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GST Newsletter

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Where railway scrap located in Jharkhand was auctioned in Bihar to petitioner-firm having Bihar registration and invoice was issued imposing CGST and SGST, in absence of any proof that goods were moved to Bihar from Jharkhand, Railways could not be directed to issue revised invoice levying IGST to claim ITC particularly when for invoice issued in 2017-18, ITC was claimed beyond time in 2021-Patna HC

Revenue was directed to consider representation made by assessee which was required by for renewal of petitioner's GST registration-Madras HC

Where petitioner, a legal heir of deceased individual formed a partnership firm with deceased's wife and son for providing Works Contract Services, order of demand initiated against deceased were to be set aside and revenue was directed a fresh proceeding to be initiated regarding liability of Proprietorship Firm operated after deceased individual-Orissa HC

When High Court specifically directed Commissioner of Central Tax and Customs to consider representation of assessee Assistant Commissioner ought not to have entertained representations and passed orders-Telangana HC

Where assessee is substantially aggrieved by assessment order, which itself was a rectification order passed by revenue suo motu, it is open for petitioner to file rectification application, furthermore revenue obligated to review application, conduct a hearing, issue appropriate orders- Madras HC

HC directs refund of amount recovered directly from bank account of petitioner subject to final outcome of proceeding-Madras HC

Where refund of ITC had not been credited to petitioner's account despite sanction of refund due to system constraint, petitioner was directed to file GST Form DRC-03 under head "intimation for Voluntary Payment" for sanctioned refund amount-Kerala HC

Where GST TRAN-1 order is passed but instead of uploading it on GST Portal of petitioner, another order of different party is wrongly uploaded, revenue was expected to correctly upload order on GST Portal of petitioner-Allahabad HC

Allahabad HC directed assessee to participate in proceedings and file objections to show cause notice-Allahabad HC

HC directed petitioner to file application for release of goods and vehicle before appellate authority-Gujarat HC

1. High Court of Allahabad in the case of Sahib Furniture Vs State of UP[WRIT C NO. 1299 OF 2020 Dated 11.10.2023]

Petitioner was transporting goods from Ludhiana to Kolkata. Truck was intercepted.

Reasons for detention as elaborated were that TDS-01 Form was not downloaded for carrying goods from one State to another .

Petitioner filed a reply to show cause notice taking a ground that goods was liable to IGST or CGST and, hence, authorities were not empowered to take action as was proposed.

Action was taken under section 129(1) of UPGST Act and based upon quantum of goods, impugned order came to be passed proposing levy of tax and penalty.

It was held that Circular issued by State of U.P. itself states that in movement, if goods were not carrying E-way Bill, authority carrying goods would be called upon to upload E-way Bill.

Action of respondent in present case was contrary to circular issued by State Government.

Detention was fully based upon foundation that TDS-01 Form was not accompanied along with goods which were in transit.

Impugned orders solely founded on allegation of not carrying of TDS-01 Form, might not be sustained.

Even otherwise, under section 68, only a power vests with respondent authorities to inspect goods in movement.

However, facts remained that entire foundation for passing order was not carrying TDS-01 Form.

As such, impugned orders could not be sustained.

2. High Court of Kerala in the case of Goparaj Gopalakrishnan Pillai Vs State Tax Officer[WP(C) NO. 29855 OF 2023 Dated 05.10.2023]

It appears that the petitioner had availed excess input tax credit. The petitioner was issued show cause notice to which he filed reply.

In response to the notice issued, the petitioner stated that he mistakenly entered SGST of Rs.36,47,624.24 instead of Rs.3,64,764.24 in GSTR-3B of December 2017 (difference amount of Rs.32,82,860/-). The petitioner also submitted that he had not utilised ITC till the said date. Excess input tax credit of was deducted in the GSTR-3B of August 2018 (Financial Year 2018-2019).

An intimation of liability in Part-A of Form GST DRC-01A under Section 73(5) of the Act

Indirect Tax Updates

was issued to the petitioner. It appears that the petitioner did not file any reply to the said intimation.

The question whether input tax credit to a dealer would be denied merely on the ground of non-remittance of tax by the supplier/dealer on the goods/services supplied to the assessee as the same tax is not reflected in the Form GSTR-2A, would be enough to deny the claim of input tax credit to the assessee has been considered in the judgment dated 12th September 2023 passed in WPC No.29769 of 2023 in the case of Diya Agencies v State Tax Officer.

Paragraph 8 of the said judgment reads as under: 8. 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 GSTR2A 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.

Considering the aforesaid judgment, the present Writ Petition is allowed. Impugned order for denial of input tax credit to the petitioner to the extent of 19,830/- is hereby set aside and the matter is remitted back to the Assessing Office to give one opportunity to the petitioner for giving evidence and documents in support of his claim for input tax credit which has been denied.

If on examination of the evidence and documents submitted by the petitioner, the Assessing Officer is satisfied that the claim is bonafide and genuine, the petitioner should be given credit of input tax which has been denied by the order.