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## GST Newsletter

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Maximum penalty of Rs. 10,000 shall be levied for delay in payment of tax amount; penalty u/s 122 to be set aside-Allahabad HC

Where business was transferred to petitioner along with ITC and petitioner received scrutiny notice for recovery a demand of wrongful availment of ITC, since instant petition was at stage of SCN, no interference was required in proceedings-Delhi HC

Where 2nd appellate tribunal was not constituted and there was delay in preferring appeal against order of 1st appellate authority, writ petition was maintainable, subject to deposit of entire tax demand as interim measure-Orissa HC

Where assessee's application for condonation of delay in filing revocation of registration by 8 days was rejected, delay was due to delay in Aadhar verification, assessee had no duty liability, delay was to be condoned, impugned order was to be set aside-Madras HC



Where alternate remedy for filing an appeal against adjudication order was present but assessee filed a writ petition instead of appeal, therefore, writ petition was disposed of directing assessee to file a statutory appeal-Allahabad HC

Silver was seized as unaccounted wealth in search and seizure operations conducted in premises of assessee in respect of alleged clandestine removal of packing materials supplied by assessee, power under section 67(2) of CGST Act, did not extend to seize valuable articles, silver seized was to be released to petitioner-Delhi HC

Order cancelling petitioner's GST registration was well reasoned as there had been no contravention of any law nor any procedural impropriety which warrants any interference, writ petition was to be dismissed-Calcutta HC

The GSTN has issued an advisory to inform that new functionality of biometric-based aadhaar authentication and document verification for GST Registration for the applicants of Andhra Pradesh will be rolled out on 4th December, 2023-GSTN Advisory Dated 1.12.2023

The CBIC has issued directions to ensure that summary of the notices shall be served electronically on the portal in FORM GST DRC-01. Also, summary of the order shall be uploaded electronically on the portal in FORM GST DRC-07-IIinstruction No. 04/2023-GST Dated 23.11.2023

Allahabad HC quashed penalty order since e-way bill was not required to be generated during detention period-Allahabad HC

Writ petition is maintainable against order of First Appellate Authority in absence of GST Tribunal: HC

**1. High Court of Delhi in the case of Dipti Industries Vs Principal Commissioner of CGST[W.P.(C) NO. 13913/2023,C.M. APPEAL 54976 & 54977 OF 2023 Dated 31.10.2023]**

The petitioner has filed the present petition impugning a Show Cause Notice (hereafter 'the impugned SCN') calling upon the petitioner to show cause as to why its registration should not be cancelled. The petitioner also impugns the order-in-original (hereafter 'the impugned order') passed pursuant to the impugned SCN, whereby the petitioner's GST registration was cancelled.

The petitioner had appealed the impugned order, however, the petitioner's appeal was rejected by an order-in-appeal dated 21-8-2023 on the ground that it was delayed by a single day.

A plain reading of the impugned SCN indicates that the petitioner was called upon to show cause as to why its registration not be cancelled for the following reasons:-

"1 In case, Registration has been obtained by means of fraud, wilful misstatement or suppression of facts"

The petitioner was also directed to appear before the concerned officer and furnish a reply within a period of seven working days. The petitioner's GST

registration was also suspended from the said date.

The impugned order does not provide any reason as to why the petitioner's registration was cancelled except to state that the tax payer has not given any response.

The impugned SCN did not contain any specific details as to the alleged fraud, wilful misstatement or the facts purported to have been suppressed by the petitioner. Clearly, the said SCN is vague and was incapable of eliciting any meaningful response.

It is settled law that a show cause notice must state the reason to enable the noticee to respond to the allegation on the basis of which the adverse action is proposed. The impugned SCN has failed to satisfy the said standard and therefore, is liable to be set aside. As stated above, the impugned order does not reflect any reason for cancelling the petitioner's GST registration. It merely states that the tax payer had not given any response to the impugned SCN. The SCN, as stated above, was incapable of eliciting any meaningful response.

In view of the above, the impugned SCN and the impugned order cancelling the petitioner's GST registration are set aside.

The petitioner's GST registration shall be restored forthwith.

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It is clarified that the respondents would not be precluded from issuing a fresh show cause notice and initiating action including for cancellation of the petitioner's GST registration, in accordance with law.

The petition is disposed of in the aforesaid terms.

### **2. High Court of Allahabad in the case of Jps Buildtech (P.) Ltd Vs State of U.P.[WRIT TAX NO. 1278 OF 2023 Dated 07.11.2023]**

Relying on Section 75(4) of the U.P. GST Act, 2017 (hereinafter referred to as the 'Act') as interpreted by a coordinate bench of this Court in *Bharat Mint & Allied Chemicals v. Commissioner Commercial Tax & 2 Ors.*, [2022] 48 VJ 325, it has been then asserted, the Assessing Authority was bound to afford opportunity of personal hearing to the petitioner before he may have passed an adverse assessment order.

Insofar as the assessment order has raised disputed demand of tax and penalty about Rs. 26 Lacs, the same is wholly adverse to the petitioner. In absence of opportunity of hearing afforded, the same is contrary to the law declared by this Court in *Bharat Mint & Allied Chemicals (supra)*. Reliance has also been placed on a decision of the *Gujarat High Court in M/S Hitech Sweet Water Technologies Pvt. Ltd. v. State of Gujarat, 2022 UPTC (Vol. 112) 1760*.

The Hon'ble Court agrees with the view taken by the coordinate bench in *Bharat*

*Mint & Allied Chemicals (supra)*. Once it has been laid down by way of a principle of law that a person/assessee is not required to request for "opportunity of personal hearing" and it remained mandatory upon the Assessing Authority to afford such opportunity before passing an adverse order, the fact that the petitioner may have signified 'No' in the column meant to mark the assessee's choice to avail personal hearing, would bear no legal consequence.

Even otherwise in the context of an assessment order creating heavy civil liability, observing such minimal opportunity of hearing is a must.

Principle of natural justice would commend to this Court to bind the authorities to always ensure to provide such opportunity of hearing. It has to be ensured that such opportunity is granted in real terms.

The Hon'ble Court notes, the impugned order itself has been passed on 18.08.2023, while reply to the show-cause-notice had been entertained on 15.07.2023. The stand of the assessee may remain unclear unless minimal opportunity of hearing is first granted. Only thereafter, the explanation furnished may be rejected and demand created.

Not only such opportunity would ensure observance of rules of natural of justice but it would allow the authority to pass appropriate and reasoned order as may serve the interest of justice and allow a

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better appreciation to arise at the next/appeal stage, if required.

Accordingly, the present writ petition is allowed. The impugned order is set aside.

The matter is remitted to the Respondent No.2/Deputy Commissioner, State Tax, Sector-9, Meerut, to issue a fresh notice to the petitioner.

The petitioner undertakes to appear before that authority on the next date fixed such that proceedings may be concluded, as expeditiously as possible.