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GST Newsletter

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Extraordinary jurisdiction under Article 226 of Constitution of India cannot be invoked especially since it is not a measure to be employed where assessee has not been diligent in availing alternate remedies within stipulated time-Patna HC

Where petitioner was not able to avail remedy before Appellate Tribunal because of non-constitution thereof, as a temporary measure proceedings for disputed amount would be put on hold subject to petitioner depositing specified amount as per section 112(8)-Rajasthan HC

Where in response to show cause notice, intending to cancel registration, assessee submitted reply but after remaining silent for over four and half months, revenue authorities cancelled registration, show cause notice and impugned order were to be quashed and set aside solely on ground of violation of principles of natural justice-Gujarat HC

Special procedure notified for manufacturers of Pan Masala & Tobacco products to be effective from Jan 1st, 2024[Notification No No. 47/2023-Central Tax Dated 25th September 2023]

Where driver of vehicle and person in charge of goods, at time of interception, did not produce any statutory documents pertaining to transportation of goods and e-way bills submitted after SCN was issued showed mismatch of vehicle, tax and penalty was rightly imposed-Kerala HC

HC disposed writ petition challenging adjudication order since suo motu revisional proceedings initiated by dept-Punjab and Haryana HC

HC directed GST authorities and police to investigate matter of misuse of PAN of petitioner for GST fraud-Madras HC

Where supplier had wrongly reported supply as B2C instead of B2B in Form GSTR-1 due to which relevant supply was not get reflected or also there was declaration of wrong GSTIN of recipient in Form GSTR-1, these issues ought to have been dealt with in terms of Circular No. 183/15/2022-GST, dated 27-12-2022-Calcutta HC

Where petitioner was in custody for more than 8 months for alleged GST fraud and was not required for further investigation, he was to be released on bail-Punjab and Haryana HC

1. High Court of Madras in the case of Vinayagamorthy Tyres Vs Deputy State Tax Officer[W.P. NO. 33229 OF 2022, W.M.P. NOS. 32651 & 32652 OF 2022 Dated 11.01.2023]

The petitioner is a partnership firm. It is a registered dealer under the erstwhile TNVAT Act. Proceedings were initiated owing to alleged difference in GSTR 1 & 3B on one side and GSTR 3B & 2A on the other. The aforementioned proceedings culminated in impugned summary of order, which is under section 73 of C-G&ST Act.

Adverting to Section 73(4), learned counsel for writ petitioner submits that a duty is cast on the first respondent to give an opportunity of hearing when an adverse decision *qua* a dealer is contemplated. In the case on hand, the impugned summary of order is adverse to the writ petitioner and opportunity of hearing is the issue.

Interestingly and intriguingly, it has been averred in the writ affidavit that it is not known whether personal hearing was provided to the petitioner. It has also been averred that this is owing to the Fact that what has been described as 'full-fledged portion of adjudication order' has not been uploaded and only summary of order has been uploaded. Prima facie, this Court is of the view that it is for the petitioner-assessee to say whether he was given an opportunity of personal hearing.

Be that as it may, it is also contended that on scrutiny of returns *qua* Section 61 of C-G&ST Act, Rule 142 of 'the Central Goods and Services Tax Rules, 2017' (C-G&ST Rules, 2017) kicks in and the same has been given a go by.

There is no disputation that the petitioner has neither preferred an appeal nor sent communication either within the prescribed period of limitation (3 months from date of communication of impugned summary or order) or the condonable period (1 month thereafter) of limitation *qua* statutory appeal under Section 107 C-G&ST Act.

The prescribed Period of limitation (three months) elapsed on 4-7-2022 and the condonable Period (1 month thereafter/therefrom) elapsed on 4-8-2022. However, the Writ petitioner submits that he has filed a rectification petition under section 161 of C-G&ST Act on 15-9-2022 which also is a way beyond the prescribed period *qua* a rectification application at the instance of an affected party.

Learned Revenue counsel, adverting to the aforementioned earlier proceedings dated 12-12-2022 and more particularly paragraph No. 8 thereat submits, on instructions, that the order that should have preceded the impugned summary of order was neither uploaded nor served (under acknowledgment) in any other manner permissible in law on a day prior to 4-4-2022. It is also submitted that it has not been served until this day.

In the light of the stated position of the respondents, the prayer in the captioned main writ petition cannot but be acceded to. Prayer in the captioned main writ petition acceded to. Captioned Writ Petition is disposed of as allowed albeit making it clear that if the respondents are to initiate proceedings afresh, it is open to

the respondents to do so and all the rights and contentions of both sides are preserved if proceedings are initiated afresh by the respondents. Consequently, connected Writ Miscellaneous Petitions are also disposed of as closed.

2. High Court of Delhi in the case of Zhudao Infotech (P.) Ltd. Vs Principal Additional Director General[W.P.(C) 3428/2023 & CM APPL. 13239/2023, CM APPL. 25805/2023 Dated 22.05.2023]

Petitioner's bank account was attached alleging they were indulged in evasion of GST while providing an online payment gateway. There was allegation that some merchants on-board petitioner's online payment platform were non-existent and that money was being paid to fake and non-existent merchant. A search was conducted on the premises of ZIPL as well as its Directors and orders attaching ZIPL's bank accounts were passed.

Aggrieved by the same, ZIPL filed its objections under Rule 159(5) of the CGST Rules, praying that its bank accounts be defreezed. The respondents did not consider the said objections and sent a letter dated 4-1-2023, informing ZIPL that its objections were not in the correct/prescribed format. Being aggrieved by the impugned orders, ZIPL approached this Court by filing a writ petition [W.P.(C) No. 492/2023], *inter alia*, praying that the impugned orders be set aside.

On the basis of petitioner's submissions the Hon'ble Court held that IPL's bank accounts could not be attached for any amount due and payable to the merchants using the

ZIPL's platform. The provisions of Section 83 of the CGST Act can be invoked for attaching the assets and bank accounts of a taxable person or a person specified under section 122(1A) of the CGST Act, if in the opinion of the Commissioner it is necessary to do so for the purpose of protecting the interest of government revenue.

Thus, the bank accounts of ZIPL cannot be attached for securing the revenue of another taxable person. It is implicit that the bank accounts and assets of only those taxable person or persons specified in Section 122(1A) of the CGST Act can be attached who may be liable for payment of any government revenue and the Commissioner is of the opinion that it is necessary to attach their assets in the interest of government revenue.

A debt owed by any person to the taxable person, whose assets or bank accounts are liable to be attached under section 83 of the CGST Act, can be attached being an asset of such a person. But the bank account of the person owing such debt cannot be subject to a provisional attachment order under section 83 of the CGST Act. The petitioner submitted that ZIPL had no issue in accepting the respondents' condition that the payments to various merchants be made only in the specified bank accounts as communicated to the respondents and as noted in the impugned order dated 1-2-2023. He also states that ZIPL has no cavil in undertaking that the amounts payable to the merchants and as recorded in the impugned order dated 1-2-2023 will be paid without holding back any amount.

Indirect Tax Updates

The Hon'ble Court considers it apposite to dispose of the present petition by setting aside the impugned orders attaching ZIPL's bank accounts albeit with the further direction that ZIPL shall make payments due to various merchants directly in their respective bank accounts as disclosed by ZIPL to the respondents and as recorded in the impugned order dated 1-2-2023. Insofar as the remaining amount of Rs. 69.92 crores is concerned, ZIPL shall transfer the same to its current account.

The respondents are not precluded from taking any effective steps, in accordance with law, in respect of various merchants if they are of the opinion that it is necessary to do so in the interest of protecting the government revenues.

It is also clarified that the respondents are not precluded from taking any action against ZIPL in accordance with law, if it is found that any amount is due and payable by ZIPL. The concerned Commissioner is also not precluded from taking protective action, in accordance with law, in respect of any liability of ZIPL, if in his opinion the interest of protecting the government revenue requires such action.