

All India Federation of Tax Practitioners



AIFTP TIMES

Volume 10 – No. 10 • October 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
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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 - Honourable Justice Sharad Arvind Bobde, (Judge Supreme Court of India) Guest of Honour - Honourable Justice Govind Mathur (Chief Justice Allahabad High Court)* Guest of Honour- Sri Pramod Chandra Mody (Chairman CBDT)*
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.		

(*confirmation awaited)

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		
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.	Issues and Controversies in New GST Returns	CA. Umang Talati, Mumbai	Shri M. L. Patodi Advocate, Kota
3rd Technical Session	4:00 p.m. to 6.00 p.m.	Panel Discussions – Shifting of Burden of Proof – Direct & Indirect Tax	Panellists: Shri V. Sridharan, Sr. Advocate, Mumbai and Shri Saurabh Soparkar, Sr. Advocate, Ahmedabad	Moderator: CA. Pradip Kapasi, Mumbai
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.	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
	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. Advocate, New Delhi
6th Technical Session / Panel Discussion	12.45 p.m. to 2.15 p.m.	Power of Arrest and Prosecution under Tax laws	Shri Rahul Agarwal, Advocate, Allahabad	Shri Vikram Nankani, Sr. Advocate, Mumbai
	2.15 p.m. onward	Lunch		

REGISTRATION FEES

	Early Bird	
	Fees up to 15th October 2019	Fees After 15th October 2019
Members	(₹ 4,200+756) = ₹ 4,956/-*	(₹ 5,200+936) = ₹ 6,136/-*
Outstation Delegate's Spouse	(₹ 2,500+450) = ₹ 2,950/-*	(₹ 3,000+540) = ₹ 3,540/-*
Non-Members	(₹ 5,200+936) = ₹ 6,136/-*	(₹ 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. Chirag Parekh, Treasurer (WZ) – 9821634128
Mr. Deepak Shah, Conference Co-Chairman & Chairman (WZ)– 9820148536	Mr. Santosh Gupta, Joint Secretary (WZ) – 9890033480
Mr. Bhaskar B. Patel, Vice President (WZ) – 9979733033	Mr. Vipul Joshi, NEC Member – 9820045569
Mr. Pravin Shah, Vice Chairman (WZ) – 9821476817	

or E-mail to aiftpwz@gmail.com

ELECTION RULES

Dear Members,

Please take notice that elections to National Executive body of AIFTP for 2020 & 2021 shall be held at Mumbai as per the schedule detailed as under:-

Schedule	Proposed Date
Date of Notice	25/10/2019
Availability of Nomination Form	11/11/2019
Last Date of Filing Nominations	02/12/2019
Scrutiny of Nomination Forms	03/12/2019

Schedule	Proposed Date
Publication Valid Nominations	05/12/2019
Withdrawal of Nominations	08/12/2019
Declaration of Final List of Candidates	08/12/2019
Date of Elections	13/12/2019

Rule 6. Qualifications of the Office bearers and members of the national executive committee

The election/co-option as provided in rules 10(1), (2), (3) and (4) as a member of the National Executive Committee or any of the office bearers shall be subject to the following qualifications :

1. Member of the *National Executive Committee*

Any individual life member or a representative of the association member that may be nominated in terms of rule 5(C)(ii), who is in practice of direct and/or indirect taxes for more than five years and who has been a member of the Federation for at least two years can file his/her nomination form for the election at the Ordinary General Meeting.

Rule 14. TERM OF THE NATIONAL EXECUTIVE COMMITTEE

The term of the NEC elected in accordance with Rule 10 shall be two calendar years commencing from 1st day of January that follows the date of the election at the Ordinary General Meeting. Subject to other rules and regulations and the election rules framed by the National Executive Committee under rule 7, the general body at its ordinary general meeting shall elect not more than fifty (50) consenting members duly proposed and seconded, in the prescribed nomination form, to constitute a National Executive Committee of the Federation for the ensuing term of two calendar years commencing from the 1st January that follows the date for the ordinary general meeting.

Provided however that the number of members to be elected from each zone shall be determined in accordance with rule 7(3). The format of the prescribed nomination form along with the election rules shall be available with each zone office for the benefit of the existing eligible members.

ALL INDIA FEDERATION OF TAX PRACTITIONERS RULES FOR ELECTION TO THE NATIONAL EXECUTIVE COMMITTEE

1. The National Executive Committee shall arrange for the election of the members of the next Executive Committee, as and when an ordinary General Body meeting is called under Rule of the Constitution.
2. The National Executive Committee shall fix the date and the time up to which and the place or places where nominations for the purposes of the aforesaid election shall be received. If by the date and the time fixed by the National Executive Committee, no nominations are received or sufficient nominations to fill all the posts of the National Executive Committee are not received, nominations for all the posts, or nominations falling short for filling all the posts shall be called for at the time of the General Body meeting. In the latter case Chairman of the General Body meeting shall have all the powers to do the needful in the matter. Members can be nominated for election even in absentia.
3. If at the General Body meeting sufficient numbers of nominations are not forthcoming to fill all the posts on the National Executive Committee the General Body shall be entitled to empower the National Executive Committee to fill the vacancies by nominations at its subsequent meetings. Such nominations shall be in addition to co-option referred to in Rule 10(2).
4. Any life member and any representative nominated in terms of rule 5(c)(ii), shall be eligible to seek election to the National Executive Committee. His name shall be proposed and seconded by any member of the Federation.

“Provided further that it shall be the duty of the each Member of the National Executive Committee including office bearers to attend 50% or at least two meetings of the National Executive, whichever is less in a calendar year. The defaulting member shall not be eligible for election or nomination or co-option to be a NEC member in the next NEC.

*Provided that any member who have already opted to be on the Zone Managing Committee for the ensuing term shall not be eligible to file nomination for NEC. Requisite declaration shall be annexed with the nomination form.

5. If more nominations are received than the total number of posts on the National Executive Committee, there shall be election, unless any member withdraw his nomination/s before the announcement of voting at the General Body meeting, so that the total number of nominations are equal to or less than the total number of posts on the National Executive Committee.
6. *The Election Officer, after the expiry of the time notified for receiving the nomination forms, shall scrutinise all the forms and notify, all valid and invalid nominations with reasons for invalidity of any of the forms in the list, with the help of electronic media. He shall also announce the zonewise list of valid nominations alongwith the maximum number required to be elected in terms of Rules 7(3) and 14, "at least five days before the actual date of voting."**

* Added on 24th December, 2016

** Added on 6th October, 2018

7. If on withdrawal of any nomination/s, all the posts on the National Executive Committee cannot be filled, the General Body shall be entitled to empower the next National Executive Committee to fill the vacancies as provided in Rule 3 of these Rules.
- 7A. *The members existing on the date of issue of the notice convening the AGM, will only be eligible to vote at the said meeting. Such list of members shall be made available by the Secretary General to the Election Officer.
*Any member admitted thereafter will not be eligible to vote at the election however he can attend and take part in the discussions on any other item on agenda of the AGM.
8. Election to the National Executive Committee shall be by secret ballot.
9. Chairman of the General Body meeting shall appoint one or more scrutinisers from amongst the members present at the Meeting or otherwise. The scrutiniser/s, so appointed, shall have all the powers to conduct the election and report the result thereof to the Chairman of the meeting.
10. Before the close of the General Body meeting, the result of the election shall be declared by the Chairman of the meeting.

* Added on 24th December, 2016

Ganesh Purohit
Chief Election Officer

Direct Taxes

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

Tribunal

1. **S. 43CA: Business of construction of a commercial project, Assessee entered into agreement to sell flats/offices and there was no transfer of any land or building or both in favour of buyers, provisions of s. 43CA cannot applicable.**

The assessee developed a commercial project, while going through documents during assessment, the AO noticed that in respect of the various units, there were huge discrepancies between Agreement value and stamp duty. The assessee stated that the entire project was completed in AY 2015-16 and the sales of all the properties were duly offered to tax in AY 2015-16 by following project completion methods. Further assessee contended that any difference between agreement value and stamp duty value was to be considered in the year of completion of project and not otherwise. The AO opined that as all the transactions were executed in the year under appeal, and, thus the difference between agreement value and the stamp duty value was suppressed sales by the assessee, hence same was to brought to tax u/s. 43CA.

While deciding the issue, the Tribunal observed that the provisions of s. 43CA are applicable only when there is transfer of land or building or both. Here in this case, neither of those had happened pursuant to registration of agreement with the stamp duty valuation authorities. In respect of allotment of offices made prior to 31-3-2013, it is found that the assessee and the prospective buyer of flats had specifically agreed that till such time the agreement of sale is executed and registered, no right is being created in favour of the flat buyer and that the allotment letter is just a confirmation of booking subject to the execution of the agreement. The allotment letter specifies that the relevant office has been allotted to the flat buyer with rights reserved to assessee to amend the building plan as it may deem fit. All documentary evidences prove that the assessee had not completed the construction of the office during the relevant year. The assessee had transferred pursuant to registration of the agreement was only the rights in the flat/office (which was under construction) and not the property *per se*. Hence, there was no transfer of any land or building or both by the assessee in favour of the flat buyers pursuant to registration of the agreement in the year under appeal. Therefore provisions of s. 43CA cannot be applicable to the assessee. (AY 2014-15)

Shree Laxmi Estate (P.) Ltd. vs. ITO, ITA No. 798/Mum/2018 dt. 05/07/2019 (Mum)(Trib.) source : www.itat.nic.in

2. S. 194J : Deduction of tax at source - Fees for technical or professional services (Arbitration charges) liable to Tax deducted as source (TDS)

During the year, assessee made payments to arbitration without deducting tax at source u/s. 194J. As the contention of the assessee was that since services of arbitrators were in the nature of court procedure for out of court settlement, TDS was not required to be deducted on the payment made to them. The AO rejected explanation offered by the Assessee and disallowed said payment u/s. 40(a)(ia).

Tribunal observed that Arbitration is a way to resolve disputes outside the courts. The dispute will be decided by one or more persons the ‘arbitrators’, ‘arbiters’ or ‘arbitral tribunal’, which renders the ‘arbitration award’.

The arbitral Tribunal is not a court in the traditional sense but provides services to resolve disputes that arise out of agreements between members, organizations or private parties. The arbitrators are empanelled and are chosen by mutual consent of the parties. The arbitration fee is determined by and paid by both the parties who were availing the arbitration award. The said fee performs the legal functions, therefore it cannot be said that the company is not getting the services of the arbitrators and dealing with their disputes regarding the contracts etc. Since, the amount paid was in the nature of professional services sought by the legal professionals involved in the profession/occupation/vocation of arbitration, hence the said amount is liable to deduct TDS as per the provisions of s. 194J.(AY 2012-13)

ACIT vs. HAL Offshore Ltd. ITA Nos. 2081, 4673/Delhi/2016 dt. 23/07/2016 (Delhi)(Trib.) source : www.itat.nic.in



Indirect Taxes

Tanmay Mody, GST Practitioner

1) GST – Powers under Section 83

Writ applicant seeks to challenge the action of blockage of the input tax, provisional attachment of the stock of goods, provisional attachment of its Bank Accounts in exercise of powers under Section 83 of the SGST Act, 2017.

Held: Although there is no specific challenge to the order passed by the Commissioner of State Tax delegating his power under Section 83 to the subordinate officers, yet, by virtue of such order, the impugned order of provisional attachment cannot be defended. The power conferred upon the authority under Section 83 of the Act for provisional attachment could be termed as a very drastic and far-reaching power. Such power should be used sparingly and only on substantive weighty grounds and reasons. The power of provisional attachment under Section 83 of the Act should be exercised by the authority only if there is a reasonable apprehension that the assessee may default the ultimate collection of the demand that is likely to be raised on completion of the assessment. The power under Section 83 of the Act should neither be used as a tool to harass the assessee nor should it be used in a manner which may have an irreversible detrimental effect on the business of the assessee

(Source: Order in Special Civil Application No. 13132 of 2019 by Gujarat High Court in the case of Valerius Industries vs. Union of India dated 28th August, 2019)

2) GST – Applicability of Rule 117 of CGST Rules

Whether the due date contemplated under Rule 117 of the Rules to claim transitional credit is procedural in nature or a mandatory provision?

Held: The entitlement of credit of eligible duties on the purchases made in the pre-GST regime as per the then existing CENVAT credit rules is a vested right and, therefore, it cannot be taken away by virtue of Rule 117 of the CGST Rules, 2017, with retrospective effect for failure to file the form GST Tran-1 within the due date. The provision for facility of credit is as good as the tax paid till the tax is adjusted and, therefore, the right to the credit had become absolute under the Central Excise Act and, therefore, the credit is indefeasible and the same cannot be taken away. The right to carry forward credit is a right or privilege, acquired and accrued under the repealed CEA, 1944 and it has been saved under Section 174(2)(c) of the CGST Act, 2017 and, therefore, it cannot be allowed to lapse under Rule 117 of the CGST, 2017, for failure to file declaration form GST Tran-1 within the due date. It is further declared that the due date contemplated under Rule 117 of the CGST Rules for the purposes of claiming transitional credit is procedural in nature and thus should not be construed as a mandatory provision.

(Source: Order in Special Leave Application No. 5758 to 5762 of 2019 by Gujarat High Court in the case of M/s. Siddharth Enterprises vs. The Nodal Officer, dated 6th September, 2019)

3) Service Tax – Rule 4 of PoPS Rules

Rejection of refund claim of accumulated CENVAT credit of Scientific & Technical Consultancy Services on the ground that same cannot be treated as export of service. Revenue is of the view that the Scientific and Technical Consultancy Service provided by the Appellant being performance based services therefore it falls under Rule 4 of Place of Provision of Service Rules.

Held: The reading of the provision of Rule 4 of Place of Provision Service Rules, 2012 makes it clear that the said Rule is applicable when the service is to be provided with respect to goods which are physically made available by the recipient of service to the provider of service. The CBEC *vide* Education Guide has explained the services which shall be covered under Rule 4(a) of Place of Provision of Service Rules, 2012. The essential characteristics of a service to be covered under this Rule is that the goods temporarily come into the physical possession or control of the service provider and without this happening, the service cannot be rendered. So far as reimbursement of material cost plus a mark-up of 10% on the same is concerned, it is a method of pricing considered in the agreement, since the result from research & development activity performed by the Appellant cannot be determined at any particular point of time. The aforesaid pricing method cannot be treated as reimbursement of expenses. Reimbursement means paying the service provider exact cost incurred by him on behalf of service recipient, therefore there is no reimbursement of goods involved in the matter. Since the research activity performed by the Appellant leads to formation of a new product different from the original raw material therefore Rule 4 of Place of Provision Of Service Rules, 2012 will not be applicable. The research & development service falls under Rule 3 of Rules, 2012, according to which, the location of service provided shall be construed as the location of recipient.

(Source: Mumbai CESTAT Order in Appeal No. 87993 of 2018 in the case of M/s. Dow Chemical International P. Ltd. vs. C.C.G.S.T, Navi Mumbai, dated 6th September, 2019)

4) Service Tax – Supplies to Employees for ITC

Eligibility of CENVAT credit on input services which were sold by the appellant to their employees for a consideration. Internet services, mobile phone services, Tatasky D2H services, employee insurance services and employee mediclaim policies exclusively provided to employees at their residential quarters

Held: Merely because a person happens to be appellant's employee, he does not cease to be a service recipient. If the employees were not a service recipient, no amounts would have been recovered from them and no service tax would have been paid on the same. Conversely, the appellant cannot get any exemption from payment of service tax if he has rendered services, even

if such services are rendered to their own employees for a consideration. This issue has been examined and clarified in the draft circular which never came to be issued. Nevertheless, the fact remains that there are two kinds of relationships between appellant and their employees. First, they have a relationship as an employer and employee. As far as this relationship is concerned, any input service which is availed to provide benefits to their employees is excluded from Rule 2(l). Secondly, they have a relationship as a service provider and a service recipient. As far as these services rendered with respect to this equation are concerned, the appellant is bound to pay service tax on the services rendered to their employees for a consideration and is entitled to avail credit on input services on the relevant services. Therefore, the appellant is entitled to the CENVAT credit on the disputed amounts.

(Source: Hyderabad CESTAT Order in Appeal No. ST/31314/2018 dated 19th September, 2019 in the case of M/s. Ultra Tech Cement Ltd. vs. Commissioner of Central Tax - Tirupati)

5) GST – Maharashtra AAR

Whether the contractor can charge GST on the value of material supplied by the recipient of service? What should be the mechanism to calculate the taxable value as per section 15 of the Act?

Held: In the present case, the material is supplied by the contractee and therefore the question raised by the applicant as to whether they can charge GST on the same is irrelevant. The applicant, on this issue of supply of subject materials, is not a supplier of goods/services and as per the provisions of Section 95 of the CGST Act, they cannot raise this question. Hence the question is not answered- As per section 15 of CGST Act, 2017 any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both shall be included in the value of taxable supply-GST is payable on the entire contract value as per certificate issued by the Architect i.e. R.A. Bill without deducting the value of Cement, Mild Steel, Tor Steel and Structural Steel provided by the contractee.

(Source: Maharashtra AAR Order No. GST-ARA-03/2019-20/B-90 dt. 20th August, 2019 in the case of M/s. Tejas Const. & Ifr. P. Ltd.)



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Now you can make an online complaint by clicking "Non-Receipt of Times / Journal", if you have not received the copy of Times or Journal and we will send you soft copy of the Times/Journal by e-mail.

Publications for sale

Sr. No.	Name of Publication	Edition	Rate (₹)		
			Members	Non-Members	Courier Charges
1.	311 – Frequently Asked Questions on Survey – Direct Taxes	Dec., 2018	600.00	675.00	100.00
2.	Handbook on FEMA – Taxation – Frequently Asked Questions	Oct., 2018	600.00	675.00	100.00
3.	Income Tax Appellate Tribunal – A Fine Balance – Law, Practice, Procedure and Conventions – Frequently Asked Questions	Dec., 2017	1,000.00	1,050.00	100.00

- Notes: 1. The above publications are available for sale; those who desire to buy may contact the office of the Federation.
2. Local/Outstation members not collecting from office are requested to add courier charges, as mentioned above.
3. Please draw Cheque/Draft in favour of "All India Federation of Tax Practitioners" payable at Mumbai.

Advertisement Tariff for AIFTP Journal

	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 30th September, 2019 Life Members

	Associate	Individual	Association	Corporate	Total
Central	0	1059	25	0	1084
Eastern	6	1620	36	0	1662
Northern	0	1218	18	1	1237
Southern	1	1312	19	4	1336
Western	5	2393	37	6	2441
Total	12	7602	135	11	7760

DISCLAIMER

The opinions and views expressed in this Times are those of the contributors. The Federation does not necessarily concur with the opinions/views expressed in this journal.

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