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GST Newsletter

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Where taxable persons, who could not file an appeal on or before 31-3-2023 against order passed under section 73 or section 74 within time period specified in section 107(1) or appeal was filed but same was rejected solely on grounds that said appeal was not filed within time period, in view of Notification No. 53/2023, dated 2-11-2023, matter was remanded to appellate authority-Orissa HC

Where petitioner's appeal under sub-section (1) of section 107 of OGST Act was not admitted being in contravention to sub-sections (1) and (4) of section 107 of GST Act, second Appellate Tribunal been not constituted, as an interim measure subject to petitioner depositing entire tax demand, rest of demand was to remain stayed during pendency of writ petition-Orissa HC

Criminal proceedings to be dropped where summons under GST have been complied with by the taxpayer-Jharkhand HC



Where petitioner raised concerns about potential bias since same officer who conducted investigation, search and seizure at petitioner's premises also issued order under section 74, said order was to be set aside and revenue was to be directed to initiate de novo proceedings, taking into account said guidelines outlined in Circular, dated 20-9-2022-Delhi HC

GSTN has developed a functionality to generate automated intimation in Form GST DRC-01C which enables the taxpayer to explain the difference in Input tax credit available in GSTR-2B statement & ITC claimed in GSTR-3B return. Upon receiving an intimation, the taxpayer must file a response using Form DRC-01C Part B. In case, no response is filed by the impacted taxpayers in Form DRC-01C Part B, such taxpayers will not be able to file their subsequent period GSTR-1/IFF-GST Advisory Dated 14.11.2023

Taxpayers can now file appeal in FORM GST APL-01 on the GST portal on or before January 31, 2024 for the order passed by proper officer on or before March 31, 2023-Notification No. 53/2023-Central Tax Dated 02.11.2023.

No coercive action to be taken against taxpayer as tax is recoverable from the job work service recipient Govt. department-Madras HC

A recent West Bengal GST notification said that an e-way bill will be required for the movement of goods valued at over Rs 50,000 within the state. The provision will also apply to job work goods.

Online game of rummy and poker, being distinct from offline games, are considered as game of skill and not game of chance-Madras HC

Interest and penalty not to be levied where excess ITC was availed but then reversed before its utilization-Punjab and Haryana HC

One person can be summoned as witness for two separate investigations of two separate entities on same subject matter-Patna HC

Belated appeal of taxpayer allowed as she had handed over cash for tax payment to the CA and he defaulted in paying the same-Calcutta HC

1. High Court of Allahabad in the case of Vacmet India Ltd. Vs Additional Commissioner Grade-2 (Appeal)[WRIT TAX NO. 687 OF 2019 Dated 17.10.2023]

In the present case, the goods were sent from one unit to another.

The petitioner, being a registered dealer, is adhering to the provisions of GST in letter and spirit.

In the normal course of business, the petitioner made a stock transfer from its Agra unit to its Kosi Kala unit at Mathura, which was accompanying with all proper documents, such as, stock transfer of challan, e-way bill, transporter bilty and no discrepancy was found in the said documents, except Part 'B' of e-way bill, which was required to be filled up by the transporter was not filled, but as soon as the said discrepancy came to the notice of the petitioner, the same was updated and filled up immediately and produced before the authority concerned, along with its reply.

He further submits that in the goods in question, there is no liability of tax as the goods were being sent from the petitioner's one Unit to another. He further submits that there is no element of any evasion of tax. He further submits that the goods were in transit, which was accompanying with documents and there

was a technical breach, after issuance of show cause notice, the same was rectified and therefore, the authority concerned ought to have released the goods without any demand/penalty.

Petitioner has placed reliance on the judgement of this Court ***in Shyam Sel & Power Limited v. State of U.P. [(2023) 11 Centax 99) All]*** as well as the judgement of the High Court of Telangana in ***M/s Same Deutzfahr India P Limited v. State of Telangana [Writ Petition No. 13392/2020, decided on 23-9-2020]***.

In the present case, the goods were sent from one unit to another. Learned ACSC could not point out any provision under the GST Act, which could show that while stock transfers are made within the State of Uttar Pradesh from one unit to another, *i.e.*, Agra to Mathura, the tax is to be charged as the goods in question, which were raw material and not a finished goods.

No evasion of tax could be attributed to the goods in question. Once there was no intention to evade payment of tax, the entire proceedings initiated against the petitioner are vitiated and are liable to be set aside.

In view of the aforesaid facts & circumstances of the case, the order passed by the Additional Commissioner, Grade - 2 (Appeal), State Tax, Mathura as well as the order passed by the Assistant

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Commissioner, State Tax, Mobile Squad, Unit - 4, Mathura cannot be sustained in law and the same are hereby quashed.

The writ petition succeeds and is allowed. The fine/penalty, if any, deposited by the petitioner pursuant to the impugned orders shall be refunded to the petitioner within a period of one month from the date of receipt of a certified copy of this order, failing which the petitioner shall be entitled to interest @ 8% per annum from the date of deposit of the amount till the actual payment made to the petitioner.

2. High Court of Uttarakhand in the case of Bhupendra Singh Vs State Tax Officer [WRIT PETITION (M/S) NO. 796 OF 2023 Dated 04.08.2023]

Petitioner-assessee was engaged in stockist activities.

Assessee received show cause notice for cancellation of GST registration.

Said notice was vague and did not indicate, as to whom assessee should meet or provide a proper opportunity for him to respond.

Assessee's registration was cancelled, without affording him an opportunity for a hearing.

The Hon'ble Court held that as per section 29(2) registration may not be cancelled unless person has been afforded an

opportunity of hearing before cancelling his GST registration.

Said notice and order canceling assessee's GST registration were not in accordance with law and, therefore, were to be set aside.