

Tax Digest

- Recent case laws



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

23rd January 2023

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



- The Supreme Court on Tuesday asked the revenue department to provide details of the total number of show-cause notices issued for availing of the goods and services tax (GST) exemption in instances where exports have preceded imports, and where high courts (HCs) have granted interim orders.
- Amount collected by the assessee as “activation charges” of equipment/ software features are covered under the activity of sales of goods and not covered under the provisions of “Service” under the Finance Act, 1994 [CESTAT Ahmedabad in the case of Black Box Limited v. Commissioner of Central Excise & ST, Ahmedabad-iii [Service Tax Appeal No. 572 of 2012-DB dated January 4, 2023]
- Unless signature is put on the order by the issuing authority, it will have no effect in the eyes of law therefore, the time to file appeal would begin from the date on which the signature of issuing authority was put on such order [Hon'ble Bombay HC in the case of Ramani Suchit Malushtre v. Union of India & Ors. [Writ Petition No. 9331 of 2022 dated September 21, 2022]

NEWS

FEED

- No ITC is available on goods/services used for installation of Solar Power Panels as electric energy(solar power panels)being goods as classified under HSN 2706 and exempted-Tamil Nadu AAR
- GST on accommodation services supplied by Air Force Mess to its personnel other than Business entities are exempt(CIRCULAR NO. 190/02/2023- GST [F. NO. CBIC-190354/316/2022-TRU SECTION-CBEC], DATED 13-1-2023)
- Incentives paid by MeitY to acquiring banks under the Incentive scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions are in the nature of subsidy and thus not taxable.CIRCULAR NO. 190/02/2023- GST [F. NO. CBIC-190354/316/2022-TRU SECTION-CBEC], DATED 13-1-2023)
- Clarification regarding GST Rates and classification of certain GOODS based on recommendations of GST Council held on 17.12.2022[CIRCULAR NO. 189/01/2023-GST [F. NO. CBIC-190354/316/2022-TRU SECTION-CBEC], DATED 13-1-2023]
- A new functionality has been deployed on the GST portal to allow the unregistered persons to file an application for advance ruling on the portal. They can submit the application by creating a Temp ID on the GST portal. Earlier such persons could only submit the fee towards advance ruling application but were required to file the application in offline mode.

1. [High Court of Orissa in the case of M/s. Shiva Jyoti Construction v. The Chairperson, Central Board of Excise & Customs and others \[W.P. \(C\) No. 18216 of 2017 dated January 12, 2023\]](#)
 - i. M/s Shiva Jyoti Construction (“the Petitioner”) had filed this petition seeking to permit them to rectify the GST Return filed for the months of September 2017 and March 2018, wherein the Petitioner had wrongly mentioned B2C instead of B2B while filing Form GSTR-1 due to which the recipient was unable to avail the ITC. The Petitioner was unaware of such error until January 21, 2020.
 - ii. Thereafter, the Petitioner had made requests to the Revenue Department (“the Respondent”) to allow it to rectify the **Form GSTR-1**. The Respondent rejected the request of the Petitioner on the ground that the last date of filing the return was March 31, 2019 and the last date of carrying out such rectification was April 13, 2019. Thus, the deadline for the rectification of errors in **Form GSTR-1** had crossed.
 - iii. As per High Court there is no wrong to allow the applicant to fix the error mentioned above, and no loss there that has been rendered to the opposite parties. Tax escapement is unlikely in the future for the same. It is merely for the GST ITC advantage that any event would be provided to the applicant.
 - iv. On the opposite part, if the same is not been allowed, then the applicant will be prejudiced. Relied on the judgment of the Hon’ble Madras High Court in the matter of M/s. Sun Dye Chem v. the Assistant Commissioner (ST) [Writ Petition No.29676 of 2019 dated October 6, 2020] wherein, the Court allowed the assessee to rectify and correct its Form GSTR-1 for the Period August 2017 to December 2017 and redistribute the ITC available and directed the Revenue Department to enable amendment in Form GSTR-1.
 - v. Permitted the Petitioner to resubmit the corrected Form GSTR-1.
 - vi. When the rectified forms would be obtained in a manual way then the department will ensure ease in

uploading that information to the web portal.

2. Supreme Court of India in the case Vipin Garg Alias Bindu Vs State of Haryana(SPECIAL LEAVE TO APPEAL (CRL.) NO(S). 66 OF 2023 Dated 09.01.2023)

- i.** The appellant had been arrested primarily on the allegation of misuse of input credit under the Central Goods and Services Act, 2017.
- ii.** He was in detention since 27-1-2022. A co-accused had already been enlarged on bail, on 29-6-2022 as submitted on behalf of the appellant. It had been pointed out on behalf of the appellant that charge-sheet had been submitted.
- iii.** Resisting the plea for bail, Mr. Deepak Thukral, Deputy AG of Haryana submitted that the loss to the exchequer caused by the accused persons is to the extent of rupees six crores and no recovery has as yet been made.
- iv.** But, the Apex Court did not think it necessary for further detention of the appellant pending trial.

- v.** The State had not filed any petition for special leave to appeal in regard to the co-accused who had been enlarged on bail by the High Court.
- vi.** The Apex Court set aside the order under appeal and directed that the appellant be released on bail in connection with the subject-proceeding on such terms and conditions the Trial Court may deem fit and proper.
- vii.** The appellant, was ordered not to delay the proceedings before the Trial Court and to remain present before the Court on regular basis.