



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

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

GST Digest

- Recent case laws and
Notifications

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- No GST exemption on leasing of ordinary plots by RLDA for building residential infrastructures-AAAR Rajasthan
- Limitation under section 107 of UPGST Act is not 120 days, but four months and may be 121 or 122 days depending upon date on which date Adjudicating Authority passes order-Allahabad HC
- Writ jurisdiction of High Court is not invocable when remedy of representing before Commissioner to lift provisional attachment is available and writ petition is filed without exhausting such remedy-Kerala HC
- HC directed assessee to avail alternate remedy of appeal against detention order-Madras HC



- **HC granted bail to applicant against whom there was no evidence of obtaining any monetary benefit of ITC fraud-Allahabad HC**
- **Centre asks state governments to approve changes in GST laws by October**
- **Since order passed under section 73 was not signed by concerned authority, therefore, order was to be set aside-Delhi HC**
- **Strengthen GST registration process further with tech: FM to tax officers**
- **HC directs deposit of tax and stays interest & penalty as interim measure since appeal is rejected on ground of delay-Orissa HC**
- **Order cancelling registration passed in violation of principles of natural justice was to be set aside with directions for fresh proceedings-Gujarat HC**
- **HC granted another opportunity to contractor to prove that demand raised by computing tax at 18% was not sustainable-Calcutta HC**
- **88% MSME say GST reduced cost of goods and services, optimised supply chain**

Indirect Tax Updates

1. High Court of Delhi in the case of Alex Tour and Travel (P.) Ltd. Vs Assistant Commissioner, CGST [W.P.(C) NO. 5722 OF 2023 dated 08.05.2023]

The petitioner filed refund applications, all dated 13.04.2021, claiming refund of unutilised Input Tax Credit, amounting to Rs. 46,38,276/- for the financial year 2018-19. Thereafter, on 14.04.2021, the petitioner filed an application seeking refund of the unutilised Input Tax Credit, amounting to Rs. 2,15,63,451/- for the period 2019-20.

The petitioners' claims for refund were rejected, inter alia, on the ground that the services provided by the petitioner were intermediary services and did not qualify for export of services.

The petitioner filed an appeal against the orders dated 14.06.2021 (7 in no.) passed by the adjudicating authority under Section 54(5) of the Central Goods and Service Tax Act, 2017 (hereafter 'the CGST Act').

It is also relevant to note that the appellate authority also accepted the petitioner's contention that in case of voluminous transactions of export of services to customers located outside India, transaction-wise FIRC is not feasible.

The petitioner again filed Form GST RFD-01 on 19.02.2022, 23.08.2022 and 10.11.2022 for grant of refund along with interest. Notwithstanding that the petitioner has succeeded before the appellate authority, the respondent did not process the petitioner's claim for refund and issued Deficiency Memos and Show Cause Notices.

Revenue cannot ignore the orders passed by the appellate authority mainly on the ground that it proposes to file an appeal.

No order has been passed by the Court, staying the effect of the Orders-in-Appeal passed by the appellate authority. The respondent is also taking no steps for securing orders to that effect.

In view of the above, the present petition is liable to be allowed.

It is noted that the Orders-in-Appeal have not granted the petitioner, any interest. More than one year has elapsed in case of Order-in-Appeal dated 08.02.2022 and almost ten months have elapsed in respect of Orders-in-Appeal dated 28.07.2022.

In view of the aforesaid, the petitioner would also be entitled to interest in accordance with law. The present petition is allowed. The respondent is directed to forthwith disburse the petitioner's claim for refund along with interest as payable in accordance with law.

2. M/s. High Court of Jharkhand in the case of Steel Authority of India Ltd. Vs State of Jharkhand [W.P. (T) NO. 3983 OF 2022 Dated 12.06.2023]

Petitioner has filed refund application on 04.03.2019 and vide email dated 22.10.2019 and corresponding communication in GSTN Portal, Petitioner was informed that its refund application has been sanctioned which is awaiting issuance of payment advice under RFD-05 by the jurisdictional

officer. Consequent thereto, Petitioner repeatedly followed-up with the Respondent Department for issuance of payment advice and after a lapse of about 30 months, in the month of April, 2022, Petitioner was communicated for the first time that its refund application has been rejected through RFD 01-B and the refund order is bearing order no. 91 dated 18.10.2019.

However, copy of the said refund rejection order is not available in the record of the Department. Admittedly, no opportunity of hearing has been granted to the Petitioner before passing of the purported order of rejection of refund.

It is in the aforesaid background that this Court, vide order dated 30.01.2023, held that in absence of any order either sanctioning or rejecting refund application being available on record, no decision can be said, under law, to be taken on the refund application of the Petitioner.

Accordingly, the Court directed the respondent to take decision on the refund application of the Petitioner. However, despite the order, which has not been challenged by the Respondents, the Respondents have not taken any decision on the refund application of the Petitioner, but instead, filed supplementary counter affidavit again stating, inter alia, that refund application of the petitioner has been rejected vide Order no. 91 dated 18.10.2019 despite the fact that said order is not available in the official record and has

contended that petitioner should file refund application afresh

If any order was passed rejecting application of the Petitioner, said order was passed in utter violation of the principles of natural justice and without complying with Rule 92(3) of the CGST Rules, which provides for grant of opportunity of hearing before rejection of refund application of an applicant.

If Petitioner is directed to apply for refund application afresh, the Petitioner would lose the benefit of statutory interest in terms of Section 56 of the CGST Act, which, otherwise, the Petitioner is entitled as its refund application has been purportedly illegally rejected contrary to the statutory provisions.

In this regard, reference may be made to the judgment of Hon'ble Supreme Court in the case of Union of India vs. Tata Chemicals (supra); in the said case it has been held that obligation to refund money received and retained without right implies and carries with it the right of interest. Whenever money has been received by a party which ex ae quo et bono ought to be refunded, the right to interest follows, as a matter of course.

Petitioner applied for refund for the subsequent periods also towards unutilized ITC on account of compensation cess i.e., for the periods April, 2018 to March, 2019 and April, 2019 to March, 2020. It is an admitted fact that refund for the subsequent periods

has already been sanctioned in favour of the Petitioner. Petitioner has further annexed a copy of its Electronic Credit Ledger from which it is reflected that as on 31.03.2021, Petitioner was having an excess ITC of Rs. 359.54 crores as closing balance towards compensation cess in its electronic credit ledger.

Thus, the re-credit of an amount being the refundable amount for the period 2017-18 in the electronic credit ledger of the Petitioner towards compensation cess, was making no difference as the Petitioner has not utilized the said amount for payment of any output tax liability.

The Petitioner is further entitled to interest in terms of the provisions of Section 56 of the CGST Act after expiry of 60 days from the date of receipt of the application for refund i.e., 04.03.2019 @ 6% per annum till the date of payment of refundable amount to the Petitioner.