

**Tax Digest**

- Recent case laws



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- The gross GST revenue collected in the month of April, 2023 is Rs. 1,87,035 crores. The revenues for the month of April 2023 are 12% higher than the GST revenues in the same month last year. For the first time, gross GST collection has crossed Rs. 1.75 lakh crores mark.
- Rejection of appeal filed against cancellation of registration on ground of delay of more than 6 months was sustainable when no explanation for condonation was offered- Madras HC
- HC directed Revenue to examine aspect of limitation on merits afresh in light SC decision on extension of limitation-Bombay HC



- **Pre-import condition' in Foreign Trade Policy for availing benefit of exemption from levy of integrated tax and GST compensation cess on import under Advance Authorisation Scheme cannot be characterized as arbitrary or unreasonable-SC**
- **Entitlement Of ITC After Cancellation Of GST Registration Can Be Considered During Revocation: Rajasthan High Court.**
- **Finance minister asked the Central Board of Indirect Taxes and Customs (CBIC) to automate goods and services tax (GST) return scrutiny.**
- **High Court of Calcutta admits writ petition challenging Constitutional validity of anti-profiteering provision but declines stay of order of NAA**
- **Bail to be granted to accused of availing fake ITC who co-operated with investigation which was already completed: Punjab and Haryana HC**
- **Department Cannot Decide Title Of The Goods When No One Disputes Ownership: CESTAT**
- **Profile Of An Assessing Authority Can't Be Stern And Unreasonable, Programmed Solely To Collect Tax: Kerala High Court**
- **GSTN issues new advisory for timely filing of GST Returns**
- **Proper officer empowered to summon any person to collect evidence; HC directs to respond to summons-Patna HC**
- **18% GST is leviable on lease of land for 90 years being classified under SAC 9972: Gujarat AAR**

**1. High Court of Delhi in the case of Sakshi Bahl Vs Principal Additional Director General(W.P.(C) NO. 3986 OF 2023 Dated 29.03.2023)**

- i. The petitioners have filed the present petition, inter alia, impugning an order dated 06.02.2023 (hereafter 'impugned order'), whereby the respondent (Principal Additional Director General, DGGI, DZU), had ordered provisional attachment of the savings bank accounts of the petitioners.
- ii. The respondent had also directed the Bank Branch Manager, HDFC Bank, not to permit any withdrawal from the bank accounts of the petitioners which were operated under the same PAN numbers, without the permission of the Department. 3. It is the petitioners' case that they are neither taxable persons nor persons covered under Section 122(1A) of the Central Goods and Services Tax Act, 2017 (hereinafter 'the Act'); therefore,

the impugned order is ex facie without jurisdiction.

- iii. The Department was of the view that the funds lying in the account of the petitioners belonged to the partners of M/s Hindustan Paper Machinery Industry and therefore, had proceeded to attach their bank accounts.
- iv. It is also the petitioners' case that the funds received by them were return of advances and loans that were extended by the petitioners.
- v. The petitioners have also annexed the statement of account which indicates that over a period of 9 years, ₹12.62 crores had been withdrawn from the account of petitioner no. 1 in favour of M/s Hindustan Paper Machinery Industry or Mr. Rajiv Chawla. The statement also indicates that the petitioner no. 1 had received ₹6,05,50,000/- during the aforesaid period.

vi. It is not necessary for this Court to examine the nature of the payment made by Shri Rajiv Chawla to the petitioners. Clearly, the same cannot be a subject matter of adjudication in these proceedings. However, it is clear that the petitioners are not taxable persons. The power under Section 83 of the Act, to provisionally attach assets or bank accounts is limited to attaching the bank accounts and assets of taxable persons and persons specified under Section 122(1A) of the Act.

vii. In view of the above, the impugned order cannot be sustained. It is not open for the respondent to attach the bank accounts of other persons on a mere assumption that the funds therein are owned by any taxable person.

viii. The attachment of bank accounts is a draconian step and such action can only be taken in case

conditions specified in Section 83 of the Act, are fully satisfied. The exercise of power under Section 83 of the Act must necessarily be confined within the limits of the aforesaid provision.

ix. In view of the above, the petition is allowed and the order dated 06.02.2023 in so far as it attaches the bank accounts of the petitioners is set aside.

**2. High Court of Tripura in the case of SR Constructions Vs Union of India Vs Union of India(W.P. (C) NO. 399 OF 2022 Dated 04.04.2023)**

i. The petitioner contended that the appeal against order dated 13.10.2020 has been rejected by the appellate authority but in the impugned order it is nowhere stated any reason so as to hold that the petitioner is not entitled to avail ITC on works contract service.

ii. Rather, it is merely observed that 'ITC on works contract service i.e.

- sub-contractor will charge GST in the tax invoice raised on the main contractor. The main contractor will be entitled to take ITC on the tax invoice raised by his sub-contractor. Therefore, ITC is not applicable to the petitioner in respect of subject works contract services for construction of a hotel building and amenity block'. He submitted that such observation is devoid of any logic. Further, it is submitted that a demand notice cannot be confirmed upon the assessee, without specifying the charges and notifying the exact statutory provisions, based on which such demand is proposed.
- iii. The respondent submitted that a clear reading of the impugned adjudication order reveals that in the impugned adjudication order the charges have been specifically put down and provisions have been clearly mentioned. Hence, the allegations are baseless. So, the action of the respondents Tax authorities is correct and the petitioner is liable to pay the amount demanded under the Input Tax Credit. It is seen from the record that the petitioner has already paid substantial amount as per Section 17(5)(c) of the Act.
- iv. As per the High Court it is clear that the petitioner has fulfilled all the conditions of work contracts as he is providing work contract services under a contract for construction of building of a Hotel wherein transfer of property in goods is involved in the execution of such contract.
- v. The Hotel Polo Pvt. Ltd. is immovable property. So, the petitioner has been providing work contract services to the owner of the hotel and not for it's own. Further, in providing taxable work contract services for the said construction of Hotel Building, he is entitled to take Input Tax Credit on the Goods and Services being utilized for providing the taxable work contract services. So, in this case, we find that the petitioner do not

fall within the definition of Section 17(5)(c) of the CGST At,2017. The demand raised on 30.09.2019 and the penalty imposed under Section 74(1) of the CGST Act,2017 is ultra vires, contrary to law and thus, the impugned order dated 01.02.2022, passed by the respondent no.3, the appellate authority affirming the order passed by the adjudicating authority on 13.10.2020, is liable to be set aside and quashed.