

Tax Digest

- Recent case laws



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

22nd May 2023

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



- High Court directs petitioner to approach authorities for benefit under amnesty scheme providing opportunity to seek revocation of cancellation of registration as per Notification No. 03/2023-Central Tax-Madras HC
- Rummy is predominantly a game of skill, not chance, whether played with stakes or not and is not considered gambling; Show Cause Notice (SCN) of Rs. 21,000 crore issued by the Revenue department on Gameskraft's online gaming activities to be quashed being illegal, arbitrary, and without jurisdiction-Karnataka HC
- 5% GST to be paid on lump sum amount of bonus paid by recipient to employees of Canteen Service Provider: AAR
- The Goods and Services Tax authorities are seeking near real-time access to banking transactions of the taxpayers, as a means to detect fake invoices and excess use of input tax credit (ITC) by sections of businesses.

NEWS
FEED

- Where appeal preferred by assessee with a delay of 536 days against order demanding short payment of GST was dismissed, limitation having expired after normalization of COVID-19 pandemic situation, writ petition against said dismissal order was also to be dismissed-**Chattisgarh HC**
- Confiscated truck of petitioner to be released after furnishing bond and deposit of Rs. 1 lac: **Gujarat HC**
- Since, show cause notice issued to assessee was vague to extent of not communicating relevant information and material, same was to be quashed with a liberty to competent authority to proceed in matter in accordance with law-**Madhya Pradesh HC**
- HC affirmed assessment order demanding tax & penalty on ground of entries in diary recovered by SIB during inspection-**Allahabad HC**
- **Madras HC Orders Goods' Buyer to Deposit 200% Penalty for Illegal GST IT.**
- Finance Ministry sources said that the centre is not planning any major rationalisation of GST rates or tax slabs until after the 2024 Lok Sabha elections.
- The CESTAT, Kolkata in *M/s. Bhootpurva Sainik Kalyan Sangh v. Commissioner of Central Excise & Service Tax* [Service Tax Appeal No. 566 of 2011 dated May 11, 2023] held that, there should be mens rea to evade payment of service tax for demand of service tax and penalty beyond period of limitation.

1. High Court of Rajasthan in the case of Gajrar Singh Ranawat Vs Union of India(D.B. CIVIL WRIT PETITION NO. 5141 OF 2023 DATED MAY 2, 2023)

- i. The petitioner-firm has submitted that the petitioner-firm is in business of construction of roads and for the said purpose, it requested the supplier to supply certain material on which GST is payable.
- ii. It is also submitted that though the supplier has already paid GST on the supplied items, however, ignoring the same, the respondent has passed an order for return of Input Tax Credit claimed by the petitioner.
- iii. The learned counsel for the petitioner has submitted that he does not want to press the reliefs prayed for declaring Section 16(2)(aa), 16(2)(c) of the Act of 2017 and Rule 36(4) of the Rules of 2017 as unconstitutional with a further prayer that the writ petition may be disposed of while quashing the impugned order

with a direction to the respondent to pass a fresh order after providing opportunity of hearing to the petitioner.

- iv. Since learned counsel for the petitioner is not pressing the reliefs for declaring the provisions of Section 16(2)(aa), 16(2)(c) of the Act of 2017 and Rule 36(4) of the Rules of 2017 as unconstitutional, the order passed by the respondent is quashed and set aside.
- v. The respondent is directed to pass a fresh order after providing opportunity of hearing to the petitioner.

2. High Court of Madhya Pradesh in the case of Durge Metals Vs Appellate Authority and Joint Commissioner State Tax(WRIT PETITION NO. 6124 OF 2020 DATED 10.05.2023)

- i. It is the contention of counsel for the petitioner that the show cause notice was vague to the

- extent of not communicating the relevant information and material thereby disabling the petitioner to respond to the same, and therefore, all consequential actions of passing of order and dismissal of appeal are vitiated in law.
- ii. Learned counsel for the petitioner has placed reliance upon decision of the Division Bench of Jharkhand High Court (***M/s Sidhi Vinayak Enterprises v. The State of Jharkhand & ors***) including WP(T) No.745/2021 rendered on 14th-15th, September 2022, the facts and circumstances of which are similar if not identical to the facts and circumstance prevailing herein. It is urged that show cause notice in ***M/s Sidhi Vinayak Enterprises (supra)*** was identical to the show cause notice issued in the present case vide Annexure P-1 to the extent of being vague and cryptic.
- iii. The Jharkhand High Court has dealt with the provisions of Section 74 and 75 of GST Act as well as Rule 142 of GST Rules.
- iv. It is true that the petitioner has not specifically raised the said ground before the appellate authority but the fact remains that mandatory provisions of Section 74 of GST Act make it incumbent upon the Revenue to ensure the show cause notice to be speaking enough to enable the assessee to respond to the same.
- v. Bare reading of the show cause notice (Annexure P-1) reveals that it neither contained the material and information nor the statement containing details of ITC transaction under question.
- vi. Section 75 of GST Act is complete Code in itself which prescribes for various stages or determination of wrongful utilization of ITC which is required to subject to affording of reasonable opportunity of being heard to the assessee. Since the Statute itself prescribes for affording reasonable opportunity, it is incumbent upon the Revenue to afford the same and any deficiency in that regard vitiates the end result.
- vii. In view of above and the following decision of the Jharkhand High Court, this Court has no manner of doubt that the

very initiation of the proceedings by way of show cause notice is vitiated for the same being vague.

- viii.** Accordingly, impugned orders and the show cause notice are quashed with a liberty to the competent authority to proceed in the matter in accordance with law, if so advised.