

**Tax Digest**

- Recent case laws



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**NEWS**

**FEED**

- Since Investigation By DGGI Started Prior To Filing Of Application, AAR Order that appellant is not eligible for exemption Is Invalid : Andhra Pradesh High Court.
- Writ Court Can't Classify Products Under Customs Tariff Act, Technical Analysis Is Required: Calcutta High Court.
- Online Gaming Not Betting/Gambling; Rajasthan High Court Grants Interim Relief to Myteam 11.
- Solid Waste Management Services To Municipal Corporation Is Exempted From GST: West Bengal AAR
- Failure To Adjust Interest Paid By NCPA Is Hyper-Technical, Should Not Affect Sabka Vishwas Scheme: Bombay High Court
- Assessee providing transportation services by air-conditioned buses can claim ITC of buses taken on rent: AAR



- Activity of designing and development of tools as per specification indicated by recipient of supply and getting same manufactured from third parties for eventual supply to overseas customers amounts to supply of goods and not composite supply-Maharashtra AAR
- GST is not payable under reverse charge by recipient on supply of service by way of renting of immovable property by SEZ authority provided that a letter of undertaking (LUT) is furnished by recipient of supply. .[ORDER NO. MAH/AAAR/DS-RM/15/2022-23 Dated 13.01.2023]
- GST is not payable under reverse charge by recipient on supply of service by way of renting of immovable property by SEZ authority provided that a letter of undertaking (LUT) is furnished by recipient of supply.[ORDER NO. MAH/AAAR/DS-RM/15/2022-23 Dated 13.01.2023]

**1. Supreme Court of India in the case of State of Punjab v. Shiv Enterprises [Petition(s) for Special Leave to Appeal (c) no. 19295 of 2022 Dated 16.01.2023]**

- i. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 4-2-2022 passed by the High Court of Punjab and Haryana at Chandigarh, by which the High Court has set aside the order of detention of the goods/vehicle issued by the Office of Assistant Commissioner State Tax, Mobile Wing, Chandigarh-2 and also the notice dated 14-9-2021 issued under Section 130 of the CGST Act, 2017, the State has preferred the present appeal.
- ii. From the notice dated 14-9-2021, it can be seen that the original writ petitioner was called upon to show cause within 14 days from the receipt of the said notice, as to why the goods in question and the conveyance used to transport such goods shall not be confiscated under the provisions

of Section 130 of the Punjab GST Act, 2017 and IGST Act, 2017 and CGST Act, 2017 and why the tax, penalty and other charges payable in respect of such goods and the conveyance shall not be payable.

- iii. In the show cause notice, there was a specific allegation with respect to evasion of duty, which was yet to be considered by the appropriate authority on the original writ petitioner's appearing before the appropriate authority, who issued the notice.

- iv. However, in exercise of powers under Article 226 of the Constitution of India, the High Court entertained the writ petition against the show cause notice and set aside the show cause notice under Section 130 of the Act by observing in para 29 as under:-

*"29. From the pleadings on record, it is clear that there is no allegation that the petitioner has contravened any provision of the*

*Act or the rules framed thereunder much less with an intent to evade payment of tax. It is also not the case of the State that the petitioner did not account for any goods on which he is liable to pay tax under the Act or that he supplied any goods liable to tax under the Act without having applied for registration or that he supplied or received any goods in contravention of any of the provisions of the Act. From the perusal of show cause notice issued to the petitioner under Section 130, the case alleged against the petitioner is that of wrongful claim of input tax credit. The petitioner or for that matter any registered person shall be entitled to tax credit of input tax on any supply of goods or services, only when he shall be able to show that the tax in respect of such supply has been paid to the Government either in cash or through utilization of input tax credit admissible in respect of the said supply. Needless to reiterate any person can claim input tax credit under the provisions of the 2017 Act*

*only if the same has been actually paid to the Government. Thus, the action of the respondents in initiating proceedings under Section 130 on the basis of show cause notice dated 14-9-2021 cannot be sustained.*

- v.** Apart from the fact that the aforesaid is factually incorrect, even otherwise, it was premature for the High Court to opine anything on whether there was any evasion of the tax or not. The same was to be considered in an appropriate proceeding for which the notice under Section 130 of the Act was issued. Therefore, we are of the opinion that the High Court has materially erred in entertaining the writ petition against the show cause notice and quashing and setting aside the same.
- vi.** However, at the same time, the order passed by the High Court releasing the goods in question is not to be interfered with as it is reported that the goods have been released by the appropriate authority.

**vii.** In view of the above and for the reasons stated above and without expressing anything on merits in favour of either parties, more particularly, against respondent-herein (original writ petitioner), on the aforesaid ground alone, the Apex Court has set aside the impugned judgment and order passed by the High Court to the extent quashing and setting aside the notice dated 14-9-2021, issued under Section 130 of the CGST Act and remand the matter to the appropriate authority, who issued the notice.

**viii.** As per the Apex Court it will be for the respondent-herein - original writ petitioner to file a reply to the said show cause notice within a period of four weeks and thereafter the appropriate authority will pass an appropriate order in accordance with law and on its own merits.

**ix.** The present appeal is partly allowed to the aforesaid extent.

**2. High Court of Madras in the case of Deepam Roadways Vs Deputy State Tax Officer[W.P. NOS. 33851 OF 2022 & 476 OF 2023, W.M.P. NOS. 33322 OF 2022, 425 & 428 OF 2023 Dated 23.01.2023]**

**i.** As seen from section 129(3) of the Central Goods and Services Tax Act, 2017, the proper officer after detaining the goods or conveyance shall issue a notice of such detention or seizure specifying the penalty payable and thereafter, pass an order within a period of seven days from the date of service of such notice, for payment of penalty under clause (a) or clause (b) of Sub-Section (1) of Section 129.

**ii.** In the instant case, after detaining the petitioner's vehicle and the goods notice was issued by the respondents within seven days from the date of detention.

**iii.** However, the consequential order for payment of penalty was passed beyond the period of seven days from the date of

- service of notice on the petitioner.
- iv. As per High Court since the impugned order was passed beyond the period of seven days from the date of service of notice on the petitioner which is contrary to section 129(3) of the CGST Act, 2017, the impugned orders have to be necessarily quashed and the writ petitions will have to be allowed.
- v. The very same view was taken by two other learned Single Judges of this Court in the case of **Udhayam Steels Private Limited vs. Deputy Tax Officer (Int.) and another dated 28-12-2022 in W.P.No.34268 of 2022** and in the case of **D.K. Enterprises vs. The Assistant/Deputy Commissioner and another dated 29.08.2022 in W.P.No.22646 of 2022**.
- vi. It is brought to the notice of this Court by the learned Special Government Pleader appearing for the respondents that no appeals have been filed against the aforesaid orders passed by two learned Single Judges of this Court and therefore, the said orders have also attained finality.
- vii. For the foregoing reasons, the impugned detention order as well as the impugned consequential order are quashed and the writ petitions are allowed and a direction is issued to the respondents to release the detained goods and conveyances of the petitioner within a period of one week from the date of receipt of a copy of this Order.