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## GST Newsletter

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The Central Government constitutes State Benches of the Goods and Services Tax Appellate Tribunal and this regard notification has been issued-Notification S.O. 4073(E) dated 14.09.2023

Where management of hotel was imposing GST on customers beyond prescription of Act, Tax Department would not be liable for same; Consumer Forum should not entertain any petition against statutory authority-Madras HC

The GSTN has issued an advisory to inform you that it has been decided by the Government to impose a time limit on reporting old invoices on the e-invoice IRP portals for taxpayers with AATO greater than 100 crores and taxpayers in this category will not be allowed to report invoices older than 30 days on the date of reporting-GSTN Advisory dated 13.09.2023

Where ownership of previous entities eligible for Budgetary Support Scheme were changed and as per section 22 of CGST Act, new GST registrations were taken, new entities could not claim exemption under Budgetary Support Scheme-Sikkim HC

Supply of aircraft type rating training services to commercial pilots, in accordance with training curriculum approved by Directorate General of Civil Aviation for obtaining extension of aircraft type ratings on their existing licenses, is not exempted from GST-AAAR UP

HC granted bail to accused who was in jail from 1 year for forming bogus firms since trial wasn't likely to conclude soon- Punjab and Haryana HC

HC directed dept. to release confiscated goods of assessee on depositing amount of penalty and bond towards fine-Gujarat HC

After having come to a conclusion that appeal was not filed in time and was not maintainable, Appellate Authority was not justified in recording findings on merits to reject registration; only if appeal was not time barred, appeal would then be required to be effectively adjudicated on merits on basis of elaborate findings- Bombay HC

HC directed dept. to refund amount recovered in excess of amount which was required to be paid as pre-deposit- Calcutta HC

Where on basis of vehicle details in E-way bill, department doubted that petitioner was involved in paper transaction without actual movement of goods, as petitioner appeared in office of proper officer with all required documents, but without examining same, GST registration was cancelled, matter was to be readjudicated-Delhi HC

1. High Court of Delhi in the case of Solidum and Stars Guild LLP Vs Commissioner of Central Tax, Appeal-II(W.P.(C) NO. 8182 OF 2023, CM APPL. 43743 OF 2023 Dated 24.08.2023)

The petitioner had filed an application dated 21-5-2021 claiming refund of the aforesaid amount of Rs. 76,76,106/-, relating to ITC in respect of goods exported during the period November 2020 to March 2021.

The filing of the said application was acknowledged by the concerned authority in the requisite form (GST-RFD-02). Thereafter, the Adjudicating Authority issued a Show Cause Notice dated 19-7-2021, proposing to reject the petitioner's claim.

The petitioner responded to the said Show Cause Notice enclosing therewith details of all the vendors; their respective GSTIN; and the particulars of the invoices.

The petitioner, *inter alia*, claimed that the purchases made were genuine from dealers that were registered.

Notwithstanding the above, the Adjudicating Authority rejected the petitioner's application for refund by the impugned order dated 5-8-2021. The Adjudicating Authority found that on verification, one of the suppliers named M/s Siddhi Impex (GSTIN: 07EUOPS8731J1ZR) was found to be non-existent.

The impugned order dated 5-8-2021 records that verification was conducted by the office of the Assistant Commissioner, Division Old Delhi, CGST Delhi North and it was informed that on physical verification, the said entity was found to be non-

existent at their registered place of business.

Based on the aforesaid information, the Adjudicating Authority rejected the petitioner's claim for refund.

It is material to note that there was no allegation in respect of any of the other suppliers, the details of which were provided by the petitioner.

The petitioner preferred an appeal under section 107 of the Central Goods and Services Tax Act, 2017. However, as noted above, the petitioner's appeal was rejected by the impugned Order-in-Appeal dated 31-5-2022.

The said impugned order indicates that the Appellate Authority had considered the details of invoices furnished by the petitioner and had found that two invoices pertained to M/s Siddhi Impex. The ITC in respect of the two invoices amounted to Rs. 21,76,260/- (Rs. 12,13,872/-+ Rs. 9,62,388/). The Appellate Authority noted that the said supplier was found to be non-existent and concluded that the appellant 'had not received any input/input services from M/s Siddhi Impex' and had claimed refund fraudulently on the strength of the invoices issued by M/s Siddhi Impex.

On the basis of the aforesaid reasoning, the Appellate Authority rejected the petitioner's appeal. There was no allegation regarding any of the other suppliers, the details of which were supplied by the petitioner.

Pursuant to the physical verification of M/s Siddhi Impex, the registration of the said supplier was cancelled. The petitioner voluntarily deposited the amount of Rs. 21,76,260/-, being the amount of refund

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claimed in respect of the two invoices of Siddhi Impex, in its electronic credit ledger.

As noted above, there is no allegation regarding any irregularity in respect of the supplies made by the suppliers other than M/s Siddhi Impex. There is also no dispute as to the quantum of the ITC in respect of those supplies. Neither the Adjudicating Authority nor the Appellate Authority has raised any doubt in respect of those supplies.

Thus, the Hon'ble Court finds no reason whatsoever for denial of refund in respect of ITC pertaining to supplies made by suppliers other than M/s Siddhi Impex.

In view of the above, the present petition is allowed. The impugned orders are *set aside* to the extent as aforesaid.

The Adjudicating Authority has been directed to process the petitioner's claim for a sum of Rs. 54,99,846/- pursuant to its application dated 21-5-2021, along with interest, in accordance with law as expeditiously as possible.

**2. [High Court of Delhi in the case of Geetanjali Trade Fincap \(P.\) Ltd Vs Commissioner of Delhi Goods & Services Tax\(W.P.\(C\) NO. 8257 OF 2023, CM APPL. 31784 OF 2023 Dated 05.09.2023\)](#)**

The petitioner has filed the present petition, *inter alia*, praying that the petitioner's GST Registration be cancelled w.e.f. 31-12-2019 and not from any date prior to that. The petitioner had filed an application dated 4-1-2020 seeking cancellation of its GST registration w.e.f 31-12-2019 on the ground that the petitioner had closed its business.

The respondent issued a notice dated 27-7-2020 seeking certain clarifications under

Rule 9(2) of the Central Goods and Services Tax Rules, 2017.

The petitioner responded to the said notice on 27-8-2020. It is also the petitioner's case that since the notice dated 27-7-2020 was beyond the period of six months from the petitioner's date of application, the same was not permissible.

The Proper Officer did not accept the petitioner's response to its notice and rejected the petitioner's application for cancellation of its GST registration by an order dated 27-11-2020.

Thereafter, on 5-3-2021, the Proper Officer issued another Show Cause Notice calling upon the petitioner to show cause why its registration not be cancelled on the ground that the petitioner had not filed returns for a continuous period of six months. Thereafter, the Proper Officer passed an order dated 15-3-2021, cancelling the petitioner's registration pursuant to the Show Cause Notice dated 5-3-2021.

It is the petitioner case that it is not required to file any returns as it had closed down its business and informed the same to the concerned authorities.

It is material to note that the order of cancellation dated 15-3-2021 does not indicate any reason for cancelling the petitioner's GST registration with retrospective effect, that is, w.e.f. 1-7-2017.

The said order also contains a Tabular Statement which indicates that no tax was due from the petitioner.

As noted from the above, the petitioner's registration was proposed to be cancelled on the ground that he had not filed returns for a period of six months. There was no indication that the petitioner's GST

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Registration would be cancelled with retrospective effect.

The Hon'ble Court also found that the impugned order dated 15-3-2021 provides no reasons for cancellation of petitioner's GST registration with retrospective effect.

In the Court's view considering that the only allegation against the petitioner was not filing returns for a period of six months is no plausible reason to cancel its GST registration with retrospective effect, that is, from 1-7-2017.

In view of the above, the impugned order cannot be sustained. The same is liable to be set aside. It is the petitioner's case that it had discontinued its business w.e.f. 31-12-2019, the Hon'ble Court considered it apposite to direct that the petitioner's cancellation of GST registration shall take effect from 31-12-2019.

The Hon'ble Court also clarified that this would not preclude the department from taking any steps or measures in the event that the department finds any tax, interest or penalty is due from the petitioner.