

Tax Digest

- Recent case laws



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NEWS

FEED

- When writ petition was filed only after lapse of more than thirteen months, petitioner was directed to deposit 50 per cent of amount demanded under impugned assessment order even if principles of natural justice was violated by respondent and impugned assessment order is non-speaking order with regard to petitioner's contention(HIGH COURT OF MADRAS A. Palanisamy v. Deputy State Tax Officer (Circle) W.P. NO.3921 OF 2023 , W.M.P. NO. 3987 OF 2023 dated 10.02.2023)
- The CBIC has issued notification to provide that if applicant opts for authentication of Aadhaar number then he must undergo authentication of Aadhaar number and the date of submission of the application in such cases shall be the date of authentication of the Aadhaar number, or fifteen days from the submission of the application whichever is earlier(Notification No. 04/2023 Dated 31.03.2023)
- Specific Tax based levy of GST compensation cess w.e.f 01.04.2023 on commodities like pan masala, tobacco, etc(NOTIFICATION NO. 1/2023-COMPENSATION CESS [F. NO. 190354/85/2021-TRU], DATED 31-3-2023)



- The Government has notified new GST Compensation Cess rates for the products like Pan Masala, Tobacco and manufactured tobacco substitutes, etc. and now the levy of cess is changed from ad valorem to specific tax based levy on the retail sale price(Notification No.2/ 2023-Compensation Cess (Rate) Dated 31.03.2023)
- Sale of commercial built-up space by NMDC can't be treated as function of Municipality as envisaged under Article 243W: AAAR
- Since reply to show cause notice demanding GST on road restoration charges recovered by municipality was not filed and such notice was issued by wing other than investigation wing, interim stay was not liable to be granted(Gujarat HC)
- Services Provided By EY India To Overseas EY Entities Not “Intermediary Services”: Delhi High Court Directs IGST Refund To EY India
- Different Amount Mentioned In Tax Invoice And E-Way Bill: Orissa High Court Orders Issuance Of Fresh Assessment Order
- Since order was passed by respondent-department due to non-constitution of tribunal, petitioner-assessee would be required to present/file his appeal under Section 112 of Bihar Goods and Services Tax Act, 2017, once tribunal would be constituted and made functional-Bihar HC.
- It is not necessary to keep assessee in custody when investigation has been completed; High Court grants bail in subject to conditions and furnishing of bail/surety bond-Punjab and Haryana HC

1. HIGH COURT OF ANDHRA PRADESH in the case of Sri Sai Balaji Associates Vs State of Andhra Pradesh(WRIT PETITION NO.4663 OF 2023 Dated 07.03.2023)

- i.** The grievance of the petitioner as ventilated by learned counsel is that though the Department in terms of Section 70 (1) of G.S.T Act, has power to summon any person whose attendance is considered necessary either for giving evidence or producing a document or any other thing in any inquiry in the same manner, however that power is not extended to direct the summoning of a party to stop all further payments, which he ought to receive from the customers.
- ii.** Learned counsel would submit in notice such a direction is contained which is beyond the jurisdiction of the Department. He would thus pray to allow the writ petition and delete the last paragraph in the impugned notice.
- iii.** Learned Government Pleader while admitting that in a notice issued

Under Section 70 (1) of GST Act, the concerned officer may not have power to issue a direction to stop payment by the summoning party to the assessee, would however argue, he has such power Under Section 83 of GST Act which deals with provisional attachment of any property or bank account of the assessee.

- iv.** As can be seen, the impugned notice was issued under Section 70(1) of GST Act but not under Section 83 of GST Act. Section 70 (1) of GST act only says that the proper officer shall have the power to summon any person whose attendance is considered necessary either to give evidence or to produce a document or any other thing in the enquiry and nothing more.
- v.** Therefore, it is obvious that under Section 70 (1) of GST Act the proper officer cannot exercise powers to direct the summoning party to stop payment to the assessee which is beyond the scope of 70 (1) of GST Act.

vi. Of course, under Section 83 of GST Act, if the Commissioner is of the opinion that for the purpose of protecting the government revenue, he may by order provisional attachment of any property including bank account belonging to the taxed person or any person specified in Sub Section 1 (A) of Section 122 in such manner as prescribed.

vii. The impugned notice was issued under Section 70 (1) of GST Act but not in exercise of powers conferred under Section 83 of GST Act. Thus at the outset, it is clear that the Department has exceeded his power in directing M/s. Sterlight Technologies Limited to stop further payments to the petitioner herein. Therefore, such a direction is beyond the jurisdiction of the Department. The same is liable to be set aside to that extent.

viii. Accordingly, this writ petition is allowed and the impugned portion of the notice issued under Section 70 (1) of GST Act i.e., "in view of the above explanation you are hereby requested stop all further payments from here onwards until clearance is

given by the undersigned" is set aside and liberty is given to the Department to proceed in accordance with law so far as the other part of the notice issued by him under section 70 (1) of GST Act is concerned. No costs.

2. HIGH COURT PUNJAB AND HARYANA in the case of New Hanumat Marbles Vs State of Punjab(C.W.P. NO. 10560-10568 OF 2021 Dated 30th January 2023

i. The petitioner argued that the search was conducted in the premises of the petitioner on 3-1-2018 and some documents were seized from his office. Thereafter, he was issued notice and his lawyer Naresh Chawla appeared and submitted his power of attorney.

ii. The grievance of the petitioner is that before passing final order on assessment, Rule 142(1) of the CGST Act is mandatory to be followed and GST DRC-01 has to be uploaded electronically on the website.

- iii. Learned counsel for the respondents has argued that summon/notice dated 19-2-2021 was given to the petitioner before initiating proceedings of passing assessment order under Section 74(5) of the Central GST Act/Punjab GST Act, 2017.
- iv. Thereafter, on 5-3-2021, another notice under Section 70, 50 and 74 of Central/Punjab GST Act, 2017 read with Section 20 of IGST Act, 2017 was issued for 10-3-2021 and served through email (Annexure R-3). On 10-3-2021 also, the petitioner did not appear and, thereafter, the case was decided on merits.
- v. Learned counsel for the petitioner has referred to the judgment passed by the **High Court of Madhya Pradesh in M/s. Shri Shyam Baba Edible Oils Vs. The Chief Commissioner** and another, decided on 19.11.2020 in which the High Court of Madhya Pradesh was examining a case where show cause notice had been issued to the petitioner. However, as per the stand taken by the State, show cause notice dated 10-6-2020 was communicated to the petitioner on his email address. Reference was made to Rule 142(1) of the CGST Act and it was observed that the only mode prescribed for communicating to the show cause notice/order is by way of uploading the same on the website of the revenue.
- vi. In the facts of the present case, it is nowhere stated in the reply dated 6-8-2021 filed by the respondents that they had uploaded the notice on the website of the revenue as per Rule 142(1) of the CGST Act, 2017 before passing final orders dated 12-3-2021 and 10-3-2021 (Annexures P-6 and P-7).
- vii. Hence, the present writ petitions are allowed and orders and detailed order are set aside and the matter is remanded back to the Assessing Officer to pass fresh orders after issuing notice as contemplated under Rule 142(1) of the CGST Act and afford opportunity of hearing to the petitioner(s) in accordance with law.