

**Tax Digest**

- Recent case laws



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

29<sup>th</sup> May 2023

Ph: 033-22306990/ 40032841  
Email id: [info@acbhuteria.com](mailto:info@acbhuteria.com)

**NEWS  
FEED**

- Provisional attachment orders have no effect after expiry of 1 year & no orders are required for setting aside same-Delhi HC.
- IGST collected on ocean freight from assessee on import of goods to be refunded: Gujarat HC.
- Writ petition seeking release of conveyance by transporter on ground of full tax payment by consignor to be dismissed-Madras HC.
- SCN can't be issued by Deputy Commissioner when Form GST DRC-01A was already issued by Assistant Commissioner: Calcutta HC
- HC directed to release goods and conveyance of assessee after furnishing bank guarantee of 75% of total demand: Gujarat HC



- **18% GST on Contracts for Electrical Work Undertaken by Govt Corporations: Telengana AAR**
- **The Commissionerate of CT & GST, Odisha, Finance Department has issued a Instructions vide No.CCT-PEI-POL-0155-2021/7869/CT&GST dated May 10, 2023 regarding care to be taken during the process of registration, cancellation of registration and revocation of cancellation of registration of fake taxpayers under GST.**
- **More steps needed to weed out fake ITC generators from GST system: CBIC member**
- **Crackdown on tax violations: 10,000 fraud GST registrations turn up in first week of drive**
- **Centre proposes to reduce GST on flex fuel automobiles; GST cut on hybrid vehicles also in the pipeline**

**1. High Court of Allahabad in the case of Nagarjuna Agro Chemicals (P.) Ltd. Vs State of UP(WRIT TAX NO. 336 OF 2023 Dated 15.05.2023)**

- i.** The petitioner is an assessee under the GST regime and has submitted returns for the assessment year 2019-20.
- ii.** The department apparently has not initiated any action referable to Section 61 of the Act. It transpires that the proceedings under Section 74 have been initiated by the department against the petitioner on certain grounds with regard to classification and consequential tax payable of certain goods.
- iii.** The department has examined the issue and ultimately passed the order impugned whereby the tax previously paid was found short and a demand has been raised for deposit of appropriate short fall in the deposit of tax as also interest and penalty.
- iv.** Section 61 regulates scrutiny of returns. In the process of scrutiny

of such returns the proper officer has been vested the jurisdiction to examine the return and in case any discrepancies are notice therein the proper officer can intimate such discrepancy to the assessee with the object of conferring an opportunity upon the assessee to rectify such discrepancy.

- v.** The discrepancy may be of different kinds. The proper officer is also vested with jurisdiction under Section 61 to proceed with issuance of notice against the assessee where the deficiency pointed out by the department is not rectified and no satisfactory explanation is furnished in that regard. The exigency, which is dealt with under Section 61 is therefore, quite distinct and is confined to the scrutiny of returns.

- vi.** In the present case it does not appear that any discrepancy was noticed by the department in the returns of the petitioner nor any such deficiency was pointed out to the assessee for it to be rectified by it. The returns, therefore, remain intact. It is later at the stage of consideration of the return that the

- department has found that proper tax has not been deposited and consequently proceedings under Section 74 has been initiated and concluded against the petitioner. In the statutory scheme the course followed by the department would clearly be permissible in law. The argument that unless deficiency in return is pointed out to the assessee, and an opportunity is given to rectify such deficiency, that the department can proceed under Section 74 is not borne out from the statutory scheme and the argument in that regard therefore, must fail.
- vii. The scrutiny proceedings of return as well as proceeding under Section 74 are two separate and distinct exigencies and issuance of notice under Section 61(3), therefore, cannot be construed as a condition precedent for initiation of action under Section 74 of the Act.
- viii. So far as the judgment relied upon by the counsel for the petitioner in the case of ***M/S Vadivel Pyrotech Private Ltd. vs. The Assistant Commissioner, (2022 U.P.T.C. 1769)***, we find that the observations of learned single judge of Madras High Court therein is in the facts of that case and do not lay down any proposition of law which restricts the exercise of jurisdiction under Section 74 upon issuance of notice under Section 61(3) of the Act.
- ix. In our view, merely because no notices were issued under Section 61 of the Act would mean that issues of classification or short payment of tax cannot be dealt with under Section 74 as exercise of such power is not dependent upon issuance of notice under Section 61. The argument is misconceived is thus, repelled.
- x. In the facts of the case, the Hon'ble Court finds that the petitioner has a remedy of preferring appeal which has not been availed. Various facts are asserted during the course of hearing to highlight the incapacity of the petitioner due to which the appeal could not be filed earlier.
- xi. The Hon'ble High Court therefore permits the petitioner to prefer such appeal and in the event such an appeal is filed, the same shall be entertained without raising any objection with regard to limitation.

**2. HIGH COURT OF PUNJAB AND HARYANA in the case of Shamim Akhtar v. Directorate General of GST Intelligence(CRM-M-33946 OF 2022 (O&M) DATED MAY 8, 2023 )**

- i.** The petitioner submits that it has been falsely implicated in the case in hand, which is evident from the fact that neither any cash nor any Agriculture Grade Urea was recovered from the petitioner.
- ii.** Learned Senior counsel submits that the arrest of the petitioner was in contravention of the statutory provisions of Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act") as the adjudication and assessment of tax liability in the instant case is yet to start.
- iii.** Learned Senior counsel further submits that the entire case of the petitioner is based on the statement of Manoj Kumar , who allegedly disclosed that he had supplied Agriculture Grade Urea to M/s Saba Chemicals Wood Products situated at Yamuna Nagar, however, said Manoj Kumar had not even been cited

as a witness by the respondent-Department. Hence, the alleged statement made by Manoj Kumar on the basis of which the petitioner had been arrayed as an accused, would not carry much evidentiary value.

- iv.** The petitioner is accused for the commission of offences under CGST Act, which are triable by the Magistrate and the maximum punishment prescribed for the alleged offences is upto 5 years, which would be dependent on the quantum of tax evasion.
- v.** The trial is at the stage of pre-charge evidence, hence, there is no likelihood of the trial concluding in the near future. Therefore, further incarceration of the petitioner in the aforesaid facts and circumstances would serve no useful purpose. Accordingly, the present petition is allowed. The petitioner be admitted to bail to the satisfaction to the trial Court/Duty Magistrate concerned.