

Tax Digest

- Recent case laws



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

6th March 2023

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

NEWS

FEED

- Rs. 1,49,577 crores gross GST revenue collected in February 2023: Press Release
- The West Bengal Authority of Advance Ruling (AAR) has ruled that services by way of milling food grains into flour (atta) and supplying it to the Food & Supplies Department, Govt. of West Bengal, for distribution under the Public Distribution System, are eligible for GST exemption
- GSTN has informed the taxpayers that the functionality for geocoding the principal place of business address (i.e. the process of converting an address or description of a location into geographic coordinates) is now available on the GST Portal.
- CBIC has issued notification to clarify that any authority, board or body set up by the Central Government or State Government including National Testing Agency for conduct of entrance examination for admission to educational institutions shall be treated as educational institution for the limited purpose of providing services by way of conduct of entrance examination for admission to educational institutions[NOTIFICATION NO. 01/2023 - CENTRAL TAX (RATE) Dated 01.03.2023]



- Assessee can file declaration before dept. that appeal would be filed after Tribunal is constituted to stop recovery proceedings: HC
- 5% GST Applicable On Value Of Part Of Gold Retained For Job Work: West Bengal AAR
- Writ disposed of where the petitioner didn't follow appropriate route for releasing bank account: HC
- The Bombay High Court has advised the Central Board of Indirect Taxes (CBIC) to construct GST tribunals to reduce needless litigation in the form of filing Writ Petitions
- HC of Uttarakhand set aside order as petitioner didn't get opportunity to file reply of intimation under Form GST DRC-01A
- HC of Madras dismissed writ petition as order was uploaded on common portal which is correct method of service
- Tax to be paid under RCM on services provided by Courts and Tribunals: Notification No. 02/2023-CentralTax (Rate) Dated 28.02.2023

1. High Court of Delhi in the case of Mahajan Fabrics (P.) Ltd. Vs Commissioner, Central Goods and Services Tax[W.P.(C) NO. 6727 OF 2022 Dated 06.02.2023]

- i.** The said application was allowed by the Order-in-Original and an amount of Rs. 22,32,502/- was directed to be remitted to the specified bank account of the petitioner.
- ii.** The aforesaid order was reviewed by the Commissioner under Section 107(2) of the Act. In terms of the said provision, the Commissioner directed that the appeal be preferred to the Appellate Authority [in this case, the Joint Commissioner (Appeals)].
- iii.** In view of the Commissioner's review order dated 15-3-2020, directing that an appeal be filed against the Order-in-Original dated 12-9-2019, the Revenue preferred the appeal on the grounds as stated in the review order dated 15-3-2020 and as briefly noted above. 8. The Appellate Authority [Joint Commissioner (Appeals)] found that the vehicles mentioned in the two invoices that were picked up for scrutiny were, in fact, registered with the e-vahan portal.
- iv.** Notwithstanding that the Appellate Authority had found that the two vehicles were registered on the e-vahan portal, it allowed the Revenue's appeal on the ground that the petitioner had not established that the goods had been received by providing details of other vehicles in respect of the remaining 124 invoices.
- v.** On a pointed query from the Court as to which provision of the Act required the petitioner to file details of all vehicles and also establish its registration with the e-vahan portal, the counsel submitted that there is no such requirement but once a doubt is raised, it is incumbent on the petitioner to file the requisite details.
- vi.** It is clear from the explanation to Section 16(2)(b) of the Act that the person would be deemed to have received the goods if the conditions, as stated therein, are satisfied. 14. In the present case, there is no dispute that the petitioner had filed its return disclosing all necessary details for claiming the refund. It was, accordingly, also sanctioned in terms of the Order-in-Original dated 12-9-2019. 15. It appears from the review order dated 15-3-2020 that a few invoices were picked up for scrutiny. Out of the said invoices, it was found that the vehicles mentioned in

two invoices were not registered on the e-vahan portal. 16. It is on the basis of this finding that the decision to file an appeal was taken by the Commissioner of Tax. He assumed that the refund claims made by the petitioner were dubious solely on the basis of the aforesaid finding. However, the Appellate Authority had found the said finding to be incorrect, as is apparent from Paragraph 6.5 of the impugned order, as stated above. 17. Thus, the review order dated 15-3-2020 to file an appeal against the Order-in-Original is founded on an erroneous finding. Having accepted the same, the Appellate Authority was required to reject the Revenue's appeal outrightly.

- vii. Having established that the foundation of the Revenue's appeal is flawed, the petitioner was not required to do anything more. The Appellate Authority did not find any flaw in the details as furnished by the petitioner. There is neither any tangible reason to doubt the particulars, as stated in the invoices, nor any finding that the same are untrue.
- viii. The Hon'ble Court held that the respondents are directed to disburse the amount of refund sanctioned by the Assistant Commissioner in terms of the Order-in-Original dated 12-9-2019.

2. High Court of Gujarat in the case of Apex Formulations (P.) Ltd. Vs Union of India(R/SPECIAL CIVIL APPLICATION NO.9860 OF 2020 Dated 22.02.2023)

- i. The petitioner exported certain goods through valid Exporter and, therefore, applied for refund under Rule 89(5) of the Central/Gujarat Goods and Service Tax Rules, 2017 in the prescribed format. The petitioner also submitted documents in support of the refund claim. The said application was sanctioned by an order dated 26.3.2019 sanctioning the refund of the petitioner.
- ii. However, the CGST department being dissatisfied with the said refund order preferred an appeal against the said order on the ground that the Exporter had not mentioned the name and GST Identification Number of the present petitioner and was not mentioned in the shipping bill which was an essential condition of the aforesaid Notification. The said appeal came to be accepted vide order dated 1-5-2020.
- iii. However, subsequently, upon a request made by the petitioner, revised form was submitted by the Exporter. Therefore, the petitioner would be entitled for the refund granted by the Authority.

- iv.** Initially, the Exporter to whom the petitioner has sold the goods had not mentioned the name and GST Identification Number of the petitioner.
 - v.** However, the authority granted refund considering the factual aspect of the matter i.e. details about the goods sold by the petitioner to the Exporter and further transferred by the Exporter to the third party.
 - vi.** It is also true that subsequently, at the request of the petitioner, correct form was submitted by the Exporter to the authority and, therefore, this aspect was required to be considered by the Appellate Authority which is essentially not done in the present case.
 - vii.** Hence, as per the Hon'ble Court the impugned order is required to be quashed and set aside.
 - viii.** The appeal filed by the CGST is revived. It would be open for the petitioner to file additional documents, if any, along with an affidavit in support of its claim of refund before the Appellate Authority.
 - ix.** The Appellate Authority shall decide the appeal afresh, without being influenced by the earlier order as well as by this order and decide the appeal after examining all the documents on record
- and giving an opportunity of hearing to the parties concerned. All issues are kept open before the Appellate Authority and the Appellate Authority shall decide all issues.