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GST Newsletter

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The gross GST revenue collected in the month of September, 2023 is Rs. 1,62,712 crores. The revenue for the month of September, 2023 is 10% higher than the GST revenues in the same month last year-Press Release Dated 03.10.2023

Proper officer should issue a summary of notice and demand electronically in FORM GST DRC-01 & DRC-02-Delhi HC

High Court remands matter for fresh consideration for taking into account precedent decision that penalty is not imposable for mere classification dispute-Kerala HC

Exemption from IGST for imports under EPCG Scheme available for the period from 1-7-2017 to 12-10-2017 also under Notification issued on 13-10-2017; High Court orders refund of IGST paid-Gujarat HC



Bajaj Allianz gets GST demand notice for ₹1,010 crore .It received the show cause cum demand notice from the Directorate of GST Intelligence for the non-payment of GST on co-insurance and re-insurance premiums

Search cannot be conducted until all the conditions u/s 67 of the CGST Act are fulfilled-Delhi High Court

Endorsement rejecting petitioner's appeal against assessment order was to be set aside as requirements for filing appeal were duly compiled by petitioner-Andhra Pradesh HC

GST demand notices have been served on Indian companies in recent weeks in cases where overseas staff have been deputed to India

SCN lacking specific reasons for cancellation of GST registration is invalid, order for suspension quashed-Delhi HC

GST Registration once granted cannot be cancelled due to an allegation not listed in Section 29(2) of CGST Act-Allahabad HC

The GSTN has issued an advisory to inform that e-Invoice JSON download functionality is now live on the GST e-Invoice Portal. Additionally, this functionality allows to download all e-invoices reported across all six IRPs (Invoice Registration Portals), i.e. complete data-GSTN News Dated 03.10.2023

Natural justice can't be said to be served if assessee did not submit reply to SCN or appear for personal hearing-Jharkhand HC

Madras HC directed dept. to restore GST registration after payment tax and filing of returns by petitioner-Madras HC

Anti-profiteering not applicable as, allotment of flats, development permissions etc. done post-GST only-CCI

No willful disobedience where Commissioner failed to provide seized documents copies as Dept. is tracing missing files-Delhi HC

1. High Court of Kerala in the case of Henna Medicals Vs State Tax Officer[WP(C) NO. 30660 OF 2023 dated 19.09.2023]

The only ground on which the petitioner has been said to have availed the input tax credit is the difference between GSTR 2A and GSTR 3B.

This Court, after taking note of the judgment of the Supreme Court in the case of *The State of Karnataka v. M/s Ecom Gill Coffee Trading Private Limited* 2023 (3) TMI 533 SC as well as Calcutta High Court judgment in *Suncraft Energy Private Limited v. The Assistant Commissioner, State Tax, Ballygunge Charge* [Judgment dated 2-8-2023 in MAT No. 1218/2023] has held that the input tax credit of the assessee under the GST regime cannot be denied merely on the difference of GSTR 2A and 3B.

Paragraph 8 of *Diya Agencies v. The State Tax Officer* [Judgment dated 12-9-2023 in WPC 29769/2023] of this Court would read as under:

In view thereof, I find that the impugned Exhibit P-1 assessment order so far denial of the input tax credit to the petitioner is not sustainable, and the matter is remanded back to the Assessing Officer to give opportunity to the petitioner for his claim for input tax credit. If on examination of the evidence submitted by the petitioner, the assessing officer is satisfied that the claim is *bonafide* and genuine, the petitioner should be given input tax credit.

Merely on the ground that in Form GSTR-2A the said tax is not reflected should not be a sufficient ground to deny the assessee the claim of the input tax credit. The assessing authority is therefore, directed to give an opportunity to the petitioner to give

evidence in respect of his claim for input tax credit. The petitioner is directed to appear before the assessing authority within fifteen days with all evidence in his possession to prove his claim for higher claim of input tax credit. After examination of the evidence placed by the petitioner/assessee, the assessing authority will pass a fresh order in accordance with law."

In view thereof, the present writ petition is allowed.

The matter is remitted back to the file of the Assessing Authority/1st respondent to examine the evidence of the petitioner irrespective of the Form GSTR 2A for the petitioner's claim for the input tax credit. After examination of the evidence placed by the petitioner/assessee, the Assessing Authority shall pass fresh orders in accordance with the law.

2. High Court of Allahabad in the case of Kumar Brothers Vs Additional Commissioner-Grade 2(Appeal)[WRIT TAX NO. 1424 OF 2022 DATED 03.10.2023]

petitioner has submitted that goods in question were transported through Truck No. RJ47 GA2801 and was accompanied with genuine prescribed documents as per the provisions of the Act, however, the authorities in order to harass the petitioner had seized the goods.

He further submits that the purchaser is registered firm and regularly filing the returns and there is no irregularity in the transaction. He further submits that electronic credit ledger was also brought on record which shows that the purchaser doing its business prior to the date of present purchase and subsequently thereafter but without considering the material on record, the impugned order has been passed illegally.

Indirect Tax Updates

Admittedly, the goods in question was purchased by M/s Shlok Brothers, Delhi from the petitioner and along with the goods requisite documents as provided under the Act was accompanied and its genuineness was not disputed however after detention of the goods a report was called from the Delhi G.S.T. Authority about genuineness of purchaser (M/s Shlok Brothers, Delhi) and same was given but at the time of inspection no business activity was found at the disclosed place of firm and on the said basis, the goods were seized and demand as well as security were raised for release of goods.

The petitioner has brought on record the various documents which shows that the purchaser was registered dealer and its registration is continuing/functioning.

Further the returns have been filed and the electronic credit ledger also shows that the business is being undertaken by the purchaser *i.e.* M/s Shlok Brothers, Delhi. Once from the material brought on record, it shows that the business were being undertaken by the parties, the appellate as well as assessing authority were not justified in imposing/demanding the security as well as levying penalty under section 129 (3) of the Act. The appellate authority has rebutted the documents on the ground that it is an afterthought.

Once the material have been brought on record copy of which has also been filed as Annexure no. 9, the registration certificate of the purchaser shows that registration of the purchasing firm is valid and the firm is functional. Further Annexure no. 10 shows that copy of electronic credit ledger has been brought on record for a period of 1-11-2020 to 31-1-2021, where various credits have been mentioned. These facts ought to have been considered by the appellate authority before confirming the

impugned order dated 11-11-2020. The documents accompanied with the goods itself shows that the purchaser is involved in the business activity *i.e.* purchase and sale as per the provisions. Once the purchaser is shown as functional/active the authorities ought not to have pass the impugned order confirming the seizure order dated 11-11-2020.

In view of of above, the impugned orders dated 21-1-2022 passed by Additional Commissioner, Grade -2 (Appeal) Commercial Tax, Judicial Division Basti, respondent no. 1 and the order dated 11-11-2020 passed by Assistant Commissioner, Commercial Tax, Mobile Squad, Basti, respondent no. 2 are hereby quashed.