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Session III: Indian Legal Landscape and Foreign Trade

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Session III

INDIAN LEGAL LANDSCAPE AND FOREIGN TRADE

This session was chaired by Mr. P. R. Kumaramangalam, Minister of State for Law, who commenced by saying that the world on the whole, has realised that there is no other way but to remember that we are dependent on each other and the humanity as a whole is one. He further added that the share of manufactured goods in the world trade have increased from about 45 percent in 1955 to about 63 percent in 1985 and that now we are in the region of nearly 70 percent of the world trade. He was of the view that intellectual property would be one of the issues that would have to be discussed in any multi-lateral or even bi-lateral forums wherein world trade was being discussed. He remarked that India still believes that higher protection to one's own industry even at the cost of inefficiency, bad production techniques, old fashioned technology and lack of utilisation of capacity is better than opening up your economy and ensuring you have the competitive edge. He further added that we believed that ideologically and conceptually the universe is one family. He assured the participants that though we have almost 23-25 statutes, they did not really come in the way of foreign trade or create problems for foreign trade. He observed that it was the exercise of interpretation that created problems. He said that if the administration wanted to interpret it from the point of view of a liberal competitive outlook, they could do so.

He pointed out that today the approach is of a liberal competitive outlook and certain steps have been taken regarding this like decanalising a number of sections and rationalisation of tariffs.

He firmly stated that we would not review the Super 301 under pressure. He stressed that those who dealt with internal or foreign trade should realise that India is a industrialised developing country and we have problems akin to both developed countries and also of a developing country. In this context he mentioned that while we are talking about a free market economy, it is inevitable that we have to talk of a welfare state.

He agreed that some of the imbalances that were shown on foreign trade taxation were not justified and he appreciated the points relating to foreign technical experts and approval and assured that steps would be taken to see that the approvals are given within a period of two weeks from the date on which the application is made with the requisite information supplied in the forms. He concluded by saying that we preferred persuasion to pressure.

This presentation was followed by a question-answer session. In answer to a question relating to delay in litigation in India between foreign investors and particularly the Indian government, the Minister said that efforts will be made to work out a possible way.

After the question-answer session there was a presentation from Mr. Nishith Desai, a Senior Advocate. He also showed five slides to the participants. He spoke on tax and non-tax matters and also of the attitudinal change that was required in India. He said that we should think not only of India but of every policy in terms of how it could operate globally.

According to him we cannot talk any more in terms of total independence, total self-reliance and this is what has been reflected in the new Industrial Policy but not to the extent which we should. He further said that the word 'self reliance' in the new policy has been defined to mean an ability to pay for imports and not as we understood it earlier, that if anything is produced in India it is a good reason to ban a competitive import.

He next spoke about the changes required in the non-tax policies. He was of the view that permitting 51% foreign investment was a good step but he remarked that 50-50 ventures were coming up more and more. He made the following suggestions:

— The memorandum of information should be simplified.

— Since the licensing regime was being applied only to the items of security or hazardous nature or strategic nature certain items like electronic entertainment, dish washing machines and the like should be removed from the purview of the licensing system.

— Retail shopping centres should be included in the tourism industry

— Equity should be serviced.

  Therefore in case of priority business, the companies which were already in existence and were holding 40 percent equity and if they wanted to take up their equity to 51 percent should not be required to bring additional capital.

— De-investment policy should be announced as early as possible.

— Some parameters should be laid down for high-tech industry in the foreign technology policy.

— Rates of personal taxation as far as residents are concerned should be reduced.

— Discrimination relating to overseas restructuring should be immediately done away with.

Mr. K. Sampath a Chartered Accountant said that we have always recognised the role of taxes in economic development. He pointed out that it was essential that the four basic principles i.e. low rates, simplicity, stability and proper administration with reference to the tax provisions should be given due and proper weightage.

He also said that since India is short of foreign exchange it is very essential that we must have provisions that ensure that people bringing in foreign exchange are not harassed in any way and no questions are asked and no penalty or prosecution proceedings are initiated later on with reference to their inability to explain the source from which the monies are ploughed into this country then some sort of an incentive should be given vis-a-vis such retention so that there is a stimulus to those people to be able to retain the monies in the country.

He also suggested that there should be thinking on the subject that whether dividends should be subjected to tax or not and that whether all companies should be subjected to tax on such other rates which compare very favourably with the rates which are applicable in other developing countries.

He further suggested that the time has now come that we have a uniform definition with reference to the aspect of residents and non-residents assessees. He was of the view that we should adopt the parameters which are there in the Foreign Exchange Regulation Act as that Act makes a distinction very clearly between a citizen and a person who is not an Indian. He pointed out that it is the objective of the person which is important and merely because of the fact that for certain reasons, he has stayed in India or overstayed in India, he cannot be penalised by subjecting his global income to tax in India, and therefore in this context amendments are required.

Another suggestion was that the deeming provision in the Income Tax Act should be thoroughly overhauled, if we are to insulate the foreigners against income-tax i.e. Indian Income Tax on incomes which arise abroad or which arise to them while they are in India. He pointed out that the exceptions to the provisions should be more liberal and more realistic.

He also felt that the provision with reference to dividends paid outside India, interests paid by the government of India and others who are resident in India and royalty paid, and other provisions which say that they will be deemed to accrue or arise in India, should be done away with.

He was of the view that as in Pakistan we should also permit any Indian to maintain a non-resident account i.e. an account in foreign exchange.

Session IV

SOME IMPORTANT ASPECTS OF INDIAN FOREIGN TRADE

Mr. Anil Divan, Senior Advocate, Supreme Court of India and President Lawasia chaired this session. He began the session by pointing out that the legal profession has a prophylactic role to play and lawyers therefore, are very much interested in all reforms particularly reform where foreign investment has to come in a big way.