

AIFTP TIMES

Volume 5 - No. 11 | November 2014

FORTHCOMING PROGRAMMES

Date & Month	Programme	Place
15-11-2014	Foundation Day Celebration (Western Zone)	Mumbai
15-11-2014	Foundation Day Celebration (Northern Zone)	Noida
20-12-2014	National Executive Committee Meeting	Jaipur
20, 21-12-2014	National Tax Conference (Central Zone)	Jaipur

FOUNDATION DAY CELEBRATION

WESTERN ZONE

To celebrate Foundation Day of All India Federation of Tax Practitioners, the Western Zone is pleased to announce holding a programme on Saturday, November 15, 2014 at Navinbhai Thakkar Auditorium, Shraddhanand Road, Vile Parle (W), Mumbai – 400 057, jointly with The Sales Tax Practitioners Association of Maharashtra, Mumbai.

The programme includes address by eminent personality and cultural event thereafter, to be followed by Dinner.

As a token, contribution of ₹ 100/- per person will be charged.

Kindly send your contribution through cash/cheque in favour of "All India Federation of Tax Practitioners – Western Zone" payable at Mumbai.

NORTHERN ZONE

Foundation Day Celebration of AIFTP is organized by AIFTP-NZ on November 15, 2014 at IFA Academy, C-56/9A, Near Baba Balak Nath Temple & Stellar Commercial Complex, Sector – 62, Noida at 5.00 p.m. onwards.

On the occasion of Foundation Day, discussion will be on the topic of 'Ethics, Education & Excellence in Tax Professional's Life in the Changing Scenario'. We will be hearing views from our Guest Speaker Dr. O. P. Sharma, Eminent Scholar Shanti Kunj, Haridwar alongwith views of our own strength of Federation Shri N. M. Ranka, Senior Advocate, Jaipur and Shri Bharatji Agrawal, Senior Advocate, Allahabad. This intellectual discussion would be followed by a Musical Concert i.e. 'Melody of Golden Era' and of-course a 'Networking Dinner' thereafter.

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NATIONAL TAX CONFERENCE, JAIPUR – 2014

Jointly organised by

**ALL INDIA FEDERATION OF TAX PRACTITIONERS • RAJASTHAN TAX CONSULTANTS ASSOCIATION
TAX CONSULTANTS ASSOCIATION, JAIPUR • JAIPUR TAX BAR ASSOCIATION**

**on 20th and 21st December, 2014
at B.M. Birla Auditorium, Statue Circle, Jaipur**

THEME : Make in India – Role of Tax Professionals

PROGRAMME

DAY 1 - SATURDAY, 20TH DECEMBER, 2014

8.30 am to 9.30 am	Breakfast and Registration
9.30 am to 11.30 am	Inaugural Session Chief Guest – Hon'ble Supreme Court Judge Presided by Hon'ble Mr. Justice Sunil Ambwani, Chief Justice, Rajasthan High Court
11.30 am to 11.45 am	Tea Break
11.45 am to 1.15 pm	First Technical Session Income Tax Topic Chief Guest – Hon'ble Mr. Justice Ajay Rastogi, Administrative Judge, Rajasthan High Court Chairman – Shri Bharat Ji Agarwal, Sr. Advocate, Allahabad Key Speaker – Shri Kapil Goel, Advocate, New Delhi
1.15 pm to 2.00 pm	Lunch
2.00 pm to 3.30 pm	Second Technical Session Panel Discussion on Companies Act Key Note Speaker– Mr. Nesar Ahmed, (Past President ICSI, New Delhi) Panellists – Industry Representative – Mr. Gopal Gupta Expert – 1 – Shri Narayan Jain, Adv, Kolkata Expert – 2 – Shri H. N. Motiwalla, CA, Mumbai
3.30 pm to 4.45 pm	Third Technical Session Service Tax Topic Chief Guest – Shri S. S. Lenka, Chief Commissioner, Central Excise Chairman – Shri N. K. Gupta, Chairman Manglam Group, Jaipur Key Speaker – Shri Atul Gupta, (Member, Central Council, ICAI), New Delhi
4.45 pm	High Tea
5.00 pm to 7.30 pm	National Executive Meeting of AIFTP at Hotel Clarks Amer
7.45 pm to 9.00 pm	Musical Programme
9.00 pm onwards	Gala Dinner

DAY 2 – SUNDAY 21ST DECEMBER, 2014

9.00 am to 9.30 am	Breakfast
9.30 am to 12.00 noon	Fourth Technical Session Panel Discussion on issues of Income Tax, VAT, Service Tax and Stamp Duty on Real Estate Transactions Chief Guest – Hon'ble Mr. Justice Rajesh Bindal, Judge, P & H High Court Chairman – Dr. K. Shivaram, Sr. Advocate, Mumbai Panellists – Industry Representative – Shri Atma Ram Gupta Income Tax – Shri V. P. Gupta, Advocate New Delhi Income Tax – Dr. MVK Moorthy, Advocate, Hyderabad Service Tax – Shri Ashok Chandak, CA Nagpur VAT – Shri H. C. Bhatia, Advocate, New Delhi VAT – Shri Vinayak Patkar, Advocate, Mumbai Stamp Duty – Shri Mahaveer Swami, Jaipur

12 noon to 1.00 pm	Fifth Technical Session Advance Law of Attraction and its Application Key Note Speaker– Mr. Govind Babu (Chief Trainer & Management Guru)
1.00 pm to 1.45 pm	Lunch
1.45 pm to 3.15 pm	Sixth Technical Session Works Contract and Overlapping issue of Service Tax/VAT Chief Guest – Hon'ble Mr. Justice J. K. Ranka, Judge, Rajasthan High Court Chairman – Shri Ashok Saraf, Sr. Advocate, Guwahati Key Speaker – Mr. N. Venkatramani, FCA, Bangalore Speaker – Shri Deepak Bapat, Advocate, Mumbai
3.15 PM to 5.30 PM	Brains' Trust Session Chairman – Shri N.M. Ranka, Sr. Advocate, Jaipur 1. Shri S. K. Poddar, Advocate, Ranchi 2. Smt. Prem Lata Bansal, Sr. Advocate, New Delhi 3. Shri M. L. Patodi, Advocate, Kota 4. Mrs. Nikita Badheka, Advocate Mumbai 5. Shri K. L. Goyal, Sr. Advocate, Chandigarh 6. Shri Mukul Gupta, Advocate, Ghaziabad 7. Dr. Anita Sumanth, Advocate, Chennai Followed by High Tea

Delegate Fees :- For Members/Spouse – ₹ 1,600/-; For Others – ₹ 2,500/-

Kindly issue DD/Cheque at par in favour of "NATIONAL TAX CONFERENCE 2014" payable at Jaipur. If you wish you can make payment online by depositing cheque or demand draft or by RTGS in the name of National Tax Conference 2014 Account Number: 50200008290443 in HDFC Bank, Ashok Marg, C-Scheme Branch. IFSC Code: HDFC0000054.

Invitation and Request by

PANKAJ GHIYA Vice President, AIFTP-CZ 9829013626	VIKRAM GOGRA President, JTBA 9829060406	AVINASH KHANDELWAL President, TCA 9414240851	O. P. AGARWAL Conference Chairman 9829017765	SATISH GUPTA President, RTCA 9828012935
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Conference Secretariat

RTCA Association Bldg., B-145 /13, Mangal Marg, Bapu Nagar, Jaipur
Tel.: 0141 - 2704697 e-mail: ntcj2014@gmail.com

Hotel Accommodation

Hotel Name	Rate @ Double Occupancy	Remarks
Hotel Clarks Amer (5 Star)	₹ 4000.00 + Taxes	Special Negotiated Rates inclusive of Break Fast

ACTIVITIES OF CENTRAL ZONE

AIFTP (CZ) organised full court reference with ITAT Bar Jodhpur and Tax Bar Association, Jodhpur on 14-10-2014 at 10 AM on the occasion of superannuation of Shri Hariom Maratha, Hon'ble Judicial Member. On this occasion Shri H. L. Karwa, Hon'ble President, ITAT presided over the function. CIT Shri O. P. Meena, Shri K. R. Meena, Smt. Alka Rajwansi Jain, JCIT Shri Jaisingh Ji, Addl. JCIT Shri Mahesh Kumar Ji, Ex ITAT Member Shri A. L. Gehlot & Shri B. M. Kothari, Chairman (CZ) Dr. S. L. Jain and different representatives of Bar from Bhilwara, Udaipur, Bikaner, Sriganganagar, Jaipur were also present. The new was published in various newspapers. The main function was organised in guidance of Chairman (CZ) Shri S. L. Jain and President of ITAT Bar, Jodhpur, Shri P. M. Chopra.

Second Function – Deepawali Milan & Welcome of newly appointed member Rajasthan Tax Board Hon'ble Mr. Manoharpuri Ji was held by AIFTP (CZ) jointly with Tax Bar Association Jodhpur and also welcomed newly appointed Dy. Commissioner Shri V. P. Singh Ji RAS. Welcome speech was delivered by Shri K. L. Soni President Tax Bar Association Jodhpur. The function was conducted by Shri P. M. Chopra & Vote of thanks was given by Shri Ashok Jangid, Treasurer, AIFTP (CZ).

(Dr. S. L. Jain)
Chairman
AIFTP-CZ

(Rajesh Mehta)
Secretary
AIFTP-CZ

(Paras Chhajed)
Vice Chairman
AIFTP-CZ

(Ashok Jangid)
Treasurer
AIFTP-CZ

DIRECT TAXES

Ajay R. Singh, Rahul Hakani, Rahul Sarda and Ms. Neelam Jadhav
Advocates, KSA Legal Chambers

HIGH COURTS

1. **S. 275(1A): Assessee's claim for refund of penalty with interest cannot be defeated by inaction of revenue**

Section 275(1A) is that the order imposing or enhancing or reducing or cancelling the penalty may be passed on the basis of the assessment as revised by giving effect to the order in appeal. The concerned authority was required to make specific order for cancelling the penalty by giving effect to the order in appeal made in favour of the petitioner. However, failure of assessing officer or concerned authority to pass such order would not mean that the assessee has no right of refund on his becoming successful in appeal against the order of assessment. If there is failure to exercise power u/s. 275(1A) within outer limit of six months, the assessee would be justified in approaching this Court under Article 226. The word 'MAY' should be construed to create an obligation upon the authority to pass consequential order upon conclusion of the litigation. Though time limit of six months is provided for the order contemplated to be passed of imposing, enhancing, reducing, cancelling penalty or dropping the proceedings for imposition of penalty for giving effect to any order passed in appeal, but when such order is to be passed in favour of the assessee, time limit for passing such order by the concerned officer should not come in the way of the assessee for cancelling the penalty on his getting success before the higher forum in appeal merely because the concerned official failed to discharge his duty of giving effect to the order. While awarding interest, it is a kind of compensation of use and retention of the money collected unauthorisedly by the Department. When the collection is illegal, there is corresponding obligation on the revenue to refund such amount with interest in as much as they have retained and enjoyed the money deposited.

Shanti Enterprise v. ACIT (Guj.)(HC) Source: itatonline.org

2. **S. 147: If A.O. contests the audit objection but still reopens to comply with the audit objection, it means he has not applied his mind independently and the reopening is void**

Whether the reassessment proceedings have been initiated at the instance of the audit party and solely on the ground of audit objections and on a perusal of the files, the noting made therein and the relevant documents, it appears that the assessment is sought to be reopened at the instance of the audit party, solely on the ground of audit objections. The A.O. tried to

sustain his original assessment order and submitted to the audit party to drop the audit objections, if the reassessment proceedings are initiated merely and solely at the instance of the audit party and when the A.O. tried to justify the Assessment Orders and requested the audit party to drop the objections and there was no independent application of mind by the A.O. with respect to subjective satisfaction for initiation of the reassessment proceedings, the impugned reassessment proceedings cannot be sustained.

Raajratna Metal Industries Ltd. v. ACIT Source: itatonline.org

3. **S. 80HHC: Deemed credit under the CENVAT Incentive Scheme is part of the business profits eligible for deduction u/s. 80HHC**

The CENVAT incentive being the refund of tax and duty paid on inputs consumed for goods manufactured and exported would automatically reduce the cost of manufacture of the exported goods, thereby necessarily increasing the profit. In view thereof, the deemed credit under the CENVAT Incentive Scheme would be a part of the business profits eligible for a deduction u/s. 80HHC. The deemed credit under the CENVAT Incentive Scheme would not reduce the material/manufacturing cost of the goods exported by the assessee. Under the provisions of s. 80HHC, the assessee would be entitled to a deduction to the extent of the profits referred to in sub-section (1-B) thereof derived by the assessee from the export of such goods or merchandise. No other provision was brought to our notice that would justify the disallowance of CENVAT incentive whilst computing the admissible deduction u/s. 80HHC of the Act.

CIT v. Valiant Glass Works Pvt.Ltd. (Bom.) (HC) Source: itatonline.org

4. **S. 9(1): Income by way of fees for technical services payable by a person who is a resident, would be income deemed to accrue or arise in India**

Income by way of fees for technical services payable by a person who is a resident, would be income deemed to accrue or arise in India, except where (i) the fees are payable in respect of service utilised in a business or profession carried on by such person outside India; or (ii) for the purposes of making or earning any income from any source outside India. In the present case, FCI, IPCC and J. K. Synthetics Ltd are all residents of India. Hence payments made by them to the assessee would fall within sub-clause (vii)(b) of s. 9(1) of the Act. However, the proviso stipulates that nothing in sub-clause (vii) to

section 9(1) shall apply in relation to any income by way of fees for technical services payable in pursuance of an agreement made before the 1st day of April, 1976, and approved by the Central Government.

CIT v. Montedison of Italy (Bom.)(HC) Source: itatonline.org

TRIBUNALS

1. S. 2(1A): Gains from sale of agricultural land is exempt even though purchaser intends to use the land for commercial purposes

The only reason the A.O. treated the land as non-agricultural land was that 'agreement of sale' read with 'Irrevocable GPA' does not indicate that land retained the character of agriculture at the time of transfer. The ground raised by Revenue that M/s. Ramky Estates and Farms P. Ltd., may put the property to commercial use, therefore, the land was meant for commercial exploitation and did not have the character of agricultural land at the time of his transfer. There is no dispute that assessee has purchased agricultural land and put to agricultural use as such earlier. The facts indicate that assessee has sold only agricultural land which was also used and put to agricultural use earlier and the purpose for which the purchaser utilised the land cannot be considered as an evidence of change of nature of land as was considered by A.O. Section 45 shows that the requirement as on the date of sale of transfer is that the asset must be capital asset, considering the description under the Act. The chargeability to tax under s. 45 arises only if on the date of sale, the land in question retained its character as a capital asset, which means, an asset, which does not answer the definition of a capital asset and which is an agricultural land would automatically be outside the scope of section 45. It is no doubt true that the purpose for which the purchaser had purchased was totally different from what the transferor had intended to use the land in question but with the admitted finding that the lands in question were under agricultural operation on the date of sale for the purpose of considering the meaning of capital assets, subsequent purchaser intended the land in question to be put to use. Accepted the contention that no capital gains arises on the sale of agricultural land even though purchaser purchased the property with an intention of selling it for non-agricultural purposes.

DCIT v. M. Kalyan Chakravarthy (Hyd.) (Trib.) Source: itatonline.org

2. S. 14A/Rule 8D: No disallowance if accounts not examined

It is settled principle that the A.O. has to examine the disallowance made by the assessee by having regard to the accounts of the assessee and only thereafter the A.O., if he is not satisfied with the correctness of the claim, shall determine the disallowance to be made u/s. 14A and in accordance Rule 8D. In the instant case, the workings furnished by the assessee for interest disallowance was not examined at all by the A.O., whereas he is required to reject the workings furnished by the assessee after having regard to the accounts of the assessee. Further the revenue could not controvert the finding given by the learned CIT(A) that the assessee was able to establish the nexus between the borrowings and the investments. Also noticed that the finding so given by the First Appellate Authority was correct as per the workings furnished by the assessee in the table extracted. It is also pertinent to note that the revenue did not find fault with the said workings, under these circumstances, it is justified in holding that the interest disallowance was required to be made under Rule 8D(2)(i) and also in confirming the disallowance of interest to the extent as worked out by the assessee.

ITO v. Reliance Share and Stock Brokers (P.) Ltd. (Mum.)(Trib.) Source: itatonline.org

3. S. 40(a)(i): Charter hire payment is not assessable as royalty – No obligation to deduct TDS and no disallowance u/s. 40(a)(i)

The assessee company was in the nature of simple payments for chartering ships on hire for doing the business outside India. Therefore, the payments do not satisfy the test laid down in section 9. When s. 9 is not satisfied, there cannot be a case that income is deemed to accrue or arise in India as a result of hire payments made by the assessee to foreign ships. The liability u/s. 195 is cast on the assessee only when the payment is made to a non-resident, which is chargeable under the provisions of the IT Act. The payments made by the assessee do not fall under section 9 and the payments do not take the character of any sum chargeable to tax under this Act. Therefore, section 195 does not come into operation. When section 195 does not apply to the case, there is no violation of that section and consequently invoking of section 40(a)(i) does not arise.

Mathewsons Exports & Imports v. ACIT (Kochi)(Trib.) Source: itatonline.org



VOLUNTEERS FOR DIGESTING THE CASE LAWS FOR AIFTP JOURNAL

We invite our members who desire to digest the case laws for AIFTP Journal to please e-mail us at aiftp@vsnl.com

INDIRECT TAXES

SALES TAX

D. H. Joshi, Advocate

1. Denial of interest on the huge refund granted

The appellant filed an appeal against the order of the Learned Jt. Commissioner, whereby he partly allowed the appeal and granted refund of ₹ 98,57,507/-. However, he held that the appellant was not entitled to interest on the refund due as per his Order.

2. As against this, the appellant contended that he was entitled to incentives, and, therefore, no tax was collected from the customers and the payment was made at a time when the appellant needed the assistance of the State pursuant to incentives offered by the State Government. Thus, the payment was made by the appellant because of delay on the part of the State Government in granting requisite incentive certificates and the amount remained with the State Government for a long period of time. As such, when such amount has illegally remained with the State Government, the appellant is entitled to compensation by way of interest in Section 9(2) of the CST Act, r/w Section 54(1)(aa) of the GST Act. The interpretation adopted by the First Appellate Authority that the interest on refund is admissible only if it arises as per assessment order, was very restricted interpretation. Such interpretation of the provision which leads to such a travesty of law was absolutely bad and illegal. The HC after examination of the facts and circumstances of the case and in the light of the statutory provision held that the appellant was entitled to interest on refund due to him as per appeal order at the applicable rate. Accordingly, the appeal was allowed.

Saurashtra Chemicals Ltd. v. State of Gujarat, [2014 Tax Reporter Vol. 17 P 69]

2. Entry Tax

The issue whether entry tax was leviable on "Generator" as "Machinery" along with interest thereon. The Allahabad High Court held Entry tax was rightly levied. As regards interest levied High Court followed the ratio laid down in *CIT v. Santram Mangatram Jewellers, 264 ITR 564 (SC)* and held charging of the interest is mandatory and courts have no power to waive or restrict it. Accordingly, the order of the AO was restored.

Commissioner Trade Tax, U.P. v. Vekamat Packaging (I) Ltd. And Other 2014 NTN (Vol. 56) 33.

3. Input tax credit

A. Disallowance of input tax credit for ₹ 1,58,476 against the STDs' Certificates issued by the different authorities – whether justified? Held in the negative.

It appears to the Board a sum of ₹ 1,58,476 towards STDs was still remaining disallowed to the petitioner. The Board test checked some documentary evidence produced by the petitioner in support of his claim. Having satisfied about the claim, the Board modified the assessment order with a direction to the Asstt. Commr. to modify the impugned assessment order.

Jypee Projects Ltd. v. Sr. Jt. Commissioner (2014) 64 STA (Board-45).

B. Reversal of input tax credit. The grievance of the assessee was that reasonable opportunity of personal hearing was not given before passing the reversal order. Hence, the same was challenged in a writ petition. The High Court after noticing Section 19(16), ruled that the assessing authority was under the mandate to give reasonable opportunity of being heard, in the event of denying the benefit of ITC, to registered dealer, who has claimed input-tax credit based on such invoice, bill or cash memorandum. However, a perusal of impugned orders which are subject-matter of challenged in these writ petitions would disclose that the respondent has not given an opportunity of personal hearing to the petitioner or to its authorised representative and hence, on this sole ground, the impugned orders passed by the respondents were liable to be interfered with. Consequently, the respondent was directed to give an opportunity of personal hearing to the petitioner and passed orders on merit and in accordance with the law within a period of 3 weeks from the date of receipt of a copy of this order.

M/s Prabas V Care Health Clinic v. CTOs 2014-15 (20) TNCTJ 155.

4. Input tax credit qua sale made against Form E

The dealer was dealing in iron sheets, MS wires etc. ITC claimed by the selling dealer upon purchases made against tax invoices for the goods sold against Form E, which was rejected by the Assessing Authority under the U.P. VAT Act, 2008. First Appeal filed by the dealer, he got partial reduction in tax liability of U.P VAT and Entry Tax. Second Appeal preferred against the impugned order by both dealer and the Dept. as well. Issues before the Tribunal were: (i) whether the claim of ITC made by the appellant was available u/s 13(7) and (ii) whether the reduction in tax liability made by the First Appellate Authority was proper or not in a case where the assessing authority had rejected the books of account on the basis of survey report? Tribunal placed a reliance on the judgment in the case of *State of Karnataka v. Azad Coach Builders*

[2011 NTN (Vol. 45) 198] and other cases and held that the sale made by the appellant-dealer to a manufacturer-exporter against U.P. VAT Form E is not a sale during the course of export for reductions in tax liability made by the First Appellate Authority, which was disputed, both by dealer and Dept. as well, did not require any interference.

Faisal Metal v. CCT U.P., Lucknow 2014 NTN (Vol. 55) Tribunal-144

5. Interpretation of Section 5(3) of the CST Act, 1956

In a recent judgment dated 4-8-2014, the Bombay High Court while deciding W.P. No. 12025 of 2012 an interesting question relating to the interpretation of Section 5(3) of the CST Act, noted the facts of the case whereunder a purchase order/agreement dated 5-3-2004 of M/s Crown Corporation Pvt. Ltd. (for short Crown) required the petitioner i.e. Exide Industries Ltd. to supply Submarine Navy Batteries of the type and specifications more particularly set out in the order, agreement. On 25-5-2004 the Algerian Navy placed a purchased order on M/s Crown, for supply of sub-marine navy batteries. On 14-9-2004, petitioner sold and supplied submarine navy batteries to M/s Crown, who in turn exported the same to the Algerian Navy. In these circumstances, the petitioner company i.e. Exide contended that the sale effected by them of 'Submarine Navy Batteries to M/s Crown, was exempt from the levy of sales tax under the BST Act, 1959, by virtue of the provisions of Section 5(3) of the CST Act. On the other hand, the respondents i.e. State of Maharashtra contended that since the purchase order placed by M/s Crown on the petitioner dated 5-3-2004 was before the date when the Algerian Navy placed the purchase order on M/s Crown (i.e. on 22-5-2004), the sale by the petitioners to M/s Crown did not take place after, and for the purpose of complying with, the agreement or order of the Algerian Navy. It was therefore not "for or in relation to such export" as contemplated under the provisions of Section 5(3) of the CST Act. This naughty issue was required to be decided by the High Court.

2. After going through minutely the Order / agreement technical conditions of the contract etc; and in particular Article 286 of the Constitution of India r/w Sections 5 and 2(g) of the CST Act, 1956 and extensive case law referred to by both the parties, the High Court in the context of the controversy and noting the finding given in *Aazad Coach Builders Pvt. Ltd. (2010) 36 VST 1 (SC)* observed as follows:-

"It is true that in the present case, there is no agreement available on record to indicate that the aforesaid purchase was made for the purpose of export. In the absence of the said document, it is not possible for us to specifically state as to whether

it was clear that the sale or purchase between the parties i.e. the dealer and the purchaser was inextricably linked with the export of the goods. It is only when a claim is established, the claim u/s 5(3) of the CST Act, would be justified. At the time of auction-sale when the appellant purchased the tea from the dealer, there is nothing on record to show that a definite stand was taken by the purchaser that the aforesaid purchase of tea is for the purpose of occasioning an export for which an agreement has been entered into. Since no such claim was made at that stage, so therefore sales tax was realised which was paid to the Government by the dealer. Despite this said fact, there is a clear finding recorded by the assessing authority himself that the export documents were verified by him with the accounts from which it is indicated that the entire exports were effected pursuant to the prior contract or prior orders of the foreign buyers and that the export sales are supported by bills of lading, export invoices and such other valid documents."

3. The High Court opined that the above referred judgment is of no assistance to the Revenue. In the facts of the case, we had already held that there was an inextricable link between the local sale by the petitioner to M/s Crown, and the export of those very goods thereafter to the Algerian Navy. Accordingly, the writ petition was granted.

M/s Exide Industries Ltd. v. State of Maharashtra and Ors. Tax Reporter 2014 Vol. 17 Page 608

6. Interest and its payability

Payment of tax on the basis of returns. Levy of interest on unpaid tax not admitted in the return filed. Whether interest limited to tax due on the basis of particulars of turnover disclosed in the returns. Held, in the affirmative, after considering Sections 31, 45, 49(2), 50 and 80 of West Bengal Sales Tax Act & Rule 51.

2. Whether interest on additional sale tax payable after determination of tax on final assessment and after service of demand notice? Held in the affirmative. In holding so, the settled principles of law that interest can be charged only after service of demand notice. Reliance placed on the Apex Court judgment in the case of *J. K. Synthetics Ltd. v. CTO (1994) 94 STC 422 (SC)*.

M.M.T.C. Ltd. v. W.B. Commercial Taxes and Appellate Board (2014) 64 STA 197.

7. Inter-State sale – Whether Appellate Authority is entitled to call for a copy of lorry receipt

Once the assessing officer assesses a sale transaction under the CST Act, being inter-State sale on presentation of valid 'C' form for concessional rate, whether in appeal appellate authority can call for a

copy of lorry receipt. Held that it is not necessary since assessing authority was satisfied about the nature of the transaction being inter-State sale and also valid 'C' forms were produced at the appellate stage. Hence, Second Appeal was allowed.

M/s Shiva Pharmachem Ltd. v. State of Gujarat STJ 53 Part-VI Page 591.

8. Manner of payment

Payment of tax by cheque/bank draft. Rule 48 of The U.P. Trade Tax Rules, 1948. In this case, assessee pleaded that late deposit of tax by cheque caused due to alleged delay by bank collection of cheque and also by intervening holidays. AO ignoring the above pleading of the assessee, imposed penalty for late deposit of tax. In appeal, Tribunal confirmed the levy of penalty. In revision petition before the High Court, the High Court followed the judgment

in the case of *Commissioner of IT v. Oagle Glass Works Ltd.*, AIR 1954 SC 249 and placed reliance on the ratio laid down in the decision of *Western India Match Co. Ltd. v. Commissioner of ST (1989) UPTC 1074* and other judgments and held - "power to levy penalty is a discretionary power, and, therefore, it should be exercised in a reasonable manner. It should not be imposed in each and every case, when there is a default. Mechanical imposition of penalty u/s 15A(1)(a) of the Act, cannot be approved. The Departmental authorities are supposed to exercise the discretion in a reasonable manner so as to advance the sense of justice taking into consideration overall facts and circumstances of the case. Accordingly, the order of Tribunal set aside by deleting penalty.

Hughes Communications India Ltd. v. CCT 2014 NTN (Vol. 56)-12



Advertisement Tariff for AIFTP Journal (W.e.f. 15th July, 2013)

Particulars	Per Insertion
1. Quarter page	₹ 1,500/-
2. Ordinary half page	₹ 2,500/-
3. Ordinary full page	₹ 5,000/-
4. Third cover page	₹ 7,500/-
5. Fourth cover page	₹ 10,000/-

There shall be Discounts on bulk advertisements.

Membership of AIFTP as on 28-10-2014 Life Members

	Associate	Individual	Association	Corporate	Total
Central	0	796	23	3	822
Eastern	3	1169	35	3	1210
Northern	0	962	17	0	979
Southern	1	902	13	7	923
Western	4	1721	33	16	1774
Total	8	5550	121	29	5708

Non-receipt of the Times must be notified within one month from the date of publication, which is 4th of every month.

Associate Editor of AIFTP Times : Mr. Deepak R. Shah

Printed by Kotecha Mitesh Ashwin Published by Kotecha Mitesh Ashwin on behalf of All India Federation of Tax Practitioners (name of owner) and Printed at Finesse Graphics & Prints Pvt. Ltd., 309, Parvati Industrial Premises, Sun Mill Compound, Lower Parel, Mumbai - 400 013. (name of the printing press with address) and published at All India Federation of Tax Practitioners, 215 Rewa Chambers, 31, New Marine Lines, Mumbai - 400 020 (full address of the place of publication). Editor: Vanjara Kishor Dwarkadas.

To

Posted at Mumbai Patrika Channel Sorting Office
Mumbai 400 001.

Date of Publishing : 1st of every month.

Date of Posting : 3rd & 4th November, 2014

If undelivered, please return to :



ALL INDIA FEDERATION OF TAX PRACTITIONERS

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