

All India Federation of Tax Practitioners



AIFTP TIMES

Volume 8 – No. 6 • June 2017

FORTHCOMING PROGRAMMES

Date & Month	Programme	Place
3rd, 10th, 17th & 24th June, 2017	Intensive Study Course on Goods & Services Tax	Thane
16th June, 2017	Full Day Seminar on Goods and Services Tax Awareness	Mumbai
17th June, 2017	ICDS	Mumbai
17th June, 2017	Notice of Annual General Meeting AIFTP (CZ)	Chhattisgarh
23rd June, 2017	Notice of Annual General Meeting AIFTP (SZ)	Hyderabad
7th July – 9th July, 2017	Residential Education Programme & National Executive Committee Meeting	Goa
2nd & 3rd September, 2017	Two Day National Tax Conference & National Executive Committee Meeting	Kolkata

AIFTP JOURNAL SUBSCRIPTION 2017-18

Dear Members,

The AIFTP Journal is the mouthpiece of the All India Federation of Tax Practitioners and it is also a source of information for updating our subscribers with the latest developments on Direct and Indirect Taxes.

The unique feature of our Journal is that every quarter, we publish gist of important case laws reported in more than 30 tax magazines. We publish opinions of eminent professionals, thought provoking speeches of Hon'ble Judges of Apex Court and High Courts, important articles on Direct and Indirect Taxes, articles on Wealth Management and answers by eminent professionals on various controversial issues. We are sure that in the era of information technology, our journal would definitely help you to update your knowledge on latest case laws and development of law. Therefore, we take this opportunity to emphasise that subscription to the journal is highly recommended.

Please note that AIFTP Journal subscription for the year 1st April, 2017 to 31st March, 2018 falls due for payment on 1st April, 2017.

Life Member

Members are requested to remit the amount of either ₹ 800/- for one year or ₹ 2,100/- for three years by Cheque/ Demand Draft at the earliest. You are also requested to fill in all the details in the Renewal Notice.

Non-Member

Non-members are requested to remit the amount of either ₹ 1,000/- for one year or ₹ 3,000/- for three years by Cheque/ Demand Draft at the earliest. You are also requested to fill in all the details in the Renewal Notice.

Thanking you,

Yours sincerely,

For ALL INDIA FEDERATION OF TAX PRACTITIONERS**Vipul Joshi***Treasurer***Note :**

1. Payment should be made by Account Payee Cheque/Demand Draft in favour of "ALL INDIA FEDERATION OF TAX PRACTITIONERS".
2. OUTSTATION MEMBERS are requested to send payments only by either at par cheque or Demand Draft payable at Mumbai drawn in favour of "ALL INDIA FEDERATION OF TAX PRACTITIONERS".
3. An early payment of the subscription would be highly appreciated.
4. Member who requires the AIFTP Journal to be couriered separately at their communication address, should add ₹ 300/- per year as courier charges.
5. Please download the subscription form from the AIFTP's website and duly filled in all respects along with the payment.
6. Please write your name on the reverse of Cheques/D.D.

FOR ANY QUERIES MEMBERS MAY CONTACT ANY OF THE FOLLOWING OFFICE BEARERS

Name	Mobile	Tel. (O)	Fax	E-mail
National President – Smt. Premlata Bansal, Sr. Adv.	9811558194	011-23955703	–	plbansal49@gmail.com
Deputy President – Shri Ganesh Purohit, Sr. Adv.	9425154914	0761-2660402	4003074	purohitganesh@gmail.com
Secretary General – Shri Sanjay Sharma, Adv.	9810071545	011-45539955	45539955	adv_sanjay_31@yahoo.co.in
Treasurer – Shri Vipul B. Joshi, Adv.	9820045569	022-66333736	22080951	vipulbjoshi@gmail.com

REPORT ON TWO DAY NATIONAL TAX CONFERENCE AT ANAND (GUJARAT)

By **Samir Jani**, *Vice President (AIFTP)*

Two Day National Tax Conference was organised on 22nd & 23rd of April at Madhubhan Resort, Anand (Gujarat) by All India Federation of Tax Practitioners (WZ) & All Gujarat Federation of Tax Consultants jointly with Central Gujarat Chamber of Tax Consultants, Gujarat Sales Tax Bar Association, Anand VAT Bar Association, Anand Branch of ICAI & Nadia Tax Practitioners Association on Direct & Indirect Taxes. The theme of the Conference was “Post Demonetisation Taxation”. In all there were 5 Technical Sessions over and above Brains’ Trust Session. The Conference was inaugurated by Hon. Justice R. K. Agrawal, Judge, Supreme Court of India. Guests of Honour were Hon’ble Justice J. K. Ranka, Judge, Rajasthan High Court and Res. K. H. Kaji, President Emeritus, AGFTC. Three Direct Taxes Sessions had as faculties – CA. Girish Ahuja, CA. Padamchand Khincha & Sr. Advocate, Mr. Firoz Adhyarujina and for Indirect Taxes it was Mr. Nayan Sheth, Advocate and Mrs. Nikita Badheka, Advocate from Mumbai. CA. Girish Ahuja lucidly dealt with the topic of “Benami Property Act and handling of Cash Transactions” whereas CA. Padamchand Khincha dealt with “Latest Amendments through Finance Act”. Sr. Advocate from Mumbai Firoz Adhyarujina delivered paper on “Evidentiary Value under Income-tax Act.” Under Indirect Taxes, Mr. Nayan Sheth dealt with “Tax liability under GST” and Mrs. Nikita Badheka dealt with IGST. All the technical sessions were chaired by Past Presidents, Mr. N. M. Ranka, Mr. P. C. Joshi, Dr. K. Shivaram, Mr. S. K. Poddar, Mr. M. L. Patodi & Mr. J. D. Nankani.

Trustees for Brains’ Trust were Mr. V. P. Gupta, Mr. Harish N. Motiwala, Mr. Vipul Joshi, Mr. Vinayak Patkar & Mr. S. Satyanarayan. The Conference registration was above 300 in number. Amul dairy visit was also arranged for the delegates.

Mr. Samir S. Jani, VP (WZ) & Mr. Bhaskar Patel, Jt. Sec. (WZ) took pains in making the conference a success.

REPORT OF ACTIVITIES OF THE CENTRAL ZONE

By **D. C. Mali**, *Chairman, AIFTP (CZ)*

1. Representation sent for extension of the date of VAT return and Amnesty Scheme and both have been extended.
2. We have also sent representation for including assessment completed in the month of March should also be included in the Amnesty Scheme.
3. We have submitted representation for the Amnesty Scheme for luxury tax and the same has been introduced by the Government of Rajasthan.
4. **New Members:** 9 new members introduced.
5. On behalf of Marudhara Tax Bar Association and All India Federation of Tax Practitioners, we have welcomed Justice Mr. Manoj Garg being elevated as judge of Rajasthan High Court..
6. **Future Programme:** We are organising one day State Level Seminar on GST at Jodhpur on 4th June and at Rajnandgaon Chhattisgarh in the month of June 2017.
7. We have sent representation for Amnesty Scheme to Ministry of Finance.

NOTICE OF ANNUAL GENERAL MEETING AIFTP (CZ)

Notice is hereby given that the Annual General Meeting of the Members of All India Federation of Tax Practitioners (Central Zone) will be held on Saturday, 17th June, 2017 6.00 p.m. at Hotel Sabras, Stadium Road Kaurinbhatha, Near Gaurav Path, Rajnandgaon, Chhattisgarh to transact the following business..

AGENDA

1. To read and approve the minutes of the last Annual General Meeting.
2. To receive and adopt the report of the Managing Committee (CZ) up to this AGM.
3. To consider and adopt the audited accounts for the year ended on 31st March, 2017.
4. To appoint auditors for the year 2017-18 and fix their honorarium.
5. To transact any other business with the permission of the Chair.

Yours faithfully,
For All India Federation of Tax Practitioners (CZ)

Place : Chhattisgarh
Date : 30-5-2017

(Bhanwar Lal Bissa)
(Hon. Secretary)

- Note: 1. If there is no quorum by 6.00 p.m., the meeting will be adjourned by half an hour and the members present at such adjourned meeting shall form the quorum.
2. There will be Half day Tax Seminar on Income Tax & GST at Hotel Sabras, Stadium Road Kaurinbhatha Near Gaurav Path, Rajnandgaon, Chhattisgarh from 2:00 pm onwards.

NOTICE OF ANNUAL GENERAL MEETING AIFTP (SZ)

Notice is hereby given that the Annual General Meeting of the Members of All India Federation of Tax Practitioners' (SZ) will be held on Friday, the 23rd June, 2017, at Hotel Amrutha Castle, Hyderabad at 4 p.m. to transact the following business:

AGENDA

1. To read and approve the minutes of the last AGM held on 29th June, 2016 at Hyderabad,
2. To receive and adopt the Annual Report of the Managing Committee – SZ for the year 2016-17.
3. To consider and adopt the audited accounts of the Southern Zone for the year ended 31st March, 2017.
4. To appoint Auditors for the year 2017-18 and fix their honorarium.
5. To transact any other business with the permission of the Chair.

Yours faithfully,
For All India Federation of Tax Practitioners (SZ)

Place : Hyderabad
Date : 30-5-2017

(D. Amarnath)
Secretary

- Note. 1. Accounts for the year ended on 31-3-2017 and the report of the Managing Committee for the Southern Zone can be collected from the office of the Secretary from 9th June, 2017 onwards between 11 a.m. to 4 p.m. The accounts and report can be made available to the members through e-mail on request to the office.
2. If there is no quorum by 4.30 p.m., the meeting will be adjourned by half an hour and the members present at such adjourned meeting shall form the quorum.

FULL DAY SEMINAR ON GOODS AND SERVICES TAX AWARENESS

Friday, 16th June, 2017 from 9.30 a.m. to 6.00 p.m.

at

**Oricon House, 6th Floor, Maharashtra Chamber of Commerce Lane,
Kala Ghoda, Fort, Mumbai – 400 001.**

Organised by

ALL INDIA FEDERATION OF TAX PRACTITIONERS (WESTERN ZONE)

Supported by

MAHARASHTRA CHAMBER OF COMMERCE, INDUSTRY & AGRICULTURE, MUMBAI

With a view to help the professionals, dealers and assesseees, All India Federation of Tax Practitioners (Western Zone) supported by Maharashtra Chamber of Commerce, Industry & Agriculture, Mumbai, has arranged a full day seminar on the Goods and Services Tax Awareness on Friday, 16th June, 2017 from 9.30 a.m. to 6.00 p.m. at Oricon House, 6th Floor, Maharashtra Chamber of Commerce Lane, Kala Ghoda, Fort, Mumbai – 400 001.

Topics	Speakers	Chairmen
Session I – Concept of / Supply / Consideration / Time / Place	CA. Kiran Garkar, Mumbai	Smt. Nikita R. Badheka, Advocate, Mumbai
Session II – ITC & Valuation	CA. Pranav Kapadia, Mumbai	Shri Vinayak Patkar, Advocate, Mumbai
Session III - Composite Levy / RCM / Services & Restaurant Tax / Works Contract & Rates	Shri Parth Badheka, Advocate, Mumbai	CA. Rajat Talati, Mumbai
Session IV – Registration & Returns including (TDS / TCS)	CA. Chetan Bumb, Nashik	CA. Janak Vaghani, Mumbai
Session V – Impact on Business & Transitional Provisions	CMA. A. B. Nawal, Jalgaon	Shri P. C. Joshi, Advocate, Mumbai

Who can attend:

Professionals practicing in field of Direct and Indirect Taxes, Trade and Industry Members, Hotels and Restaurants, service providers.

Delegates fee (including Breakfast, Lunch, Tea & Material)

₹ 1,500/- for Members & ₹ 2,000/- for Others (inclusive of Service Tax)

Cheques to be drawn in favour of “All India Federation of Tax Practitioners – Western Zone”

Members are requested to take advantage of this unique opportunity and enroll early to avoid disappointment and also to encourage their clients to take advantage.

Members wishing to enroll can contact the following:

Shri Chirag Parekh, Chairman, AIFTP (WZ) : (M) 9821634128

Shri Satish Boob, Chairman, VAT & CST Committee, MACCIA: (M) 9822025420

AIFTP Office : 22006342 / 43 / 4970 6343

RESIDENTIAL REFRESHER COURSE AT GOA

7th July, 2017 to 9th July, 2017

As a part of our continuous education programme and to update the members on latest amendment under GST we have organized and pleased to announce the Residential Education Programme at Goa during the monsoon with location enviable and amenities luxurious at Goa Hotel “Bogmallo Beach Resort” which is Five Star Hotel, having all the modern amenities including Health Spa, Steam Sauna, Gymnasium, Water Sports (Chargeable). The Course will be a mix of education and fellowship and you will enjoy relishing delicious hospitality of food with luxurious stay in a five star Hotel. Just the place to refresh, rejuvenate and re-energise yourself with your family and members of other zones.

PROGRAMME SCHEDULE

7th July, 2017	
2.00 p.m.	Check in
3.30 p.m. to 4.00 p.m.	Inauguration
4.00 p.m. to 6.15 p.m.	1st Technical Session
6.15 p.m. to 6.30 p.m.	Break
6.30 p.m. to 8.30 p.m.	National Executive Committee Meeting
8th July, 2017	
9.00 a.m. to 11.00 a.m.	2nd Technical Session
11.00 a.m. to 11.15 a.m.	Tea Break
11.15 a.m. to 1.15 p.m.	Brains' Trust Session
9th July, 2017	
12.00 noon	Check out

DELEGATE FEES PER PERSON

DELEGATES

ACCOMMODATION (Per Room – Per Night)

Double Occupancy	₹ 6,500/-
Single Occupancy	₹ 6,000/-
Triple Occupancy (Mattresses)	₹ 5,200/-

CONFERENCE FEE

Delegate	₹ 1,500/-
Spouse and Children	₹ 500/-

NON-RESIDENT DELEGATE

MEMBERS

₹ 1,500/-

NON-MEMBERS

₹ 2,500/-

₹ 1,000/-

₹ 2,150/- (Extra for Lunch, Breakfast and Dinner)

(Including Service Tax on Conference Fee, Course Material, 2 Breakfasts, 2 Lunches and 2 Dinners) and no concession will be given to any delegate if staying for one day in hotel as it is package deal.

It is 4 kms. away from Goa, Airport and If POSSIBLE we will try to arrange pick up and drop from Airport only, if intimation of travel details is received before 20th June, 2017. It is 9 kms. away from Vasco Railway Station & 27 kms. from Panaji Bus Stand.

Payment Detail for Educational Programme Fee and Hotel Booking

Only limited rooms are available at Bogmallo Beach Resort. The enrollment will be on first come first served basis. Kindly send your registration along with Cheque / DD in the name of “The All India Federation of Tax Practitioners – Western Zone” to the office of the Federation at the earliest.

Kindly send your payment for **Hotel accommodation** to the below address **on or before 10th June, 2017** to get the confirmation of rooms.

After making payment, send pay-in-slip/RTGS/NEFT details to hotel on e-mail mumsales@bogmallobeachresort.com and also send copy to AIFTP OFFICE on e-mail aiftp@vsnl.com to keep a track of booking.

Account Name	:	“Trade Wings Hotels Ltd. Bogmallo Beach Resort”
Bank	:	IDBI Bank
Account Type	:	Current Account
Account Number	:	177102000001762
Address	:	IDBI Bank, Suvarna Bandekar, Swatantra Path, Vasco, Goa – 403 802.
IFSC Code	:	IBKL0000177

For further details, please contact

Chirag S. Parekh, Chairman, AIFTP (WZ) – (M) 9821634128
 Sanjay Sharma, Secretary General, AIFTP – (M) 9810071545 / 9999671545
 Tushar P. Joshi, Vice-Chairman (Maharashtra State) and
 Vice-Chairman, Education Committee, AIFTP (WZ) – (M) 9821135246
 Sachin R. Gandhi, Vice-Chairman (Goa State) and
 Convenor, Education Committee, AIFTP (WZ) – (M) 9821482020
 Vijay Kewalramani, Hon. Secretary, AIFTP (WZ) – (M) 9820073165
 Raj P. Shah, Hon. Jt. Secretary, AIFTP (WZ) – (M) 9867368285
 Pravin R. Shah, Hon. Treasurer, AIFTP (WZ) – (M) 9821476817
 Ashvin A. Acharya, Chairman, Education Committee, AIFTP (WZ) – (M) 7208005055
 Samir Jani, Vice-President, AIFTP – (M) 9825037365
 Bhaskarbhair Patel, Jt. Secretary, AIFTP – (M) 9979733033

A TO Z OF GST Intensive Study Course on Goods and Services Tax

Saturday, 3rd June, 2017, Saturday, 10th June, 2017, Saturday, 17th June, 2017 and Saturday, 24th June, 2017
 at TMA Hall, Next to Dwarka Hotel, 16th Road, Wagle Estate, Thane - 400 604

Organised by
ALL INDIA FEDERATION OF TAX PRACTITIONERS (WESTERN ZONE)

Jointly with
**TAX PRACTITIONERS' ASSOCIATION, THANE,
 SALES TAX PRACTITIONERS ASSOCIATION OF MAHARASHTRA, MUMBAI
 THANE MANUFACTURERS ASSOCIATION AND TAX FRIENDS, MUMBAI**

With the Goods and Services Tax (GST) planned to be implemented with effect from 1-4-2017 and the fast developments relating to the same, it is now imperative to understand the finer details of the new law.

With a view to help the professionals, dealers and assesseees, All India Federation of Tax Practitioners (WZ) jointly with the Tax Practitioners Association - Thane, Sales Tax Practitioners Association of Maharashtra - Mumbai, Thane Manufacturers Association and Tax Friends - Mumbai, has arranged an Intensive Study Course "A to Z of GST" to be held on Saturday, 3rd June, 2017, Saturday, 10th June, 2017, Saturday, 17th June, 2017 and Saturday, 24th June, 2017 at TMA Hall, Next to Dwarka Hotel, 16th Road, Wagle Estate, Thane - 400 604.

PROGRAMME

Date	Time	Topics	Speaker
3-6-2017	10.00 am to 11.30 am	Basic Concepts/ Levy, Meaning/ Composite and Mixed Supply	CA Deepak Thakkar
3-6-2017	11.45 am to 01.45 pm	Composition Levy and Rules	CA Jayesh Gogri
	01.45 pm to 02.30 pm	Lunch	
	02.30 pm to 03.00 pm	Sponsor Presentation	
3-6-2017	03.00 pm to 05.00 pm	Registration including registration rules/ E-Commerce Transaction/ Person liable to registration	Adv. Ishaan Patkar
10-6-2017	10.00 am to 01.00 pm	Input Tax Credit/ Input Service Distributor with Rules and related Transitional provisions	CA Ankit Chande
	01.00 pm to 02.00 pm	Lunch	
	02.00 pm to 02.30 pm	Sponsor Presentation	
10-6-2017	02.30 pm to 05.00 pm	Place and Point of Supply of Goods and Services (Domestic and International) with Transitional Provisions	Adv. Deepak Bapat

Date	Time	Topics	Speaker
17-6-2017	09.30 am to 11.30 am	Time of Supply of Goods and Services and Transitional Provisions	CA Dharmen Shah
17-6-2017	11.45 am to 01.15 pm	Returns/ Payment of taxes/ refunds	Deepak Rupani (IRS)
	01.15 pm to 02.00 pm	Lunch	
	02.00 pm to 02.30 pm	Sponsor Presentation	
17-6-2017	02.30 pm to 05.00 pm	Valuation rules (Job Work/Branch Transfer/ Consignment Sales/Sample Sales etc.) with Transitional Provisions	Adv. Vikram Nankani
24-6-2017	09.30 am to 11.00 am	Documentations pertaining to records, Tax Invoice/ E-way Bill rules	Adv. Pradeep Kshatriya
24-6-2017	11.15 am to 01.30 pm	Assessments/Audit/Recovery/Advance Ruling/ Appeals/Prosecution	Adv. Dinesh Tambde
	01.30 pm to 02.15 pm	Lunch	

Who can attend

Professionals practising in field of Direct and Indirect Taxes, Trade and Industry Members, Hotels and Restaurants, Service providers.

Delegates fee (including Breakfast, Lunch, Tea & Material) on all days.

₹ 1,750/- for Members (Incl. Staff), ₹ 2,250/- for Others

Cheques to be drawn in favour of **“Tax Practitioners’ Association, Thane”**

NEFT Details

Name of Account : Tax Practitioners’ Association, Thane

Account No. : 003110100017968

Type of Account : Savings

Bank : TJSB Bank, Naupada, Thane

Registrations restricted to **160 participants only strictly on First come basis.**

Members are requested to take advantage of this unique opportunity and enroll early to avoid disappointment and also to encourage their clients to take advantage.

Members wishing to enroll can contact the following:

Chirag Parikh, Chairman : 9821634128

Vijay Kewalramani, Hon. Secretary : 9820073165

AIFTP Office : 022 2200 6342

E-mail : taxthane@gmail.com

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 27-5-2017 Life Members

	Associate	Individual	Association	Corporate	Total
Central	0	924	24	3	951
Eastern	4	1324	36	3	1367
Northern	0	1056	17	0	1073
Southern	1	1137	19	8	1165
Western	4	2238	37	18	2297
Total	9	6679	133	32	6853

DIRECT TAXES

Ms. Neelam Jadhav, *Advocate*, KSA Legal Chambers

Tribunal

1. S.32 : Depreciation on software expenditure — Software expenditure incurred in nature of obtaining licence, implementation, set-up fees, AMC charges etc. same being revenue in nature, allowable to for full depreciation.

Even if the software expenses incurred by the assessee results into enduring benefit to assessee, the same could not be treated as capital expenditure and real intent and purpose of the same has to be seen. Said expenses shows that the they were in the nature of obtaining license, implementation, set-up fees, AMC charges etc., Such expenses were incurred to ensure smooth conduct of the business and improve operational efficiency and therefore, they are revenue in nature and allowable to full, Assessee entitled to claim full deduction on software expenses.

Empire Industries Limited v. Addl. CIT ITA No. 4065/Mum/2013 dtd. 17-5-2017 (Mum)(Trib.) Source : www.Itat.nic.in

2. S.40A(3) : Expenses or payments not deductible in certain circumstances – addition on bogus purchase – Deleted addition

The AO concluded that purchases made by assessee were bogus purchases. CIT(A) held that since books of account had been rejected as basis for computing income and income was estimated, therefore, there would be no separate disallowance u/s. 40A(3) on account of payments against purchases.

The ITAT held that entire bogus purchases and entire amount of bogus purchase could not be gross profit of assessee. Purchases were not bogus but were made from parties other than those mentioned in books of account. Not entire purchase price but only profit element embedded in such purchases could be added to income of assessee.

ITO vs. Manish Kanji Patel & Anr ITA Nos. 7299/Mum/2014 dt. 18-5-2017(Mum.)(Trib.) Source : www.Itat.nic.in

3. S.74(1)(a) : Losses under head capital gains — Set off brought forward short term capital loss - No specific provision

which provided for sequence in which different categories of short term capital gains had to be adjusted first

Assessee incurred short term capital loss on sale of shares, assessee had set off brought forward short term capital loss against short term capital gains chargeable to tax. AO had set off brought forward short term capital loss against short term capital gains. CIT(A) directed to set off brought forward short term capital loss, against gains that accrued first, i.e. as per F.I.F.O. system.

The ITAT held that for setting of brought forward loss there is no specific provision which provided for Sequence in which different categories of short term capital gains had to be adjusted first. (r.w.s. 70)

Action Financial Services India Ltd. v. ACIT ITA No. 1823/Mum/2012 dt.03/05/2017 Source : www.Itat.nic.in

4. S.195 : TDS – Royalty — Transfer or sale of software is not taxable as royalty and not liable to deduct tax at source u/s. 195

Appellant procured software product on which Minitab Inc. of USA had copyright and no TDS was deducted by appellant in terms of Article 7 of DTAA between India and USA. Notice u/s. 201(1) was issued for non-deduction of TDS u/s. 195(1). The AO referred to definition of royalty in Article 12(3) of the Indo-USA DTAA and held that payment for licence of software would also amount to royalty within provisions of said DTAA. CIT(A) held that, assessee was liable to deduct tax at source u/s. 195 on payment made to X, USA for acquisition of software by treating same as 'royalty' chargeable to tax in terms of sections 9(1)(vi).

The ITAT has taken a view that, appellant was allowed to use software only for its own business without any liberty to loan, rent, sell, sub-licence or transfer said software or any rights therein. Therefore, it could not be said that there was any transfer of all or any rights in software purchased by appellant, once payment in question was not royalty which would, within mischief of clause (vi) Explanation to s. 9(1) would have no application. Therefore transfer or sale of software was not taxable as royalty hence not liable to deduct TDS u/s.195.

National Stock Exchange of India Ltd. v. Dy. DIT (International Taxation) ITA No. 7735/Mum./2011 dtd. 18-5-2017 Source : www.Itat.nic.in

INDIRECT TAXES

CA. Janak Vaghani

1. VAT – Transfer of right to use – Providing buses to Pune Municipal Corporation with driver – Is deemed sale – Liable to VAT

The appellant had provided buses on hire to Pune Municipal Corporation for operating them on stage carriage permit to be issued by the authority to the Pune Municipal Corporation for transporting within the Pune Municipal limit per kilometer basis. Under the contract during the subsistence of the contract the buses supplied will exclusively ply for PMT. The buses cannot be used by the appellant for any other purpose. He cannot divert buses for any other purpose. The buses hired in terms of the contract remain only use by the PMT. Accordingly, the High Court held that the transaction is for transfer of right to use goods namely buses and rightly subjected to VAT.

[Source: *Waltor Buthello, Mumbai v. The Commissioner of Sales Tax, Maharashtra, Maharashtra VAT Appeal No. 33 of 2016, dated 7th February, 2017 (Bom.)*]

2. VAT – Jurisdiction – AP VAT Department – Has no jurisdiction to contracts executed outside the State – Deemed sale – No transfer of right to use when rigs are hired for offshore drilling – Not liable to VAT

The AP VAT department has no jurisdiction for levy of VAT in respect of contracts executed outside the State particularly in Maharashtra. Further, there is no transfer of right to use the goods when contract executed for deploying on charter hire basis, a jack up drilling rig and the requisite personnel for operating the drilling unit and for carrying out offshore drilling operations. The parties to the contract have used the expression charter hire, only because of the fact that they were dealing with offshore drilling rigs. The agreement between the parties does not fall under the category of a charter similar to a demise or bare boat charter. The terms of the agreement makes it clear that the entire control with regard to manning, operating and navigating was retained by the petitioner herein. Once this is clear, it follows as a corollary that there was no

transfer of the right to use as such not liable to VAT.

[Source: *M/s. Transocean Offshore, v. Union of India, Writ Petition No. 44908 of 2016, dated 6th April, 2017, [2017] 81 Taxmann.com 11 (AP)*]

3. Sales Tax – Dealer – Railway servicing food through canteens – Is a dealer – Liable to pay tax

Western Railway serving foods through its canteen is a dealer within the meaning of section 2(11) of the Bombay Sales Tax Act, 1959 and liable to pay sales tax.

[Source: *Union of India v. State of Maharashtra, W.P. No. 300 of 2001, dated 18th April, 2017 (Bom.)*].

4. Sales Tax – Service of Notice

Where notice was served at correct address of assessee and it came back with endorsement that assessee received it but refused to accept the same. It amounts to sufficient and adequate service of notice within meaning of Bombay Sales Tax Rules, 1959. Revenue's appeal upheld.

[Source: *The Commissioner of Sales Tax v. Sunil Haribhau Pote, Sales Tax Reference No. 53 of 2009, dated 21st March, 2017 (Bom.)*].

5. Sales Tax – State has right to file appeal before Tribunal

Section 39(2) of the Haryana General Sales Tax Act, does not confer the right of appeal only in favour of the assessee. It does not limit the right of appeal to any particular person or party. There is nothing in the scheme of the Act that persuades to read a Limitation to this effect into sub-section (2) of section 39. If, the Legislature intended restricting the right of appeal to assessee, it would have provided so expressly. Even there is no such an intendment into sub-section (2) of section 39.

[Source: *The State of Haryana v. Limtofit Pvt. Ltd. and Another, CWP No. 6175 of 2010, dated 8th May, 2017 (P&H)*].

IMPORTANT CASE LAWS IN SERVICE TAX, CENTRAL EXCISE

S. S. Satyanarayana, *Tax Practitioner*, Hyderabad.

CENVAT Credit : The facts of the case is that respondent is engaged in the manufacturing activity as well as providing services of GTA service, Business Auxiliary Service, Repair and Maintenance service and Commercial Construction service. They are availing CENVAT credit of inputs and input services used in the manufacture of final product as well as for providing the aforesaid services. They are maintaining consolidated records for availment/ utilisation of CENVAT credit on inputs and input services pertaining to manufacturing activities as well as services provided by them. The show-cause notice was issued proposing demand of service tax paid by utilising the CENVAT credit availed from a common pool. The adjudicating authority confirmed the demand imposed penalties and demanded interest. Held : Service tax paid by utilising the CENVAT credit availed from a common pool account of credit taken on inputs and input services. The utilisation of CENVAT credit from common pool for payment of excise duty and/or service tax is permissible. Revenue's appeal dismissed.

[*CCE, Nashik v. Graphite India Ltd.* – 2017 (2) TMI 155 - CESTAT MUMBAI].

Central Excise : Packing or repacking of goods is also included by the Legislature within the manufacturing activity in respect of the goods specified in the Third Schedule. Admittedly biri is an item, which has been kept in the First Schedule. Therefore, it is more than clear that the Legislature has made a distinction as to in which cases packing or repacking is an activity which can be included to be construed as in aid of manufacture of the item. When the Legislature itself has made a distinction, there is no reason why any separate meaning could be given to that. Labelling and packing of handmade biri in printed plastic wrappers with aid of power operated machine to bring into existence retail pack would not come within purview of 'manufacture'. Revenue's appeal dismissed. [*Deputy CCE, Siliguri v. Kishan Biri Mfg. Co.* [2017] 78 taxmann.com 167 (Calcutta)]

CENVAT Credit : Appellant engaged in manufacture of sugar and molasses. CENVAT

Credit availed by the appellant on items was disallowed as it appeared to Revenue that these items are not eligible for CENVAT Credit. Rule 2(k)(i) of CENVAT Credit Rules, 2004 provides input' means all goods used in or in relation to manufacture of final products which directly or indirectly and whether contained in final product or not and includes items like lubricating oils, grease and cutting oils in relation to manufacture of final product or for any other purpose within factory of production. Since most of the items in question have been indisputably utilised in factory of production of excisable goods and without the use of which the appellant could not have manufactured excisable goods, appeal allowed.

[*Bajaj Hindustan Ltd. v. CCE, Lucknow* – TOG-207-CESTAT-ALL-2017]

Central Excise : Assessee was engaged in manufacture of drugs. It submitted an application to Commissioner stating that some of finished goods manufactured by it crossed their expiry dates and, therefore, became unfit for human consumption. It requested him to grant permission for removing finished goods from bonded store for destruction and consequently had asked for remission of duty on such goods. Since assessee did not receive any permission even after two months from date of application, it destroyed goods in presence of Assistant Commissioner, Food and Drugs Control Administration Department. Lower authorities including Tribunal denied remission of duty on goods destroyed by assessee. Whether if assessee was claiming remission of duty on destruction of drugs, it was required to follow procedure as required under Chapter 18 of CBEC's Central Excise Manual? Held : Where assessee had destroyed finished goods without prior permission of appropriate authority and without following procedure as required under Chapter 18 of CBEC's Central Excise Manual, not eligible for remission of duty on such goods.

[*Sun Pharmaceuticals Industries Ltd. v. CCE* – [2017] 78 taxmann.com 166 (Gujarat)]

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