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### GST Newsletter

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Where petitioner received Notice of Intimation issued under rule 86A(1)(a) and (c) of TNGST Rules blocking credit purchases made by petitioner from one supplier, petitioner placed reliance on CBIC letter No. CBEC-20/16/05/2021-GST, dated 2-11-2021, petition was to be disposed of permitting petitioner to give a representation to impugned notice-Madras HC

When raw materials purchased are already used in manufacture of finished goods and finished goods are destroyed in fire accident completely, ITC is required to reversed; when raw materials procured are lost in fire accident before use in manufacture of finished goods, ITC is required to reversed; when destroyed finished goods can be sold as steel scrap in open market and output tax liability on such supply of scrap is paid, ITC is required to reversed-AAR Telengana

The Government has clarified that the tax payers, notified for generation of e-invoices and supplying goods or services to government departments / agencies, need to generate B2B e-Invoices with the GSTIN of the Government department/agency- Press Release Dated 14.09.2023

Wherein ITC fraud allegation, assessee filed writ petition, in view of fact that petitioner had full opportunity to respond to show cause notice, petitioner should comply with same and adjudication authority should proceed accordingly-Delhi HC

Where period of one year has expired after order defreezing assessee's bank account was passed, concerned bank would not interdict operations of petitioner's bank account on basis of impugned order-Delhi HC

DGGI of concerned zonal unit can't take decision for cancelling GST registration; Superintendent of Central Tax of concerned Range should take an independent decision-Kerala HC

Where show-cause notice under section 74 was issued by Competent Authority and assessment order was also passed by Competent Authority, source and jurisdiction of Authority being unquestionable, once petitioner has submitted to jurisdiction of Assessing Officer and thereafter assessment order has been passed, in all fairness, assessee should have approached appellate forum as contemplated under section 107-MP HC

**1. High Court of Madras in the case of Tvl. M.B. Enterprises Vs Assistant Commissioner (ST)(W.P. NO. 23144 OF 2023, W.M.P. NOS. 22693 AND 22694 OF 2023 Dated 07.08.2023)**

The impugned order bearing Ref.No.33AAAPR6503P1ZI/2019-2020dated 6-1-2023 has been passed in gross of violation of principles of natural justice.

The impugned order preceded a Show Cause Notice in Form GST DRC-01 dated 7-11-2022 issued under Rule 142(1) of the CGST Rules, 2017.

The said notice has called upon the petitioner to reply by 7-12-2022. It has however not given any specific date for the petitioner to appear for a personal hearing. Thus, the petitioner has not participated in proceeding. The impugned order is also not a detailed order.

Section 75(4) of the CGST Act, 2017 deals with the "General Provisions Relating to Determination of Tax".

It is mentioned therein that, an opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person.

Therefore, the Court is inclined to quash the impugned order and remits the case back to the respondents to pass appropriate orders within a period of six weeks from the date of receipt of a copy of this order.

**2. High Court of Madras in the case of SRM Engineering Construction Corporation Ltd. Vs Assistant Commissioner (ST) (FAC)(W.P.NO. 25013 OF 2023, W.M.P. NOS. 24441 AND 24442 OF 2023 dated 24.08.2023)**

The petitioner has challenged the impugned Assessment order dated 23-2-2023. The impugned order precedes notice issued in GST DRC 01 on 19-12-2022. The petitioner however failed to respond to the same and therefore on account of the mismatch between the GSTR1 and GSTR 3B and also difference in ITC between GSTR 3B and GSTR 2A, the impugned order has been passed.

Normally period of limitation for filing an Appeal would have expired on 22-5-2023. With a further grace period of 30 days, the last date for filing an appeal would have expired on 22-6-2023.

The petitioner has thus not filed a Statutory Appeal before the Appellate Commissioner under section 107 of the GST Act and in view of the decision of the Hon'ble Supreme Court in Assistant Commissioner (CT) LTU, Kakinada and others v. Glaxo Smith Kline Consumer Health Care Limited, 2020 SCC Online SC 440. The petitioner has now filed this writ petition on 21-8-2023 with a delay of 58 days. Although the Hon'ble Supreme Court in Assistant Commissioner (CT) LTU, Kakinada and others v. Glaxo Smith Kline Consumer Health Care Limited, 2020 SCC Online SC 440. has declared that orders cannot be challenged under Article 226 of the

## *Indirect Tax Updates*

Constitution of India beyond the statutory period of limitation for filing appeal, Court is inclined to dispose this writ petition.

In instant writ petition, explanation was given by assessee that assessee's business was closing and active staffs left company - GST portal was not logged in frequently by new and few employees and company came to know about demand only when they manually received recovery notice.

Though adjudication orders cannot be challenged under article 226 of Constitution beyond statutory period of limitation for filing appeal, in view of facts of case instant writ petition was to be disposed of. Delay in filing appeal was to be condoned. Assessee was to be directed to file a statutory appeal