

Tax Digest

- Recent case laws



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- The gross GST revenue collected during December 2022 is Rs. 1,49,507 crore, of which CGST is Rs. 26,711 crore, SGST is Rs. 33,357 crore, IGST is Rs. 78,434 crore (including Rs. 40,263 crore collected on import of goods) and Cess is Rs. 11,005 crore (including Rs. 850 crore collected on import of goods).
- Renting of residential dwelling to a registered person being a proprietor in personal capacity for use as his own residence and such renting is on his own account and not that of the proprietorship concern is exempt from GST (NOTIFICATION NO. 15/2022- CENTRAL TAX (RATE) [F.NO. CBIC-190354/316/2022-TRU SECTION-CBEC], DATED 30-12-2022)
- Levy and Collection of Tax - Reverse Charge on certain specified supplies of Goods- Amendment in Notification No. 4/2017-CENTRAL TAX (RATE), DATED 28-6-2017 (NOTIFICATION NO. 14/2022- CENTRAL TAX (RATE) [F.NO. CBIC-190354/316/2022-TRU SECTION-CBEC], DATED 30-12-2022)



- Food and beverages prepared/cooked in restaurant and supplied by applicant to its customers either consumed in restaurant or by way of takeaway qualifies as 'restaurant services' and is classifiable under SAC 996331 and attract 5 percent GST with no input tax credit (ADVANCE RULING NO. GUJ/GAAR/R/2022/51)
- Readily available food and beverages (not prepared in restaurant) sold over counter by applicant from restaurant is supply of goods which is liable to applicable rate of GST and does not qualify as 'restaurant services (ADVANCE RULING NO. GUJ/GAAR/R/2022/51)
- Supply of different stationary products in single box/pack and in single price made by applicant is covered under category of mixed supply under section 2(74) and supply which attracts higher rate of tax among all taxable supplies containing in pack/box shall be applicable rate of tax for said mixed supply(ADVANCE RULING NO. GUJ/GAAR/R/2022/52 DATED 30.12.2022)

**1. High Court of Allahabad in the case of Ganpati Battery Traders Vs State of UP(WRIT TAX NOS. 1138 OF 2021 DATED 06.12.2022)**

- i. Goods and conveyance detained after physical verification and inspection were released on payment of penalty as per order of Assistant Commissioner (Mobile Squad)
- ii. Against the order of the Assistant Commissioner, an appeal was preferred by the petitioner before the Additional Commissioner, Grade-2 (Appeal) Second, Commercial Tax Department, Kanpur. The said appeal was rejected.
- iii. The petitioner submitted that the Appellate Authority was not correct to uphold the detention order and the order of penalty passed by the Assistant Commissioner on the ground that the goods sold were on the basis of number of pieces and not according to the weight.
- iv. The batteries were completely redundant and cannot be re-sold after repair. According to him, there was no concealment on the part of the petitioner/assessee as correct description was given in the truck invoice differentiating the goods between large damaged battery and small damaged battery.
- v. As per the learned Standing Counsel while defending the order of Adjudicating Authority as well as the First Appellate Authority submitted that the petitioner was trying to evade payment of tax and the battery was sold in terms of per piece and not according to the weight. He contended that Rule 46 of the Central Goods and Service Tax Rules, 2017 would be applicable in the present case.
- vi. As per High Court the tax invoice issued by petitioner gives a complete detail of the batteries.
- vii. The Adjudicating Authority while passing the order has not

- recorded any finding as to how the explanation accorded by the petitioner cannot be accepted and the trade practice of purchase and sale of battery is according to weight and not per piece.
- viii.** First Appellate Authority has failed to record any finding as to how it has arrived to the conclusion that the trade practice required the battery to be sold is according to the weight and not per piece, when the specific case of the petitioner was that he was purchasing and selling the battery on the basis of per piece and was maintaining the Books of Account, which has not been denied by the Taxing Authority.
- ix.** Assistant Commissioner had wrongly detained the truck along with the goods of the petitioner and imposed a penalty of Rs.9,70,542/- and the adjudication order and the appellate order have no legs to stand as no reasoning has been accorded by either of the authorities in consonance with the law so as to hold that the old and damaged batteries are to be sold according to the weight and not per piece.
- x.** Both the orders of the above authorities were set aside.
- 2. [High Court of Patna in the case of Ghar Ghar Ki Awaz Having Vs State of Bihar\(CIVIL WRIT JURISDICTION CASE NO.16160 OF 2022 DATED 06.12.2022\)](#)**
- i.** Summary and Ex-parte Order passed under Section 73(9) of the Bihar Goods and Service Taxes Act, 2017 as per assessee violates principles of natural justice.
- ii.** As per High Court order is bad in law. This we say so, for two reasons- (a) violation of principles of natural justice, i.e. Fair opportunity of hearing. No sufficient time was afforded to the petitioner to represent his case; (b) order passed ex parte in nature, does not assign any reasons sufficient even decipherable from the record, as to how the officer could determine the amount due and payable by the assessee.

- iii.** The authorities have not adjudicated the matter on the attending facts and circumstances.
- iv.** All issues of fact and law ought to have been dealt with, even if the proceedings were to be ex parte in nature.
- v.** The High Court quashed and set aside the impugned order dated 09.01.2021.
- vi.** The Petitioner should undertake to deposit twenty per cent of the amount of the demand raised before the Assessing Officer.
- vii.** The High Court also directed for de-freezing/de-attaching of the bank account(s) of the writ-petitioner.
- viii.** The Assessing Authority shall pass a fresh order only after affording adequate opportunity to all concerned, including the writ petitioner.