**‘OMIT , AND ‘REPEAL’ , IN LAW.**

1.In view of recent discussion on omission/repeal(?) of retro law as it is now infamously called ,the words in question**’’repeal’’** and **‘’omit’’**assume significance and need a proper legal appreciation specially in view of significant amount of confusion prevailing thereon.

**2.OMIT**: Something that is left out, left undone, (Black’s 9th ed.)

But there is another ,legal usage/aspect to this word. It also means,**’’something that never existed’’**; and there is a corollary to it:**’’unless there is a savings in General Clauses Act’’.**

2.1 **REPEAL:**abrogation of an existing law by legislsative act**(BLACK’S 9TH ED.)**

**3**.**Are they both same in substance and effect?Omit and repeal?**There are vital legal implications to it.

**4.**The relevant portions of the **GCA, 1897** need entry in our discussion here.They are reproduced as under-

**"6. *Effect of repeal*—**Where this Act, or any [Central Act} or Regulation made after the commencement of this Act, **repeals any enactment** hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not -

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| (*a*) |   | **revive anything not in force** or existing at the time at which the repeal takes effect; or |
| (*b*) |   | **affect the previous operation of any enactment so repealed** or anything duly done or suffered thereunder; or |
| (*c*) |   | **affect any right, privilege, obligation or liability** acquired, accrued or incurred under any enactment so repealed; or |
| (*d*) |   | **affect any penalty, forfeiture or punishment** incurred in respect of any offence committed against any enactment so repealed; or |
| (*e*) |   | **affect any investigation, legal proceeding or remedy** in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed. |

**6A. *Repeal of Act making textual amendment in Act or Regulation.*—**Where any [Central Act] or Regulation made after the commencement of this Act repeals any enactment by which the text of any [Central Act] or Regulation was amended by the express omission, insertion or substitution of any matter, then, unless a different intention appears, **the repeal shall not affect the continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal."**

**24.   Continuation of orders, etc, issued under enactments repealed and re-enacted.-**Where any (Central Act) or Regulation, is after the commencement of this Act, **repealed and re-enacted with or without modification,** **then,** unless it is otherwise expressly provided any (appointment notification) order, scheme, rule, form or bye-law (made or ) issued under the repealed Act or Regulation **shall, so far as it is not inconsistent with the provisions re-enacted, continue in force and be deemed to have been (made or) issued under the provision s so re-enacted,** unless and until it is superseded by any (appointment, notification) order, scheme, rule, form or bye-law, (made or) issued under the provisions so re-enacted (and when any (Central Act) or Regulation, which, by a notification under Section 5 or 5A of the Scheduled Districts Act, 1874 (14 of 1874) or any like law, has been extended to any local area, has, by a subsequent notification, been withdrawn form the re-extended to such area or any part thereof, the provision s of such Act or Regulations shall be deemed to have been repealed and re-enacted in such area or part within the meaning of this Section.

**5.ONE ARGUMENT: OMIT ,REPEAL,DELETE ARE SAME:**

The following decisions, (**1) *M/s. Shree Bhagwati Steel Rolling Mills* v. *C.I.T*. Excise & Others - 2015(326) ELT 209(S.C.), M/s. Fibre Boards 62 Taxmann.com 135 (S.C.)** interpret the matter in favour of the stand that omission of a provision shall have to be interpreted as per sec.6 and sec.6A of GCA 1897 and read in togetherness. **For proceedings which stem from the omitted provision, or part thereof, including consequential proceedings, it shall not mean an obliteration from the very beginning; it will have the effect as if the omitted part is in full force before such omission of the provision, or part thereof.**

**The Constitution bench in the above cases, orders passed in 2015, have held that repeal, delete and omit can be used interchangeably** and, therefore, section 6 of the General Clauses Act would also save provisions which have been omitted from the Act. **Therefore, the proceedings initiated during the omission of provision will continue. It cannot be obliterated from the very beginning.**

**6.COUNTER ARGUMENT:**

**Hon`ble Supreme Court in the case of Rayala Corporation (P) Ltd (1970 AIR 494) has defined the terminology "omission" and "Repeal" and distinguished these terminologies also.** The relevant para of the judgment is reproduced below:

*"The argument of Mr. Sen was that, even if there was a contravention of R. 132A(2) by the accused when that Rule was in force, the act of contravention cannot be held to be a "thing done or omitted to be done under that rule," so that, after that rule has been omitted, no prosecution in respect of that contravention can be instituted. He conceded the possibility that, if a prosecution had ,already been started while R. 132A was in force, that prosecution might have been competently continued.* ***Once the Rule was omitted altogether, no new proceeding by way of prosecution could be initiated even though it might be in respect of an offence committed earlier during the period that the rule was in force.*** *We are inclined to agree with the submission of Mr. Sen that the language contained in clause 2 of the Defence of India (Amendment) Rules, 1965 can only afford protection to action already taken while the rule was in force, but cannot justify initiation of a new proceeding which will not be a thing done or omitted to be done under the rule but a new act of initiating a proceeding after the rule had ceased to exist. On this interpretation, the complaint made for the offence under R. 132A(4) of the D.I. Rs. , after 1st April, 1965 when the rule was omitted,* ***has to be held invalid.’’***

**7.RAIPUR STEEL ORDER (see below)SAYS** :After going through the judgment of the Hon`ble Supreme Court in the case of *Rayala Corporation (P) Ltd* (*supra*), we note that **the provisions of section 6 of the General Clauses Act (X of 1897) apply only to repealed statutes and not to "omitted" statutes, unless it contains some special provision to the contrary**. Therefore, any penalty/prosecution under clause(*i*) of section 92BA may be punished before its "omission" that is, before 1-4-2017 and as soon as the Act omits any proceedings which are being taken against a person will *ipso facto* terminate.

**7.1 Raipur Steel Casting India (P.) Ltd. *v.*Pr.CIT [2020] 117 taxmann.com 944 (Kolkata - Trib.)**

**Section 92BA of the Income-tax Act, 1961 - Transfer pricing - Domestic transaction, meaning of (Scope of provisions) - Assessment year 2014-15 - Whether when clause (i) of section 92BA has been omitted by Finance Act, 2017 with effect from 01-04-2017, without any saving clause of General Clauses Act, it would be treated as said clause never existed in Statute Book and, thus, impugned revisional proceedings initiated by Commissioner under section 263 in respect of specified domestic transactions referred to in clause (i) of section 92BA in relevant assessment year, deserved to be quashed - Held, yes [Para 22] [In favour of assessee]**

8.The position is well known that **the normal effect of repealing a statute or provision is to obliterate it from the statute book as completely as if it had never been passed, and the statute must be considered as a law that never existed.** To this rule, an exception is engrafted by the provisions Section 6(1). If a provision of a statute is **unconditionally omitted without a saving clause** in favour of pending proceedings, all actions must stop where the omission finds them, and if final relief has not been granted before the omission goes into effect, it cannot be granted afterwards. Savings of the nature contained in Section 6 or in special Acts may modify the position. **Thus the operation of repeal or deletion as to the future and the past largely depends on the savings applicable. In a case where a particular provision in a statute is omitted and in its place another provision dealing with the same contingency is introduced without a saving clause in favour of pending proceedings then it can be reasonably inferred that the intention of the legislature is that the pending proceeding shall not continue but a fresh proceeding for the same purpose may be initiated under the new provision.**

**9.ILLUSTRATIONS:**

**i.ESSAR OIL LTD VS ADDL CIT[** 2013] 157 TTJ 785 (Mumbai - Trib.)

Section 90 of the Income-tax Act, 1961 - Double taxation relief - Where agreement exists - Assessment year 2004-05 - Whether in pursuance of power conferred by sub-section (3) of section 90 with effect from 1-4-2004, Notification No. 91/2008 dated 28-8-2008 issued by Central Government clarifying phrase 'may be taxed' in context of DTAAs, is clarificatory in nature and, thus, it will have retrospective effect from assessment year 2004-05 - Held, yes - **Whether substitution of section 90 with effect from 1-10-2009, will not obliterate earlier section 90 and specifically sub-section (3) of section 90 which has come into effect from 1-4-2004 and, therefore, Notification dated 28-8-2008 issued therein shall continue to hold at least upto 1-10-2009**- Held, yes [Paras 67 and 76]

**ii.CIT *v.*Venkateswara Hatcheries (P.) Ltd.** [**1999] 237 ITR 174 (SC) held that**

 ***‘’As noticed earlier, the omission of section 2(27) and re-enactment of section 80JJ was done simultaneously****.* ***It is a very well-recognized rule of interpretation of statutes that where a provision of an Act is omitted by an Act and the said Act simultaneously re-enacts a new provision which substantially covers the field occupied by the repealed provision with certain modification, in that event such re-enactment is regarded having force continuously and the modification or changes are treated as amendment coming into force with effect from the date of enforcement of re-enacted provision.*** *Viewed in this background, the effect of re-enacted provision of section 80JJ was that profit from the business of livestock and poultry which enjoyed total exemption under section 10(27) from the assessment years 1964-65 to 1975-76 became partially exempt by way of deduction on fulfilment of certain conditions.’’*

10.This then is the correct way to appreciate the aspects of omit and repeal.Omnibus prescriptions without studying aspect of savings clause and parallel provisions being inserted after repeal/omission need to be examined in any given case.