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Tax Digest

- Recent case laws

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NEWS

FEED

- *GST Payable On Medical insurance premium for employees and pensioners: Telangana AAAR (Order-in-Appeal No. AAAR/12/2022)*
- *Deposit in Electronic Cash Ledger prior to due date of filing of GSTR-3B return does not discharge tax liability: Jharkhand High Court.*
- *Withdrawal of Circular No. 106/25/2019-GST dated 29.06.2019 as rule 95A has been omitted, retrospectively w.e.f. 01.07.2019(Circular No. 176/08/2022-GST Dated 6th July 2022)*
- *Punjab Government has established a new Tax Intelligence Unit (TIU) in the State GST Commissionerate to monitor GSTN platform for better analanalsis of the digital data available over it.*
- *Maharashtra deputy chief minister asked state GST (Goods and Services Tax) department officials to work closely with the cyber security department of the home ministry to curb increasing cases of financial frauds and cyber crimes.*
- *The Central Board of Indirect Taxes and Customs (CBIC) has decided not to file a review petition in the Supreme Court against the latter's decision to quash integrated goods and services tax (IGST) on ocean freight.*
- *Those not paying the goods and services tax (GST) because of differences in the interpretation of the law may not be arrested by the authorities, according to instructions issued by the investigation wing of GST under the Central Board of Indirect Taxes and Customs (CBIC).*

1. High Court Of Bombay in the case of Euro Pratik Sales Corporation Vs. Union of India and Ors(WP 3380 OF 2022 Dated 17.11.2022)

- i. Petitioner was registered for GST.
- ii. The petitioner closed his business and applied for cancellation of registration which was granted by an order dated 18th July 2019.
- iii. At the time of cancellation, it is the petitioner's case that petitioner had to his deemed excise credit a sum of Rs.39,13,025/-. It is the petitioner's case that petitioner was entitled to claim transition credit in Form GST TRAN-1 under sub-section 3 of Section 140 of the Central Goods and Services Tax Act, 2017 (CGST Act).
- iv. Petitioner applied for transition but due to various reasons, the petitioner's transition could not take place.
- v. The petitioner is unable to transmit the credit because petitioner's registration has been cancelled.
- vi. Sub-section 3 of Section 29 provides cancellation of registration under this section shall not affect the liability of the person to pay tax and other dues under this Act or to discharge any obligation under this Act or the rules made thereunder for any period before the date of

cancellation whether or not such tax and other dues are determined before or after the date of cancellation.

- vii. Therefore, the petitioner must be permitted to transition the credit to the new GST regime.
- viii. Section 30 of the CGST Act provides for revocation of registration cancellation but only envisages situations where a registration is cancelled by the proper officer on his own motion. It does not factor in a situation as in the present case that is a registered person has applied for cancellation and an application for revocation of such a cancellation or restoration of the registration.
- ix. Here is a case, in the view of the court, the petitioner cannot be permitted to forgo a sum of Rs.39,13,025/- which according to the petitioner is entitled to deemed excised credit, particularly when under sub-section 3 of Section 29 his liability will continue even after cancellation of registration.
- x. It will be wholly unfair if the petitioner ends up having to forgo the deemed excise credit of a substantial amount of Rs.39,13,025/- .
- xi. The High Court has given the order to the petitioner to submit the physical application for revocation of

- cancellation of registration and registration will have to be restored.
- xii. After the restoration of registration, the Nodal Officer shall forward the restoration order to GSTN and GSTN shall on receipt of the order ensure that the portal is open in such a way that petitioner will be able to apply for migration under TRAN-1 and TRAN-2 before the 30th November 2022.
2. [High Court of Delhi in the case of Bimal Kothari Versus Assistant Commissioner\(W.P.\(C\) 9207/2019 & CM No.37947/2019 Dated 01.11.2022\)](#)
- i. Rule 25 provides that where a proper officer is satisfied that physical verification of the place of business of a person is required due to failure of Aadhaar authentication, before the grant of registration or due to any other reason after the grant of registration, such physical verification of the place of business, if deemed necessary, is to be carried out in the presence of the said person.
- ii. Furthermore, after physical verification is carried out, a report generated on that behalf along with other documents, including photographs, is required to be uploaded in FORM GST REG-30 on the common portal within 15 days following the date of such verification.
- iii. The concerned officer deemed it necessary to carry out physical verification of the petitioner's place of business before proceeding to pass the impugned order, which resulted in, as noticed above, the cancellation of the petitioner's registration. 11.1. Concededly, no notice was issued to the petitioner requiring his presence as mandated by Rule 25 at the time of verification.
- iv. Furthermore, it appears that the verification report, though generated, has not been uploaded, as required, in FORM GST REG-30 on the common portal. As noted above, the period stipulated

for the same is 15 days commencing from the date when physical verification is carried out.

- v.** The impugned order cancelling the petitioner's GST registration cannot be sustained.

- vi.** As per the Court, the petitioner's GST registration shall stand restored and the respondents/revenue will also accord to the petitioner a leeway of eight weeks to upload the returns for the period during which its registration stood cancelled.