

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](mailto:info@acbhuteria.com)



- 18% GST leviable on amusement park ride karts also known as 'Go-karts' being classifiable under Heading No. 9508: AAR
- Waltop Computer "roombr" is classifiable under tariff heading 8471 41 90: AAR
- Essential Oil such as peppermint oil, spearmint oil, etc. are notified under reverse charge mechanism (NOTIFICATION No. 14/2022-Central Tax (Rate) Dated 30.12.2022)
- GST Chennai Introduces Whatsapp, E-mail Communication Facility For Facilitation for Traders. The taxpayer can WhatsApp at 9498343027 and send an email to [ommrapp12.chn-rev@gov.in](mailto:ommrapp12.chn-rev@gov.in).
- GST proposed for Natural Gas-An industry body that represents the likes of Reliance Industries as well state-owned firms, has said



- Ratios of ITC to turnover based on factual records can be relied on to compute profiteered amount: NAA
- Limiting erstwhile Area based exemption up to 58% under GST is not hit by doctrine of promissory estoppel: HC
- No GST on services of life insurance provided by State Govt. Dept. to members of state agency: AAR
- No GST on supply of vaccines during the course of providing health care services to patients for treatment: AAR

1. High Court of Allahabad in the case of Skyline Automation Industries Vs State of UP(WRIT TAX NO. 1512 OF 2022 DATED 02.01.2023)

- i. Petitioner submitted that before passing any order under Section 74 of the Act, a show cause notice in Part A of FORM GST DRC-01A is required to be issued. It is only thereafter that the jurisdiction is vested with the Competent Authority to pass order.
- ii. In the case in hand, notice in Part A of FORM GST DRC-01A having not been issued, any subsequent proceeding will be without jurisdiction as the petitioner did not have fair opportunity to respond.
- iii. In support of the argument, reliance was placed on a Division Bench judgment of Delhi High Court in Gulati Enterprises v. Central Board of Indirect Taxes and Customs &

others, 2022 U.P.T.C. (Vol. 111) - 1271.

- iv. Department submitted that subsequent reminders had given fair opportunity of hearing to the petitioner to place his case before the authority concerned, which he failed to avail of. The impugned order now passed is appealable under Section 107 of the Act.
- v. As per the court present writ petition should be allowed, as admittedly for initiation of proceedings against the petitioner a notice as provided for under Rule 142(1A) of the Rules in Part A of FORM GST DRC-01A was not issued, which provided for communication of details of any tax, interest and penalties as ascertained by the officer.
- vi. Any subsequent reminder will not cure inherent defect in proceedings initiated against the petitioner.

vii. The impugned show cause notice was set aside and the matter was remitted back to authority concerned to initiate fresh proceedings in accordance with law.

2. High Court of Delhi in the case of KPM Enterprises Vs Commissioner, Delhi GST (W.P.(C) 16388 OF 2022 DATED 29.11.2022)

i. Goods were seized by the Assistant Commissioner-II, Jaipur. Apparently, this was done as the concerned officer found it suspicious. The reasons why he found it so were unclear. The petitioner had challenged the said action which was pending before the High Court of Rajasthan in Jaipur.

ii. According to the respondent, there was no establishment at the said address and the petitioner was not functional.

iii. The field visit report (GST RG-30) was prepared. However, the same had not been uploaded. As

per Rule 25 of CGST Rules 2017- Physical verification of business premises in certain cases. - Where the proper officer is satisfied that the physical verification of the place of business of a person is required due to failure of Aadhaar authentication or due to not opting for Aadhaar authentication before the grant of registration, or due to any other reason after the grant of registration, he may get such verification of the place of business, in the presence of the said person, done and the verification report along with the other documents, including photographs, shall be uploaded in FORM GST REG-30 on the common portal within a period of fifteen working days following the date of such verification."

iv. It was also conceded that no photographs were taken and no intimation was served on the petitioner prior to the inspection.

v. The inspection triggered the impugned show-cause notice and suspension of the petitioner's

registration. In terms of the impugned show-cause notice, the petitioner was called upon to show-cause as to why its GST registration should not be cancelled, for the reason that "taxpayer found non-functioning/not existing at the principal place of business". Thereafter, the respondent issued the impugned order cancelling the registration, although no demand has been raised.

- vi. **As per Department** even though Rule 25 of the 2017 Rules was not strictly followed the petitioner can be afforded an opportunity to contest the same. The impugned show-cause notice was issued to afford the petitioner an opportunity to present its case as to why the registration should not be cancelled.
- vii. **As per High Court** it was unacceptable that the impugned show-cause notice can be sustained, considering that it was clear that it was premised on an alleged inspection that was carried contrary to the 2017 Rule.
- viii. The petition was allowed and the impugned show-cause notice as well as the impugned order was set aside.