

Tax Digest

- Recent case laws



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- **GST Dept. Empowered To Detain Vehicle And Seize The Goods: Calcutta High Court Upholds Penalty**
- **The Mumbai Bench of the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) has held that service tax refunds cannot be denied on input services that are wholly consumed within the SEZ.**
- **The Goods and Service Tax Network (GSTN) has introduced negative values in Table 4 of GSTR-3B.**
- **49th GST Council Meet: Final GST Appellate Tribunal Agreement To Be Drafted.**
- **GST is not payable on surety bond forfeited/encashed as same does not qualify as consideration: AAR**
- **Tanning activity carried on hides, skins and leather received from customers to be treated as job work: AAR**



- **Dealer Can't Undervalue Goods To Escape Tax, Under The Garb of E-Way Bill Isn't Required For Goods Below Rs. 50,000: Allahabad High Court**
- **Jharkhand High Court Stays Show-Cause Notices Issued By Two Different Authorities In Respect Of The Same Subject Matter**
- **GSTN enabled Option to file a declaration in Annexure-V to opt for payment under Forward Charge Mechanism by GTA. Last date for submission of declaration for the Financial Year 2023-2024 is March 15, 2023.**
- **Composition option cancellation reckoned from condition-breach date; Directs Revenue to address software limitation: HC**
- **Where no loss occurred to department as there was no escapement of tax if petitioner was permitted to rectify error of GST returns, petitioner was to be permitted to resubmit corrected Forms**

1. High Court of Gujarat in the case of Choksi Exports Vs Union Of India(R/SPECIAL CIVIL APPLICATION NO. 23798 OF 2022 Dated 03.02.2023)

- i.** The petitioner had been marked as “risky exporters”
- ii.** The petitioner contented that inspite of various letters and reverting ITC along with interest and penalty, neither the respondent has replied back to the petitioner nor the name of the petitioner was removed from the list of risky exporters.
- iii.** Since the firm has been marked as Risky Exporter by respondent the firm is not in receipt of the refund of IGST.
- iv.** Level-1 inquiry was conducted and that has also been cleared and the report is already given to respondent.
- v.** Petitioner further submits that on the basis of the verification report of the jurisdictional CGST officer, the DGARM issued NOC and the office of respondent can revoke the suspension only after the receipt of NOC from DGARM, and after the suspension is revoked, the Customs Automated Systems will automatically disburse all the pending IGST refund of the exporter.
- vi.** As per the Court, none of the provisions of the CGST Act and the IGST Act mandate the petitioner to verify the genuineness of the suppliers of the supplier, even though safeguards is provided to recover the taxes, if not paid or wrongly availed by the petitioner’s supplier or supplier’s supplier.
- vii.** In this case, the supplier’s supplier is placed in the list of L2 risky supplier and even then, with a hope to get the IGST refund, the petitioner has paid the ITC.
- viii.** Further, the respondents ought to have granted the provisional refund to the extent of 90% as provided under Section 54(6) of the CGST Act read with Rule 91 of the CGST Rules, which the respondents failed to do so.

- ix. the petitioner has filed shipping bills for all the exports and the petitioner is not prosecuted for any offence under the Act or under the existing law and has also reversed the ITC, therefore, there is no point for the respondents herein to withhold the refund.
 - x. Judgment of ***Telangana High Court in the case of Bhagyanagar Copper Private Limited (supra)***, has also been considered.
 - xi. High Court held that the authorities are directed to grant the amount of IGST refund to the petitioner and credit such amount to the petitioner's account within a period of three weeks from the date of receipt of copy of this order.
2. [High Court of Bombay in the case of Rohit Enterprises Vs Commissioner, State GST\(WRIT PETITION NO. 11833 OF 2022 Dated 16.02.2023\)](#)
- i. Petitioner contends that since he had undergone angioplasty, and the firm suffered financial set back in pandemic situation, GST returns from August 2021 could not be filed.
 - ii. Section 29(2) of the GST Act enables proper officer to cancel registration if registered person / firm fails to furnish three consecutive returns.
 - iii. The State Tax Officer, Aurangabad issued a show cause notice dated 28-02-2022 calling upon the petitioner to furnish his explanation within a period of 7 working days. The notice stipulated that the registration of the petitioner stood suspended.
 - iv. The petitioner replied the show cause notice. Citing the reason of the financial crunch, he requested for revocation of the notice. However, the State Tax Officer cancelled the registration.
 - v. The petitioner requested for revocation of the cancellation of registration. In response, the State Tax Officer issued show cause notice for rejection of the application. The petitioner was called upon to furnish the reply within 7 days along with supporting documents like bank statement till the date of the notice, challan of tax, interest and late filing penalty.
 - vi. The matter was taken up for hearing. Finally, the State Tax Officer rejected the application of petitioner seeking revocation of cancellation.

- vii. The petitioner filed appeal under section 107 of the Maharashtra Goods and Service Tax Act, 2017 challenging cancellation of registration.
- viii. The Dy. Commissioner/State Tax (Appeal), Aurangabad Division rejected the appeal on the ground of limitation that the appeal has been submitted beyond the prescribed period provided under section 107(1) and 107 (4) of the MGST Act, 2017.
- ix. The petitioner contended that he would not be in a position to continue his business in absence of registration and would face starvation.
- x. He would urge this Court to exercise jurisdiction under Art. 226 of the Constitution of India to protect the fundamental right guaranteed under Art. 19 and 21 of the Constitution of India in favour of the petitioner.
- xi. A reference can be made to the judgment of the **Supreme Court in the case of Mafatlal Industries Ltd. Vs Union of India reported in (1997) 5 SCC 536.**The supreme court observed that the jurisdiction of the High Court under Art. 226 of the Constitution of India or Supreme Court under Article 32 cannot be restricted by the provision of any Act to bar or curtail remedies.
- xii. As per the High Court since it is merely a matter of cancellation of registration, the question of limitation should not bother us since it cannot be said that any right has accrued to the State which would rather be adversely affected by cancellation.
- xiii. As per the High Court it is not in the interest of the government to curtail the right of the entrepreneur like petitioner.
- xiv. The petitioner must be allowed to continue business and to contribute to the state's revenue.
- xv. The High Court held that the writ petition is allowed. The order dated 28-02-2022 suspending the GST registration, the order cancelling GST registration of the petitioner passed by the State Tax Officer and the order passed by the Dy.

Commissioner of Tax, Aurangabad
(Appeal) quashed and set aside.

- xvi.** The Hon'ble High Court also held that and declare that the registration in the name of the petitioner is valid, subject to the condition that the petitioner files up to date GST returns and deposits entire pending dues along with applicable interest, penalty, late fees in terms of Rule 23 (1) of MAST Rules, 2017.