

Tax Digest

- Recent case laws



2, India Exchange Place,
2nd Floor, Room No 10,
Kolkata – 700001

Ph: 033-22306990/ 40032841
Email id: info@acbhuteria.com

20th February 2023



- PPI Vouchers which require RBI Approval do not fall under the category of goods and services and they are exempted from levy of tax(WRIT PETITION NO. 5569 OF 2022 (T-RES) Dated 16.01.2023).
- High Court of Madras directs release of vehicle along with goods after payment of penalty of Rs. 5000 after observing expiry of e-way bill does not create scope for evasion.
- No error in AAAR order that marine paint is not necessary to make vessel operative; HC refuses to exercise writ jurisdiction.
- Section 174 of the central goods and services tax act, 2017, read with section 35 of the central excise act, 1944 and finance act, 1994 - repeal and savings - reassignment of appeals filed under pre-gst regime to specified officer - supersession of order no. 4/2021, dated 7-12-2021(ORDER NO. 1/2023 [F.NO. 137/13/2017-ST-PART-III], DATED 9-2-2023)



- High Court directed Appellate Authority to decide afresh issue relating to demand in respect of solar power project based on CBIC Circular clarifying applicability of amendment for past period.
- Appeal to be dismissed on ground of limitation if filed beyond condonable period even after applying SC order: UP AAAR
- HC granted bail to petitioner arrested for allegedly availing ITC without receipt of goods being in jail for nine months
- Orders can't be passed without grant of hearing even if reply mistakenly stated that hearing was not required: HC
- No error in AAAR order that marine paint is not necessary to make vessel operative; HC refuses to exercise writ jurisdiction

1. High Court of Jharkhand in the case of Chitra Automobile v State of Jharkhand-W.P.(T) NO. 4784 OF 2022 Dated 24.01.2023)

- i. The petitioner had regularly filed its monthly returns of outward supplies in FORM GSTR-1 monthly return of self assessment in FORM GSTR-3B.
- ii. A Show Cause Notice under Section 73 of the JGST Act, 2017 along with FORM GST DRC-01 of even date stating that the petitioner has violated provisions of the JGST Act, 2017 related to the Tax Period and the petitioner was asked to reply the show cause notice.
- iii. Since the petitioner has not presented any reply of the show cause notice; summary of order in FORM GST DRC-07 2017 was issued.
- iv. The judgment passed by this Court in the case of **M/s NKAS Services Pvt. Ltd. v. State of Jharkhand & Ors., passed in W.P.(T) 2444 of 2021** was relied upon.
- v. As per the Court a show cause notice under Section 73(1) of the Act was issued to the petitioner which was issued in a format without striking out the irrelevant particulars and thus, the same is treated as vague as it does not spell out the contraventions for which the petitioner is charged.
- vi. Without giving any opportunity of hearing State Tax Officer issued summary of order in FORM GST DRC-07.
- vii. As SCN issued was vague, summary of order could not sanctify same.
- viii. Rule 142(1) (a) of the JGST Rules provides that the summary of show cause notice in Form DRC-01 should be issued "along with" the show cause notice under Section 73(1) which will spell out the contraventions in details for which the Assessee is charged. The word "along with" clearly indicates that in a given case show cause notice as well as summary thereof both have to be issued.

ix. The impugned show cause notice in the instant case does not fulfill the ingredients of a proper show cause notice and thus amounts to a violation of principles of natural justice.

2. High Court of Gujarat in the case of Jatin Bhagwatlal Shah Vs State of Gujarat(R/SPECIAL CIVIL APPLICATION NO. 18201 OF 2022 Dated 22.12.2022)

i. The spot visit was without giving notice to the petitioner. He was not present at the place of business and, therefore, the same was closed and adverse inference is drawn from that.

ii. The petitioner had vacated its old premises and cancelled the rent agreement from 31-12-2021. He has shifted to the new premises on rent from 1-1-2022. However, formally rent agreement was executed on 31-1-2022. In the meantime, show cause notice issued to the petitioner was proposed to cancel the registration certificate on the ground that the assessee had not filed the return under the GST Act for continuous period of six months.

iii. The assessee was given notice fixing the date of hearing of the matter on 19-3-2022. The authority did not hear him and his registration was retrospectively cancelled on the ground that he did not appear on the day fixed for hearing.

iv. The petitioner was very much present at the time of spot visit. The authority noticed absence of stock at the premises and the petitioner explained that for the past three months, because of cancellation of registration certificate under the GST Act, stock register was duly shown to the authority. Application for revocation of cancellation was rejected by reproducing the contents of the show cause notice.

v. It is quite apparent from the material, which is placed on the record that the cancellation of registration certificate is contrary to law.

vi. It is a non-speaking order, which cancelled the registration on the ground that he did not remain present even though he did submit the reply.

- vii. Thus, cancellation of registration without assigning any reason is wholly mechanical and stereotyped.
- viii. He has explained that it is already on record that he has shifted to another premises from 1-1-2022. The day the premises was visited, he was not intimated and assuming that it may not be necessary, the fact remains that he has explained and when he appeared before the respondent authority along with the documents so far as the financial transactions are concerned.
- ix. The very order, which is impugned in this petition when is considered, it is very cryptic and hence, following the decision of ***Agarwal Dying and Printing Works v. State of Gujarat, (2022) 137 Taxmann.com 332(Gujarat)*** indulgence is necessary.
- x. Again, it needs to be pointed out that the petitioner concerned had shifted to another premises and, hence, he simply cannot be found at the old address. In absence of any intimating during the spot visit, if it was difficult for him to remain present because of the shift in the office, the cancellation of registration with the retrospective date is fully impermissible.
- xi. As per the High Court, the petition is allowed, quashing and setting aside the order passed by Department and order canceling registration certificate of the petitioner is also quashed and set aside and the registration certificate of the petitioner is thereby restored.