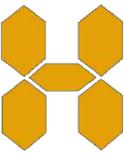


Liberalized Vaccine

POSITION OF PATENT LAW ON VACCINES





SHORT STORY

Sometimes a story can teach much more than entire philosophical treatises

A long time ago, a farmer had a duck, which laid 4 eggs. After a few days, all eggs hatched.

Three ducklings looked like their mom and the fourth one looked different. It was big and grey.

All other ducklings started making fun of him, as they started calling him ugly.

After some days the sad duckling ran away to a river nearby. There he saw a beautiful white swans.

After seeing their beauty, he wanted to drown in the river. But when he looked at his reflection in the river, he realized he was not an ugly duckling but a beautiful Swan!

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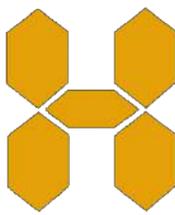


CONTACT US:

CALL: 080-4202 4038

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Liberalized Vaccine

POSITION OF PATENT LAW ON VACCINES

There are seven point eight billion people living in a world in the grips of the pandemic and vaccines for only 650 million of them produced and distributed by only a handful of large pharmaceutical companies and so far, distributed mostly to rich countries of the world. To change that, countries like India and South Africa are urging the World Trade Organization to introduce a temporary patent waiver for producing covid-19 vaccines. The idea is to allow other countries to make their own versions of vaccines and scale up production, which is essential to win the race against time with a mutating virus.

But so far, without any success. The United Kingdom (U.K.), United States of America (U.S) and the European Union (E.U.) are among those blocking the waiver, and major pharma companies are opposing it, too.

REASON FOR OPPOSITION

Five major covid-19 vaccine producers account for over 90 percent of all vaccines produced globally. It's projected companies will scale up massively by the end of 2021. But proponents of the waiver say production needs to happen faster, especially in light of booster's or new vaccines. We may need to tackle a mutating virus.

Over 100 nations, led by India and South Africa, are asking the WTO for a temporary suspension of certain patent rules enshrined in the so-called TRIPS agreement. To put it simple, supporters say a patent waiver would help overcome certain legal barriers, preventing them from producing their own vaccines. They also argue the waiver could be a first step towards distributing vaccines more equally.

For now, over 80% of all vaccines have gone into the arms of people in rich and middle income countries.

NGOs estimate that 9 in 10 people in 70 countries won't receive the vaccine this year. In fact, many predict that most poor countries will not achieve mass vaccination until 2024. Supporters of the waiver also argue more manufacturers in more countries could drive prices down. AstraZeneca and Johnson and Johnson have vowed to provide vaccines on a nonprofit basis during the pandemic, but Moderna and Pfizer have not. Pfizer is charging 39\$ in the U.S. and around 37\$ in the E.U.

MONOPOLY IS INAPPROPRIATE DURING PANDEMIC

Amongst all others the U.S. Government has signaled that, it may rethink its opposition to the waiver. Pressure on the U.S. has been mounting over 170 former heads of state and Nobel laureates, as well as a series of U.S. lawmakers and global organizations, have called on the U.S. government to reverse its veto.

But opposition to the idea of a waiver remains strong. The E.U., U.K., Japan and Brazil are among those blocking it. The farmer and intellectual property lobby are opposed to it, too, and some say a waiver is unnecessary.

Non-exclusive voluntary licensing agreements are entered with pharmaceutical manufacturers of various countries allowing them to manufacture and distribute in specific countries.

Example: Serum Institute of India

Opponents to the proposal say that waiving intellectual property rights could kill innovation and that innovation is not rewarded. It could discourage investors and companies from spending money on such research in the future. For them, voluntary licenses are the way to go, and they say that they've already been granted to manufacturers fulfilling requirements. Many also say the waiver wouldn't lead to more vaccine doses. One of the arguments the world is already working at maximum speed.

The production and distribution of covid-19 vaccines involves many challenges from the complexity of supply chains to shortages of raw materials and the need to meet high production standards. The backers of the waiver say, therefore, is for companies to share their Know-How and for governments to increase pressure on them to do so.

The WHO is already created a Covid-19 Technology Access Pool called "C-TAP" designed to share vaccine technology, skills and know-how with prominent supporters like US Chief Medical Adviser Anthony Fauci.

However, so far, none of the major pharmaceutical companies producing vaccines have signed up.

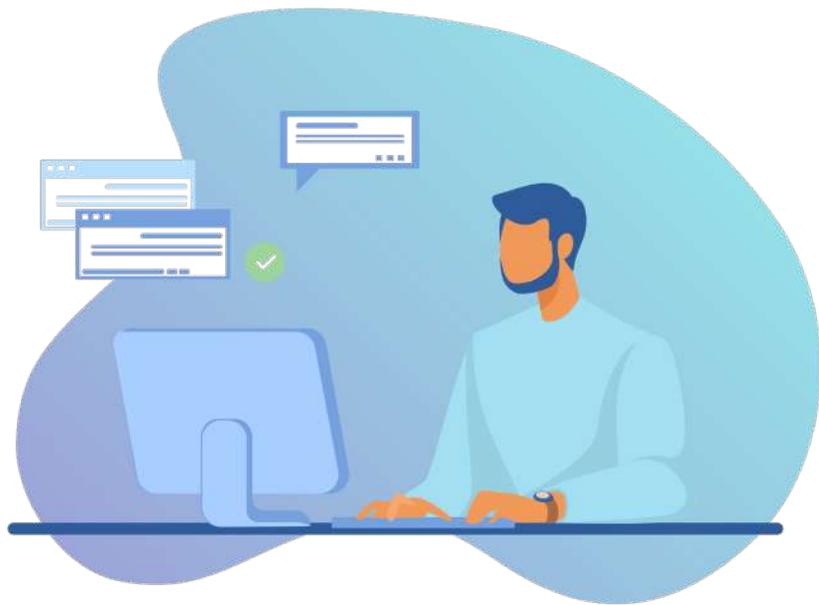




OVERVIEW

The Supreme Court has put an end to an over two-decade-old software royalty tax dispute after it ruled that cross-border payments made for the sale of software to a non-resident are not to be taxed as "royalty".

Honorary Court has ruled that no TDS is applicable on Indian Companies for amount Paid to use Foreign Software.



20-YEAR OLD TUSSLE

- ❖ The case pertains to the treatment of payments by end users or tech companies in India to suppliers abroad on import of software as 'royalty'
- ❖ Assessments of these payments as a royalty under the applicable Income Tax Sections made it mandatory to deduct tax.
- ❖ The 20-year-old litigation involved more than 80 appeals from companies that included Samsung, IBM India, Sonata, Infineon & GE India.
- ❖ At least in one case a High Court did not accept a company's point that, through these imported software, it only acquired a 'copyrighted article' but not the 'copyright' itself.
- ❖ The High Court had said when an imported software is redistributed, the incorporated program was licensed to the end-user, and hence payments were held to be 'royalty'
- ❖ Finally, the Supreme Court in its 226 pages order set aside all judgements. Thus, now all companies will be able to apply for refunds accordingly.

ANALYSIS

The appeals of the Engineering Analysis Centre of Excellence may be grouped into four categories.

- ❖ The first category deals with cases in which computer software is purchased directly by an end-user, resident in India, from a foreign, non-resident supplier or manufacturer.
- ❖ The second category of cases deals with resident Indian companies that act as distributors or resellers, by purchasing computer software from foreign, non-resident suppliers or manufacturers and then reselling the same to resident Indian end-users.
- ❖ The third category concerns cases wherein the distributor happens to be a foreign, non-resident vendor, who, after purchasing software from a foreign, non-resident seller, resells the same to resident Indian distributors or end-users.
- ❖ The fourth category includes cases wherein computer software is affixed onto hardware and is sold as an integrated unit/equipment



CIRCULAR REFERENCE

- ❖ It is also important to note that vide Circular No. 10/2002 dated January 9, 2002, the Revenue, after referring to section 195 of the Income Tax Act and deciding that a No Objection Certificate from the Department would not be necessary if the person making the remittance is to submit an undertaking along with the certificate of an accountant to the Reserve Bank of India has itself made a distinction in the proforma of the certificate to be issued.

ANALYSIS & VERDICT

The Three-Judge bench of Justices R.F.Nariman, Hemant Gupta, and B.R.Gavai noted the following:

- ❖ Given the definition of royalties contained in Article 12 of the DTAA mentioned in paragraph 41 of this judgment, it is clear that there is no obligation on the persons mentioned in section 195 of the Income Tax Act to deduct tax at source, as the distribution agreements/EULAs in the facts of these cases do not create any interest or right in such distributors/end-users, which would amount to the use of or right to use any copyright.
- ❖ The provisions contained in the Income Tax Act (section 9(1)(vi), along with explanations 2 and 4 thereof), which deal with royalty, not being more beneficial to the assessee, have no application in the facts of these cases.
- ❖ The court said that the amounts paid by resident Indian end-users/distributors to non-resident computer software manufacturers/suppliers, as consideration for the resale/use of the computer software through EULAs/distribution agreements
- ❖ These amounts are not the payment of royalty for the use of copyright in the computer software, and that the same does not give rise to any income taxable in India, as a result of which the persons referred to in Section 195 of the Income Tax Act were not liable to deduct any TDS under section 195 of the Income Tax Act.

The answer to this question will apply to all four categories of cases.

This issue was contested before various courts in the past. The two most important and conflicting rulings were in the case of Samsung Electronics where the Karnataka High Court had ruled in favour of the Revenue and Delhi High Court's ruling in the case of Ericsson favouring the taxpayers.

RESPONSE

- ❖ Tax experts hailed the SC order, saying the judgment would have a far-reaching impact. Rakesh Nangia, Chairman, Nangia Andersen India, says the ruling was much awaited and will put to rest open litigation on this issue.
- ❖ Vishal Malhotra, National Tax Leader - TMT, EY India, said the judgement not only brings certainty to the two-decade-long debate but also vindicates the non-taxability stand on software payments by reinforcing supremacy of tax treaties entered into by two sovereigns over the domestic law.

Supreme court has ruled by analysing the article 12 of DTAA and concluded that Purchase of software from foreign countries does not amount to "royalty". Thus, by applying DTAA an importer can get away with the requirement of TDS on import of software.



Mubarak Gafur Korabu v. ITO [Pune Trib]

Assessing Officer initiated reassessment proceedings on ground that assessee had raised excess claim of depreciation in respect of water supply and drainage system, in view of fact that said reason for reopening of assessment was subject matter of proceedings under section 143(3) and thereupon proceedings under section 263, once again, for very same reason, power under section 147 could not be invoked and, thus, impugned reassessment proceedings were to be set aside



CIT v. Neyveli Lignite Corporation Ltd. [Mad HC]

Agricultural land not covered under ambit of Sec. 56(2)(vii)(b) as the land purchased and held by assessee was agricultural land which was not a capital asset as clearly defined under section 2(14). Section 2(14) clearly excludes agricultural land out of the definition of capital asset.

Chowdry Associates. v. ACIT [Del Trib]

Where assessee was in business of commodity derivatives and revenue had also accepted income from transactions of assessee as business income and not as income from speculation for all earlier years, if owing to suspension of operations by NSEL, assessee could not recover amounts from brokers which were advanced for purchase of commodities, such loss was allowable under section 28

Atlas Healthcare Software India (P.) Ltd. v. ACIT [Kol Trib]

Where DRP directed Assessing Officer/TPO to provide benefit of working capital adjustment to assessee, however, while giving effect DRP order to Assessing Officer/TPO had not given effect to it, therefore, TPO was to be directed to implement DRP's direction

Supreme Build Cap (P.) Ltd. v. ACIT [Del Trib]

Where Assessing Officer made certain addition to assessee's income in respect of sale of property, in view of fact that said amount represented outstanding receivable from buyer in respect of property sold in earlier assessment year, impugned addition was to be deleted

Pandian Hotels Ltd. v. DCIT [Mad HC]

Where assessee, running a hotel, incurred certain expenses on renovation and repair of hotel rooms, same was to be allowed as deduction under section 37(1)





Supreme Build Cap (P.) Ltd. v. ACIT [Del Trib]

Where assessee, engaged in business of real estate, claimed depreciation in respect of its routine business assets such as cars, air conditioners, computers etc., mere fact that assessee had not undertaken any new project during relevant assessment year, could not be a ground for rejecting claim so raised

Yes Bank Ltd. v. DCIT [Mum Trib]

In case of public limited company, issue of shares to Qualified Institution Buyers (QIB) would be regarded as issue of shares to 'public' and, thus, expenses incurred on said issue would be eligible for deduction under section 35D as Preliminary Expenses

CIT v. Smt. Umayal Annamalai [Mad HC]

Where assessee invested sale proceeds of old asset in new property before due date of filing belated return and took possession within three years, she was entitled to exemption under section 54F though she had not invested sale proceeds in Capital Gain Account Scheme before due date of filing of return under section 139(1)

ACIT v. Swastic Safe Deposit and Investments Ltd. [SC]

SLP dismissed against High Court ruling that where gain from sale of shares by assessee was exempt from tax in terms of section 10(38), mere non-disclosure of such gain on sale of shares in return of income would not mean that capital gain from sale of shares had escaped assessment

Yes Bank Ltd. v. DCIT [Mum Trib]

In case of public limited company, issue of shares to Qualified Institution Buyers (QIB) would be regarded as issue of shares to 'public' and, thus, expenses incurred on said issue would be eligible for deduction under section 35D as Priliminery Expenses

Bar Council of Delhi v. CIT [Del Trib]

Where appellant, Bar Council of India was engaged in safeguarding rights, privileges and interest of advocates, thus, its dominant purpose being of advancement of general public utility, it would be entitled for registration under section 12AA and consequent exemption under section 80-G



INCOME TAX

- Filing Belated Return of Income u/s 139(4) for AY 2020-21 (FY 2019-20) – Extended to 31st May, 2021 (which ended on 31st March, 2021)
- Filing SFT (Form 61) extended to 31st May, 2021 (where the due date was 30th April, 2021)
- Return filed in response to 148 of the Income Tax Act – where return of income had to be filed on or after 1st April, 2021 - can now be filed upto 31st May, 2021
- Relaxation of Filing Appeal dates for Appeals to CIT (Appeals) extended to 31st May, 2021 (where such last date was 1st April, 2021 or after)
- Payments of TDS deducted u/s 194IA, 194IB and 194M and filing of challan-cum-statement on the same on or before 31st May, 2021 (earlier date 30th April, 2021)

GST

- Reduction in Interest Rate for delayed GST payment for Regular Taxpayer for the month of March & April 2021
 - Regular taxpayer- Turnover more than 5 Cr- Interest rate reduced to 9% for first 15 days
 - Regular taxpayer- Turnover upto 5 Cr- Interest rate reduced to NIL for First 15 days and 9% for next 15 days
- Reduction in Interest Rate for delayed GST payment for Composition taxpayer for the March'21 quarter- Interest rate reduced to NIL for First 15 days and 9% for next 15 days
- Waiver of late fees for delayed filing of GSTR-3B for the month of March & April 2021
 - Regular taxpayer- Turnover more than 5 Cr- Late fees waived for 15 days
 - Regular taxpayer- Late fees waived for 30 days
- Extension in due date for filing GSTR-4 for composition taxpayers for FY 2020-21- The due date extended to 31st May 2021 from current 30th April 2021.
- Extension in due date for furnishing the declaration in ITC-04 in respect of goods dispatched to a job worker or received from a job worker for Jan-Mar'21 quarter- The due date extended to 31st May 2021.
- Extension in due date for filing GSTR-1 for the month of April 2021- The due date extended to 26th May 2021.
- Extension in due date for filing IFF for the month of April 2021- The due date extended to 28th May 2021.
- Relaxation in restriction of Input Tax Credit under rule 36(4)- , the said restriction of 5% shall apply cumulatively for the period April to May, 2021.
- Time limit for completion or compliance of any action, by any authority or by any person, which falls during the period from the 15th April, 2021 to 30th May, 2021 is extended up to 31st May, 2021

App of the Month -

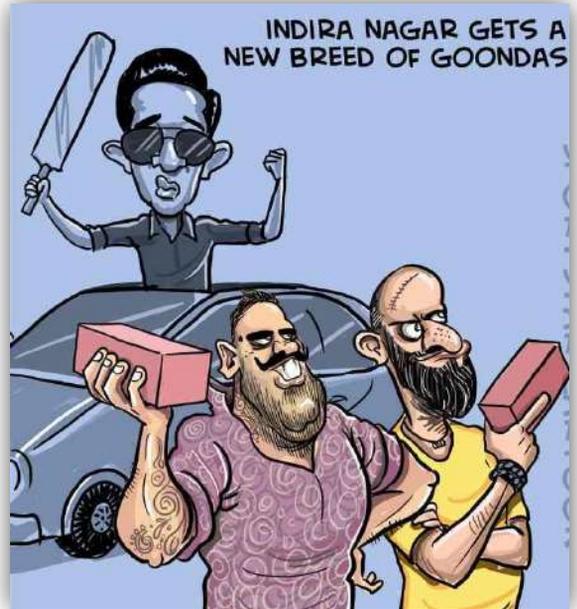
ADOBE SCAN



Use the Adobe Scan mobile document scanner to turn anything – receipts, notes, documents, photos, business cards, whiteboards – into an Adobe PDF or JPEG file with content you can reuse from each PDF and photo scan.

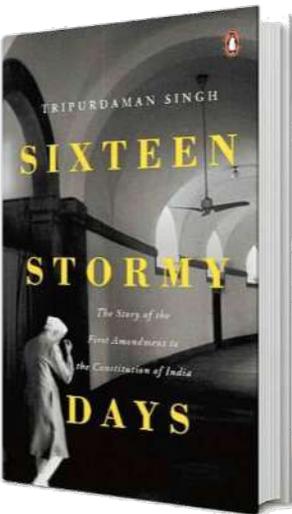
With the free mobile scanner app, you can make anything scannable. Use the quick PDF scanner to create a photo or PDF scan. Scan and go right back to other important things.

Click of the Month



Book of the Month -

SIXTEEN STORMY DAYS



“Every moment is a fresh beginning”

- 288 pages
- Published in 2020
- Vintage books

The Indian Constitution finally came into being in 1950 following three years of debate, yet it was radically changed in June 1951 after a mere 16-day debate. What was the reason for such an

extreme change, given that it curbed most of the liberal rights mentioned in the Constitution? The First Amendment restricted freedom of speech, gave permission for caste-based reservation and made a special provision for unconstitutional laws that were above any judicial interference. PM Nehru made radical changes to the Constitution, leading to huge divide between what was promised to the people, and what we actually received.

Doctor's Diary

MANGO LEAVES



Mango leaves helps in prevention of cell damage. Its antimicrobial properties can help in treating tumors and cancer. It contains vitamin A, B and C.

Consumption of water boiled with mango leaves in empty stomach helps in diabetes.

Trivia

Mahant Bharatdas Darshandas has been voting since 2004 and during every election since then, a special polling booth is set up exclusively for him as he is the only voter from Banej in Gir forest.

