



All India Federation of Tax Practitioners

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# AIFTP TIMES

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## FORTHCOMING PROGRAMMES

Date & Month	Programme	Place
5-5-2012	One Day Regional Tax Conference - CZ	Neemuch
12-5-2012	One Day Mega Seminar - EZ	Siliguri
1-6-2012	National Executive Committee Meeting	Kolhapur
1, 2 & 3-6-2012	National Tax Conference, 2012 - WZ	Kolhapur

## FEDERATION NEWS

Narayan P. Jain, Secretary General

### REPORT OF AIFTP (EZ) NATIONAL TAX CONFERENCE AT GUWAHATI

"The stability of a county's economy depends on its tax regime"- Justice Kabir

The National Tax Conference was successfully organised by All India Federation of Tax Practitioners (EZ) jointly with Tax Bar Association, at Pragjyoti ITA Centre, Guwahati on 17th and 18th March, 2012. The theme was "NAV CHETNA 2012 - Globalisation - Emerging opportunities in Corporate and Tax Laws".

Hon'ble Mr. Justice Altamas Kabir, Judge, Supreme Court of India was the Chief Guest and Hon'ble Mr. Justice Jasti Chelameswar, Judge, Supreme Court of India and Hon'ble Mr. Justice Adarsh Kumar Goel, Chief Justice, Guwahati High Court graced the Inaugural session as Guests of Honour.

Speaking as Chief Guest Hon'ble Mr. Justice Altamas Kabir said that the stability of a county's economy depends on its tax regime which makes tax planning both relevant and important. Globalisation has expanded the width and scope of commercial activities and geographical boundaries have vanished with the inception of the Internet, which in its turn has increased the network of corporate and taxation laws. Taxation laws are by their very nature a specialised field requiring people with specialised knowledge of the subject to deal with the same. Being somewhat technical in nature, taxation laws have acquired a certain exclusiveness and separate Tribunals have, therefore, been established and a separate bar has also developed dealing exclusively with tax matters in their different forms, he added.

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Hon'ble Mr. Justice Jasti Chelameswar said that the collapse of Berlin Wall and the subsequent political developments in the world order brought about profound changes in the economic order of the world. International trade and commerce have become increasingly less burdened by domestic regulations of various countries. Conferences like "NAV CHETNA 2012" would help to better understand the changing legal environment, he added.

Hon'ble Mr. Justice Adarsh Kumar Goel, Chief Justice, Guwahati High Court highly praised the role of AIFTP in updating the knowledge of its members by organizing useful Seminars and Conferences.

In the inaugural session Dr. Ashok Saraf, Chairman of Conference Committee and Advocate General of Arunachal Pradesh welcomed all the dignitaries and delegates from all over India and also elaborated on the theme of the Conference. Shri S.K. Poddar, National President extended invitation to all in the tax profession to join AIFTP. Shri Narayan Jain, Secretary General briefly threw light on objects and activities of AIFTP. Many members of the Federation have been elevated as Judges of the Supreme Court and various High Courts he added. Shri M.L. Patodi, IPP also addressed and admired the efforts of East Zone Chairman Shri Indu Chatrath and his entire team. Shri Kamal Agarwal, Secretary of the organizing committee delivered vote of thanks in the inaugural session.

The first Technical Session on "Judicial Accountability vis-a-vis independence of Judiciary" was chaired by Hon'ble Mr. Justice Altamas Kabir, Judge, Supreme Court of India. Hon'ble Mr Justice Jasti Chelameswar, Judge, Supreme Court of India addressed as Key Note Speaker. Other Speakers were Hon'ble Mr. Justice Amitava Roy, Judge, Guwahati High Court; Hon'ble Mr. Justice I.A. Ansari, Judge, Guwahati High Court and Shri Nilay Dutta, Senior Advocate. The delegates listened to the dignitaries with apt interest and highly appreciated the same.

The second Technical Session was on "Survey under the Income Tax Act including marriage related surveys" in which Shri J. D. Nankani, Advocate, was the Key Note Speaker and Shri Narayan Jain, Advocate dealt at length on various aspects of Surveys and expressed concern that despite the CBDT Instructions not to insist on disclosure during Survey, it was being insisted by some departmental authorities. The assessee suffers as law does not provide for immunity from penalty in case of such disclosure during survey. The other topic in this session was "Controversial issues in Income Tax search and seizure" and the Speaker Shri Subhash Agarwal, Advocate dealt with issues during search including disclosures made on the spot during search and issues relating to retractions of statements. The session was nicely chaired by Shri Ramesh Goenka, Advocate.

It was followed by Third Technical Session on the subject "Deficiencies in VAT Laws – Procedural and Legal" chaired by Shri P. C. Joshi, Advocate and Past President, AIFTP. Shri Bharatji Agrawal, Senior Advocate and Past President, AIFTP delivered Key Note address and shared his rich experience. The Speakers were Smt. Nikita Badheka, Advocate, Shri G. K. Joshi, Senior Advocate and Shri P. S. Sarin, Advocate.

The evening witnessed a wonderful Cultural Programme "Colouous of Seven Sisters" at Hotel Vishwaratna. The dignitaries including the Hon'ble Judges and all delegates thoroughly enjoyed the programme. It was followed by sumptuous dinner.

The "Union Budget 2012-13" was discussed in fourth Technical Session chaired by Shri N. M. Ranka, Senior Advocate and Past President, AIFTP. The Speakers were Shri Bharatji Agarwal, Senior Advocate, Shri S. R. Wadhwa, Advocate, Smt. Premlata Bansal, Senior Advocate and Shri R. S. Joshi. Highlighting various provisions, the speakers felt that the increasing trend of retrospective amendments and insertion of deeming provisions was a matter of concern. The provisions of General Anti Avoidance Rules (GAAR) should be implemented with caution so that injustice is not caused.

The fifth Technical Session on "Controversial Issues in Service Tax" was chaired by Shri Sheoji Poddar, Advocate and National President, AIFTP. The Speakers were Shri Rajashri Bharadwaj, Advocate and CA Arun Agarwal.

In Valedictory Session Shri S.K. Poddar, National President; Shri J.D. Nankani, Deputy President, Shri Narayan Jain, Secretary General, Shri N.M. Ranka, Past President, Shri Kishor Vanjara, NEC Member and other senior members appreciated the unique efforts of Dr. Ashok Saraf for wonderful organization of the National tax Conference at Guwahati. It was termed to be the Best National Tax Conference ever organized in AIFTP. The inputs in deliberations in technical sessions, content and quality of Souvenir, Cultural programme and food were specially praised by delegates from all the Zones. Dr. Saraf was honoured by presentation of a Shawl and Memento. All Chairmen and key members of the organizing committees were also presented the mementoes. The contribution of Tax Bar Association, Guwahati as also of Shri K.C. Kaushik, Shri Kamal Agarwal, Shri G.N. Sahewalla, Shri Rajesh Bhatra, Pankaj Bhura, Ms. Nitu Hawelia, Ms. Medha L. Gope, Deepak Jain and Amit Goyal was specially admired.

**RAJASTHAN BUDGET 2012 - 13****M.L. Patodi, Advocate & Immediate Past President, AIFTP**

The Chief Minister (Finance Minister) Mr. Ashok Gehlot presented Rajasthan State budget in the State Assembly on 26-3-2012. The State Govt. has issued the notifications on the basis of budget on 26th March, 2012 and amendments are summarized as under :

1. In the coming year assessments for the year 2010-11 has to be completed under the Deemed Assessment Scheme and for that purpose the date of filling all/ any return for the Year 2010-11 has been extended to 30-4-2012. The assessee has to file all the returns and to deposit due tax, interest for that period before filling the returns for eligibility under Deemed Assessment Scheme.
2. The due date for filling the quarterly return for the assessee whose tax liability in the previous year was less than ₹ 50,000/-, has been extended from 45 days to 60 days.
3. At present there is no specific provision to revise the annual return. In order to mitigate the same new provision related to revision of annual return has been provided.
4. In order to match the time limit for disposing of the appeal in one year, the time limit to grant the stay has been extended to one year instead of six months.
5. Since the Union F.M. has announced in the budget speech regarding implementation of GST, necessary preparation of modalities are proposed.
6. It is also proposed for the dealers having tax liability of ₹ 1,00,000/- or more in a year, have to pay tax electronically.
7. The F.M. also emphasized on e-governance and promotion of the same in order to cope up with that the E.C. as provided by the WCT officers are proposed to be issued electronically.
8. The rate of WCT on payment of Exemption Fee in lieu of tax, has been notified as under w.e.f. 1-4-2012 :

Sl. No.	Description of Works Contract	Rate of Exemption Fee % of total value of the contract
1	Works contract where the cost of material does not exceed five per cent of the total contract amount	0.25
2	Works contract relating to EPC Turkey power projects awarded by Rajasthan Rajya Vidyut Utpadan Nigam Limited, Works Contract relating to construction of roads, runways, bridges, dams, drains, tunnels, channels, barrages, diversion, railway tracks, causeways, sub-ways, splitways, boundary walls and water harvesting structures	1.00
3	Any other kind of Works Contract not covered by item Nos. 1 and 2	3.00

9. The Composition Scheme for Sarafa Dealers has been changed and now the dealer has to pay tax on every turnover of ₹ 2,00,000/- or part thereof the Composition Amount of ₹ 500/-.  
The Composition Scheme for Gems & Stones, 2006 has also been changed and now the dealer has to pay Composition Fee of ₹ 500/- for every ₹ 2,00,000/- or part thereof in the relevant year.  
The Composition fee, in any case, shall not be less than the Composition fee for the previous year.
10. It was very much demanded by AIFTP to make e>Returns and e-payments for Entry Tax as well. This has been accepted and one more step took forward for e-governance. Further, dealers have to file Quarterly Returns instead of Monthly Return under Entry Tax Act.
11. Great relief has been provided to the persons affected from Land Tax. At present to file an appeal against levy of Land Tax under the law it was mandatory to deposit 50% of the disputed amount, this has been reduced to 25%.
12. Further, provision for Revision against Land Tax has been deleted and provision has been added for Second appeal before Rajasthan Tax Board and Rajasthan Tax Board is authorized to hear the Second Appeal instead of Revision.
13. EXEMPTIONS

In Schedule I appended to the Act, after existing serial number 132 and entries thereto the following new serial numbers and entries thereto shall be added and the following items have been exemption from tax :

Sl. No.	Description
133	Sanitary Napkin of "free days" brand sold under the NRHM Scheme
134	Stone dust
135	Plant and Machinery including parts thereof, used in generation of Electricity, from : (a) Solar Energy; (b) Wind Power; and (c) Biomas as defined under Policy for promoting generation of electricity from Biomas, 2010 of Government of Rajasthan
136	Waste Paper (raddi)

14. INCREASE (IN RATE OF TAX)

1. The rate of tax on Pan Masala, Tobacco and Tobacco products has been increased from 40% to 50%.

15. DLC rate has been increased by 10%.

16. REDUCTION IN RATE OF TAX UNDER RVAT

1. The rate of tax in case of ATMs, Wood Glues, Automobile bodies and Toner has been reduced to 5% from 14%.
2. The most important change in rate of tax is related to PETROL and the rate of tax has been reduced to 26% from 28%.
3. The rate of tax on Tent, Tripal, Sunglasses has been reduced to 5% from 14%.

17. As far as the Entertainment Tax is concerned, it has been practically abolished by providing exemption to everything which comes under the net of this Entertainment Tax Act.

18. RVAT Rules, 2006 would be amended in order to issue PAN based registration number.

19. ENTRY TAX

1. Entry Tax has been levied on Polyester Viscose Yarn @ 5% and on Explosives the rate of Entry Tax has been increased from 4% to 10%. If VAT has been paid on sale of said goods, the Entry Tax will not be applicable.

20. The Annual Return may be filed within 10 months from the end of the year and Return Forms 10, 10-A and 11 have been amended w.e.f. 1-4-2012.

21. The time limit for filing the VAT Audit Report for the A.Y. 2010-11 has been extended up to 30th April, 2012 from 31st January, 2012.

**REPORT OF TWO DAY TAXATION CONFERENCE HELD ON  
7th & 8th April, 2012 AT HOTEL GATE WAY TAJ, SURAT**

The mega conference on taxation was held by The All India Federation of Tax Practitioners (West Zone), The Southern Gujarat Income Tax Bar Association, Surat jointly with The Southern Gujarat Chamber of Commerce and Industry on 7th and 8th April, 2012 at Hotel Gate Way Taj at Surat, under the theme "In pursuit of Excellence in Emerging Tax Scenario". The event has been supported by The Southern Gujarat Commercial Tax Bar Association, Surat. It is the matter of pride that 293 delegates from various parts of the States of Gujarat and Maharashtra like Valsad, Vapi, Navsari, Bilimora, Bharuch, Baroda, Ahmedabad, Junagadh, Bhavnagar and Mumbai took participation in the Conference. Such large participation of delegates from various places have made the Conference a mega success. For the whole two days, the organizers have taken care to provide vegetarian delicious food and also Jain food for Jains. The efforts of the organizers in providing nice accommodation and hospitality to all the guests, paper writers, Chairmen of technical sessions and participants was highly appreciated.

The inaugural function of the Conference was held on 7th April in the Auditorium. Hon'ble Mr. Justice D.A. Mehta, Former Judge, High Court of Gujarat chaired as the Chief Guest of the Inaugural Function while

National president Shri Sheoji Poddar was the Guest of Honour. Mr. J.D. Nankani, Deputy National President of AIFTP was also present.

The session started well in time. Mr. Rohit Mehta, The President of The Southern Gujarat Chamber of Commerce and Industry welcomed all the dignitaries on the dais and learned paper writers, Chairmen of Technical Sessions and delegates. He conveyed that as a Chamber of Commerce and Industry they are very much keen to organize such mega Conference regularly in future also as valuable service to the people from various business and industries. The intention is to make them aware of the legal provisions, procedures and to update them with knowledge of the new tax laws like DTC, GST, etc. He expressed sincere thanks to the AIFTP and The Southern Gujarat Income Tax Bar Association for organizing jointly with The Chamber of Commerce such mega Conference in Surat.

Mr. Vinayak Patkar, Chairman, AIFTP (WZ) also welcomed the Chief Guest as also all the delegates , paper writers and Chairmen. He introduced the delegates present with various activities of the AIFTP. He conveyed that as a part of regular educational activity for the benefit of the professional brothers and the tax payers, this Tax Conference was organized at Surat. He thanked Mitish Modi and his team for doing wonderful arrangements and for helping AIFTP in making the conference a grand success. He also thanked his team at AIFTP headed by Mrs. Nikita Badheka, Chairperson, Education Committee (WZ) for giving able support and assistance.

Mr. Mitish S. Modi, President, The Southern Gujarat Income Tax Bar Association, the main organizing person, expressed gratitude to Mr. Vinayak Patkar for giving his consent and assisting in organizing taxation conference at Surat which is the first taxation conference after the Union Budget – 2012 and he added that the participants would certainly be enriched by the in-depth knowledge of the paper writers, keynote speakers and Chairmen of various Technical Sessions on the very recent and relevant subjects chosen in this conference.

Mr. J.D. Nankani, Dy. National President, AIFTP congratulated The Southern Gujarat Income Tax Bar Association for their successful endeavour in organizing such wonderful conference jointly with The Southern Gujarat Chamber of Commerce and Industry. He wished the Conference success and expressed his readiness to extend every kind of support in future from the AIFTP.

Hon'ble Mr. Justice Dhirenghai A. Mehta, Chief Guest of the Inaugural function gave a very meaningful speech and message to the participants. He enlightened the delegates with the advantages and value of excellence in performance by tax professionals. At the end he congratulated all the organizers and blessed the Conference for a grand success and declared the Conference open.

The function was concluded with vote of thanks by Mr. Paresh Patel, the Vice President, The Southern Gujarat Chamber of Commerce and Industry. He thanked the Chief Guest, all the dignitaries on dais and the organizing team of all the Associations.

The first technical session consisted of two papers, one on Direct Taxes and another one on Indirect Taxes. Dr. (CA) Girish Ahuja from Delhi presented his paper on "Survey, Search and Seizure under the Income tax Act – certain practical aspects" covering all the relevant issues practically faced by taxpayer surveyed or searched. He provided able guidance as to how statement are to be recovered, records to kept and compliances in survey and search proceedings. Mr. K.C. Patel, Advocate from Ahmedabad, in his opening remarks raised certain issues to be discussed by the paper writer. Mr. K.C. Patel appreciated the views expressed by the Dr. (CA) Girish Ahuja and concluded the session.

Second paper was by CA Ashit Shah from Mumbai. He introduced his paper on "CENVAT credit rules under Service Tax Law." Mr. Jadish Surti of Mumbai took the charge as the Chairman of the session. He acknowledged the efforts of the paper writer on the given subject. In his concluding remarks, he agreed with the paper writer that the issues of CENVAT credit under the service tax laws are burning issues and matter of litigations and therefore every service providers are compelled to understand the amended CENVAT credit rules.

After delicious lunch, the second technical session was started. Shri S.K. Poddar, National President, AIFTP, chaired the technical session of paper writer Naresh Thacker, Advocate from Mumbai. In his opening remarks, Shri S.K. Poddar congratulated Mr. Mitish S. Modi, the President of The Southern Gujarat Income Tax Bar Association and his team and also Mr. Vinayak Patkar for organizing such Mega Conference in West Zone. He also congratulated Mr. Rohit Mehta for great support as the joint organizer of The Southern Gujarat Chamber of Commerce. In his speech, he discussed the role of Professionals and the Federation to serve the society

particularly by organizing such Conferences in small towns so that the knowledge can be evenly spread throughout India. He invited the delegates to become members of AIFTP so that the tree of fraternity can grow bigger and bigger.

Mr. Naresh Thacker, the Paper Writer lucidly explained various facets and litigation affecting real estate and developers industry under the Service Tax Law. The views expressed by him were endorsed by commentator Nikita Badheka, the past chairperson of AIFTP (WZ) and she shared her views as to applicability of Service Tax Law on Real estate and developers with reference to works contract.

The next paper was on practical issues u/s 6(2) of the Central Sales Tax Act which was discussed in detail by the paper writer CA Janak Vaghani from Mumbai. He expressed his valuable opinion on current practical issues under CST and some probable solutions within the framework of Law. Mr. Vinayak Patkar the Chairman of session elaborately discussed various High Courts and Supreme Court judgments and its effect while dealing with the practical issues under CST. He concluded the session with Vote of thanks to all the delegates and paper writers for the day. All the delegates enjoyed the high tea.

In the evening the delegates were entertained with a beautiful drama in Gujarati. The members present appreciated the drama and its selection by the organizers.

On the next day on 8th April, the technical session started dot in time under the Chairmanship of Mr. P.C. Joshi, Advocate from Mumbai and past president of AIFTP. Mr. Joshi, in his opening remarks, reminded the sweet memories of Surat. He also appreciated the pain taken by the paper writer CA Kishor Gheewala for the difficult subject of "GVAT Audit vis-à-vis section 145A of the Income Tax Act." CA Kishor Gheewala while presenting his paper, highlighted the relevant provisions of Sales Tax Law, Income tax law and its far reaching effect with reference to GVAT audit. Mr. P.C. Joshi in his concluding remarks endorsed the valuable views of the paper writer and added that every professional should have complete knowledge of audit procedures with reference to accounting standards while conducting GVAT audit.

Immediately thereafter CA Tarun Ghia presented his paper on subject 50C and 56(2) of Income-tax Act under the Chairmanship of Shri J.P. Shah, Advocate from Ahmedabad. CA Tarun Ghia discussed in detail certain emerging issues of Deemed Capital Gain and how it is applicable in the case of sellers, land owners and developers. Mr. J.P. Shah, the Chairman of the session expressed that the paper writer has discussed in-depth all the relevant aspects on the subject and for such detailed discussion he congratulated the paper writer CA Tarun Ghia. The Technical Session was concluded by CA Mr. Manish Kaji with vote of thanks.

After scrumptious lunch, the second and last technical session was chaired by CA Dilip Thakker of Mumbai while CA Paresah Shah of Mumbai, the paper writer presented his paper through PowerPoint presentation on very important subject of NRI Taxation. CA Paresah Shah covered in his paper the important areas of FEMA, Income Tax, International Taxation, Transfer Pricing etc. CA Dilip Thakker put his remarks that the taxation of Non-Resident Indian is a very huge subject and considering the present economic policy of the Nation and abroad, it is quite important for every Indian citizen and tax Professionals to get acquainted with various tax provisions affecting non-residents.

The last paper was presented by CA Ashwin Shah from Ahmedabad for the ever important subject "Recovery and Stay proceedings under the Income-tax Act." Mr. K.H. Kaji, Advocate from Ahmedabad, was the Chairman of the session. He said that the assessment proceedings and recovery proceedings are separate and distinct proceedings under the Income Tax Law. He appreciated the efforts of CA Ashwin Shah in preparing the detailed paper on the given subject. CA Ashwin Shah discussed relevant circulars, instructions and judgments while interpreting statutory provisions, discretionary powers and administrating power of the Income Tax Authorities and appellate authorities with reference to recovery and stay proceedings under the Income Tax Act. Mr. K. H. Kaji concluded the session with important clarification of certain issues of recovery from OD account, CC Account etc. The session concluded with vote of thanks by S.C. Rajan.

Mr. Mitish S. Modi, the President of the Bar Association proposed sincere vote of thanks to all delegates present in large numbers, all the paper writers and Chairmen of the technical sessions, co-organizers bodies, sponsors, media guests. He expressed special thanks to Mr. S.K. Poddar, Mr. J.D. Nankani, Mr Vinayak Patkar, Mrs Nikita Badheka, Mr Chirag Parekh, Mr. Rajesh Shah and the entire team of AIFTP for their continuous support and encouragement for such successful Conference. He also expressed the thanks to The Southern Gujarat Chamber of Commerce and expected the same kind of support in future also. The Conference has been concluded after enjoying high tea.



**TWO DAYS NATIONAL TAX CONFERENCE***Organised by***ALL INDIA FEDERATION OF TAX PRACTITIONERS – WESTERN ZONE***and***THE SALES TAX PRACTITIONERS ASSOCIATION OF MAHARASHTRA**

At Pavilion Hotel, Kolhapur

On (Friday) 1st (Saturday) 2nd &amp; (Sunday) 3rd June, 2012

**“QUENCHING THIRST OF KNOWLEDGE WITH THE BLESSINGS OF GODDESS”****ABOUT THE CONFERENCE**

All India Federation of Tax Practitioners (Western Zone) and The Sales Tax Practitioners Association of Maharashtra cordially invite you to participate in the Tax Conference for **exclusive & exhaustive study of Direct & Indirect Taxes** on 1st, 2nd & 3rd June, 2012 (Friday to Sunday) at Kolhapur (Maharashtra).

Object of the Conference is to exhaustively discuss the recent trends in Tax Laws.

The Paper writers from all over India including Maharashtra would do their best to provide food for thought and probable solutions to the participants. Though this unique Conference is designed to discuss threadbare the important aspect of recent trends, the paper writers would also deliberate on the basic aspects of the subject in their paper. The paper book is designed to remain as a permanent reference book in the library of participants.

We are pleased to inform you that we shall not only be offering an excellent ambience but shall also be arranging variety of cultural programmes in the evening. Kolhapur is the princely city and you would definitely enjoy our hospitality.

Enroll yourself at the earliest.

**PROGRAMME DETAILS****1st June, 2012 (Friday)**

- 3.30 p.m. to 4.00 p.m. : Tea & Registration  
 4.00 p.m. to 5.15 p.m. : Inaugural Session  
 5.15 p.m. to 6.15 p.m. : Intricate issues of Finance Bill, 2012 – Direct Taxes  
 CA. Chandrashekhar Naniwadekar, Pune  
 6.30 p.m. onwards : NEC Meeting followed by Dinner

**2nd June, 2012 (Saturday)**

- 8.30 a.m. to 9.30 a.m. : Breakfast  
 9.30 a.m. to 11.00 a.m. : **1st Technical Session**  
 Subject : Some intricate issues of TDS  
 Chairman : Mr. Bharatji Agrawal, Sr. Advocate, Allahabad  
 Keynote Speaker : Mr. N.P. Jain, Advocate, Kolkata  
 Paper Writer : CA. Harish Motiwalla, Mumbai  
 11.00 a.m. to 12.30 p.m.: **2nd Technical Session**  
 Subject : Recent Amendments in MVAT Act and Issue based Audit  
 Chairman : Mr. S.S. Gaitonde, Advocate, Mumbai  
 Keynote Speaker : Mr. C.B. Thakar, Advocate, Mumbai  
 Paper Writer : Mr. Deepak Bapat, Advocate, Mumbai  
 12.30 p.m. to 1.30 p.m. : Lunch

1.30 p.m. to 5.00 p.m. : **3rd Technical Session  
Construction Industry**

Subject : Important issues under the CST Act and  
Issues relating to Construction Industry  
Chairman : Mr. P.V. Surte, Advocate, Mumbai  
Keynote speaker : Mr. N.K. Arora, Advocate, Muzaffarnagar (UP)  
Paper Writer : Mr. G.Y. Patwardhan, Advocate, Pune  
Subject : Issues under Income Tax Act  
– Construction Industry  
Chairman : Dr. K. Shivaram, Advocate, Mumbai  
Paper Writer : Mr. Vipul Joshi, Advocate, Mumbai  
Subject : Issues under Service Tax – Construction Industry  
Chairman : Mr. V. Sridharan, Sr. Advocate, Mumbai  
Keynote Speaker : Mr. M.L. Patodi, Advocate, Kota  
Paper Writer : C.A. Sagar Shah, Pune

5.00 p.m. to 7.30 p.m. : Free time for shopping and sightseeing

7.30 p.m. onwards : Cultural programme followed by Dinner

**3rd June, 2012 (Sunday)**

8.30 a.m. to 9.30 a.m. : Breakfast

9.30 a.m. to 11.00 a.m. : **4th Technical Session (Service Tax)**

Subject : Recent Amendments under Service Tax  
Chairman : CA. S.S. Gupta, Mumbai  
Keynote Speaker : Dr. M.V.K. Moorthy, Advocate, Hyderabad  
Paper Writer : CA. Pranav Mehta, Mumbai  
Topic : Intricate issues of CENVAT Credit

11.00 a.m. to 1.00 p.m. : Brains' Trust Session

Chief Co-ordinator : Mr. S. K. Poddar, Advocate, Ranchi  
Trustees : Mr. P. C. Joshi, Advocate, Mumbai  
Mr. S.R. Wadhwa, Advocate, New Delhi  
Mr. Vikram Nankani, Advocate, Mumbai  
Mrs. N.R. Badheka, Advocate, Mumbai  
Mrs. S. S. Rangnekar, Advocate, Mumbai

1.00 p.m. to 2.00 p.m. : Lunch and Disburse

Delegate Fees : ₹ 2,000/- for Members, ₹ 2,500/- for Others

(includes paper material, two breakfasts & two lunch)

₹ 1,250/- for Accompanying Spouse (includes two breakfasts & two Lunch)

**Cheque / Draft may be drawn in favour of**

**"All India Federation of Tax Practitioners – Western Zone" payable at Mumbai.**

Outstation members are requested to pay the amount by DD only.

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Mr. Raj Shah, Travel Arrangement Co-ordinator, Email: shahraj87@yahoo.com / Mobile: 09867368285



**ONE DAY MEGA SEMINAR***Organized by***AIFTP (Eastern Zone)***jointly with***SILIGURI TAXATION BAR ASSOCIATION and SILIGURI BRANCH OF EIRC OF ICAI**

at Siliguri on Saturday, 12th May, 2012

Venue: ORBIT HOTEL, 3rd MILE, SEVOKE ROAD, SILIGURI

10.00 a.m. – 11.30 a.m. : Inauguration Session

11.30 a.m. – 1.30 p.m. : **1st Technical Session**

a) TDS, TCS and other key proposals in Union Budget, 2012

b) Section 271(1)(c) read with Section 132(4) of I.T. Act

2.30 p.m. – 4.00 p.m. : **2nd Technical Session**

VAT ON WORKS CONTRACT

4.30 p.m. – 6.00 p.m. : **3rd Technical Session**

SERVICE TAX ON CONSTRUCTION AND POINT OF TAXATION

Speakers include:

**Shri Bharatji Agrawal**, Sr. Advocate, Allahabad,**Dr. Ashok Saraf**, Sr. Advocate, Guwahati;**Shri Narayan P. Jain**, Advocate, Kolkata;**CA S. Venkataramani**, Bengaluru;**Shri Piyush Agrawal**, Advocate, Allahabad;**Shri Sandeep Choraria**, Advocate, Kolkata;**Shri Deepak Jain**, Advocate, Kolkata, etc.**Delegate fee:** ₹ 500/- only (including KIT, Tea and Lunch)*For Registration please contact:*

Dilip Kumar Agarwal, President, STBA : 94743-80665 • E-mail: dk2ita@yahoo.co.in

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Sanjiv Agarwal, Chairman, ICAI, Siliguri Branch : 98320-61298

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**SILIGURI AT A GLANCE**

Siliguri is known as gateway of North Eastern states and second to Kolkata. It is surrounded by lush green Area and rivers. One can visit the tourist place of Sikkim, Darjeeling, Kalimpong, Mirik, Jaldapara Wild sanctuary, Country of Bhutan and Nepal. One can witness beautiful SUNRISE at Darjeeling and wild life animals at Jaldapara Wild life sanctuary, Elephant ride through the dense forest of Jaldapara wild life sanctuary. It is well connected with Rail and Air.

<b>Name of Hotel</b>	<b>Rate Tariff</b>	<b>Telephone Nos.</b>
HOTEL SALUJA	₹ 250 to ₹ 750 Non-AC / ₹ 900 to ₹ 1,050 AC	2431684/2431689
RANJIT HOTEL	₹ 525 to ₹ 625 Non-AC / ₹ 780 to ₹ 880 AC	2431680/539/565/703
SALUJA RESIDENCY	₹ 1,400 to ₹ 1,600 AC	2431683/682/70

## NEW RECENT AMENDMENTS IN COMMERCIAL TAXES UNDER THE WEST BENGAL BUDGET 2012-2013

Saurav Chandra, *Advocate*

### Return

The requirement for submission hardcopy of W.B. VAT, C.S.T and W.B.S.T e-returns has been abolished by introducing digitally signed e-return and considering the fact that the cost of obtaining Digital Signature Certificate (DSC) may be a burden on the small dealers, the cost of obtaining DSC will be borne by the Government for dealers with annual turnover below ₹ 2 crore. Instead of prevailing voluminous returns for three different Sales Tax Acts, an one simple consolidated return e-Sahaj has been introduced to save time and cost of the dealers in submitting the same.

### Way Bill

All unregistered dealers will be allowed to enjoy the facility of online e-way bill instead of prevailing manual waybill.

### Audit – Assessment

In the present system where the dealer not accepts the audit report by depositing the tax, etc., further assessment was initiated. Now, if the audit report is not accepted by the dealer, no further assessment process will be initiated. The audit report, on expiry of the prescribed time, shall automatically become a Notice of Demand, which will reduce the time for dealers by at least 12 months.

### VAT Audit Report

The threshold limit for submitting the VAT Audit Report has been enhanced to ₹ 3 crore and such dealers will have to submit only a "Self-Audited Statement" instead of Audit Report from a Chartered Accountant or Cost Accountant.

### Amnesty Scheme

Dealers who have remained unregistered despite having already acquired liability to pay tax will be given a last opportunity to declare their liability and seek registration on payment of only a certain percentage of their declared taxable turnover. No interest and penalty shall be charged for the undisclosed liability and failure of the dealers to get registered. This Amnesty Scheme will be available up to 31-12-2012.

### Appeal

For disposal of assessment related First Appeal petitions, an Appeal Forum consisting of more than one officer has been introduced where the disputed

amount exceeds ₹ 20 lakh. Apart from this an e-filing system for filing of appeal petitions has been introduced from the Financial Year 2012-13.

### Tax Deposit

All public sector banks will be authorized to accept tax deposits in e-mode during the Financial Year 2012-13 from the present eleven public sector banks.

### VAT Return Preparers Scheme (VRPs)

A new scheme for VAT Return Preparers under the Public-Private-Partnership model has been introduced by training around 1,000 unemployed youth graduates (preferably from minority and backward community) in preparation of Sales Tax Returns and other tax related services for which they will be given a Certificate of Proficiency by the Commercial Tax Directorates towards self-employment.

### Negative list

Presently dealers engaged in repair of motor vehicles are not allowed to enjoy input tax credit on purchases of spare parts as such items are specified in the negative list. Now, an amendment in the negative list has been made to allow Input Tax Credit on purchases of Spare Parts of Motor Vehicles for execution of Works Contract.

### Deemed assessment

The threshold limit u/s 47A of the West Bengal Value Added Tax Act, 2003 for Deemed Assessment during the Financial Year 2010-11 has been enhanced from ₹ 3 crore to ₹ 5 crore with extension of date till 30-6-2012.

### Composition Scheme

The turnover of certain types of dealers like owner of Small Restaurants, Eateries, Dhabas, etc. opting Composition Scheme has been enhanced to ₹ 25 lakh from ₹ 15 lakh.

### Penalty for goods seized

The rate of penal provisions on seizure relating to unauthorized import of taxable goods has been reduced from 30% to 15% where goods taxable @4% and from 50% to 25% where goods are taxable @13.5%.

**W.B.C.T.A & R.B at North Bengal**

To minimize the costs of the appellant dealers of North Bengal and for disposal of their pending appeals and revisional cases pending at the West Bengal Commercial Taxes Appellate & Revisional Board located in Kolkata, four camps, one in each quarter, of the West Bengal Commercial Taxes Appellate & Revisional Board will be organized every year in Siliguri for the benefit of the dealers of North Bengal.

**Profession Tax**

The exemption limit for payment of Profession Tax for Salaried Persons has been enhanced from the present threshold of ₹ 3,000.00 per month to ₹ 5,000.00 per month. The provision for Deemed Assessment will be applicable in respect of Profession Tax returns submitted for the periods up to 31-3-2011.

**Industrial Promotion Assistance Scheme**

Financial assistance to Micro and Small Enterprises under the West Bengal Industrial Promotion (Assistance to Industrial Enterprises) Scheme, 2010 towards expansion of production capacity, modernization and improvement of marketing capabilities has been extended for a further period from 31-3-2012 to 31-3-2013.

**Exemptions of tax rate**

Fully exemptions of Empty LPG Cylinders and Balloons.

**Decrease of tax rate**

Reduction of tax rate from @13.5% to @4% on Paneer, Wooden Boxes and Kite sticks.

**Increase of tax rate**

Increase of Tax Rate from @13.5% to @14.5% on Sale of Motor Car priced above ₹ 10 lakh, Television with the MRP exceeding ₹ 25,000, Mobile Phones with the MRP exceeding ₹ 20,000, Watches with the MRP exceeding ₹ 15,000 and Air Conditioners with capacity above 1 ton.

**Entry Tax**

There is a newly introduction of levy of tax on entry of goods into local areas of West Bengal.

**OTHER IMPORTANT AMENDMENTS****Advocates' Welfare Corporation**

Government of West Bengal is going to form a welfare corporation for the purpose

of providing residential housing, insurance facilities, provident fund and stipend facilities to Advocates. Newly enrolled junior Advocates will be eligible to get stipend @ ₹ 1,000 per month.

**Online File Tracking Management System & Decentralization of DDOs from Finance Department**

A web based online file tracking and management system will be introduced from September, 2012 in the Finance Department by which the individual department would be able to know the status of the file at any point of time. The Government has also decided to decentralize the Drawing & Disbursing Officers (DDO) Office functioning from Finance department to all Administrative Departments by September, 2012.

**Property Registration, e-Stamping & Advance Queue Management System**

A new provision for registration of agreement between the owner of a piece of land and the developer/promoter has been introduced like agreement relating to purchase of residential houses and flats, by providing a voluntary and optional scheme of registration with paying a nominal stamp duty. An attempt to prevent the leakage of revenue by using fake Non-Judicial Stamp Papers in different registration offices, it is decided to introduce e-stamping system through net banking and also counter payment in authorized banks. The Government will be able to receive the payments on account of Stamp Duties and Registration Fees in a secured way through an Electronic Centralized Revenue Receiving System operational from June, 2012. In the Advance Queue Management System operational from June, 2012, the registrant public will be able to follow the process of registration on the display board installed in the registration offices. One SMS would be sent to the concerned person to inform that the deed was ready for delivery.

**Road Tax on motor vehicle**

Apart from existing payment of five years tax, an option will also be available to the registrant public for paying life-time tax. All existing taxes like Road Tax, Additional Road Tax, Video Tax, Audio Tax, Registration Charges, Special Tax and other related duties at the time of registration of vehicles are planned to be merged into a single tax and the Transport Department will collect the same by online through the dealers.

## DIRECT TAXES

Ajay R. Singh, Paras Savla, & Rahul Hakani  
Advocates, KSA Legal

### SUPREME COURT

**1. S. 9(1) : Income deemed to accrue or arise in India - Transfer of shares of foreign company - Review Petition dismissed**

Pursuant to the judgement in *Vodafone International Holdings B.V. v. UOI* holding that Vodafone was not liable to pay capital gains on the transfer of shares, the Union of India filed a review petition in the Supreme Court seeking a review of the aforesaid judgment. Held by the Supreme Court dismissing the review petition.

We have carefully gone through the review petition filed by the Union of India on 17th February, 2012. We find no merit in the review petition. The review petition is, accordingly, dismissed.

*UOI v. Vodafone International Holding (SC) (Review Petition)* [www.itatonline.org](http://www.itatonline.org)

### HIGH COURT

**2. S.10(23C) : Income not included in total income - Educational institutions**

Facts that an educational institution is not recognized by any university or board and has not been awarding its own degrees or certificates cannot be grounds for denying exemption u/s. 10(23C)(vi).

*Delhi Music Society vs. Director General of Income tax (2012) 17 Taxmann.com 49 (Del.)*

**3. S. 132 : Search and Seizure**

Where FDRs seized were found to be made from maturity amount of Indian Development Bonds gifted by NRIs / OCBs, neither any further investigation was permitted nor any addition could be made.

*CIT v. Smt. Usha Omer (2011) 16 Taxman.com 377 (Allahabad)*

**4. S. 132 : Search and Seizure**

Where entire material like high growth, high profit margins and details thereof was available with

revenue authorities and, moreover, it was not their case that they had obtained any other information which was suppressed by assessee, search and seizure proceedings initiated against assessee were to be quashed.

*Spacewood Furnishers (P) Ltd. v. Director General of Income tax (Investigation), Pune (2012) 17 Taxman.com 114 (Bom.)*

**5. S. 143 : Assessment - Natural justice**

Assessee is entitled to prior notice of any report or material which A.O. intends to rely upon; mere fact that such reports are available on internet cannot satisfy mandate of rules of natural justice.

*Falcon Marine Exports Ltd. v. UOI (2011) 16 Taxman.com 356 (Orissa)*

**6. S. 194I : Deduction of tax at source - Rent**

Once landlord paid amount of short deduction of TDS with interest on amount of rent, tenant/ assessee could not be construed as an assessee in default.

*CIT v. Sony India (P) Ltd. (2012) 17 Taxmann.com 126 (Karnataka)*

**7. S. 245 : Set off of refunds against tax remaining payable**

Where Assessing Officer while making refund, adjusted amount payable by assessee for earlier asst. year against amount of refund due without following procedure prescribed under section 245 i.e. advance intimation and opportunity of hearing, impugned adjustment was to be set aside.

*Genpact India v. ACIT (2012) 17 Taxman.com 145 (Del.)*

**8. S. 260A : Appeal to High Court - Less than ₹ 10 lakhs**

Where net tax effect of subject matter of appeal before High Court is less than 10 lakhs, appeal is not maintainable.

*CIT v. Seedi Builders (2012) 17 Taxmann.com 121 (Karnataka)*

**9. S. 269SS : Mode of taking or accepting certain loans and deposits – (S. 271D)**

Share application monies received by assessee company in cash for allotment of shares would not amount either to a 'loan' or 'deposit' within meaning of sec. 269SS

*CIT v. I.P. India (P) Ltd. (2011) 16 Taxman.com 407 (Del.)*

**10. S. 281B : Provisional attachment to protect revenue in certain cases**

There is no provision in statute which gives preferential rights to dues of state under I.T. Act.

*Axis Bank Ltd. v. CIT (2012) 17 Taxmann.com 139 (P&H)*

**TRIBUNAL****11. S. 14A : Business expenditure- Disallowance – Exempted income – Rule 8D disallowance cannot exceed total expenditure**

In A.Y. 2008-09, the assessee earned tax-free dividend income. Its total expenditure as per the P&L A/c was ₹ 49 lakhs. The AO applied Rule 8D and made a disallowance u/s 14A of ₹ 2.37 crores which was reduced by the CIT (A) to ₹ 1.78 crores. Before the Tribunal, the assessee claimed that even assuming that the entire expenditure had been incurred to earn the dividend, the disallowance u/s 14A & Rule 8D could not exceed the expenditure incurred. held accepting the plea:

U/s 14A read with Rule 8D, disallowance can be made for the expenditure incurred for earning of exempt income. From the assessee's P&L A/c, it is evident that the total expenditure incurred was ₹ 49 lakhs only which was claimed as a deduction. The disallowance u/s 14A and Rule 8D cannot exceed the expenditure actually claimed by the assessee. Accordingly, the action of the AO & CIT(A) in making disallowance in excess of total expenditure debited to P&L A/c is unjustified.

*Gillette Group India Pvt. Ltd. v. ACIT (Delhi) (Trib)www.itatonline.org*

**12. S.22 : Income from house property-Terrace-Society-Rent for letting out portion of terrace of its building is assessable as income from house and not as income from other sources (S.56)**

The assessee is a co-operative housing society, it has received the rent from Reliance Telecom to use of portion of the terrace. It has shown the income from house property and claimed the deduction under section 24 of the income-tax Act. The Assessing Officer assessed the income as income from other sources. On appeal the Commissioner (Appeals) also confirmed the assessment as income from other sources. On appeal to the Tribunal. The Tribunal followed the order of Tribunal in *Sharda Chamber Premises v. ITO ITA no 1234/Mum/2008 dt 1st Sept., 2009 (A.Y. 2003-04)*, *ITO v. Cuffe Parade Sainara Premises Co-operative Society Ltd. ITA No. 7225/Mum/2005 dt. 28th April, 2008 (A.Y. 2002-03)*, *S. Sohan Singh v. ITO (1986) 16 ITD 272 (Delhi) (Trib)*, and held that rent is assessable as income from house property and assessee is entitled to deduction under section 24 of the income-tax Act.(A.Y. 2004-05)

*Matru Ashish Co-operative Society Ltd v. ITO (2012) 144 TTJ 446 (Mum) (Trib)*

**13. S. 37(1) : Business expenditure-Transport business- Violation of traffic rules-Expenses incurred for violation of traffic rules being for infraction of law is not allowable deduction**

The assessee incurred expenditure for violating traffic rules by entering town on no entry times, one way traffic violation, etc. The Tribunal held that the expenses being penalty/fine for violation of traffic rules and payment being for infraction of law Explanation to section 37 of the Act is applicable and deduction is not allowable under section 37. (A.Y. 2005-06)

*Kranti Road Transport (P) Ltd. v. ACIT (2012) 50 SOT 15 (Visakhapatnam) (Trib)*



## INDIRECT TAXES

**Nikita R. Badheka**  
Advocate & Notary

### 1. Sales to exempted person

The Andhra Pradesh High Court held that when sales and purchase made by Tirumala Tirupathi Devasthanam (TTD) was exempt by a notification, it impliedly follows that revenue cannot levy and collect tax on the sales effected by petitioners to TTD.

*[(2012) 54 AP STJ 39 (AP) Vijayalaxmi Enterprise Vijayawada vs. State of Andhra Pradesh].*

### 2. Assessment

The Andhra Pradesh High Court in a Writ Petition filed by assessee held that where an assessment order is passed based on report of vigilance and enforcement department and such report is used against assessee in the assessment proceedings. Such report should be furnished to the assessee before forming assessment.

*[Uma Maheshwari Rice & Flour Mill vs. CTO (2012) 54 Andhra Pradesh ST 51 (AP)].*

### 3. Penalty

The Allahabad High Court in reply to challenge to levy of penalty under U. P. Trade Tax Act, 1948, observed that to establish violation of provisions of the Act, Tribunal must give clear finding that there was intention to evade tax. The books of accounts having been accepted do not reflect any intention to evade payment of tax penalty was therefore deleted as not justified. However deterrent cost was imposed as the goods were accompanied by blank form observing. Non-filing is not merely technical defect but shows non-compliance of procedural law.

*[(Dharpal Satyapal Ltd. vs. CIT (2012) NTN (Vol. 48) 79 (All)].*

### 4. Tribunal – Natural justice

The Allahabad High Court hearing a revision application held that once the appeal is entertained for hearing it can only decide it in accordance with provisions of law.

*[(Comfy Stores vs. CCT (2012) NTN (Vol. 48) – 91 (All)].*

### 5. Reassessment

The provisions of reassessment of the U.P. Trade Tax Act do not permit reassessment of turnover which

after due consideration is subjected to assessment to tax, merely because the assessing authority subsequently comes to a different view. Where opinion is formed in assessment that turnover was exempt from sales tax, the reassessment notice cannot be issued. The AO cannot be allowed to have a second thought about applicability or effect of survey. Where the primary facts necessary for assessment or fully and truly disclosed in the original proceedings, the AO is not entitled to change of opinion to commence reassessment but where the AO did not apply its mind at all and completely omitted consideration of material, the reason to believe for reassessment may not be doubted.

*[Shree Bhavani Paper Mills Ltd. vs. State of Uttar Pradesh (2012) NTN (Vol.48)-99].*

### 6. Penalty – Tax invoice

The Sales Tax Tribunal : Gaziabad, observed that when the Govt. had abolished the provision of printing book number on tax invoice, not pre-authenticating the tax invoice is only a technical error due to human error. Ex parte order was passed when no evidence of evasion of tax was found. The penalty imposed was deleted.

*(Ambro Traders vs. Commissioner of Sales Tax Uttar Pradesh 2012 NTN (Vol. 48) Tribunal 60)*

### 7. Dealer

The Allahabad High Court, while deciding whether Sri Velur Devasthanam was dealer or not, observed that question of profit motive or not profit motive would be relevant only where the person carries on trade, commerce, manufacture or adventure in the nature of trade, commerce, etc. On the facts it could not be said that Trust was either dealer or was carrying trade, commerce, etc.

*[Sri Velur Devasthanam Vaitheswara 12 DADM vs. State of Tamil Nadu (2012 NTN (Vol.48)172 (Mad)].*

### 8. Sale price

The Madras High Court held that receipt of duty drawback has nothing to do with the sale between parties and has no relevance to sale transaction at the time of or before the delivery of goods in terms of definition of sale price under CST Act and therefore such receipt cannot be taxed as part of turnover.

*[State of Tamil Nadu vs. Garware Wall Ropes (2012 NTN (Vol. 48) 161 (Mad)]*

### 9. Interstate Sale

The Supreme Court held that whether transaction is intra state or interstate is essentially question of fact to be determined by authorities. High Court ought not to have entertained writ petition. The Apex Court further observed, whenever a question arises as to whether a sale is interstate or not the same has to be answered in terms of sec. 3 of CST Act only. Similarly, when a question arises by which State the tax is leviable, one must apply test given in Sec. 9(1) only and no other provision is relevant.

*(Zynaid Ent. & Others vs. State of Madhya Pradesh (2012) 20 STJ 411 (SC).*

### 10. Penalty

The Supreme Court held that levy of penalty ordinarily requires proof of *mens rea* unless there exists any statutory provision to the contrary question whether *mens rea* is essential ingredient or not will depend on nature of right of parties and purpose for which penalty is sought to be imposed. In the case where a discretion is conferred upon the authority levying penalty, principle of "*mens rea*" will be applicable.

*[(Bharjatiya Steel Industries vs. Commr. of Sales Tax, UP (2012) 20 STJ 381 (SC)].*



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