

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



- AAR Orissa-Construction of Medical Institute and super specialty hospital for SAIL through sub-contractor under EPC contract on turnkey basis is liable to 12 per cent GST [6 per cent CGST + 6 per cent SGST] in terms of Sl. No. 3(vi)(a) or 3(vi)(b) of Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017 as amended (ORDER NO. 01/ODISHA-AAR/2022-23 Dated 20.05.2022)
- HC of Punjab and Haryana-Where petitioner had already faced incarceration for more than 1 year and 4 months and other two co-accused had already been extended benefit of bail, bail was to be granted to petitioner (CRM-M-8844-2023 (O&M) Dated 24.02.2023)
- CESTAT Rejects The Refund Claim Of Krishi Kalyan Cess Worth Rs. 5 Lakhs Paid On Services Received For Manufacturing Of Goods.
- Service Tax Not Payable On The Service Charges For Prepayment Of Loan Amount By The Customer: CESTAT
- Some issues have been raised by the persons registering as 'One Person Company' while they take GST registration. Now, the GSTN has issued advisory to provide that in the 'Part B' of GST Registration Form 'REG-01', the applicant may select Constitution of Business under 'Business Details' tab using dropdown list option "Others", if the taxpayer wants to register for GST as "One Person Company" - (GSTN Advisory Dated 21.03.2023)



- Show cause notice issued for cancellation of registration and no order passed while registration remains suspended; High Court directs authority to decide based on SCN-Patna HC
- Trade bodies have welcomed most of the announcements in the state budget but are disappointed that no announcement was made for forming a state-level committee for representation in GST Council.
- Where communication was issued by Joint Commissioner to petitioner stating that Commissioner of CGST was of opinion that points raised in application for rectification were not covered under section 74 of CGST Act, 2017 and said application was stood disposed of, said communication was to set side as Commissioner who passed Order-in-Original was required to deal with an application for rectification of mistake as per section 74(1)-Sikkim HC
- GSTN issued advisory on HSN Code Reporting in e-Invoice on IRPs Portal-GSTN Advisory dated 22.03.2023
- GST charged by service provider for hiring of bus/motor vehicles having approved seating capacity of more than 13 persons (including driver) for transportation of employees would be available as ITC to assessee-employer subject to fulfillment of conditions prescribed in Section 16 of Central Goods and Services Tax Act, 2017 and such ITC would be restricted to extent of cost of transportation borne by said employer-Kerala AAR
- Where E-Waybill was generated by petitioner on 8-4-2018 for transportation of goods to Meghalaya, however, due to some reasons truck was made available to petitioner on 17-4-2018 for transportation, since, petitioner had waited 10 long days and did not cancel said E-way bill and had evaded tax, concerned authorities had rightly passed an order of seizure of goods-Allahabad HC

1. High Court of Allahabad in the case of Tanishka International Vs State of U.P(WRIT TAX NO. 847 OF 2022 Dated 30.01.2023)

- i.** In terms of the provisions of Rule 142(1A) of the Central Goods and Service Tax Rules, 2017 (hereinafter referred to as "the Rules) as existing at the time of initiation of the proceedings against the petitioner before it was amended on October 15, 2020, 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.
- ii.** It is only thereafter that the jurisdiction is vested with the Competent Authority to pass order. 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 and order dated January 2, 2023 passed by this Court in Writ Tax No.1512 of 2022, titled as *M/s Skyline Automation Industries v. State of U.P. and another*.
- iv.** On the other hand, learned counsel for the respondents, while not disputing the fact that notice in Part A of FORM GST DRC-01A was not issued, 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 High Court present writ petition deserves to 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. Similar view has been expressed by the Delhi High Court in *Gulati Enterprises'* case (*supra*) and this Court in *M/s Skyline Automation Industries'* cases (*supra*) wherein also in identical facts pertaining to a case prior to the amendment of Rule 142(1A) of the Rules with effect from October 15, 2020, 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.

viii. For the reasons mentioned above, the writ petition is allowed. The impugned order dated November 10, 2022 is quashed.

2. [High Court of Gujarat in the case of Shree Govind Alloys \(P.\) Ltd. Vs State of Gujarat\(R/SPECIAL CIVIL APPLICATION NO. 23835 OF 2022 Dated 01.12.2022\)](#)

i. It is the grievance on the part of the petitioner that the truck had remained in non-motorable condition and thus, the goods which were to be delivered on or before 17.10.2022 could not be delivered in time and on 19.10.2022 at the time of inspection, because of the

expiration of the e-Way bill number, it came to the notice of the officer that the entire truck along with the impugned goods has been seized. The petitioner has been issued GST Form MOV No.1,2,6 and 7 where he was called upon to remain present and eventually the order of 4.11.2022 was passed demanding the tax and penalty.

ii. On issuance of notice by this Court, learned Assistant Government Pleader appeared for the State, where it is attempted to justify the detaining of the goods bearing invoice value of Rs. 24,69,358/- along with Conveyance on the ground that e-Way bill had expired 41 hours before the time of interception.

iii. According to him, the period between the expiry of validity of e-Way bill and time of interception was not substantiated and no justification was offered by conveyance driver. There was no satisfactory reason for non-updation of the e-Way bill which was given.

iv. This Court in *Govind Tobacco Manufacturing Co. v. State of U.P., [2022] 140 taxmann.com 383*

(Allahabad) has held that as there is expiry of e-Way bill on transit, the seizure of said vehicle and the goods is not permissible under the law.

dated 19.10.2022 are also quashed and set aside.

- v. In the case before the High Court of Madhya Pradesh at Jabalpur in ***M/s. Daya Shaker Singh v. State of Madhya Pradesh passed in Writ Petition No.12324 of 2022 on 10-8-2022***, where also the Court had intervened considering the fact that the respondent could not establish any element of evasion of tax with fraudulent intent or negligence on the part of the petitioner.
- vi. Delay was of almost 4 ½ hours before the e-Way bill could expire. It appeared to be *bona fide* and without establishing any fraudulent intention. Here also what is found is that there is no fraudulent intention for this to happen.
- vii. The High Court ordered that present petition stands will be allowed. The impugned order dated 04.11.2022 demanding the sum of Rs.7,53,364/- is quashed and set aside.
- viii. The order of detention dated 19-10-2022 as well as the notice issued under section 129(3) of the Act