



AIFTP TIMES

Volume 9 – No. 4 • May 2018

FORTHCOMING PROGRAMMES

Date & Month	Programme	Place
17-5-2018	One Day Tax Seminar	Puri
26-5-2018	Tax Conference	Agra
9-6-2018	Symposium on Income Tax	Kolkata
9-6-2018	Annual General Meeting of Eastern Zone	Kolkata
11-8-2018	National Executive Committee Meeting	Amritsar
11, 12-8-2018	National Tax Conference	Amritsar
8, 9-9-2018	Justice Dr. B. P. Saraf National Moot Court Competition	Kolkata
6-10-2018	National Executive Committee Meeting	Thane
6, 7-10-2018	National Tax Conference	Thane
21, 22, 23-12-2018	21st National Tax Convention, 2018	Guwahati

Comments from Members

- ☞ Thanks for Birthday greetings – *Jasmeet G. Hora, Adv., Indore*
- ☞ Good job by AIFTP to greet the members – *Jayesh D. Vakil, Surat*
- ☞ Excellent International Study Tour, we enjoyed thoroughly – *V. B. Sharma, Jaipur*
- ☞ This is my first experience with AIFTP tour. I enjoyed lot with AIFTP Family. Thanks to all co-ordinator & executive members and special thanks to Pankaji & Ganeshji – *Sunil Goel, Adv., Ghaziabad*
- ☞ A lot of thanks to all of you four, Mr. Ghiya, Mr. Purohit, Mr. Gupta and Mr. Sanjay Sharma, who always stand in complete tour just like four pillar around us and we all are always enjoy with full of fun. Never forget you sir. Really really so funny. Thanks to all of you. – *Kundan Gupta, Adv., Delhi*
- ☞ We really enjoyed the company of all participants and thanks everyone will look forward for next trip you all soon. – *CA. Siddharth Goel, Gurgaon*

Two Day National Tax Conference at Amritsar on 11th & 12th August, 2018

AIFTP (NZ) will be organizing a two day National Tax Conference on 11th & 12th August, 2018. The venue has been zeroed down to Hotel MK, Ranjit Avenue, Amritsar. Wagah Border visit has been arranged on Friday, 10th August, 2018. Those members desired to visit the same are requested to reach Amritsar on 10th August, 2018 before 1.00 p.m. Hotel accommodation has been arranged at the venue at concessional rate i.e. ₹ 4,000/- per day with breakfast on double occupancy basis. For further details, please contact Dr. Naveen Rattan (Mob.) 9417311987 E-mail: rattanadvocates@gmail.com

V. P. Gupta	Sanjay Kumar	Jamuna Shukla	Varinder Sharma	Sandeep Goyal	Dr. Naveen Rattan
Vice President	Chairman	Hon. Secretary	Conference Convenors		Conference Chairman
M: 9810052890	M: 9415216798	M: 9450361366	M: 9814008080	M: 9814208142	M: 9417311987

Appeal to Members for sending details along with payment

It has come to our notice that in many cases members remit payments to AIFTP via cheques, NEFT, RTGS, Mobile Banking, etc. towards subscriptions, membership fee, etc. but without filling and sending corresponding form and / or without sending any intimation on e-mail. In the absence of any trail, it becomes impossible to know who has sent the payment and towards what purpose. This creates lots of accounting, administrative and tax issues.

Members are, therefore, requested to invariably send corresponding form and a simultaneous separate intimation through e-mail to AIFTP Office immediately on making any payment, so as to ensure proper credit in the name of the sender.

Members are also requested to quote their GSTR No. (if any) while remitting any payment and to intimate their GSTR No. to enable us to do proper accounting and to give proper credit for the same.

Your co-operation in this regard will go in a long way in curtailing such avoidable issues and ensuring due credit for the payments made by the members.

Vipul B. Joshi, *Treasurer*

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

Name	Mobile	Tel. (O)	Fax	E-mail
National President – Shri Ganesh Purohit, Sr. Adv.	9425154914	0761-2660402	4003074	purohitganesh@gmail.com
Deputy President – Dr. Ashok Saraf, Sr. Adv.	9864020679	0361-2529532	2460041	drashoksaraf@gmail.com
Secretary General – Shri Pankaj Ghiya, Adv.	9829013626	0141-2621679	2621679	pankajghiyajapur@gmail.com
Treasurer – Shri Vipul B. Joshi, Adv.	9820045569	022-66333736	22080951	vipulbjoshi@gmail.com

One Day Tax Seminar at Puri

All India Federation of Tax Practitioners (Eastern Zone) is extremely happy to announce that One Day Tax Seminar will be held on Saturday, 12th May, 2018 at Puri, Odisha.

The details are as under:

Day & Date : Saturday, 12th May, 2018

Breakfast and Registration : 8.30 a.m. to 10.00 a.m.

Inauguration : 10.00 am to 11.00 am.

Technical Sessions : 11.00 a.m. to 4.50 p.m.

Venue : HOTEL "PRIDE ANANYA RESORTS", VIP ROAD, PURI, ODISHA.

Fees : ₹ 1,500/- (inclusive of Seminar Materials, Breakfast, Lunch & High-tea)

Corporate Delegate: ₹ 5,000/- (inclusive of Seminar Materials, Breakfast, Lunch & High-tea)

PROGRAMME SCHEDULE

Time and Subjects	Guests & Faculties
10.00 A.M. to 11.00 A.M. Inaugural Session	Chief Guest: Hon'ble Dr. Justice B.R. Sarangi, Judge, Orissa High Court. Guest of Honour: Shri Saswat Mishra, I.A.S., Commissioner of Commercial Taxes, Odisha. Guest of Honour: Shri S.P. Choudhury, I.R.S. Principal Chief Commissioner of Income Tax, Odisha. Guest of Honour: Shri Ashok Kumar Parija, Sr. Advocate, Orissa High Court. Dr. Ashok Saraf, Sr. Advocate, Gauhati High Court & Dy. President, AIFTP. Shri Nanda Dulal Saha, Chairman, AIFTP [Eastern Zone] Shri Ramesh Kumar Dhal, Vice-Chairman, AIFTP, [Eastern Zone].
1st Technical Session 11.00 A.M. to 12.20 P.M. (Indirect Tax - GST) Implication of GST on works contract vis-vis a real estate.	Chairman Dr. Ashok Saraf, Sr. Advocate, Guwahati & Dy. President, AIFTP. Speakers Shri Saswat Mishra, I.A.S., C.C.T, Odisha. CA. Arun Kumar Agarwal, Kolkata.
2nd Technical Session 12.20 P.M. to 1.20 P.M. (Direct Tax - Income Tax) Penalty for concealment under sec. 270A, law before & after A.Y. 2017-18.	Chairman Sri B. N. Mahapatra, Advocate, Bhubaneswar. Speakers Shri V. P. Gupta, Advocate, Delhi. Shri Kanhayalal Sharma. Advocate, Orissa High Court.
1.20 P.M. to 2.20 P.M.	Lunch Break
3rd Technical Session 2.20 P.M. to 3.20 P.M. On Income Tax	Chairman Shri S.C. Garg, Vice-president, AIFTP, Kolkata. Speakers Shri Rajiv Shankar Dwivedi, Advocate, New Delhi Shri Subhash Chandra Agarwal, Advocate, Kolkata. Shri Basudev Panda, Sr. Advocate, Orissa High Court.
4th Technical Session (GST) 3.20 P.M. to 4.20 P.M.	Chairman Shri Jagabandhu Sahoo, Sr. Advocate, Orissa High Court. Speakers Shri Sricharan Kootikuppala, Dy. Commissioner, GST, Cuttack Division. CA. S. Venkatramani, Bengaluru. Shri Anand Satapathy, Addl. Commissioner of Commercial Taxes, Odisha
4.20 P.M. to 4.50 P.M.	Question and Answer Session.
4.50 P.M.	High-tea & Managing Committee meeting.

Note:- 1) Only 200 participants will be enrolled on first come first served basis.

For All India Federation of Tax Practitioners - Eastern Zone

Mr. R. K. Dhal
Mob: (9437309373)
Vice-Chairman

Mr. Kamal Kr. Jain
Mob: (09830708341)
Hon. Secretary

Mr. Bhaskar Sinha Roy
Mob.: (09836006096)
Hon. Jt. Secretaries

Mr. Vivek Agarwal
Mob: (09433207785)

Agra Tax Conference

Organised by
ALL INDIA FEDERATION OF TAX PRACTITIONERS – NORTH ZONE
 In Association with
TAXATION BAR ASSOCIATION, AGRA
 at
DIWAN-E KHAS, JAYPEE PALACE, FATEHABAD ROAD, AGRA – 282 001 (U.P.)
 on Saturday, 26th May, 2018
PROGRAMME

26th May, 2018	
08.30 a.m. - 09.30 a.m.	Registration & Breakfast
09.30 a.m. - 10:30 a.m.	Inaugural Session
10.45 a.m. - 11.45 a.m.	First Technical Session E-Assessment process under Income-tax Act – Effect implication and difficulties
	Chairman: Shri Ganesh Purohit, Sr. Adv., Jabalpur Co-Chairman: Shri S. R. Wadhwa, Adv., Delhi Speaker: Shri V. P. Gupta, Adv., Delhi
11.45 a.m. - 01.00 p.m.	Second Technical Session Discussion on penalty provisions under Income-tax Act Chairman: Shri N. M. Ranka, Sr. Adv., Jaipur Speaker: Shri Kapil Goel, Adv., Delhi
01-00 p.m. - 2.00 p.m.	Lunch
02.00 p.m. - 04.00 p.m.	Third Technical Session - GST <ul style="list-style-type: none"> • E-Way Bill – Practical Difficulties • Advance Ruling and related Issues Chairman: Shri K. L. Goyal, Sr. Adv., Chandigarh Speaker: CA. Gaurav Gupta, Delhi Speaker: Shri Bimal Jain, Adv., Delhi
04.15 p.m. - 06.00 p.m.	Fourth Technical Session – GST <ul style="list-style-type: none"> • Works Contract and other Services • Input Tax Credit – Search and Survey Chairman: Shri Roop Kishor Agarwal, Adv., Agra Speaker: CA. H. L. Madan, Delhi Speaker: Shri Pankaj Ghiya, Adv., Jaipur
06.00 p.m. - 06.30 p.m.	Closing Ceremony
06.30 p.m. Onwards	Tea

Delegate Fees For Delegates ₹ 1,500/-
 (Members & Non-Members) (Rupees Fifteen Hundred only)

FOR FURTHER DETAILS & REGISTRATION PLEASE CONTACT:

Jamuna Shukla FCA 09419180101 Secretary AIFTP (NZ)	Anil Adarsh Jain Advocate 0987302569 Conference Secretary	M. M. Bhasin FCA 09811452451 Conference Co-Chairman	B. S. Baghel Advocate 09412721061 Conference Chairman	Sanjay Kumar Advocate 09415216798 Chairman AIFTP (NZ)
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AIFTP JOURNAL SUBSCRIPTION 2018-19

Request by Shri Vipul Joshi, Treasurer

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, 2018 to 31st March, 2019 falls due for payment on 1st April, 2018.

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.

Notes :

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 and send the subscription form from AIFTP's website duly filled in all respects along with the payment.
6. Please write your name on the reverse of Cheques/D.D.

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 30-4-2018 Life Members					
	Associate	Individual	Association	Corporate	Total
Central	0	986	24	3	1013
Eastern	4	1393	36	3	1436
Northern	0	1120	17	0	1137
Southern	1	1211	19	7	1238
Western	4	2274	37	4	2319
Total	9	6984	133	17	7143

Activity Report of Central Zone of April, 2018

1. Felicitation of Hon'ble Justice of International Court, Mr. Dalveer Bhandari on 22nd April, 2018 at Jodhpur. On this occasion Ex-chairman Shri D.C. Mali and Vice-President P.M. Chopra were also present. On this occasion, Hon'ble Justice Shri G.K. Vyas and Hon'ble Justice Shri Sandeep Mehta, Rajasthan High Court were also present and they also felicitated Mr. Bhandari by garlanding him.
2. New Member:-We have enrolled 10 new members from Jodhpur, Jaipur, Nokha, Kota, Bhopal along with one corporate member.
3. Welcome of Shri Nathu Ram, Hon'ble Member, Rajasthan Tax Board, Ajmer along with Shri D.P. Ojha, Addl Advocate General on the occasion of camp on 25-4-2018.
4. On elevation of Madam Vandana Singhvi from RAS to IAS, welcome was done by presenting her bouquet. She was previously posted as Deputy Commissioner at Jodhpur for five years.
5. Representation had been submitted to the Government of Rajasthan, Chhatisgarh and Madhya Pradesh for introducing Amenesty Scheme under VAT.
6. Representation has been submitted to Government of Rajasthan along with Commissioner (GST) for extending date of Annual Return-VAT 10A and VAT-11 which was 30th April and same have been extended upto 31st May 2018.
7. Representation has been submitted for accepting I.T. Return of March 2017 upto 31st July 2018.
8. Representation was also submitted by zone for the Income Tax returns which were due because of non-e-verified or not receiving of acknowledgements by CPC Bangalore. It was also requested to Central Board of Direct Taxes as well as to the Finance Minister for accepting defective returns upto 30th June 2018.

Future Programme:-

- May 2018 : Half Day Seminar at Nokha and Bikaner
In June 2018 : Half Day Seminar on 16 June at Bhopal.
16 June 2018 : Meeting of Managing Committee of AIFTP(CZ)

CA Rajesh Mehta, Indore
Chairman

D.C. Mali, Advocate
Ex-Chairman – CZ

P.M. Chopra Advocate
Vice-President

CA Devendra Kansara
Secretary

Hearty Congratulations to Gujarat Ratna Awardee Shri Kanishka Hiralal Kaji

Heartiest Congratulations to Shri K. H. Kaji on his winning the prestigious Gujarat Ratna Award. The Award was bestowed to **Shri K. H. Kaji** the Gujarat Innovation Society for his devotion, dedication and commitment to the physically challenged and was presented at a function to mark the Society's 8th Foundation Day celebrations. Shri Kaji is a well-known advocate and founder president and president-emeritus of All Gujarat Federation of Tax Consultants. The award was presented by Chief Minister Hon'ble Shri Vijay Rupani in the presence of ministers Shri R. C. Faldu and Shri Kaushik Patel.

DIRECT TAXES

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

Tribunal - Unreported Decisions

1. S.45 : Capital vis-à-vis Revenue receipt – Sales tax subsidy – Subsidy granted by Government for purpose of setting up/expansion of mills would be capital receipt

The Assessee Company was engaged in business of manufacture of cement and chemicals and had filed return of income offering incomes under normal computation as well as u/s. 115JB. AO completed assessment making addition of valuation of closing stock and claimed u/s. 80G. CIT(A) directed to AO to reduced sales tax subsidy to be adjusted proportionately from cost of assets for purpose of depreciation. Before Tribunal department challenged direction of CIT(A) to exclude sales tax subsidy.

The ITAT observed that as per sales tax, incentive/remission received by company was capital in nature as sales tax incentive was given by Government under new incentive policy for setting up industries to generate employment. In determination of character of subsidy, source, form and time of grant of subsidy would be immaterial. Subsidy granted by Government for purpose of setting up/expansion of Mills was capital receipt and such receipt was not to be added to book profit u/s. 115JB. Therefore, sales-tax subsidy granted was in capital nature not liable to tax. (AYs 2006-07, 2008-09, 2011-12, 2012-13, 2013-14)

Sanghi Industries Ltd. & Anr. v. Assistant Commissioner of Income Tax & Anr. ITA Nos. 979/Hyd/17, To 1001/Hyd/17 Dt.20/4/2018 (Hyd.) (Trib.) Source : www.itat.nic

2. S. 54 : Capital gains – Exemption – Assessee acquired one residential house of two flats, it cannot be said that assessee has purchased two residential houses.

The AO observed, assessee had sold her residential bungalow and had purchased four flats *vide* four separate agreements for flat. Claimed exemption u/s. 54F in respect of investment made in aforesaid four flats purchased. The AO held that as per s. 54F assessee was entitled for purchase of one flat against long term capital gains on transfer of certain capital asset, therefore, exemption claimed in return of income is not allowable.

ITAT held that the said flats were constructed in such a way that the adjacent units or flats could be combined into one, and eventually had been merged into a single unit and were used for the purpose of residence by the assessee. The claim of exemption u/s. 54 could not be denied, where assessee had acquired one residential house consisting of two flats, it cannot be said that the assessee had purchased two residential houses. (AY 2009-10)

ITO v. Kavita Gupta ITA No. 6884/Mum/2014 dt.11/4/2018 (Mum.) (Trib.) Source : www.itat.nic

3. S. 143(3) : Assessee shows sufficient cause, delay ought to be condoned

During assessment, AO observed that assessee had admitted capital gains. AO after verifying same, brought difference of amount to tax. The AO further observed that assessee had received amount from Bank as interest income and assessee had admitted only income as per TDS certificate enclosed. Difference was also added to returned income of assessee and brought to tax. The CIT(A) rejected appeal of the assessee on the ground of delay.

The ITAT held that appeal has been rejected by the CIT(A) on the ground of delay. Without going into the merits of the appeal, assessee has been pursuing application u/s. 154 and before the Income-tax Ombudsman his grievances which has resulted in the delay of 970 days in filing of the appeal before the CIT(A). The assessee has shown sufficient cause, therefore delay condoned. (AY. 2010-2011)

Dr. Krishna Mohan Sahu v. Income Tax Officer (Intl. Taxation) ITA No. 1343/Hyd/2017 dt.28/03/2018 (Hyd.)(Trib.) Source : www.itat.nic

4. S. 263 : Revision – Orders erroneous and prejudicial to revenue – Validity – No action u/s. 263 could be taken unless CIT recorded specific and definite finding regarding error in assessment order.

Original assessment was completed u/s. 143(3) and total income was determined accordingly. Subsequently CIT examined assessment records and found that Assessee Company had claimed loss incurred on account of “cross currency swap” which was not allowable expenditure. CIT passed order u/s. 263 holding that original assessment order u/s. 143(3) was erroneous and prejudicial to interest of revenue because deduction was wrongly allowed in respect of provisions for non-performing assets, even though it was mere contingent liability and deduction towards loss of interest rate swap was incorrectly allowed.

The ITAT held that CIT could not invoke his powers u/s 263 on ground that in his opinion it was case of inadequate enquiry. Out of total provision, an amount was *suo motu* added back in computation of income and further sum was disallowed by AO in original assessment order. Therefore, that amount already stood disallowed in original assessment order. There was no error or prejudice to interest of revenue. CIT had not pointed out definite and specific error in original assessment order and observed that inquiry made by AO was inadequate or improper without first pointing out error in original assessment order. No action u/s. 263 could be taken unless CIT recorded specific and definite finding regarding error in assessment order, which was not done by the CIT. (AY 2002-2003)

Ge Capital Services India v. Addl CIT, ITA NOs. 2697/Del/2007 & 231/Del/2012 dt.23/04/2018 (Delhi)(Trib.) Source : www.itat.nic

INDIRECT TAX DECISIONS – VAT UPDATE

CA. Janak Vaghani

1) GST - Collection of Cheques by Department during Search – and Provisionally Attachment of Bank Account – Not Proper.

On facts the department during search carried under GST Act can not collect cheques towards GST liability and attachment of bank account on same day is not proper.

(Source: Remark Flour Mills Pvt. Ltd v. State of Gujarat, SCA No. 4835/2018, dated 19/04/2018 (Guj.))

2) GST – Composite or Mix Supply – Classification of supply of power solutions including UPS, servo stabiliser, batteries etc.

Goods are naturally bundled in a supply contract if the contract is indivisible. The contract for the supply of a combination of UPS and battery, if not built as composite machine, is not indivisible. The recipient can split it up into separate supply contracts if he chooses. The goods supplied in terms of such contracts are, therefore, no longer naturally bundled and cannot be treated as a composite supply. Though UPS and Battery are two different and independent items, they are billed together and a single price is quoted for the sale. The supply of UPS and Battery is to be considered as Mixed Supply within the meaning of Section 2(74) of the GST Act, as they are supplied under a single contract at a combined single price.

(Source: Switching Avo Electro Power Ltd., 2018VIL-01-AAR)

3) GST – International Out and Out Transactions – Not Liable to GST

No GST is payable on any international out and out transactions. The GST is payable on import of goods only if imported into India. When goods are purchased outside India and sold directly to another country therefrom GST is not payable in India.

(Source: M/s. Synthite Industries Ltd, 2018 VIL 02- Kerala AAR)

4) GST – One time lease premium/Salami for lease of Land – Is a supply of service.

Section 7(1)(a) of the GST Act includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange,

licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business. The CIDCO is a person and in the course or in furtherance of its business, it disposes of lands by leasing them out for a consideration styled as one-time premium. Any lease or letting out of a building, including commercial, industrial or residential complex for business, either wholly or partly is a supply of service. Once this law, in terms of the substantive provisions and the Schedule, treats the activity as supply of goods or supply of services, particularly in relation to land and building and includes a lease, then, the consideration therefor as a premium/one-time premium is a measure on which the tax is levied, assessed and recovered.

(Source: Builders Association of Navi Mumbai v. Union of India, 2018 VIL-166 Bom)

5) CST – Purchase of Oil Against form C – After Implementation of GST – Permissible.

The provisions of section 8 of the CST Act, Rule 12 of CST (R&T) Rules and declaration Form C have not undergone any amendment after the implementation of the GST laws. There cannot be any occasion to restrict the usage of 'C' Form only for the purposes of re-sale of the six items mentioned in the amended definition of 'goods' in section 2(d) of the CST Act. The purchase of the said goods for purposes of re-sale, use in the manufacture or processing of goods for sale, in the tele-communications network or mining or in generation or distribution of electricity or any other form of power would qualify the purchaser for registration under Section 7(2) of the Act. The section 7(2) does not stipulate that only a dealer liable to pay tax under the Sales Tax law of the appropriate State in respect of any particular goods is entitled to apply for registration. Nor does section 7(2) stipulate that an application for registration can be made or 'C' Form can be issued only in respect of the sale of the same goods prescribed in the course of an inter-State sale. A dealer liable to pay tax under the Sales Tax law of the appropriate State in respect of any goods would be covered by section 7 (2) of the Act. The Government cannot refuse issue 'C' Forms in respect of the natural gas purchased by the petitioner from the Oil Companies in Gujarat and used in the generation or distribution of electricity at its power plants in Haryana.

(Source: Caparo Power Ltd. v. State of Haryana and Ors., CWP No. 29437 of 2017, dated 28th March, 2018, (P and H))



Hearty Congratulations

Hearty congratulations to the newly elected office bearers of Tax Friends, Mumbai for the term 2018-20

CA Vijay Kewalramani	:	President
Adv. Atam Teckchandaney	:	Vice-President
CA Hari Dudani	:	Hon. Secretary
CA Bharati Butani	:	Hon. Treasurer

We wish them all the success.

SERVICE TAX CASES

S. S. Satyanarayana, Tax Practitioner

1 CENVAT Credit

Assessee, a manufacturer of goods chargeable to nil duty has taken CENVAT credit of duty paid on inputs, which were used in manufacture of goods exported. Revenue raised objection. **Held:** The assessee manufacturing goods chargeable to nil duty was eligible to avail CENVAT credit of duty paid on inputs under exception clause to rule 6 [as contained in rule 6(5) of 2002 Rules and rule 6(6) of 2004 Rules] which were used in manufacture of goods exported. It further held that in view of provisions of rule 5, a manufacturer, who exported final products which were exempt from duty, could claim refund of CENVAT credit of duty paid on inputs and inputs services used in manufacture and export of said wholly exempted final products. Revenue's appeal dismissed.

[CCE, Chandigarh v. Drish Shoes Ltd. [2018] 90 taxmann.com 393 (SC)].

2. Job Work

The assessee was engaged in the manufacture of chocolates on job work basis out of raw and packing material supplied by

principal 'C'. It was receiving duty paid raw and packing material from 'C'. 'C' also supplied the assessee costing data in respect of such duty paid raw and packing material from time to time. The assessee having come to know that the goods cleared by it on job work basis had been undervalued and there was a short duty to the extent of ₹ 68 lakhs *suo motu* paid the amount along with interest. The revenue issued on the assessee a show cause notice seeking appropriation of the duty and interest already paid and also proposing to impose penalty. The Adjudicating Authority confirmed the demand and appropriated the amount already paid. In addition, he also imposed the penalties under section 11AC of the Central Excise Act, 1944 and rule 25 of the Central Excise Rules, 2002. **Held :** Where assessee was engaged in manufacture of goods on job work basis out of raw and packing material supplied by principal and it made short payment of duty due to non-supply of costing data by the principal, imposition of penalty under section 11AC of CE Act, 1944 justified.

[Dr. Writer's Food Products P Ltd. v. CCE, Pune II – [2018] 92 taxmann.com 3 (Mumbai - CESTAT)].



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

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