 | 3 | 4 | 5 | 6 |
| 1. | 3447 | Goods Transport Labour Board, Mumbai | 1993-94 to 1995-96 | 29,45,38,396 | |
| 2. | 3448 | Sri Aurobindo Society, Kolkata | 2004-2005 to 2006-2007 | | The Returns for these years are not due for filing. |
| 3. | 3449 | Goods Transport Labour Board, Mumbai | 1996-97 to 1998-99 | 23, 40, 87, 202 | |
| 4. | 3450 | Goods Transport Labour Board, Mumbai | 1999-2000 to 2001-2002 | 14,36,00,000 | |
| 5. | 3451 | EAN-India, Delhi. | 2002-2003 to 2004-2005 | Nil | The income is exempted u/s. 11 of IT Act. |
| 6. | 3452 | Grocery Markets and Shops Board, Mumbai | 1999-2000 to 2001-2002 | 10,38,00,000 | |
| 7. | 3453 | Grocery Markets and Shops Board, Mumbai | 2002-2003 to 2004-2005 | Nil | The income is exempted u/s. 11 of IT Act. |
| 8. | 3454 | West Zone Cultural Centre Udaipur | 1998-99 to 2000-01 | Nil | The income is exempted u/s/ 11 of IT Act. |
| 9. | 3455 | Children Film Society, New Delhi | 1997-98 to 1999-2000 | Nil | The Society was incurring loss during the concerned years |
| 10. | 3456 | German Leprosy Relief Association Rehabilitation Fund, Chennai | 2001-2002 | Nil | The income is exempted u/s. 11 of IT Act. |
| 11. | 3457 | Exhibition Society, Hyderabad | 2002-03 to 2004-05 | Nil | The income is exempted u/s. 11 of IT Act. |

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|----------|--|---------------------------|--------------|--|
| 12. 3458 | Shree Gadge Maharaj Mission Mumba | 2001-02 to 2002-2003 | Nil | The income is exempted u/s. 11 of IT Act. |
| 13. 3459 | All Bengal Women's Union Kolkata | 1999-2000 to 2001-2002 | Nil | The Society was in loss |
| 14. 3460 | Export Promotion Council for Handicrafts, New Delhi. | 2002-2003 to 2004-05 | Nil | The income is exempted u/s. 11 of IT Act. |
| 15. 3461 | Council for Leather Exports, Chennai | 1992-93 to 1994-95 | 8,00,000 | |
| 16. 3462 | Annapura Mahila Mandal, Mumbai. | 2000-2001 to 2002-2003 | Nil | The income is exempted u/s. 11 of IT Act. |
| 17. 3463 | Council for Leather Exports, Chennai | 1986-87 to 1988-89 | 2,27,652 | |
| 18. 3464 | The Railway Goods Clearing and Forwarding Establishment Labour Board, Mumbai | 1993-94 to 1995-96 | 10,51,05,824 | |
| 19. 3469 | The Tribune Trust, Chandigarh | 2004-2005 to 2006-2007 | ---- | The Returns for these years are not due for filing |
| 20. 3470 | National Stock Exchange Investor's Protection Fund Trust, Mumbai | 1996-97 to 1998-99 | Nil | The income is exempted u/s. 11 of IT Act. |
| 21. 300 | Indian Women Scientists Association, Mumbai | 1997-98 to 1999-2000 | Nil | The income is exempted u/s. 11 of IT Act. |
| 22. 301 | Council for Leather Exports, Chennai | 1989-90 to 1991-92 | 30,89,956 | |
| 23. 302 | Jalianwala Bagh National Memorial Trust, Amritsar | 1998-99 to 2000-2001 | 27, 134 | |
| 24. 303 | Southern Health Improvement Samity, 24, Paragana, west Bengal | 2000-2001 to 2001-2002 | Nil | The income is exempted u/s. 11 of IT Act. |
| 25. 304 | His Holiness Dalailama Charitable Trust, New Delhi | 2002-2003 to 2004-2005 | Nil | The income is exempted u/s 11 of IT Act. |
| 26. 305 | National Children's Fund Delhi | 1993-1994 to 1995-1996 | Nil | The income is exempted u/s. 11 of IT Act. |

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|-----|-----|---|------------------------|---------------|--|
| 27. | 306 | Karnataka Chief Minister's Medical Relief Society, Bangalore | 2002-2003 to 2004-2005 | Nil | The income is exempted u/s. 11 of IT Act. |
| 28. | 307 | National Children Fund, Delhi | 1990-1991 to 1992-1993 | Nil | The income is exempted u/s.11 of IT Act. |
| 29. | 308 | Sarva Seva Sangh, Sevagram Wardha | 2002-2003 to 2004-2005 | Nil | It is a renewal case of earlier Notification issued on 17.9.2001 |
| 30. | 313 | Bharatiya bhasha Parishad, Kolkata | 2002-2003 to 2004-2005 | Nil | The income has been held exempted u/s.11 of the IT Act. |
| 31. | 314 | Haryana Chief Minister's War Heroes Relief Fund, Punchkula | 1999-2000 to 2001-2002 | 2,44, 14, 000 | |
| 32. | 702 | National Children's Fund, Delhi | 1999-2000 to 2001-2002 | Nil | The income is exempted u/s. 11 of IT Act. |
| 33. | 703 | Jyotirmath Badrikashram Himalaya, Sri Guru Paduka Bhawan, Kolkata | 2002-2003 to 2004-2005 | Nil | The income is exempted u/s. 11 |
| 34. | 704 | The Hindu Women's Welfare Society, Mumbai | 1999-2000 to 2001-2002 | Nil | The income is exempted u/s.11 of IT Act. |
| 35. | 705 | Centre for Social Studies, Surat | 1995-96 to 1997-1998 | 13,45, 270 | |
| 36. | 706 | Ramakrishan Abhedananda Mission, Kolkata | 2002-2003 to 2004-2005 | Nil | The income is exempted u/s. 11 of IT Act. |
| 37. | 715 | The Bar Council of India, Delhi | 1997-98 to 1999-2000 | Nil | The income is exempted u/s. 11 of IT Act. |
| 38. | 716 | Council For Leather Export, Chennai | 2001-2002 to 2003-04 | Nil | |
| 39. | 717 | Sri Ahobila Math Samskrita Vidya Abhivardhini Sabha, Chennai | 1998-1999 to 2000-2001 | Nil | The income is exempted u/s.11 of IT Act. |
| 40. | 718 | The Indo-Japan Centre, Chennai | 1998-1999 to 2000-2001 | 33, 720 | This figure pertains to A.Y. 1998-99 only. |

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|-----|-----|---|---------------------------|-------------|--|
| 41. | 719 | Bhartiya Adim Jati Sevak Sangh, New Delhi | 2002-2003 to 2004-2005 | Nil | The income is exempted u/s.11 of IT Act. |
| 42. | 720 | Andhra Pradesh State Seed Certification Agency, Hyderabad | 1992-93 to 1994-1995 | 9,41,204 | |
| 43. | 721 | Tamilnadu Trade Promotion Corporation, Chennai | 2001-2002 to 2003-2004 | 64,88,008 | |
| 44. | 722 | Maratha Mandir, Mumbai | 1999-2000 to 2001-2002 | 1,16,65,736 | |
| 45. | 723 | Andhra Pradesh State Seed Certification Agency, Hyderabad | 1995-96 to 1997-1998 | Nil | The Society incurred losses during these years |
| 46. | 727 | The Mysore Resettlement Development Agency, Bangalore | 2003-2004 to 2005-2006 | Nil | The income is exempted u/s. 11 of IT Act. |
| 47. | 728 | Media Lab Asia, Mumbai | 2002-2003 to 2004-2005 | Nil | The income is exempted u/s. 11 of IT Act. |
| 48. | 729 | Andhra Pradesh State Seed Certification Agency, Hyderabad | 1989-90 to 1991-92 | 57,10,885 | |
| 49. | 730 | West Zone Cultural Centre Udaipur | 2001-2002 to 2003-2004 | Nil | The income is exempted u/s.11 of IT Act |
| 50. | 731 | International Commission on Irrigation and Drainage, New Delhi. | 2002-2003 to 2004-2005 | 24, 92, 700 | |
| 51. | 732 | Aga Khan Rural Support Programme (India),New Delhi | 2000-2001 to 2002-2003 | Nil | The income is exempted u/s. 11 of IT Act. |
| 52. | 733 | Institute for Financial Management and Reserarch, Chennai | 2002-2003 to 2004-2005 | Nil | It is a renewal case for earlier' notification dated 8.5.2000 |

APPENDIX II

CONFIDENTIAL

EXTRACTS FROM THE MINUTES OF THE FOURTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (2004-2005)

The Committee met on Tuesday, 26 October, 2004 from 1500 to 1625 hours in
Committee Room No. 139, Parliament House Annexe, New Delhi.

PRESENT

Shri N.N. Krishnadas - **Chairman**

MEMBERS

2. **Shri Omar Abdullah**
3. **Shri Ajay Chakraborty**
4. **Shri Bikram Keshari Deo**
5. **Shri Ram Singh Kaswan**
6. **Shri Vijay Khandelwal**
7. **Shri A. Venkatarami Reddy**
8. **Shri Chandra Shekhar Sahu**
9. **Shri Ramji Lal Suman**
10. **Shri P.C. Thomas**

SECRETARIAT

- | | | | |
|----|----------------------|---|----------------------|
| 1. | Shri John Joseph | - | Additional Secretary |
| 2. | Shri A. Louis Martin | - | Director |
| 3. | Shri Ashok Balwani | - | Under Secretary |

-2-

2. The Committee took oral evidence of the representatives of two Ministries/ Departments, one after the other.

3. The representatives of the Ministry of Finance (Department of Revenue) were called in first. The following were present:-

- | | | | |
|-------|-------------------------|---|-------------------|
| (i) | Shri K.M. Chandrasekhar | - | Revenue Secretary |
| (ii) | Shri A.S. Narang | - | Member (IT) |
| (iii) | Shri Upamanyu Basu | - | Director (ITA-I) |

4. The Committee then took oral evidence of the representatives of the Ministry of Finance (Department of Revenue) regarding exemption under Section 10(23C)(iv) of Income Tax Act, 1961.

5. Verbatim proceedings of the evidence was kept.

The witnesses then withdrew.

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|----|-----|-----|-----|
| 6. | XXX | XXX | XXX |
| 7. | XXX | XXX | XXX |
| 8. | XXX | XXX | XXX |

The Committee then adjourned.

**EXTRACTS FROM THE MINUTES OF THE FIFTH SITTING OF THE
COMMITTEE ON SUBORDINATE LEGISLATION (2004-2005)**

The Committee met on Wednesday, 17 November, 2004 from 1500 hours to 1545 hours in Committee Room No.G-074, Parliament Library Building, New Delhi.

PRESENT

Shri N.N. Krishnadas - **Chairman**

MEMBERS

2. Shri Ajay Chakraborty
3. Shri Ram Singh Kaswan
4. Shri A. Venkatarami Reddy
5. Shri Chandra Shekhar Sahu
6. Shri Ramji Lal Suman
7. Shri P.C. Thomas
8. Shri Madhu Goud Yaskhi

SECRETARIAT

1. Shri V.K. Sharma - Joint Secretary
2. Shri A. Louis Martin - Director

3. Shri Ashok Balwani - Under Secretary

2. At the outset, the Chairman welcomed the members to the sitting of the Committee and mentioned about nomination of Shri Sudam Marandi as a member of the Committee.

3. Thereafter, the Committee took up the following memoranda for consideration:-

(1) Memorandum No.6 regarding the Merchant Shipping (Cancellation or Suspension of Certificate of Competency) Rules, 2003

(2) Memorandum No.7 regarding the discrimination in the duration of probationary period

(3) Memorandum No.8 regarding the short title of the Commemorative Coins on Maharana Pratap

(4) XXX XXX XXX

4. Having considered the memoranda at Sl.No.(1) (2) and (3) above, the Committee decided to prepare a report thereon with suitable comments.

5. XXX XXX XXX

6. XXX XXX XXX

The Committee then adjourned.

XXX Omitted portion of the Minutes are not relevant to this Report.

APPENDIX III

MINUTES OF THE EIGHTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (FOURTEENTH LOK SABHA) (2004-2005)

The Committee met on Tuesday, 1 March, 2005 from 1500 to 15.45 hours in Committee Room G-074, Parliament Library Building, New Delhi.

PRESENT

Shri N.N. Krishnadas - Chairman

MEMBERS

2. Shri Omar Abdullah
3. Shri Ajay Chakraborty
4. Shri Bikram Keshari Deo
5. Justice (Retd.) N.Y. Hanumanthappa
6. Shri Ram Singh Kaswan
7. Shri A. Venkatarami Reddy
8. Shri Chandra Shekhar Sahu
9. Shri Ramji Lal Suman

SECRETARIAT

1. Shri John Joseph, Additional Secretary
2. Shri A. Louis Martin, Director
3. Shri Ashok Balwani, Under Secretary

2. The Committee took up for consideration the draft Fourth and Fifth Reports and adopted the same without any modification.

3. The Committee then authorized the Chairman to present the same to Lok Sabha.

The Committee then adjourned.
