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GST Digest

- Recent case laws and
Notifications

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NEWS
FEED

- Scrutiny of returns under section 61 of CGST Act is not an essential condition for initiating proceedings to demand tax under section 74. Provisional attachment of bank account could not be held as illegal when objections/reply had not been filed against notice-Andhra Pradesh HC[W.P. NO. 3659 OF 2023 Dated 19.06.2023]
- High Court allows payment of liability in instalments and directs lifting of provisional attachment of bank account-Gujarat[HCR/SPECIAL CIVIL APPLICATION NO. 6777 OF 2023 Dated 27.04.2023]
- Indian subsidiary was liable to GST under reverse charge for support services received from foreign parent company so as to provide consultancy service in India; Monetary proceeds transferred by subsidiary to parent company was taxable value[ORDER NO. MAH/AAAR/DS-RM/03/2023-24 Dated 05.06.2023]



- Adjudication order passed without following principles of natural justice was to be set aside: Delhi HC[W.P.(C) NO. 8692 OF 2021 Dated 10.05.2023]
- HC directed to disburse refund of ITC on account of exports which was delayed by department without any reason-Madras HC[W.P.(MD) NO.9369 OF 2023 Dated 24.04.2023]
- HC allowed petitioner to file claim of ITC being entitled for period between GST cancellation and its restoration-Rajasthan HC[D.B. CIVIL WRIT PETITION NO. 4236 OF 2023 Dated 26.04.2023]
- DGGI has raised higher tax demands to several automotive component manufacturers.
- Provisional attachment of bank account ceases to be in operation after expiry of one year from date of such order; High Court directs bank authorities to take note-Karnataka HC[WRIT PETITION NO. 12915 OF 2020 Dated 07.06.2023]
- HC set aside order directing to pay 20% of interest liability for appeal filing since entire tax was deposited-Calcutta HC[M.A.T. NO.823 OF 2023 IA NO. CAN 1 OF 2023 Dated 16.06.2023]
- HC directed department to refund amount recovered from recipient since wrong GSTR-1 was filed by supplier-Madhya Pradesh HC [WRIT PETITION NO. 14297 OF 2020 DATED 13.06.2023]
- Penalty not to be levied for generating new e-way bill after vehicle breakdown since violation was not grave enough: Calcutta HC[MAT NO. 1011 OF 2023 IA NO. CAN/1 OF 2023 Dated 16.06.2023]
- Adjudication proceedings being time barred did not give taxpayer opportunity to seek abatement of such proceedings when taxpayer himself filed petition after inordinate delay-Calcutta HC[W.P.A. NO. 9183 OF 2023 Dated 05.06.2023]

1. High Court of Jharkhand in the case of Shree Ram Agrotech Vs State of Jharkhand[W.P. (T) NO. 163 OF 2023 Dated 15.06.2023]

No show cause notice in terms of Section 73 (1) of the JGST Act, 2017 has been served by the Respondents upon the Petitioner.

The contents of the said Summary show cause in Form GST DRC-01, dated 20.12.2018, does not provide the specific alleged violations by the Petitioner and also does not specifically give the opportunity to the Petitioner to rebut the allegations of the Respondent Department. Thus, in essence, the said Form GST DRC-01 dated 20.12.2018, cannot be considered as an opportunity provided by the Respondent to the Petitioner before passing of the Impugned Summary Adjudication order in Form GST DRC - 07.

Similar issue was adjudicated by a Co-ordinate Bench of this Court in the case of *Nkas Services Private Limited v. State of Jharkhand and Others* 2021 SCC OnLine Jhar 847.

Additionally, in the present case it is an admitted fact that no detailed adjudication order, as required under Section 73 (9) of the JGST Act, 2017, has been passed by the Respondents.

The Appellate authority has not considered any of the grounds taken by the petitioner herein (Annexure to Form GST APL-01) and dismissed the appeal.

The Appellate authority should have decided the case on merit and should have given its finding on the grounds of Appeal that DRC-07 has been issued without issuing any no show cause notice in terms of Section 73 (1) of the JGST Act, 2017 and also without any adjudication order.

The Summary Order in Form GST DRC-07, issued by the Respondent No.4 whereby tax, interest and penalty under the JGST Act has been imposed on the Petitioner, is hereby, quashed and set aside.

Consequently, the Appellate Order, dated passed by the Joint Commissioner of Commercial Taxes (Appeal), Dhanbad Division and also the recovery notice, issued by the Respondent No.3, are also quashed and set aside.

However, the Respondent department would be at liberty to issue fresh show cause notice to the Petitioner, if so advised, and proceed in the matter strictly following the provisions of JGST Act and its Rules.

2. High Court of Gujarat in the case of VIP Chem Traders Vs Union of India[R/SPECIAL CIVIL APPLICATION NO. 26352 OF 2022 Dated 03.05.2023]

The petitioner is a proprietary firm having its registered office at Bharuch in Gujarat. It is having GSTIN number registered and is engaged in the supply of carbonates sodium hydroxide etc.

The petitioner received notice dated 06.12.2022 in which respondent, Commissioner of State Tax, Ahmedabad, inter alia stated that the registration of the petitioner was liable to be cancelled.

The reason was given that "returns furnished by you under section 39 of the Central Goods and Services Tax Act, 2017".

The petitioner was called upon to file reply within 30 days.

There is no gainsaying that the notice since is issued for cancelling the GST registration of the petitioner, if the final order against the petitioner is to be adverse, it will operate to the detriment and prejudice to the petitioner.

Therefore, the process of adjudication post issuance of show-cause notice would necessitate observance of natural justice and providing reasonable opportunity to the petitioner to defend his case and submit appropriate facts and details in relation to the show-cause notice.

The Hon'ble High Court held that before proceeding further pursuant to the show-cause notice, the petitioner shall be given four weeks time to file reply and also shall be given personal hearing for which the date shall be intimated to the petitioner.

After filing the reply and personal hearing is given, the authority shall decide the issue of cancellation of GST registration.