

All India Federation of Tax Practitioners



AIFTP TIMES

Volume 10 – No. 11 • November 2019

FORTHCOMING PROGRAMMES

Date & Month	Programme	Place
11-11-2019	National Executive Committee Meeting	Varanasi
11, 12-11-2019	Dev-Deepawali – National Tax Conference	Varanasi
13, 14 & 15-12-2019	OGM, Election & 22nd National Convention	Mumbai

NOTICE

It is hereby informed to all concerned that as per the procedure laid down in Rules 8 to 12 of All India Federation of Tax Practitioners Award Rules (**AIFTP Award Rules** in short), nomination for the Awards as prescribed in Rule 3 of the AIFTP Award Rules for the year 2019 are invited by the Award Selection Committee of the Federation.

The fact sheet duly filled-up in all respect by the **Bidding Zone / Office / Person** is to be e-mailed latest by **10th November 2019**, along with all the details and supporting papers and documents to the convener of the Award Committee and/or Secretary General of AIFTP 07 hard copies of the same are also to be sent by **Courier** to the convener of the Committee and/or the Secretary General of AIFTP so as to reach before **15th November 2019**.

It is to be noted by all that the nomination for every Award shall have to be sent separately in the fact sheet and that the Award shall be for a period from 1st January to 15th November 2019.

It is to be further noted that the fact sheet is prescribed in **Annexure** enclosed to the AIFTP Award Rules included in the Memorandum of Association and Rules & Regulations and the same be downloaded from the website of the Federation.

It is also to be noted that **any fact sheet emailed after 10th November 2019 or physically received after 15th November 2019 shall not be considered for nomination to the concerned Award**. However it would be in the discretion of the Award Selection Committee to consider the same on reasonable cause being shown.

Note : Any conference (one day or two days) to be held between 10th to 15th November 2019 (both days inclusive) shall be eligible for nomination on being sent fact sheet (emailed as well as hard copies) within 5 days from the date of Conference (date of conference is not inclusive).

(D. K. Gandhi) Convener Award Selection Committee	(Prem Lata Bansal) Chairman Award Selection Committee	(Dr. Ashok Saraf) National President	(Anand Pasari) Secretary General
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FOR ANY QUERIES MEMBERS MAY CONTACT ANY OF THE FOLLOWING OFFICE BEARERS

Name	Mobile	Tel. (O)	Fax	E-mail
National President – Dr. Ashok Saraf, Sr. Adv.	9864020679	0361-2529532	2460041	president.aiftp@gmail.com
Deputy President – Smt. Nikita Badheka, Adv.	9821037885	022-22030011	—	nikita.badheka@gmail.com
Secretary General – Shri Anand Kumar Pasari, Adv.	9431125350	0651-2209612	—	anandpasari17@gmail.com
Treasurer – Shri Chirag S. Parekh, Adv.	9821634128	022-26705006	26705006	chiragnp7@gmail.com

DEV-DEEPAWALI – National Tax Conference At Varanasi

**Organised By All India Federation of Tax Practitioners (NZ)
In Association with Income Tax Bar Association Varanasi**

Theme : “A Bright Sail Towards Tax Proficiency”

Venue: Kanhaiya Vilas, Akatha Balue Road, Sarnath, Varanasi

Date : 11th & 12th November, 2019

All India Federation of Tax Practitioners (NZ) is hosting a two days Tax Conference at Varanasi on 11th and 12th November 2019 (Monday and Tuesday), in association with the Income Tax Bar Association, Varanasi on the occasion of Dev Deepavali. The Dev Deepavali (“the Diwali of the Gods” or “Festival of Lights of the Gods”) is the festival of Kartik Poornima celebrated in Varanasi, Uttar Pradesh, India. It falls on the full moon of the Hindu month of Kartika and takes place fifteen days after Diwali. The steps of all the ghats on the riverfront of the Ganges River, from Ravidas Ghat at the southern end to Rajghat, are lit with more than a million earthen lamps (diyas) in honor of Ganga, the Ganges, and its presiding goddess. The gods are believed to descend to Earth to bathe in the Ganges on this day. The festival is also observed as Tripura Purnima Snan. The tradition of lighting the lamps on the Dev Deepawali festival day was first started at the Panchganga Ghat in 1985. During Dev Deepawali, houses are decorated with oil lamps and colored designs on their front doors. Firecrackers are burnt at night, processions of decorated deities are taken out into the streets of Varanasi, and oil lamps are set afloat on the river.

THE PROPOSED PROGRAMME

10th November, Sunday		
	4:00pm onwards	Swachh Bharat Abhiyan, Ek kadam swachhata ki ore Chief Guest - Dr. Ashok Sarraf (National president AIFTP)
11th November 2019, Monday		
	9.30 a.m. to 11.00 a.m.	Inaugural Session Chief Guest - Hon'ble Mr. Justice Vineet Saran, (Judge, Supreme Court of India) Guest of Honour - Hon'ble Mr. Justice Bhushan R. Gavai (Judge, Supreme Court of India) Guest of Honour- Hon'ble Mr. Justice Krishna Murari (Judge, Supreme Court of India)
1st Technical Session	11.30 a.m. to 1.30 p.m.	Current Issues and Critical Aspects of Goods and Service Tax Key Note Speakers 1. Shri. A. K. Batra, Advocate, New Delhi, 2. Shri. Sujeet Ghosh, Advocate, Supreme Court, New Delhi
	1.30 p.m. to 2.30 p.m.	Lunch Break
2nd Technical Session	2.30 p.m. to 4.00 p.m.	Crack Down on Black Money - Key Note Speaker - Shri Rajendra Nrisinh, Mumbai (Retired member ITAT)
3rd Technical Session	4.00 p.m. to 5.00 p.m.	Mann ki Baat - Panel discussion with High officials of Direct and Indirect Tax Departments with Tax Professionals and Tax payers.
Cultural Evening to be followed by dinner (7p.m. onwards)		
12th November 2019, Tuesday		
4th Technical Session	9.30 a.m. to 12.00 p.m.	Technical session (Recent changes and technical” problems under GST) Key Note Speaker : CA Vimal Jain
5th Technical Session	12.30 p.m. to 1.30 p.m.	Valedictory Session : Chief Guest - Amlrag Thakur (Deputy Finance Minister)
Dev Deepawali Celebration on the bajra (big sized boat) 2:30 pm onwards followed by dinner.		

REGISTRATION FEES

Conference Registration only for Delegates	₹ 3500/-	Conference 11th & 12th up to lunch
Conference Registration for Spouses	₹ 3000/-	Conference 11th & 12th up to lunch
Dev Deepawali registration (Per person)	₹ 5500/-	Sail on Bajra (big sized boats) with snacks followed by dinner
Corporate registration	₹ 5000/-	Only for conference

RTGS / NEFT Payment Details

Account Name : “DEV DIPAWALI TAX CONFERENCE”	Bank Account No. : 38538863089
Bank Type : Saving Bank A/c	Bank Name : State Bank of India
Branch : M. A. Road Varanasi	IFSC Code : SBIN0007233

Cheques and drafts should be in favour of : “DEV DIPAWALI TAX CONFERENCE”

For further Enquiries Contact

Adv. Arvind Shukla 9415201059,	Adv. Om Prakash Shukla 9415204837	Adv. Prakash Gupta 9161492109
CA Surendra Kumar Dwivedi 9415203012	Adv. Ajay Kr. Singh 9415618150	Adv. Sanjay Verma 9839612290
Adv. Ashutosh Singh 9415269345	Adv. Sanjay Kumar (Allid) 9415216798	CA Jamuna Shukla 9450361366
CA Punit Kumar Singh 9935535185	For Hotel Booking Contact: Adv. Asim Zafar 9415203535	

22nd National Convention

at Mumbai

(Dedicated to Past Presidents of AIFTP, Late Dr. N. M. Ranka, Sr. Advocate & Late Shri S. K. Poddar, Advocate)

Organised by

All India Federation of Tax Practitioners (WZ)

in association with



The Goods and Services Tax Practitioners' Association of Maharashtra

The Chamber of Tax Consultants

Bombay Chartered Accountants' Society

on

13th December, 2019 NEC, OGM, Elections 2 p.m. Onwards Khadayata Bhavan Vile Parle (E), Mumbai	14th & 15th December, 2019 National Convention Sahara Star , Opp. Domestic Airport, Vile Parle (E), Mumbai – 400 099
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Anand Pasari
Secretary-General, AIFTP

(Dr.) Ashok Saraf
National President, AIFTP

Topics and Speakers are as under :—

Session	Time	Subject	Speaker/Panelist	Chairman/ Moderator
Day 1 — Saturday, 14th December 2019				
	8.00 a.m. to 9.30 a.m.	Breakfast, Registration & Fellowship		
	9.30 a.m. to 12.00 noon	Inaugural Function : Chief Guest : Hon'ble Dr. Justice D. Y. Chandrachud, Judge, Supreme Court of India Guest of Honour : Hon'ble Mr. Justice Pradeep Nandrajog, Chief Justice, Bombay High Court*		
1st Technical Session	12.00 noon to 1.30 p.m.	Proposed Income Tax Law – Charter for India's Pioneering Tax Reforms and Role of Professionals	Shri Mukesh Patel, Advocate, Ahmedabad	Dr. K. Shivaram Sr. Advocate, Mumbai
	1.30 p.m. to 2.30 p.m.	Lunch Break		
2nd Technical Session	2.30 p.m. to 4.00 p.m.	Power of Arrest and Prosecution under Tax laws	Shri Rahul Agarwal, Advocate, Allahabad	Shri Vikram Nankani, Sr. Advocate, Mumbai
3rd Technical Session	4.00 p.m. to 6.00 p.m.	Panel Discussions – Shifting of Burden of Proof – Direct & Indirect Tax	Panelists: Shri V. Sridharan, Sr. Advocate, Mumbai and Shri Saurabh Soparkar, Sr. Advocate, Ahmedabad	Moderator: CA. Pradip Kapasi, Mumbai

* Subject to Confirmation

Day 2 — Sunday, 15th December 2019				
	8.00 a.m. to 9.30 a.m.	Breakfast and Fellowship		
4th Technical Session	9.30 a.m. to 11.00 a.m.	Intricacies of recent amendments under GST (including return)	CA. Umang Talati, Mumbai	Shri M. L. Patodi Advocate, Kota
	11.00 a.m. to 11.15 a.m.	Tea Break		
5th Technical Session / Panel Discussion	11.15 a.m. to 12.45 p.m.	Direct Taxes: Dilution of Fundamental Taxation Principles (or deeming provisions)	Shri Hiro Rai, Advocate, Mumbai	Smt. Prem Lata Bansal, Sr. Adv., New Delhi
6th Technical Session / Panel Discussion	12.45 p.m. to 2.15 p.m.	Valuation under GST law with reference to treatment of discounts, price variations, incentives and its implications on Input Tax Credit	CA. Sujata Rangnekar, Mumbai	Shri P. C. Joshi, Advocate, Mumbai
	2.15 p.m. onward	Lunch		

NOTE : Topics Subject to Change

REGISTRATION FEES

Fees After 15th October 2019

Members

(₹ 5,200+936) = ₹ 6,136/-*

Outstation Delegate's Spouse

(₹ 3,000+540) = ₹ 3,540/-*

Non-Members

(₹ 6,000+1,080) = ₹ 7,080/-*

*Including 18% GST

(Registration form can be Downloaded, filled up online & Submitted @ aiftpwz@gmail.com along with details of payment)

RTGS / NEFT Payment Details

Account Name : "AIFTP MUMBAI CONVENTION 2019"	Bank Account No. : 919010038002874
Bank Type : Saving Bank A/c	Bank Name : Axis Bank Ltd.
Branch : New Marine Lines, Mumbai 400 020	RTGS / NEFT Code : UTIB0000233

For further enquiries contact :

Mrs. Nikita R. Badheka, Conference Chairperson and Dy. President, AIFTP – **9821037885**

Mr. Deepak Shah, Conference Co-Chairman & Chairman (WZ) – **9820148536**

Mr. Chirag Parekh, Treasurer (WZ) – **9821634128**

Mr. Bhaskar B. Patel, Vice President (WZ) – **9979733033**

Mr. Santosh Gupta, Joint Secretary (WZ) – **9890033480**

Mr. Pravin Shah, Vice Chairman (WZ) – **9821476817**

Mr. Vipul Joshi, NEC Member – **9820045569**

or E-mail to aiftpwz@gmail.com

NOTICE OF ORDINARY GENERAL MEETING

October 25, 2019

NOTICE is hereby given that an Ordinary General Meeting as provided in Rule 10 of the Rules & Regulations of the All India Federation of Tax Practitioners will be held on **Friday, the 13th December, 2019 at Khadayata Bhuvan, Plot No. 32, Hanuman Road, Near Parle English Medium School, Vile Parle (E), Mumbai – 400 057 (Maharashtra)** at 3.30 p.m. to transact the following agenda as prescribed in Rule 8.

A G E N D A

1. Welcome address and opening remarks by the President, Dr. Ashok Saraf.
2. To confirm the proceedings of previous OGM held on 1st December, 2017 at Jabalpur.
3. To elect 50 members to the National Executive Committee for the term 2020 & 2021 in accordance with Rule 7(3) read with Rule 10(1) & 10(2) and Rule 14 of the Rules & Regulations.
4. To receive the report of the Election Officer and declaration of election result.
5. To consider suggestions from the members in respect of rendering better service to the members and for overall progress of the AIFTP.
6. To transact any other business that may be raised with the permission of the Chair

For All India Federation of Tax Practitioners

Sd/-
Anand Kumar Pasari
Secretary General

Notes.:

1. At the National Executive Committee meeting held on 22nd June, 2019 at Tirupati, Shri Ganesh Purohit (Immediate Past President) is appointed as Chief Election Officer. The Chief Election Officer has already issued Notice for election in AIFTP Times for the month of October, 2019 at Page No. 4. The above notice is issued consequent to the Notice by the Chief Election Officer.
2. Copy of the updated Memorandum of Association and Rules and Regulations can be obtained from the Head Office at Mumbai or downloaded from Official website of the Federation www.aiftponline.org
Members are requested to read the same before filing the nomination.
3. Nomination form can be downloaded from the website of the Federation or on request may be obtained from the Head Office at Mumbai from Monday, 11th November, 2019 onwards.
4. Nominations are hereby invited for the membership of National Executive Committee from all eligible members in terms of amended Rules 10(1), 10(1A), 10(1B) and 14 subject to numerical limit as provided in Rule 7(3) for each Zone. The number of members to be elected from each zone will have their contest amongst the candidates from that zone but all members from all zones will be eligible to vote for all the five zones.
5. **Any member who have already opted to be on the Zonal Managing Committee for the ensuing term shall not be eligible to file nomination for NEC. Requisite declaration to this effect shall be annexed with the nomination form.**
6. Nomination form duly filled in, affixed with photo, and requisite non-refundable deposit Cheque or confirmation of RTGS of ₹ 2000/-, duly proposed and seconded MUST REACH the registered office of the Federation on or before **Monday, 2nd December, 2019 up to 5:00 p.m.**
7. The Nomination Forms would be scrutinized by the aforesaid Election Officer on Tuesday, **3rd** December, 2019 and would notify all valid and invalid nominations on the electronic media
8. Candidate may withdraw the nomination on or before Sunday, 8th December, 2019 up to 5.00 p.m. and Declaration of Final List of Candidates would be notified on the electronic media and conduct the election if warranted at Mumbai (Maharashtra) at the time of OGM on Friday, 13th December, 2019
9. As per clause 10(3) of the Constitution of the Federation, the Chairman of the respective zone shall be ex-officio member of the National Executive Committee. Hence Chairman elect is not required to file the nomination for the National Executive Committee.
10. The Chief Election Officer declares that as per the membership of respective zones as on 25th September, 2019 maximum number of candidates who can be elected to NEC as per rule 7(3) of the Constitution are as under: -

Zones	Members as on 25-10-2019	Entitlement (Max.)
Western -	2393 Max. 16 members can be elected	16
Southern -	1312	09
Northern -	1218	08
Central -	1059	07
Eastern-	1620	10
Total -	<u>7602</u>	<u>50</u>

11. **As per Rule 10, clause 6 of the Constitution of the Federation, any individual life member or a representative of the Association member who is more than 5 years in practice and who has been a member of the Federation for at least two years can only file the nomination for NEC.**
12. The National Executive Committee Meeting will be held once in three months at different places in the country, along with two-day conference. The Executive Committee Members have to bear personally the expenses of travelling, stay and delegate fees of the conference and also devote time for the welfare of the Federation. Persons of integrity and who can afford to spend time and money for the welfare of the profession are only requested to file the nomination. Please note that it is mandatory to attend at least 50% of NEC meetings in a year or else they shall not be entitled to file nomination for re-election to NEC.
13. The National Executive at its first meeting after election shall elect from amongst its members the following Office Bearers for one calendar year i.e. for the year 2020 only, (Rule 10 Clause 4 read with clause 6 read with amended Rule 11), however the term of National Executive will continue to be that of two calendar years as per Rule 14.
 1. One President
 2. One Deputy President
 3. Five Vice Presidents (one from each zone)
 4. One Secretary General
 5. One Hon. Treasurer and
 6. Five Hon. Joint Secretaries (one from each zone)
14. For further clarification the members may contact the Secretary General, Chairman of respective zone or Registered Office.

Direct Taxes

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

Tribunal

1. S. 32 : Depreciation - written down value of asset is reduced to zero or block of asset is empty even though written down value of asset is not reduced to zero, hence depreciation is not allowable

The AO has disallowed depreciation on goodwill. Before the appellate stage, the Assessee contended that depreciation on goodwill is allowable u/s. 32(1) as an intangible asset of any other business or commercial rights of similar nature. Further submitted the assessee has written of goodwill in books of accounts by impairment of asset, as per the accounting standard issued by the ICAI, but the written down value of such goodwill is continued to be remain in the books of accounts and also, as long as, the block of asset is continued in the books of accounts, the assessee is entitled to claim depreciation on WDV of such block of assets. The CIT(A) confirmed stand of AO towards disallowances of depreciation on goodwill.

Tribunal observed that, when the asset ceased to continue in books of account and also the assessee was not getting any enduring benefit out of goodwill, the question of depreciation on such non-existing asset was incorrect and in the light of provision of s. 32(1), where it mandates the block of assets should exists to claim depreciation. Since, goodwill is not treated as an asset in its books of accounts and also, the assessee is not getting any enduring benefit out of such goodwill, the question of allowing depreciation on such non existing asset does not arise. Hence depreciation is not allowable. (AY 2012 - 2013)

Aramark India (P.) Ltd. vs. Dy. CIT ITA No. 2546 / Mum/ 2018, dt.28/08/2019 (Mum)(Trib.) www.itat.nic.in

2. S.35(1)(ii) : Withdrawal of recognition u/s.35(1)(ii) in the hands of the payee organizations would not affect the rights and interests of the assessee for claim of weighted deduction u/s 35(1)(ii).

The assessee had made donation to M/s. Herbicure Healthcare Bio-Herbal Research Foundation (M/s. HHBHRF) and claimed weighted deduction u/s. 35(1) (ii) which has been disallowed by the AO on the ground that the admission of the founder of M/s. HHBHRF and other whistle-blower; and the CIT(E)'s action to cancel the s. 12A registration pursuant to the finding that M/s. HHBHRF was indulged in giving accommodation entry to persons who gave donations to it which was bogus. Hence, AO added the amount as income of the assessee. Before appellate stage, the assessee contended

that the subsequent action of the CBDT to withdraw/ cancel the registration granted to M/s. HHBHRF with retrospective effect cannot in any way affect the weighted deduction which has to be granted in light of Explanation appended to s. 35(1)(ii). CIT(A) has confirmed the action of the AO.

The Tribunal observed that, it is not in dispute that M/s. HHBHRF was enjoying the approval under S.35(1)(ii) as on the date of receipt of donation and by retrospective cancellation of approval of the concerned institution, the deduction claimed in respect of the donation given by the assessee cannot be denied. The view has been consistently taken that when application of weighted deduction has been claimed against M/s. HHBHRF, the same has been fortified by the Explanation given u/s. 35(1)(ii). Further there is no provision in s. 35(1)(ii) to withdraw the recognition granted to the assessee therein. When there is no provision for withdrawal of recognition in the Act, the action of the revenue in withdrawing the recognition with retrospective effect from 1.4.2007 is unwarranted. There is absolutely no provision for withdrawal of recognition u/s 35(1)(ii) of the Act. Tribunal held that, withdrawal of recognition u/s. 35(1)(ii) in the hands of the payee organizations would not affect the rights and interests of the assessee for claim of weighted deduction u/s 35(1)(ii). (AY 2013 – 2014 & 2014 -2015)

Indian Coal Agency vs. ACIT, ITA No. 464/Kol/2018 & ITA No.465/Kol/2018, dt.23/10/2019 (Kol.)(Trib.) www.itat.nic.in

3. S.37(1) : Based on regulations of Medical Council of India, disallowance u/s.37(1) cannot be made in the hands of pharmaceutical companies as these regulations were laid down for the medical professionals and not for pharmaceuticals companies.

AO found that assessee had debited a sum under different heads viz., business convention, CME expenses, MCM expenses, promotional material, patron networking expenses, sales promotion expenses, travelling expenses etc., hence he concluded that freebies given to doctors was an unallowable expenditure u/s 37(1). CIT(A) upheld the order of the AO.

Tribunal observed that, assessee incurred MCM expenditure for conference and conferences were being organized for business purpose. When a large number of doctors assembled, they share their experience in day-to-day professional life and what type of hurdles they faced while treating patients, either by use of equipment's or by pharma products. If a pharmaceutical company wants to organize such type of conference or seminars then it would be quite reasonable to understand deficiency in

its products, and if doctors were required to pay from their pockets, then probably some of them would not like to participate. If nature of this expenditure was being viewed with angle of commercial organization, then it would reveal that those were essential expenditure for purpose of a pharmaceutical industry. Only caveat for their non-disallowance was Explanation 1 appended to s. 37, which was applicable on expenditure which was incurred for infringement of any law. Hence, regulations of MCI

for disallowance u/s. 37(1) cannot be made in the hands of pharmaceutical companies as the same were laid down for the medical professionals.(AY 2010-2011) (r.w.s. 263)

Troikaa Pharmaceuticals Ltd. vs. Dy. CIT ITA No. 2458/AHD/2017, dt.15/10/2019 (Ahd)(Trib.) www.itat.nic.in



Indirect Taxes

Tanmay Mody, GST Practitioner

1) Sales Tax / Service Tax – Doctrine of Mutuality

Leviability of Sales Tax / Service Tax on sale of food and drinks to the permanent members by Respondent-Club - whether the doctrine of mutuality has been done away with by Article 366(29-A)(e)?

Held: The doctrine of mutuality states, there is no sale transaction between a club and its members. There cannot be a sale of goods to oneself. The doctrine of mutuality continues to be applicable to incorporated and unincorporated members' clubs after the 46th Amendment adding Article 366(29-A) to the Constitution of India. The expression "body of persons" will not include an incorporated company, nor will it include any other form of incorporation including an incorporated co-operative society. If the doctrine of agency, trust and mutuality is to be applied qua members' clubs, there has to be an activity carried out by one person for another for consideration. We have seen how in the judgment relating to sales tax, the fact is that in members' clubs there is no sale by one person to another for consideration, as one cannot sell something to oneself. This would apply on all fours when we are to construe the definition of "service" under Section 65B(44) as well. We accept the argument on behalf of the Respondents that incorporated clubs or associations or prior to 1st July, 2012 were not included in the service tax net. In the negative list scheme, the expression "body of persons" occurring in the explanation to Section 65 and occurring in Section 65(25a) and (25aa) does not refer to an incorporated company or an incorporated cooperative society. As the same expression has been used in Explanation 3 post-2012 (as opposed to the wide definition of "person" contained in Section 65B(37)), it may be assumed that the legislature has continued with the pre-2012 scheme of not taxing members' clubs when they are in the incorporated form. The expression "body of persons" may subsume within it persons who come together for a common purpose, but cannot possibly include a company or a registered cooperative society. Thus, Explanation 3(a) to Section 65B(44) does not apply to members' clubs which are incorporated.

(Source: Order in Civil Appeal No. 4184 of 2009 and others by the H'ble Supreme Court in the case of State

of West Bengal and ors. vs. Calcutta Club Ltd. dated 3rd October, 2019)

2) Service Tax – Franchisee Agreements

Appellant entered into Franchisee Agreements with local franchisees to operate restaurants in India. Whether the extra consideration from the franchisee for promotion of its own brand in the form of contribution towards advertisement would form part of the value of taxable service of the franchisor?

Held: What transpires from the agreement is that there is no obligation cast upon the franchisee to incur any expenditure on advertising the brand name, service marks and trademarks of the franchisor. Any indirect result, because of advertisement cannot, therefore, be called an extra consideration in terms of section 67 of the Act. Unless an amount is charged by the service provider to the service recipient, it does not enter into an equation for determining the value on which Service Tax is payable. The amount incurred by the franchisees towards advertisement expenses, cannot, therefore, be said to be 'consideration' paid by the franchisee to the Appellant, as it is the franchisee themselves who are benefitting out of such expenses and not the Appellant. Merely because the agreement requires the franchisee to use only advertising and promotion materials and programs provided by the franchisor or approved in advance by the franchisor would not mean that the advertisement is for the benefit of the franchisor - The advertisement, therefore, was for promotion of the Restaurant operated by the franchisee and merely because the trade names, service marks, trademarks of the franchisor also appear in the advertisement, no extra consideration flows to the franchisor.

(Source: Delhi CESTAT Order in Appeal No. 50218 of 2016 in the case of M/s. McDonald's India P. Ltd. vs. Prin. Comm. Of ST, Delhi-I, dt. 25th September, 2019)

3) GST – Karnataka AAR

Applicant are in the business of selling Volvo branded trucks and thereafter providing after sale support services, including warranty services for Volvo branded trucks and

buses in India. Whether the warranty supplies made by the Applicant to Indian customers but payment received from Volvo Sweden is a supply of services and whether the supplies by the Applicant amounts to export of services to Volvo Sweden and hence zero rated under GST law?

Held: The subject transaction is a transaction within the country and is a composite supply of goods or services to the customers by the applicant and hence does not amount to export of services as M/s Volvo Sweden is not the recipient of services provided by the applicant, but only pays the consideration to the provider of such services. The applicant is providing composite supply of goods and services to the customers where in the principal supply is that of goods or services depending on the nature of individual case. The transaction is either an intra-State or inter-State transaction but not export transaction - Since this transaction is not an export of services, the transaction is not a "Zero-rated Supply" under the IGST Act.

(Source: Karnataka AAR Order No. KAR-ADRG 32/2019 dt. 12th September, 2019 in the case of M/s. Volvo-Eicher Commercial Vehicles Ltd.)

4) GST – Karnataka AAR

Applicability of GST over and above ₹ 7,500; GST on reimbursement of electricity charges; GST on collection of sinking fund / corpus fund.

Held: The exemption of ₹ 7,500/- in terms of entry no. 77 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, as amended, is applicable for maintenance charges collected from members. The benefit of exemption up to ₹ 7,500/- is applicable on per flat basis, when members have more than one flat. The exemption of ₹ 7,500/-, in terms of entry no. 77 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, as amended, on maintenance charges charged by a Resident Welfare Association (RWA) from, resident is available only if such charges do not exceed ₹ 7,500/- per month per member. In case the charges exceed

₹ 7,500/- per month per member, the entire amount is taxable. The electricity charges paid for power consumed towards common facilities and separately recovered from members is liable to GST as consideration received for the supply of maintenance services to the members. The Corpus Fund or Sinking Fund collected from members is not to GST, as it amounts to deposits received towards future supply of services to members

(Source: Karnataka AAR Order No. KAR-ADRG 42/2019 dt. 17th September, 2019 in the case of M/s. Prestige South Ridge Apartment Owners' Association)

5) GST – Maharashtra AAR

The Applicant offers optional Parental Mediciam insurance for employees' parents. As per this scheme, the Applicant initially pays the entire premium and 50% of the premium is recovered from the respective employees who opt for parental insurance scheme. Whether recovery of 50% of Parental Health Insurance Premium from employees, amounts to supply of service under Section 7 of the CGST Act, 2017 and whether GST is payable on recovery of 50% of the insurance premium from the salary of the employees?

Held: The activity of recovery of 50% of the cost of insurance premium cannot be treated as an activity done in the course of business or for the furtherance of business. The activity undertaken by the applicant of providing mediclaim policy for the employees' parent through insurance company neither satisfies conditions of section 7 to be held as "supply of service" nor it is covered under the term "business" of section 2(17) of CGST Act 2017. Hence, the applicant is not rendering any services of health insurance to their employees' parent and hence there is no supply of services in the instant case of transaction between employer and employee.

(Source: Maharashtra AAR Order No. GST-ARA-19/2019-20/B-108 dt. 4th October, 2019 in the case of M/s. Jotun India P. Ltd.)





AIFTP Online Membership

AIFTP Membership is now **ONLINE**. You can ask your professional friends to join the AIFTP by online filling the application forms, uploading documents. The membership fees can also be paid online. Please log on to www.aiftponline.org & click.

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