

Tax Digest

- Recent case laws



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

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

NEWS

FEED

- The Mumbai Bench of the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) has allowed the CENVAT credit on parts for the efficient functioning of machines for manufacturing.
- Transfer Of Fintech App To Subsidiary Is Transfer Of Going Concern: Karnataka AAR
- Affiliation Provided By Kota University To Its Constituent Colleges For Imparting Education Is A Supply, Attracts GST: Rajasthan AAR
- Amount paid as tax by entering incorrect details of recipient of supply could not be considered as tax; Assessee could not be directed to claim refund through online mode when Rule 97A of CGST Rules, 2017 allows for manual filing of refund claim(High Court of Andhra Pradesh in the case of Varshan Enterprises vs Office of GST Council-WRITWRIT PETITION NO. 10637 OF 2021 Dated 09.12.2022)



- The CBIC has issued clarification to deal with difference in ITC availed in GSTR-3B and GSTR-2A for FY 2017-18 and 2018-19 since GSTR-2A could not be made available to the taxpayers on the common portal during the initial stages of implementation of GST.(Circular No. 183/15/2022-GST Dated 27.12.2022)
- CBIC prescribes the manner of filing an application for refund by unregistered persons(Circular No. 188/20/2022-GST Dated 27.12.2022)
- Clarification w.r.t Taxability of No Claim Bonus offered by Insurance companies and Clarification on applicability of e-invoicing w.r.t an entity issued by CBIC-(Circular No 186/18/2022-GST)
- Confiscated Currency Need To Be Returned With Interest On Release: CESTAT

1. High Court of Delhi in the case of Vallabh Textiles Vs Senior Intelligence Officer(WP (C) No 9834 of 2022 Dated 20.12.2022)

- i. Under sub-rule (1A) of Rule 142 of the 2017 Rules, where a proper officer, before service of notice under Section 73(1) or Section 74(1) of the 2017 Rules seeks to communicate details of tax, interest or penalty, he is required to do so in the prescribed form i.e., via Part A of Form GST DRC01A.
- ii. Where, however, before service of notice or statement, the person chargeable with tax, based on self-ascertainment, seeks to make payment of tax and interest, in consonance with the leeway given under sub-section (5) of Section 73 or as the case may be, the payment of tax, interest and penalty under sub-section (5) of Section 74 he is required

to inform the proper officer of such payment made in the prescribed form i.e., GST DRC-03.

- iii. The proper officer thereafter, is required to issue an acknowledgement, accepting the payment made by the person, also in the prescribed form i.e., GST DRC-04. 31.3 This is also required to be done [i.e., the acknowledgement of acceptance of payment] where tax, interest and penalty are ascertained by the proper officer, under Rule 142(1A).
- iv. Although payments were made in the prescribed form i.e., GST DRC-03, no document has been placed on record by the official respondents/revenue, demonstrating acknowledgement of having accepted the payment in Form DRC-04.

- v. The stand taken before the High Court by the official revenue, that this was a voluntary payment, based on self ascertainment of tax, interest and penalty, is not established.
 - vi. If a procedure is prescribed under a statute or by law, that is, via dicta contained in a judgment, it has to be followed to the tee. Instruction No. 01/2022-23 [GST – Investigation] dated 25th May 2022 has not been followed.
 - vii. The direction, issued by the Gujarat High Court in the case of **Bhumi Associate v. Union of India- MANU/GJ/0174/2021 Dated 16.02.2021**, is binding on the official respondents/revenue, which was not followed .
 - viii. The amounts deposited [the cumulative sum being Rs.1,80,10,000/-] did not have an element of voluntariness attached to it.
 - ix. The fact, that deposits were made when the search had not concluded, would show that the payments were not voluntary.
 - x. Failure to follow the prescribed procedure means that the deposit of tax, interest and penalty was not voluntary .
 - xi. As per the High Court revenue have been directed to return Rs.1,80,10,000/- to the petitioner-concern, along with interest at the rate of 6% (simple) per annum.
2. [High Court of Delhi in the case of Vallabh Textiles Vs Senior Intelligence Officer\(WP \(C\) No 9834 of 2022 Dated 20.12.2022\)](#)
- i. The applicant has sought an advance ruling on the issue of whether the Rajasthan Housing Board is covered under the definition of "governmental authority".

- ii.** Yet another issue raised was whether the services provided by the Rajasthan Housing Board as a governmental authority, such as permission for building construction, approval of a map, permission for an additional floor area ratio, leasing of land, etc., are exempt from GST

- iii.** The authority observed that the various services or functions of RHB, such as granting permission for building construction, approval of building map, permission for additional floor area ratio, services of leasing of land, betterment levy, etc., are covered under the functions entrusted to a municipality under Article 243W of the Constitution and therefore exempt under GST under entry 4 of the exemption notification no. 12/2017-Central Tax (Rate) dated 28.06.2017.