

TAXTIME

NEWSLETTER

DIRECT TAX NEWS

DRUG FIRMS CAN'T CLAIM TAX BENEFIT FOR FREEBIES GIVEN TO DOCTORS: SUPREME COURT

Assorted freebies given by pharmaceutical companies to doctors to influence their prescription of medicines can't be claimed by the firms as 'business expenditure' to reduce their tax outgo, the Supreme Court ruled on Tuesday. The court noted that acceptance of these freebies by doctors is punishable by the Medical Council of India.

A Bench comprising justices UU Lalit and S Ravindra Bhatt dismissed Apex Laboratories's appeal against the Madras High Court's judgement that upheld the I-T department's decision to disallow the assessee's claim seeking benefit of business expenditure towards gifting freebies to medical practitioners for creating awareness about the company's health supplement 'Zincovit'. In pharmaceutical parlance, such freebies are called "drug promotional expenses".

"These freebies are technically not 'free' – the cost of supplying such freebies is usually factored into the drug, driving prices up, thus creating a perpetual publicly injurious cycle. The threat of prescribing medication that is significantly marked up, over effective generic counterparts in lieu of such a quid pro quo exchange was taken cognizance of by the Parliamentary Standing Committee on health and family welfare," the judges said.

The court added that denial of the tax benefit cannot be construed as penalising the assessee pharmaceutical company. "Only its participation in what is plainly an action prohibited by law, precludes the assessee from claiming it as a deductible expenditure," the judgment added.

The Bench also pointed out medical practitioners have a quasi-fiduciary relationship with their patients. "A doctor's prescription is considered the final word on the medication to be availed by the patient, even if the cost of such medication is unaffordable or barely within the economic reach of the patient – such is the level of trust reposed in doctors," it said.

The Central Board of Direct Taxes (CBDT) had in its August 1, 2012, circular clarified that expenses incurred by pharmaceutical and allied health sector industries for distribution of incentives to medical practitioners are ineligible for the benefit of Explanation 1 to Section 37(1), which denies the application of the benefit for any purpose which is an 'offence' or 'prohibited by law'.

**INDIA PAYS
₹7,900 CR TO
CAPRICORN
ENERGY SETTLING
THE RETRO TAX
ISSUE**



UK-based Capricorn Energy, formerly called Cairn Energy, on Thursday said that it has received a tax refund of ₹7,900 crore from the Indian government to settle the retrospective taxation case, which started in 2015. "Capricorn is pleased to confirm that the expected Indian tax refund of ₹79 billion has now been paid and net proceeds of \$1.06 billion have been received," the company said in a statement. A circular is expected to be issued in early March detailing the shareholder resolutions required in connection with the proposed shareholder return of up to \$700 million, comprising a \$500 million tender offer and \$200 million ongoing share repurchase programme, it added.

Last month, the company concluded all necessary steps under the rules of the India Taxation (Amendment) Act 2021 required for payment by the Government of India of a tax refund of around ₹7,900 crore (\$1.06 billion).

**UPCOMING GSTR-1 ENHANCEMENTS
& IMPROVEMENTS**

The statement of outward supplies in FORM GSTR-1 is to be furnished by all normal taxpayers on a monthly or quarterly basis, as applicable. Quarterly GSTR-1 filers have also been provided with an optional Invoice Furnishing Facility (IFF) for reporting their outward supplies to registered persons (B2B supplies) in the first two months of the quarter. Continuous enhancements & technology improvements in GSTR-1/IFF have been made from time to time to enhance the performance & user-experience of GSTR-1/IFF, which has led to improvements in Summary Generation process, quicker response time, and enhanced user-experience for the taxpayers.

The previous phase of GSTR-1/IFF enhancement was deployed on the GST Portal in November 2021. In that phase, new features like the revamped dashboard, enhanced B2B tables, and information regarding table/tile documents count were provided. In continuation to the same, the next Phase of the GSTR-1/IFF improvements would be implemented shortly on the Portal.

**TOURISM FEDERATION URGES
CENTRE TO ADDRESS GST ISSUES**



The Federation of Associations in Indian Tourism & Hospitality has requested the Union Tourism Minister G Kishan Reddy to take up the GST concerns of the industry with the Group of Ministers and re-evaluate the tax rate structure.

The Federation said the sector is "just coming out of its worst phase" and this would be the right time to support the sector.

In its representation to the Union Minister, the industry body has said, hotels should be allowed to charge Integrated Goods and Services Tax (IGST) that will ensure credit availability to all travel agents and tour operators. This in turn will help build sustainable domestic holiday, meetings and conventions business demand.

Among the other concerns it said, restaurants be allowed the option to charge GST at 12 per cent with input tax credit. This rate has to be delinked from room tariffs.

It asked for a special presumptive GST rate of 1.8 per cent with full GST set offs. "The current rate of 5 per cent without set off structurally implies that tour operators have an inbuilt margin of around 27.8 per cent which is an inherently flawed assumption in the internet economy," it explained.

Tourism, travel and hospitality players must be allowed to get a refund of any unutilised GST credit lying with State governments to get much needed liquidity.

The Federation has also pointed out that GST refund on purchases by foreign tourists needs to be implemented while Tax Refund for Tourists (TRT) Scheme of the IGST Act.

TODAY'S QUOTE

It is our attitude at the beginning of a difficult task which, more than anything else, will affect its successful outcome.

- William James

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AKSHAY SHAH

Email: ca.akshah@gmail.com

Contact No.: 9958975768

Website: www.jainshah.com