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GST Newsletter

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Writ jurisdiction can't be exercised since impugned order passed by authority was appealable-Orissa HC

Rule 86A is a provision that secures interest of revenue; since nature of order passed under rule 86A is provisional, a post-decision hearing could be granted to petitioners which would comply with principles of natural justice-Karnataka HC

Petitioner challenges order under Section 61, claiming lack of hearing opportunity said claim was rejected due to failure of petitioner to appear for a personal hearing despite notice-Madras HC

Exchange of gold can't be construed as dealing in second hand goods; AAR denied benefit of Margin Scheme-AAR Kerala

State Authorities empowered under State GST Act can also enforce provisions of CGST/IGST Act, 2017 ; Where transporter had tried to reuse e-way bills and tax invoices and intention to evade payment of tax was impliedly proved on record, order passed by Proper Officer imposing tax, penalty and fine under sections 129 and 130 of CGST Act, 2017, read with provisions of IGST Act, 2017 was legal and valid: Punjab and Haryana HC

HC denied to grant interim relief to petitioner who failed to reverse bogus ITC which was accepted before dept- Bombay HC

Where assessee wanted to avail remedy under provisions of law by approaching second appellate tribunal, which had not yet been constituted, as an interim measure subject to petitioner depositing entire tax demand, rest of demand would remain stayed during pendency of writ petition-Orissa HC

GST is not leviable when goods are supplied as free replacement during warrantee / guarantee period without any consideration-Uttar Pradesh AAR

Where applicant was arrested without any proper reason or satisfaction and offence was punishable up to 5 years of imprisonment, in view of fact that no recovery notice was issued nor was any penalty ascertained, bail was to be granted-Allahabad HC

Where detained gold ornaments were directed to be released by first appellate authority and department had not taken any steps to challenge said order in further appeal, gold ornaments were to be returned-Kerala HC

Where refund claim, even if in physical/offline mode was filed within two years from date when refund became due upon appellate order, revenue authorities should pay up amount of refund claim together with statutory interest: Allahabad HC

The GST probe has found out that the gaming apps/firms are converting earnings into cryptocurrency and utilizing networks of shell companies to evade GST

The Hon'ble Andhra Pradesh High Court in M/s Arhaan Ferrous and Non-Ferrous Solutions Pvt. Ltd. v. Deputy Assistant Commissioner [Writ Petition No.15481 of 2023 dated August 03, 2023] held that the assessee is responsible only to the extent of establishing that he bonafidely purchased goods from the supplier for valuable consideration after verifying the GST registration of the said supplier on the GST portal.

1. High Court of High Court of Telengana in the case Elecon Trading Co. Vs Deputy State Tax Officer [WRIT PETITION NO. 17633 OF 2023 DATED 07.07.2023]

Show cause notice was issued. Before date of hearing GST registration of petitioner was cancelled.

The Hon'ble High Court held that when an authority fixes a date of hearing, it would not be just and proper to hear and decide matter on a date prior to date which is notified.

That apart, even show cause notice appeared to be quite vague inasmuch as petitioner was asked to show cause as to why its GST registration should not be cancelled for wrongful availment of input tax credit.

Show cause notice was silent as to quantum of ITC allegedly availed of wrongfully and for which period.

A show cause notice must contain necessary details.

Then only noticee can give an effective reply to it. In absence of such material particulars, proceeding would be in violation of principles of natural justice.

Further, prepone hearing and cancel registration was wholly unjust - Show cause notice as well as order of cancellation were to be set aside.

2. High Court of Delhi in the case of Cuthbert Oceans LLP Vs Superintendent of CGST[W.P.(C) NO. 10421 OF 2023 & CM APPLICATION NO. 40335 OF 2023 Dated 08.08.2023]

The petitioner has filed the present petition, inter alia, impugning the show-cause notice dated 9-5-2023 (hereafter 'the impugned show-cause notice') calling upon the petitioner to show cause as to why its registration should not be cancelled, as well as the order dated 29-5-2023 (hereafter 'the impugned order') passed pursuant to the impugned show-cause notice.

The Department has issued the impugned show-cause notice proposing to cancel the petitioner's registration due to the reason that registration has been obtained by means of fraud, willful misstatement or suppression of facts.

Apart from the aforesaid reason, the impugned show-cause notice did not disclose any other reason or particulars for proposing the adverse action against the petitioner. The petitioner was called upon to furnish a reply to the impugned show-cause within a period of seven days from the date of service of the impugned show-cause notice; it further directed the petitioner to appear before the respondent.

The petitioner filed a response to the said show-cause notice albeit belatedly - after the respondent had passed the impugned order cancelling the petitioner's GST registration.

Indirect Tax Updates

According to the Hon'ble Court it is apparent from the above that the impugned show-cause notice was bereft of any particulars and it is difficult to accept that the said show-cause notice could elicit any meaningful response.

It is trite law that a show-cause notice must set out the allegation in order to enable the noticee to respond to the same. Merely making the bald statement that the registration was obtained by fraud, willful misstatement or suppression of facts without alluding to any such misstatement or the allegedly suppressed facts, provides no clue to the noticee as to the allegation against him.

Clearly, the impugned show-cause notice cannot be sustained and is liable to be set aside.

Although the impugned order is an appealable order, but considering that this is a clear case of violation of the principles of natural justice, the Hon'ble Court has considered it apposite to entertain the present petition.

In view of the above, the impugned show-cause notice as well as the impugned order are set aside.