

A.C. BHUTERIA & Co.

CHARTERED ACCOUNTANTS

16, STRAND ROAD
DIAMOND HERITAGE, ROOM 703
KOLKATA - 700001

PH: 033-46002382/ 40042183
EMAIL: INFO@ACBHUTERIA.COM

www.acbhuteria.com

GST Newsletter

September 13, 2023



Advance ruling regarding applicability of exemption notifications to services supplied cannot to be given to recipient of services- AAR WB

Where demand order was challenged on ground that amount demanded was more than amount proposed in notice while proper officer submitted that already an appropriate notice was issued though assessee was not summoned again, since impugned order being appellable, writ petition was to be disposed-Punjab and Haryana HC

Hon'ble SC stayed HC order where HC differentiated gaming on the basis of game of skill or game of chance- Supreme Court of India

Where petitioner-assessee requested to allow writ petition challenging first appellate order on ground that second appellate tribunal had not yet been constituted, matter was to be listed-Orissa HC



No violation of principle of natural justice where order u/s 74 passed after 2 months of SCN-Madras HC

Where refund amount was erroneously calculated by authorities, ignoring DIC's audit report upon which calculation had been made for refund of an amount of Rs.17,80,000/, authorities recalculated and awarded refund of Rs. 1,71,824 to petitioner, as an interim relief concerned authorities were directed to refund admitted amount to petitioner-Orissa HC

No IGST is payable on ocean freight under reverse charge mechanism on CIF contracts (costs, insurance and freight contracts); show cause notice for recovery alleging short payment of IGST on ocean freight on import under CIF contract, was to be set aside-Gujarat HC

Where petitioner-assessee requested to allow writ petition challenging first appellate order on ground that second appellate tribunal had not yet been constituted, matter was to be listed-Orissa HC

High Court permits petitioner to present appeal again before appellate authority which was dismissed as filed 10 days after condonable period-Madras HC

Where Tribunal was not yet constituted so that assessee could avail appellate remedy, subject to deposit of 20 per cent of remaining amount of tax in dispute, in addition to amount deposited earlier under section 107(6), assessee must be extended statutory benefit of stay-Patna HC

1. High Court of Allahabad in the case of Khan Enterprises Vs Additional Commissioner [WRIT TAX NO. 857 OF 2021 DATED 04.09.2023]

Goods that was intercepted was coming from Gurgaon, Haryana to Robertsganj, U.P.

Goods was detained taking ground that driver gave subsequent statement that goods were to be unloaded at Ghaziabad and not at Robertsganj.

No such fact was mentioned by detaining/seizing authority in detention order in Form GST MOV – 6.

Further, no discrepancy was found by seizing authority in accompanying goods with regard to quantity, quality or item disclosed.

Detention of goods could not be justified.

Goods were accompanying tax invoice and accompanying e-way bill was valid on date of detention/ interception on 30-9-2020 and passing of order on 5-10-2020 - In fact, validity of e-way bill with regard to earlier transaction was valid upto 6-10-2020.

Held that since during validity of first e-way bill, the subsequent e-way bill was generated and submitted before detention authority, i.e. before expiry of earlier e-way bill, seizure could not be justified - Subsequent statement of truck driver alleging to unload goods at Ghaziabad instead of Robertsganj could not be recorded by any stretch of imagination and not permissible in eye of law without any cogent material on record, which showed that perverse action had been taken against petitioner - Form GST MOV - 04 dated 5-10-2020 i.e. physical verification report - From

a perusal of MOV - 04 and physical verification goods were found as per disclosed documents and in absence of any justification to treat product different as disclosed by revenue, action for seizure/detention, demand of levy of penalty was vitiated

Once owner of goods has come forward levy of penalty under section 129(1)(b) could not be justified - Section 129(1)(a) provides that where owner of goods come forward for payment of penalty amount of penalty payable should be 200 per cent of tax payable, whereas in case in hand penalty was levied to tune of 200 per cent of value of goods - Hence, order passed by respondent could not sustain and to be set aside.

2. High Court of Madras in the case of Sabari Infra Private Limited Vs Assistant Commissioner (ST), Chennai [W. P. NOS. 22369, 22370 OF 2023 & OTHERS Dated 31.07.2023]

Show Cause Notice was issued by respondent-department to petitioner- assessee and same was uploaded on web portal.

Due to absence of reply from petitioner, assessment orders dated 29-04-2023 were passed against petitioner under Section 74.

Petitioner challenged assessment orders on ground that notices, which preceded impugned orders appeared under heading 'Dashboard' of 'Additional Notices and Orders' section whereas, notices should have been put by respondent under heading 'Dash Board' of 'View Notices and Orders' section of web portal.

Held that complex architecture of web portal resulted in failure on part of

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petitioner to notice issuance of show cause notice on 20-03-2023 - As it went unnoticed by petitioner, impugned orders were passed on 29-04-2023 .

Therefore, impugned orders were set aside and matter was remitted back to respondent.