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EDITORIAL

UNION BUDGET: BLOWING HOT AND COLD

CA VINOD JAIN*

The Union Finance Minister did a laudable and courageous job by his announcement of upward revision of income tax slabs substantially. The reduction in Excise Duty all across and specific sectors will improve consumer spending. The regulatory actions in custom duty reduction in selected areas will partly arrest the inflationary tendency. The proposal to waive farm loan of Rs. 60,000 crore is only a gratitude to the farmers by the nation. The poor value addition in agriculture and the inaction on the part of the government to empower agriculturists by providing agriculture infrastructure including cold chain, warehouses, irrigation and the farmers' ability to hold the farm produce to be sold at lucrative prices, has resulted into extremely poor financial condition of the Indian farmers. The waiver of loan may not be the solution; it can only act as an interim relief. The real solution lies in empowerment.

The shift in securities transaction tax, from a rebate in income tax to a deduction from income cannot be supported as it changes the very basis of STT which was brought in as a presumptive tax and not a transaction cost. The Finance Minister has increased taxation on short-term capital gain to 15% without addressing the controversy of investment income vs. business income. The current litigation has to be replaced by clear guidelines, may be based on a period of holding also of a short term capital asset or alternatively the best would be to allow the treatment as per books of account maintained in the ordinary course which indicates the intention of investment / business.

Contd. 3

INTERNATIONAL CRISIS – FALLING CAPITAL MARKET – AN OPPORTUNITY FOR INVESTORS

The US sub-prime crisis has caused significant losses to international financial giants including CitiBank, Merrill Lynch, Goldman Sachs, ABN Amro, Royal Bank of Scotland, UBS, Societe Generale and many more. The major US financial giants have already written off more than 100 billion dollar towards losses on sub-prime advances and their derivatives. The property prices in US have reduced by more than 50%, a large number of listed companies are quoting below their book value, jobs are being lost and threat of recession is looming large. The Federal Bank of US has already reduced the interest rates by about 50% in last few months with a view to arrest the recessionary tendency. The losses have primarily arisen on account of advances in real estate sector wherein due to defaults by the borrowers, properties were sold by banks resulting into further downfall of the market and further defaults aggravating to a huge loss situation.

The Indian Capital Market has been severely impacted by the crisis in the US market and the sensex has already come down from 23000 – 24000 mark to about 15000 – 17000 range. The sentiment in the Indian Capital Market is highly subdued. The technical analysts are projecting a further downfall on the basis of arithmetical and statistical formulations. The market analysts are pronouncing the apprehension of a big fall further.

The Indian economy on the other hand is very strong with an 8.8% growth in 2007-08. Most of the businesses are doing well and are expanding. The Indian businesses or financial markets are not having any major or noticeable impact of the international crisis, in view of lower dependence of the Indian market on the international businesses. The economy is in a resilient mood and is ripe for a further substantial growth arising out of large government, PSU and private sector investments.

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DIRECT TAXES

1.0 TAX RATES

- The basic exemption limit is proposed to be increased from Rs.1,10,000/- to Rs.1,50,000/-. Accordingly, the new rates of income tax on total income in such cases shall be as under:
  - **Upto Rs. 1,50,000 - NIL**
  - **Rs.1,50,001 to Rs.3,00,000 - 10%**
  - **Rs.3,00,001 to Rs.5,00,000 - 20%**
  - **Above Rs. 5,00,000 - 30%**
- Incase of women assesses, basic exemption limit shall be Rs. 1,80,000/- and in case of senior citizens, it shall be Rs. 2,25,000/-
- Corporate Tax Rates remain unchanged
- The rate of tax on Short Term Capital Gains u/s 111A is increased from 10% to 15%.
- Any transfer of a capital asset in a transaction of reverse mortgage shall not be chargeable to capital gains. The lump sum amount or installment received under reverse mortgage is to be treated as a capital receipt and not as a income chargeable to tax.
- The amount paid towards securities transaction tax (STT) shall be allowed as expenditure while computing income under the head "Profits and Gains of Business". Accordingly, no rebate under section 88 E would be allowable in respect of the securities transaction tax paid for the assessment year 2009-10.
- A new tax called Commodities Transaction Tax (CTT) to be levied on taxable commodities transactions including sale or purchase of commodity derivatives entered in a recognized commodities exchange. The Commodities Transaction Tax is allowed as a deduction under the head Profits and Gains of Business or Profession.
- Deferred Tax Liability or any provision thereof and Dividend Distribution Tax under section 115O and 115R shall be added back for computation of Book Profits under section 115JB
- No Change in Surcharge and Education Cess rates

2.0 EXEMPTIONS/DEDUCTIONS EXTENDED

- 100% Tax holiday for 5 assessment years shall be provided to any hospital which is constructed and starts functioning on or after 1st April 2008 and before 31st March 2013 anywhere in India, other than excluded areas (big cities/towns specified in explaination) if prescribed conditions are satisfied.
- The following investments have been included under Section 80C:
  - Five year time deposit in account under Post Office Time Deposit Rules, 1981; and
  - Deposit in an account under the Senior Citizens Savings Scheme Rules, 2004.
- If the assessee withdraws the amount from such accounts before the expiry of a period of 5 years from the date of its deposit, the principal amount and the interest thereon so withdrawn shall be deemed to be income of the assessee of the previous year in which the amount is withdrawn.
- Additional Deduction of Rs.15,000/- (Senior Citizen – Rs.20,000/-) on health insurance premium paid for parents under Section 80D will be provided.
- Definition of "charitable purpose" u/s Section 2(15) amended so as to provide that advancement of any other object of general public utility shall not be treated as charitable purpose for claiming exemption u/s 10(23C) or section 11.
- The benefit of Section 35D relating to amortization of preliminary expenses extended to Service Sector and trading sector also.
- Any income derived from saplings or seedlings grown in a nursery shall be exempt from tax as agricultural income.
- From AY 2008-09, any amount paid to a company to be used by it for scientific research is deductible at 125% under section 35 if prescribed conditions are fulfilled.
- Section 40 A(3) is amended so that the splitting of payment in a single day is not permitted and hence any cash payment to a single person in a day exceeds Rs. 20,000 then it is liable for disallowance subject to Rule 6DD.

3.0 BANKING TRANSACTION TAX

Banking Cash Transaction Tax is withdrawn from 1st April 2009.

4.0 FRINGE BENEFIT TAX

- ESOP definition clarified to include securities offered under the option/ scheme.

- Excluded from Purview:
  - Expenditure on prepaid electronic meal card useable only at eating joints, subject to conditions.
  - Crèche Facility
  - Sponsorship of Sports of Employees
  - Sports events for employees
  - Guest House Maintenance expenses
- Value of Fringe Benefit on festival celebration reduced from 50 percent to 20 percent of total expenses.

5.0 OTHERS

- For the computation of Dividend Distribution Tax, the amount of dividend declared, distributed or paid by a domestic company shall be reduced by the amount of dividend received from its subsidiary; provided that the dividend received has suffered Dividend Distribution Tax and the parent company is not a subsidiary of another company.
- The provisions of Section 194C amended so as to provide that Association of Persons (AOP) and Body of Individuals (BOI) will also be liable to deduct income tax at source in respect of payment made to resident contractor.
- No TDS on Corporate Bonds under Section 193.
- **Due date of submission of Return of Income and fringe benefit tax has been changed from 31st October to 30th September with effect from assessment year 2008-09.**

Contd. from page no. 1

UNION BUDGET ...

The non-imposition of service tax on lawyers and continuation of tax on Chartered Accountants on same services is highly unjust. We do not want any FM of this country to be perceived as a partisan to a particular profession.

Public finances of India are suffering from a very serious debt trap. The central government tax collection is around Rs. 5.08 lakh crore whereas interest payment and repayment of debt is about Rs. 5.20 lakh crore. The profession of Chartered Accountants has to provide a solution to the government by comprehensive debt restructuring. A proper accounting of plan and non-plan expenditure, proper classification of revenue and capital expenditure and introduction of a comprehensive generally accepted accounting system based on double entry accounting are very necessary to leverage on government assets and retire all debts in a planned systematic manner. **The Government should set up a sub-group whereby CA profession can suggest how to come out of the major problems. Currently only about Rs. 31000 crore are being spent on plan capital expenditure of the government against a total budget of around Rs. 8 lakh crore.**

The increasing percentage of tax collection as compared to GDP is a matter of great concern. The central government revenue itself is more than 12% of GDP and when we add the State Government tax revenue, the total become even more than 30% of the GDP. **This may be seen as a crime on the part of the government to collect so many taxes requiring immediate attention and remedial restructuring across board**. Famous Indian Economist and politician **of our ancient times, Chanakya** mandated “The King has no right to levy tax more than 1/6 of income i.e. more than 16% of income”. The Government is thirsty in spite of so many taxes. We all need to find a solution to this enormous socio-economic aberration.

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INTERNATIONAL CRISIS ...

The slowing down of the economy as is seen may be viewed as part of the monetary policy of the central banker wanting to wrest the fledgling and over heated economy. The path to the growth in economy should be steady and firm.

The Indian Capital Market is likely to revive substantially in the near future in my be one or two months and this temporary apprehension of the impact of US crisis on the Indian market is likely to fade away as per fundamental indicators clearly laid out by the Economic Survey 2008 issued by the Government. Even US market is likely to revive in a period of 3 to 6 months, significantly, in view of substantial reduction in Federal interest rate providing support to buoyancy in the US market and reducing risk of sub-prime advances default.

Is it the right time to buy or to wait for the bottom is a crucial question being raised? The market has already come down to a very low level and may rebound at any time. Now it is for the investors to take a view, the down side risk being significantly low.

INDIRECT TAXES

1.0 SALES TAX

- Central Sales Tax rate to be reduced from 3% to 2% w.e.f 1st April 2008.
- Roadmap for Goods and Service Tax being prepared to introduction of GST from April 1, 2010.

2.0 EXCISE DUTY

- General CENVAT rate on all goods reduced from 16% to 14% to give a stimulus to the manufacturing sector.
- Excise on Pharmaceutical sector reduced form 16% to 8%.
- Excise on buses and their chassis, small cars and two & three wheelers reduced form 16% to 12% and on hybrid cars from 24% to 14%.
- Excise on packaged software increased form 8% to 12%.
- Excise duty on a few items including water purification devices, veneers and flush doors, sterile dressing pads, specified packaging material, and breakfast cereals reduced form 16% to 8%.
- Further, Excise duty reduced form 16% to nil on a few items including composting mach-ines, wireless data cards, packaged coconut water, tea and coffee mixes, and puffed rice.

3.0 CUSTOMS DUTY

- No Change in Peak Rate for non-agricultural produce.
- Rates of duty on various items reduced.
- Specified parts of set top boxes and specified raw materials for use in the IT/electronic hardware industry and bactofuges to be exempted from Customs duty.
- Duty on steel melting scrap and aluminium scrap reduced from 5% to NIL.
- Customs on specified life saving drugs and on specified sports goods machinery reduced to 5%.

4.0 SERVICE TAX

- No change in Service Tax rates.
- Basic exemption limit for service providers raised from Rs. 8 lacs to Rs. 10 lacs.
- Basic exemption for obtaining Service Tax Registration raised from Rs. 7 lacs to Rs. 9 lacs.
- 4 New Services added within the purview of service tax net. They are: -
  - i. asset management service provided under ULIP;
  - ii. services provided by stock/ commodity exchanges and clearing houses;
  - iii. right to use goods, in cases where VAT is not payable; and
  - iv. customized software and other IT services. Packaged software will be subject to VAT @ 12%.
- The renting of immovable property includes allowing or permitting the use of space in an immovable property, irrespective of the transfer of possession or control of the immovable property.
- The monetary limit for self-adjustment of excess amount of Rs. 50,000/- to Rs. 1,00,000/-.
- The time limit for filing of revised return of service tax is increased from 60 days to 90 days.
- The central Excise officer has empowered to reduce or waive the penalty for delaying filing of return, where the gross amount of service tax payable is nil.
- The rate of service tax on works contract service is being increased form 2% to 4% of the total of the Works Contract.
- Service Tax Return Preparer Scheme is introduced under Service Tax in line with Tax Return Preparers (TRP) under Income Tax.

LATEST IN FINANCE

1.0 SERFAESI ACT PUTS BANKS ON FAST TRACK TO DEBT RECOVERY

Banks have been able to recover over 41% of the bad debts for which proceedings were initiated in 2006-07 under the Securitisation and Reco-nstruction of Financial Assets and Enforcement of Security Interest (SERFAESI) Act. The Act has been responsible for the bulk of the bad loan recovery in the previous fiscal, helping banks improve ratio of Non-Performing Assets (NPAs) to total assets.

The SERFAESI Act 2002 has allowed banks to attach defaulters' properties after giving 60 days' notice. Although legal issues have cropped up regarding attaching and selling defaulters' properties, the threat of dispossession has propelled many borrowers to pay up.

2.0 RBI FINALISES NORMS FOR MORTGAGE GUARANTEE COMPANIES

The Reserve Bank of India has released the final guidelines for registration and operation of Mortgage Guarantee Companies (MGCs) in India. MGCs will be registered as Non-Deposit-taking NBFCs and should have a minimum net-owned fund of Rs. 100 crores, which shall be reviewed for enhancement after three years.

According to RBI regulations, the Foreign Direct Investment (FDI) to be eligible for investment in the equity of an MGC should have prior approval of the Foreign Investment Promotion Board (FIPB).

3.0 PUBLIC SECTOR BANKS GAIN GROUND

It had come to the notice of the government that some ministries as well as entities under their control have transferred their entire business or a substantial part of the business to Private Sector Banks, to the virtual exclusion of Public Sector Banks. Bulk deposits should be placed with the banks conducting their regular business, the govt. and PSUs, have been directed by the govt. that;

- At least 60% of department/ ministry funds to be parked with PSBs
- Competitive bidding for bulk deposits to be discontinued
- Letter says PSBs have special role in advancing govt. policy
- No business to be conducted through private banks alone.

INCOME TAX

1.0 MANDATORY E-PAYMENT OF TAXES FOR CORPORATES FROM APRIL

Corporate taxpayers will have to mandatorily pay taxes in e-mode from April 1 2008. This follows the successful implementation of e-filing of tax returns. Although the option of paying income tax through e-mode exists, it had not been made mandatory. Assesses who have to give audit reports will also have to make e-payment of taxes. Taxpayers can make e-payments through internet banking facilities offered by authorized banks or by way of credit or debit cards.

2.0 NEW ZERO COUPON BOND NOTIFIED

National Housing Bank has been permitted to issue Rs. 300 Crore zero coupon 10 year deep discount bonds as specified bonds in terms of section 2(48) of Income tax Act.The discount note will be notified by NHB.

(CBDT/23/2008/06.02.08)

3.0 DIVIDEND FROM DTAA NATIONS NOT TAXABLE: SC

The Supreme Court has upheld that dividend income received from a foreign company is not liable for taxation when there is a Double Taxation Avoidance Agreement (DTAA) with the country, the firm is based in. The court has endorsed the finding that the provisions of the DTAA will override the provisions of the Income Tax Act if they are at variance. In Case of Turquoise Investment & Finance, it was held that from a plain reading of Article XI of the DTAA with malasiya, it was clear that dividend income would be taxed only in the contracting states where such income accrued.

4.0 ESOPs FROM FOREIGN COMPANIES BROUGHT UNDER FBT NET

Equity shares of foreign companies allotted to employees in their Indian subsidiaries through Employee Stock Option Plans (ESOPs) have now been brought under the Fringe Benefit Tax (FBT) net.

The Finance Ministry has done away with a definition of "equity shares" in the existing guidelines on valuation of equity shares for the purpose of FBT on ESOPs. With the removal of the definition, the meaning of equity shares has been widened to take the general meaning under the income-tax law and thereby include equity shares issued by foreign companies.

5.0 LUXEMBOURG DTAA CLEARED

The government approved the Double Taxation Avoidance Agreement with Luxembourg. The treaty which received the go-ahead from the Union Cabinet is aimed at stimulating the flow of capital, technology and manpower between the two countries. The agreement on 'avoidance of double taxation and prevention of fiscal evasion with respect to taxes on income and on capital' will provide tax stability and reduce any obstacles in mutual co-operation. India has so far signed and notified such bilateral treaties with 71 other countries.

6.0 QUOTING PAN IN TDS RETURNS MADE MANDATORY

The income tax department has made it mandatory for the employers to quote Permanent Account Number (PAN) of all the employees and parties from whom tax is deducted while filing quarterly TDS or TCS returns.

7.0 CYPRUS MAY CEASE TO BE CAPITAL GAINS TAX HAVEN

The party may soon be over for investors coming into India from Cyprus. The Double Taxation Avoidance Agreement (DTAA) between the two countries is all set to lose the capital gains tax exemption benefit.

Both the governments are understood to have concluded negotiations on amendments to the tax treaty, following which

residents, both individuals and companies of Cyprus, would have to pay Capital Gains Tax at the rate of 10%.

A limitation on benefits clause to ensure ineligible entities cannot get a benefit under the tax treaty is also proposed to be inserted.

8.0 FCEBs into shares: Method to calculate acquisition cost

The Finance Bill 2008 has now provided that the cost of acquisition of the shares received upon conversion of the bond would be the price at which the corresponding bond was acquired. It has also been provided that conversion of FCEBs into shares would not be treated as 'transfer' within the income-tax law.

INDIRECT TAXES

1.0 EU VAT ACCORD

European Union finance ministers approved a compromise agreement on value-added taxes for services that will apply VAT in the country of the customer, rather than of the provider.

2.0 MORE EXPORT SERVICES TO GET TAX REFUNDS

Exporters will now be able to claim service tax refund on three more services. The new ones include services provided by the goods transport agency in relation to transportation of export goods from the place of removal to the actual place of export, services provided in relation to transportation of goods in containers by rail and courier services provided to an exporter in relation to transportation of documents, goods or articles relating to export, to a destination outside India.

3.0 CBEC MOVE TO SPEED UP DISPOSAL OF EXCISE CASES

In an attempt to expedite the disposal of pending Central Excise cases, the Finance Ministry has brought parity in the adjudication powers of Joint Commissioners with that of Additional Commissioners in all the Central Excise Commissionerates of the country. With latest move, Joint Commissioners can now adjudicate cases involving duty of up to Rs. 50 Lakhs.

4.0 ALMONDS, CASHEW NUTS PACKAGING LIABLE FOR EXCISE DUTY, RULES SC

The Supreme Court ruled that packaging of processed cashew nuts, peanuts, almonds etc. in the form of dry roasting, oil roasting, salting would attract excise duty. The sale of such products by the companies without registering with the authorities would also invite imposition of penalty, said the apex court.

AUDIT

1.0 PRUDENTIAL NORMS FOR ISSUANCE OF LETTERS OF COMFORT BY BANKS REGARDING THEIR SUBSIDIARIES

Any Letter of Comfort (LOC) that is assessed to be a contingent liability of the bank by a rating agency / internal or external auditors/ internal inspectors or the RBI inspection team, shall be treated, for all prudential regulatory purposes, on the same footing as a financial guarantee issued by the bank.

The banks should disclose full particulars of all the LOCs issued by them during the year, including their assessed financial impact, as also their assessed cumulative financial obligations under the LOCs issued by them in the past and outstanding, in its published financial statements, as part of the 'Notes to Accounts'.

(RBI/2007-2008/255 DBOD No. BP. BC.65/21.04.009)

2.0 IAASB Issues New Auditing Standard on Accounting Estimates and Fair Values

International Auditing and Assurance Standards Board (IAASB) of International Federation of Accountants (IFAC) has released new requirements designed to enhance the rigor applied to auditing accounting estimates, including new fair value accounting estimates. The International Standard on Auditing (ISA) 540 (Revised and Redrafted), Auditing Accounting Estimates, Including Fair Value Accounting Estimates, and Related Disclosures, requires the auditor to focus attention on areas of higher risk, accounting judgment, and possible bias, thereby assisting the auditor to form appropriate conclusions about the reasonableness of estimates in the context of an entity's financial reporting framework.

ICAI NEWS

1.0 INFORMATION SYSTEMS AUDIT ASSESSMENT TEST (ISA - AT) AND CPT EXAM– TWICE A YEAR

It is notified that, in terms of the decision of the Council of the Institute, Information Systems Audit Assessment Test (ISA-AT) and CPT (CA entrance) will henceforth be held twice a year in the months of June and December every year, instead of four times.

CAPITAL MARKET

1.0 IRDA EXPANDS SCOPE OF INFRASTRUCTURE FOR INVESTMENT

With the Insurance Regulatory Development Authority (IRDA) notifying a new definition for infrastructure, insurance companies now have a wider choice of investments. The new definition of infrastructure covers all telecom services, including basic and cellular, radio paging, domestic satellite services, broadband and internet services, construction of educational institutions, hospitals and projects relating to agro-processing and supply of inputs to agriculture, among others, Insurance firms can also invest in bonds floated by developers of special economic zones (SEZ).

The definition is now in sync with that of the Reserve Bank of India and will help policy holders diversify their exposure and earn higher returns. Currently, insurers can invest not less than 10% of their portfolio in infrastructure, subject to exposure norms.

"Housing have not been included in the new definition of infrastructure. Housing will be a separate category and insurance companies can invest in instruments floated by housing financial institutions. The norm stipulates that insurers can invest not less than 5% of their portfolio in the housing sector, subject to exposure norms."

2.0 SHORT SELLING TO TAKE OFF SANS TAX CRAMPS

Short selling of securities on the stock exchanges, a market reform long promised by the finance ministry and SEBI, is set to debut.

The Centre has clarified that lending and borrowing of securities under this scheme will not attract securities transaction tax or capital gains tax. But it is unclear if sale and repurchase deals made on the basis of borrowed securities would be taxable. As per Central Board of Direct Taxes (CBDT), lending and borrowing of securities under the new scheme notified by capital market regulator SEBI will not be subject to taxes.

(CBDT Cir. No. 2/2008, dt. 22.02.2008)

3.0 SEBI BRINGS ART FUNDS UNDER ITS CONTROL.

The stock market regulator, SEBI, has stated that art funds cannot be set up without obtaining a certificate of registration from it. Failing this, the regulator can take civil or criminal action against the funds or companies.

According to a SEBI press release, art funds are "collective investment schemes" as defined under Section 11AA (2) of the SEBI Act, 1992. Only a company that has been granted certificate of registration by SEBI can launch or sponsor a collective investment scheme.

CORPORATE LAWS

1.0 LLPs MAY NOT GET TOTAL IMMUNITY AGAINST LAPSES

Professionals and investors planning to do riskier business without fear of losing their personal assets under the proposed Limited Liability Partnership (LLP) vehicle may not get total immunity for their lapses. The government has introduced a provision in the new LLP Bill under which creditors and clients are liable to get compensation from a partner, an employee or the LLP itself for their omissions and fraudulent dealings. This is in addition to the unlimited criminal liability these persons will bear for their oversight or intention to dupe their customers or lenders.

2.0 NO DAMAGES IF EMPLOYERS FAIL TO PAY ESI CONTRIBUTION

The Supreme Court has ruled that Employees State Insurance Corporation (ESIC) cannot levy damages for employers' failure to deposit contributions of employees and establishments. Existence of *mens rea* (guilt mind) to contravene a statutory provision must also be held to be a necessary ingredient for levy of damages and / or the quantum upon the employer, said the apex court.

EXIM / FEMA

1.0 US RULES OUT FTA WITH INDIA FOR NOW

Not willing to tread the path taken by the European Union and Asean for market-opening trade pacts with India, US said it was not ready for a free trade deal with the world's second-fastest growing economy, as it could not fully open agricultural imports from American farmers. On the sidelines of the India-US Summit for Small and Medium Enterprises, US trade representative Susan Schwab said "Quite honestly, it would be quite difficult, at this point of time for India to imagine doing that kind of a deal with the US considering its sensitivities in agriculture.US wants almost 100% coverage meaning if India desires to have an FTA, it has to allow a zero duty market for everything, including highly-sensitive agriculture products."

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Announces an intensive professional learning
WORKSHOP ON DIRECT TAX / SERVICE TAX
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WORKSHOP SCHEDULE

WORKSHOP	DATE	TIMING
Direct Taxes	From 31st May to 21st June 2008 (31stMay, 7th June, 13th June, 14th June 20th June, 21st June 2008) (Friday and Saturday)	2.00 pm to 8.30 pm
Service Tax	From 8th August to 23rd August 2008 (8th August, 9th August, 22nd August, 23rd August 2008) (Friday and Saturday)	2.00 pm to 8.30 pm

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