

**All India Federation of Tax Practitioners****AIFTP TIMES**

ESTD. 11th NOVEMBER 1976

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**FORTHCOMING PROGRAMMES**

Date & Month	Programme	Place
10-8-2019	Notice of Annual General Meeting & Election AIFTP (SZ)	Vijayawada
18-8-2019	Notice of Annual General Meeting of AIFTP (CZ)	Jaipur
26-8-2019 to 4-9-2019	International Study Tour, 2019	Europe
12-10-2019	National Executive Committee Meeting	Kota
12, 13-10-2019	National Tax Conference	Kota
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

**Attention**

We have Changed our Email ID. Please address all future correspondence to

**aiftpho@gmail.com****DEV-DEEPAWALI – NATIONAL TAX CONFERENCE  
AT VARANASI**

on Monday &amp; Tuesday, 11th &amp; 12th November, 2019

11th November is the Foundation Day of AIFTP which is proposed to be a full day conference with high quality deliberations on various contemporary topics of Direct and Indirect taxes. The evening will be the Foundation Day Celebration with cultural classical music and gala dinner.

12th November, 2019 from 9.30 a.m. to 1.30 p.m. would be technical sessions followed by lunch. From 3.00 p.m., we would move to especially arranged Big Boats to enjoy enchanting Dev-Deepawali at the Ganges which would be a lifetime experience

**Registration fees:**

Conference only	₹ 3000/- upto 31/07/2019	₹ 3500/- after 31/07/2019	Conference 11th & 12th upto Lunch
For Spouses:	₹ 2500/- upto 31/07/2019	₹ 3000/- after 31/07/2019	
Dev Deepawali	₹ 4500/- upto 31/07/2019	₹ 5500/- after 31/07/2019	Boat cruise with snacks followed by dinner

**For Accommodation and further details please visit our website i.e. [www.aiftponline.org](http://www.aiftponline.org)**

Contact Persons -

1. Adv. Arvind Shukla, - 9415201059, ashukla_advocate@rediffmail.com	2. Adv. O. P. Shukla, - 9415204837, is5900@rediffmail.com
3. Adv. Prakash Gupta, - 9161492109, prakashadv@gmail.com	4. CA. Jamuna Shukla - 9450361366, js5900@rediffmail.com
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7. Adv. Brij Gopal Das – 9839096264, brijyotsana_vns@gmail.com	8. Conference Mail Id:- ntcvns2019@gmail.com

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

Name	Mobile	Tel. (O)	Fax	E-mail
<b>National President</b> – Dr. Ashok Saraf, Sr. Adv.	9864020679	0361-2529532	2460041	drashoksaraf@gmail.com
<b>Deputy President</b> – Smt. Nikita Badheka, Adv.	9821037885	022-22030011	—	nikita.badheka@gmail.com
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<b>Treasurer</b> – Shri Chirag S. Parekh, Adv.	9821634128	022-26705006	26705006	chiragnp7@gmail.com

## 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



<b>13th December, 2019</b> NEC, OGM, Elections 2 p.m. Onwards Khadayata Bhavan Vile Parle (E), Mumbai	<b>14th &amp; 15th December, 2019</b> National Convention <b>Sahara Star</b> , Opp. Domestic Airport, Vile Parle (E), Mumbai – 400099
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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
<b>Day 1 — Saturday, 14th December 2019</b>				
	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.	Direct Tax Reforms - Challenges Ahead	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 – 1) Shifting of Burden of Proof 2) Developing Opportunities for Tax Professionals	Panelists: Shri V. Sridharan, Sr. Advocate, Mumbai and Shri Saurabh Soparkar, Sr. Advocate, Ahmedabad*	Moderator: CA. Pradip Kapasi, Mumbai
<b>Day 2 — Sunday, 15th December 2019</b>				
	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*	Eminent Faculty
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

\*Confirmation awaited

### Registration Fees

	<b>Early Bird</b>		<b>Fees After 21st August 2019</b>
	Fees up to 21st August 2019		
Members	(₹ 4,200+756) = ₹ 4,956/-*		(₹ 5,200+936) = ₹ 6,136/-*
Spouse	(₹ 2,500+450) = ₹ 2,950/-*		(₹ 3,000+540) = ₹ 3,540/-*
Non-Members	(₹ 5,200+936) = ₹ 6,136/-*		(₹ 6,000+1,316) = ₹ 7,316/-*

\*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

## SOUTHERN ZONE ACTIVITY REPORT FOR THE MONTH OF APRIL, MAY & JUNE 2019

S. No	Event	Details	Date	Place	No of Participants	Other Remarks
1	25-4-2019	<p>i) E. C. Meeting held on 25th April, 2019 at 11.00 AM at TTPA Association office, Hyderabad for discussed at length, about progress of the NTC preparations and activities of the various Committees formed on this occasion.</p> <p>ii). Dr. M. V. K. Moorthy had expressed that the expenditure for the Life Time Achievement award which is going to be conferred on him should not be burdened on the Federation or the partnering organization, but it should be spent by Zone.</p>	25-4-2019	Hyderabad	25 members are presented	E. C. Meeting held on 25th April, 2019 at 11.00 AM at TTPA Association office, Hyderabad for discussed at length, about progress of the NTC preparations and activities of the various Committees formed on this occasion.
2	12-5-2019	Special meeting held on Sunday, 12th May, 2019 at Bhima Residency, Tirupathi, A.P. to discuss progress of various committees of NTC from 22nd & 23rd June, 2019. The Vice Chairman conducted the special meeting in the absence of Chairman due to health grounds.	12-5-2019	Hotel Bhima Residency, Tirupathi, A.P.	Nearly 30 members are participated	Special meeting held on Sunday, 12th May, 2019 at Bhima Residency, Tirupathi, A.P. to discuss progress of various committees of NTC from 22nd & 23rd June, 2019. The Vice Chairman conducted the special meeting in the absence of Chairman due to health grounds.
3	22nd & 23rd 2 days National Tax Conference organized at TIRUPATHI.	2 days National Tax Conference held on 22nd and 23rd June, 2019 at Hotel Fortune Select Grand Ridge, Shilparamam, Tiruchanoor Road, TIRUPATHI nearly 775 (Including 67 spouses) delegates participated from all over INDIA.	22nd & 23rd June, 2019	Hotel Fortune Select Grand Ridge, Shilparamam, Tiruchanoor Road, TIRUPATHI	Nearly 775 (Including 67 spouses) delegates are participated.	<p>i) 2 days National Tax Conference held on 22nd and 23rd June, 2019 at Hotel Fortune Select Grand Ridge, Shilparamam, Tiruchanoor Road, TIRUPATHI nearly 800 delegates participated from all over INDIA. 6 Technical sessions are conducted on different topics in Direct Taxes and Indirect Taxes. Arranged 30 L-I and 200 L-II and 600 Subhadam Darshan of Sri Balaji by Organizing committee with the cooperation of TTD Officials and Darshan Committee Chairman CA. Phaulguna Kumar &amp; other members.</p> <p>ii) Life Time Achievement Award awarded to Dr. M. V. K. Moorthy garu by Justice Sri. C. Praveen Kumar, Acting Chief Justice of A.P. High Court and other judges of high Court, National President Dr. Ashok Sharf are also honoured Dr. M. V. K. Moorthy garu.</p> <p>iii) Dr. Ashok Sharf, National President participated in Inauguration session and given his valuable speech to audience. National President Dr. Ashok Sharf and Secretary General Sri. Anand Pasari has given their support to organize best NTC in Southern Zone for the year 2018 &amp; 2019.</p> <p>iv) The organizing Committee organized the 2 days national tax conference with collection of ₹ 2,500/- including GST TAX, Breakfast, tea, biscuits, Lunch, High Tea and Dinner on 22nd June, 2019 and 23rd June, 2019 Breakfast, Lunch, High Tea, Conference Kit, Souvenir to all the delegates. This is first time to provide all the above facilities with minimum cost maximum value addition in our AIFTP National Tax Conferences. All the delegates are appreciated our organizing team.</p>

S. No	Event	Details	Date	Place	No of Participants	Other Remarks
						<p>v) Sri. M. V. K. Moorthy, Past National President, AIFTP and Chief Patron has given his valuable suggestions to our Conference Committee from time to time, Chairman of Conference Sri. P. V. Subba Rao garu, Deputy Chairman of Southern Zone Sri. M. V. J. K. Kumar, taking lot of pain to coordinate with all the sub-committees from time to time to make NTC grand successes. Sri. T. Chandra Mouli and Sri. Kota Suneel Kumar, Conference Conveners, Presidents of Co-Partners Sri. AVS Krishna Mohan, Sri. S. M. Basha, Sri. Sunil Ahmed, Sri. Sreedhara Pardhasaradhi, Sri. S. Nagabushnam. Sri. Harinath, Sri. A. Rama Krishna, Sri. P. S. Hariff Khan, Sri. R. Munikrishnaiah, Sri. M. Srinivasa Rao, Sri. C. Radha Krishnan spent their valuable time and provide best services to make grand successes of NTC. Sri. S. S. Satyanarayana garu has provide his valuable time and best services to provide 'SOUVENIR" in time.</p> <p>It is memorable conference to Chairman, Deputy Chairman, Secretary, Treasurer, Joint secretaries in their tenure 2018 &amp; 2019.</p>
4	14.07.2019	One day seminar on Recent amendments n GST and Annual Audit reports in association with Association with Tax Practitioners, Vellore	14.07.2019	SKM Hall,G-Floor, Vellore	Nearly 150 members are participated.	One day seminar on Recent amendments in GST and Annual Audit reports in association with Association with Tax Practitioners, Vellore, at SKM Hall, G-Floor, Vellore, Tamil Nadu.

**B. S. Seethapathi Rao**  
Chairman

**C. Sanjeeva Rao**  
Secretary

## Report of One Day Tax Seminar at Jatani, [Khurda] Odisha

by **Shri Ramesh Kumar Dhal**, Vice-Chairman, AIFTP, E.Z. (Odisha State)

One day Tax Seminar organized by AIFTP (E.Z) in association with KHURDA Tax Bar Association was held at Agrawal Public Charitable Trust, JATNI in the District of Khurda, Odisha on 21/07/2019.

The Seminar was inaugurated by the Chief Guest Hon'ble Justice Dr. B. R. Sarangi, Judge, Orissa High Court.

Shri Pranab Ku Das, I.R.S, Principal Chief Commissioner of Income Tax, Odisha attended as the Guest of Honour.

Shri Kamal Kumar Jain, Secretary, AIFTP Eastern Zone, Shri Ramesh Kumar Dhal, Vice Chairman, AIFTP (E.Z), NEC member Shri R. K. Mishra & Shri R. N. Pal also attended the inaugural Session.

The seminar was conducted by the Chairman Shri Rashmi Ranjan Das, President Shri Kailash Sharma, Khurda Tax Bar Association, Shri Subash Ranjan Acharya, Secretary, Khurda Tax Bar Association and Shri Dharmendra Joshi, Advocate, Khurda Tax Bar Association.

Many prominent senior Advocates and different Tax Bar Associations of Odisha were felicitated by the Chief Guest.

There were three technical sessions on Direct and Indirect Taxes. Speakers were Shri V. P. Gupta, Advocate from Delhi, Shri Subash Ch Agrawala, Advocate from Kolkata, Shri K. L. Sharma, Advocate, Orissa High Court, Shri Manoj Agarwal, Advocate and officers from the Tax departments were delivered their speeches.

## Direct Taxes

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

### Tribunal

**1. S.4 : Income - Chargeable as (Subsidy) - even if a subsidy is given to attract industrial investment or expansion, which is otherwise a capital receipt under pre-amendment era, shall be treated as income chargeable to tax, is prospective in nature (r.w.s. 43(1) and amendment to s.2(24) (xviii) by Finance Act, 2015)**

The assessee received financial assistance granted by State Government to eligible units under the financial assistance to Grain Distillery Scheme, 2007. The scheme was brought out to encourage investments in grain based distilleries in the backward regions of State. Such subsidy was paid to the assessee in the form of rebate of ₹ 10 per litre and excise duty was repaid on the products supplied. The AO held that the subsidy was revenue in nature. The CIT(A) further held that the amount of subsidy should be reduced from the cost of assets in view of *Explanation* 10 to s. 43(1).

The Honourable Tribunal observed that the main purpose of providing financial assistance under the scheme was “to encourage investment in grain based distilleries in the backward regions of the Maharashtra State”. Once the object of the scheme is to encourage setting up of new units, the grant has to be held as a capital receipt. If subsidy is given, *inter alia*, for expansion, then it is a capital receipt irrespective of the fact that it is given in any form. In this case subsidy was given to the assessee to establish the industrial unit in backward regions of the Maharashtra State. Even if such subsidy was quantifiable in the form of rebate of ₹ 10/- per litre on the Excise duty, but the purpose of its grant, which is to accelerate the industrial development in grain based distilleries in the backward regions of the Maharashtra State, does not alter the nature of subsidy from capital to a revenue receipt. Considering the above observation, the Tribunal held that subsidy received by assessee was not liable to be reduced from cost of assets for purpose of depreciation in year under consideration in view of proviso to *Explanation* 10 to s. 43(1).

*Alkoplus Producers (P) Ltd. v. Dy. CIT, ITA No. 1129, 1222/PUNE/2016. Dt. 04/04/2019. Source : www.itat.nic.in*

**2. S. 22 : Income from house property - Chargeable as (Owner) – annual value of property could be assessed as income only in hands of ‘owner’ of property**

The assessee was a joint sector company promoted by State Housing Board also with DCPL for undertaking large scale construction of housing complexes within the State to solve the basic housing problems subject however to the supervision and overall control by the State Government. Pursuant to the developer’s agreement the assessee undertook the construction of the housing complex which consisted of several apartment buildings.

The assessee treated the constructed and unsold flats area as stock-in-trade. The assessee held finished apartment having cumulative value of certain amount under the head ‘inventories’ in its balance sheet.

The AO was of the opinion that the assessee was required to offer tax on the income from the annual lettable value that could be derived from unsold flats held in its inventory, the annual lettable value was arrived at by the AO on the basis of aggregation of rental value per square feet for similar properties at the same location as available in various real estate related web sites, thereafter, he arrived at the rental value at certain amount and computed the deemed rental value of the unsold finished apartments comprising at certain amount after allowing standard deduction at the rate of 30 per cent of the annual rental value of the unsold finished apartments. According to AO the amount was attributable as income from house property of the assessee as per s. 24(a) which was treated as annual lettable value and treated as the income from house property of the assessee and added to the income of the assessee.

The Tribunal observed that in order to attract the charge of tax under the head ‘House Property’ it is necessary for the AO to prove that the assessee is the owner of the house property. The term ‘owner’ of the house property is defined in S.27, appellant is a joint sector company promoted by West Bengal Housing Board also with M/s. DC Properties Ltd. for undertaking large scale construction of housing complexes within the State of West Bengal to solve the basic housing problems subject however to the supervision and overall control by the State Government of West Bengal. With this object in mind the Government of West Bengal had transferred in favour of the Housing Board certain parcels of land and the said Board in turn had entered into a Development Agreement appointing the appellant herein as developer and/or an agent of the Board for the purpose of construction of the housing complex to be developed on the land parcel allotted to the Board by the State Government. The role of the appellant as envisaged in the entire scheme formulated at the behest of the State Government was limited to being Developer of the housing project.

Considering these facts, the Tribunal held that the appellant was never owner of the apartments but its role was limited only to the Developer who held the apartments under construction in trust to be ultimately owned by the persons to whom the allotments were approved by the Board. The appellant could never be regarded as ‘owner’ of the finished apartments and therefore the notional annual value of the unsold flats could not be assessed in the hands of the appellant u/s. 23 of the Act. (r.w.s. 23)(AY 2011-12 and 2012-13)

*Bengal DCL Housing Development Co. Ltd. v. Dy. CIT, ITA No. 210/Kol/2017 & 429 /Kol/2018, dt.24/05/2019 Source: www.itat.nic.in*

**3. S.54B : Deduction cannot be denied on ground that entire agricultural land not used for cultivation**

The assessee sold agricultural land ₹ 50 lakh and shown long term capital gains being his 1/3rd share. Assessee had invested the capital gains for the purchase of another agricultural land and accordingly had claimed an exemption u/s. 54B of the Act. The AO asked the assessee to produce 7/12 extract of land for sale of land and justify the claim of exemption u/s. 54B of the Act. The reason for denying the claim of deduction u/s. 54B was for the reason that out of the total area of 1 hectare 12R, agricultural activities were carried out on a portion of the land and there was no evidence of crop grown on the balance portion of the land.

The Tribunal observed that provisions of Sec. 54B do not specify that the entire and should be used for cultivation for claiming benefit u/s. 54B. Revenue has not placed any contrary arguments nor has placed any material on record to demonstrate. Further Tribunal held that assessee agreed for disallowance and therefore the AO proceeded with proportionate disallowance. Merely because of admission of disallowance, the assessee cannot be denied the benefit to which he is eligible. Therefore, AO was not justified in denying the claim of deduction u/s. 54B. (AY 2013 -2014)

*Rajendra Bastimal Chordiya v. ITO, ITA NO.1295/Pun/2017, dt.07/06/2019 Source: www.itat.nic.in*



## Indirect Taxes

Tanmay Mody, GST Practitioner

**1) GST – Validity of GSTR-3B under Section 39**

Applicant challenging legality and validity of the press release dated 18th October 2018 to the extent that its para 3 purports to clarify that the last date for availing the input tax credit relating to the invoices issued during the period between July 2017 and March 2018 would be the last date for filing of the Return in Form GSTR-3B on the ground that the said clarification is contrary to Section 16(4) of the CGST Act, 2017.

**Held:** Return in Form GSTR-3B was not introduced as a return in lieu of return required to be filed in Form GSTR-3. The return in Form GSTR-3B is only a temporary stop gap arrangement till due date of filing the return in Form GSTR-3 is notified. The Notification No. 10/2017 Central Tax dated 28th June 2017 which introduced mandatory filing of the return in Form GSTR-3B stated that it is a return in lieu of Form GSTR-3. However, the Government, on realising its mistake that the return in Form GSTR-3B is not intended to be in lieu of Form GSTR-3, rectified its mistake retrospectively vide Notification No. 17/2017 Central Tax dated 27th July 2017 and omitted the reference to return in Form GSTR-3B being return in lieu of Form GSTR-3. Thus, the impugned press release dated 18th October 2018 is said to be illegal to the extent that its para 3 purports to clarify that the last date for availing input tax credit relating to the invoices issued during the period from July 2017 to March 2018 is the last date for the filing of return in Form GSTR-3B. The said clarification could be said to be contrary to Section 16(4) of the CGST Act/SGST Act read with Section 39(1) of the CGST Act/SGST Act read with Rule 61 of the CGST Rules/SGST Rules.

*(Source: Order in Special Civil Application No. 18962 of 2018 by the Gujarat High Court in the case of M/s. AAP & Co. vs Union of India & Ors., dated 24th June, 2019)*

**2) GST – Error in TRAN-1**

Petitioner grievance that the system did not permit revision of the TRAN-1 Form. Petitioner seeking permission to rectify the mistake in the TRAN-1 Form.

**Held:** although the failure was on the part of the Petitioner to fill up the correct data in Form TRAN-1, the error was inadvertent. The Respondents ought to have provided in the

system itself a facility for rectification of such errors which are clearly *bona fide*. The apprehension of the Respondents that such orders can open the ‘flood gates’ can easily be allayed by the Respondents themselves if they provide a robust Grievance Redressal Mechanism that can address such genuine grievances of the traders instead of compelling every trader to approach this Court for relief. The Court directs the Respondents to either open the online portal so as to enable the Petitioner to again file the rectified TRAN-I Form electronically or accept the manually filed TRAN-I Form with the correction on or before 31st July, 2019. The Petitioner will correspondingly be permitted to thereafter file the return in TRAN-2. The penalty and interest for the late filing of GSTR-3B will be waived off, subject to the Petitioner being permitted to and in fact filing the rectified TRAN-1 Form.

*(Source: Order in WP No. 3798/2019 by Delhi High Court in the case of M/s. Blue Bird Pure P. Ltd. vs. Union of India & Ors., dated 22nd July, 2019)*

**3) Service Tax – Sale of immovable property - exempt service?**

Whether receipt of consideration for residential units sold as immovable property after receipt of completion certificate amounts to providing exempted service and Rule 6 of the CCR, 2004 is applicable in such case and whether the Appellants are liable to pay 8%/10% amount of exempted value under Rule 6 of the CCR, 2004?

**Held:** The Tribunal on a harmonious reading of Rule 3 of the Rules r/w Rules 6 and 11(4) of the CCR held that eligibility to credit has to be examined only at the time of receipt of input service and once it is found to be availed at a time when output service is wholly taxable, and the said credit is availed legitimately, the same cannot be denied and/or recovered unless specific machinery provisions are made in this regard. Sub-rule (7) of Rule 4 of the Rules held that the assessee is not required to wait till output service is sold to the service recipient and the assessee can take the credit immediately after the day on bill/challan of input service is received. In facts of the case, there is no dispute that the respondent availed the credit after receipt of bill/challan in respect of input service

and, therefore, it was legally entitled to take the credit on the date after the receipt of service bills/challans. Therefore, the availment of CENVAT credit by the respondent is legal and correct and in accordance with Rule 4(7) of the Rules as at the time of taking credit, there was no existence of any exempted service, therefore, there is no application of Rule 6. the Tribunal has committed no legal error so as to warrant interference.

*(Source: Order in Tax Appeal Nos. 140 of 2019 by Gujarat High Court in the case of The Principal Commissioner vs. M/s. Alembic Ltd. dated 12th April, 2019)*

#### 4) GST – Maharashtra AAR

Whether input tax credit is available of the GST paid on expenses incurred towards promotional schemes, brand reminders, sales promotion etc.?

**Held:** The distribution of promotional articles by the applicant is nothing but “gifts” and hence the transaction is covered by the provisions of Section 17(5) of the Act. Input Tax Credit on “gifts” will not be available when no GST is being paid. Just because the applicant submits that they have satisfied Section 16 (1) of the CGST Act 2017 does not mean that they are entitled to credit. Input Tax Credit is not available for the expenses incurred towards promotional schemes such as Shubh Labh Loyalty Programme and Brand Reminder Products.

*(Source: Maharashtra AAR Order No. GST-ARA-115/18-19/B-43 in the case of M/s. Sanofi India Ltd., dated 24th April, 2019)*

#### 5) GST – Maharashtra AAR

Whether the Clinical Research services provided to entities located outside India is liable to GST or is it eligible to be treated as an export of service?

**Held:** As the applicant receives goods in India and the testing process is also carried out in India, the said goods are physically made available to them by their sponsors and therefore the place of supply of services is in India as per Section 13(3)(a) of the IGST Act. Since the place of supply is in taxable territory it is clear that the provisions of Section 2(6) of the IGST Act are not fulfilled in this case and therefore their supply cannot be considered as Export of Services. The Clinical Research services proposed to be provided by the applicant to entities located outside India is not eligible to be treated as an export of service under Section 2(6) of the IGST Act, 2017. The services are liable to GST as the location of ‘supplier of service’ and the ‘place of supply’ is in the same State, in terms of Section 13(3)(a) of IGST Act, 2017.

*(Source: Maharashtra AAR Order No. GST-ARA-119/2018-19/B-50 in the case of M/s. Cliantha Research Ltd., dated 4th May, 2019)*

#### 6) National Anti-Profitteering Authority – M/s. Adarsh Marbles

Perusal of Section 171 of the CGST Act 2017 show that it details the prospective of profiteering under the Act and hence dictionary meaning has no relevance, moreover profiteering is not acceptable in the trade if it is illegally derived by appropriating the benefits which are granted by the Government from the public funds to the consumers. The averment of the Respondent has no substance and rather incorrect, since the rules for the proceedings under the anti-profiteering provision has already been given as per Rule 126 of the CGST Rules, 2017. Profiteering has to be seen from the prism of the consumer and if he had to pay more than the commensurately reduced price, it amounts to profiteering. In fact, even if the tax has been paid in excess of the correctly leviable amount by the Respondent, the consumer has been deprived of the benefit of commensurate reduction in price, hence such an element of tax has been correctly included in the calculation of the profiteered amount. Contention of the Respondent that Section 15 was relevant for calculation of tax (GST) and was not applicable in the calculation of profiteering is not tenable, as in this case where MRP was of no relevance as the product was being sold at much lower price than the MRP. the Authority agrees with Respondent’s argument that no law can regulate his profit margin and discounting patterns but the fact is that the Respondent is trying to divert his act of profiteering towards reduction of discount of which he has no evidence. His submission that the buyers are interested in cum-tax invoices also has no ground as it appears to be an effort to hide his act of non-passing of tax reduction benefit and later on terming it as a reduction in discount. The contention of the Respondent regarding no restriction on accepting the profit according to Article 19 (g) of the constitution of India does not hold since the profit/loss etc. has no relevance in any proceedings under Section 171 of the CGST Act, 2017 as Profiteering, as referred under the said Section does not have any correlation with profit.

*(Source: Order in Case No. 42/2019 by the National Anti-profiteering Authority in the case of Mr. Mohd. Azid Ramzani & DGAP vs M/s. Adarsh Marbles dated 26th June, 2019)*



## Hearty Congratulations

Hearty Congratulations to the newly elected office bearers of Income Tax and Sales Tax Bar Association, Chandigarh for the year 2019-20

President	: Shri Parveen Aneja	General Secretary	: Shri Sanjeev Khurana
Sr. Vice President	: Shri Vikas Puri	Secretary	: Shri Ishan Malhotra
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Western	5	2393	37	6	2441
Total	12	7602	135	11	7760

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