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Tax Digest

- Recent case laws

31st October 2022

NEWS FEED

- *In partial modification to the Office Memorandum of even no., dated 29th May 2017, 30th November, 2018, 22nd January, 2019, 5th March, 2019, 20th August, 2019, 26th August, 2019, 6th July, 2020 and 4th October, 2021, with respect to constitution of the Law Committee, the membership has been reconstituted [OFFICE MEMORANDUM F.NO. 25/COMMITTEES-1/GST COUNCIL-PART-1 GST COUNCIL SECRETARIAT, DATED 17-10-2022]*
- *GST Council has issued OM to address practice of recurring SCNs in case of enforcement actions.*
- *Delhi High Court asks Loreal to deposit profiteered amount .*
- *Bombay High Court Sets Aside Arbitral Award Which Favoured BCCI In IPL Telecast Rights Dispute.*
- *GSTIN Linking Cannot Be Denied Merely For Providing Information In Wrong Form-as per Rajasthan High Court*
- *Works contract services provided to Malabar Cancer Centre Attracts 18% GST: Kerala AAR*
- *The Uttarakhand Authority of Advance Ruling (AAR) has ruled that when the transaction value of the goods transport agency (GTA) service is added to the free value of diesel, the value of free diesel filled by the service recipient in the vehicle(s) provided by the applicant will be subject to GST.*

1. High Court of Orissa M/S. Durga Raman Patnaik Vs Additional Commissioner of GST (Appeals) (First Appellate)[W.P.(C) No. 7728 of 2022]

- i. Since Appellate Tribunal has not yet been constituted as per Section 109 of the CGST Act, there being no alternative remedy available for the petitioner to question the veracity of the order passed in the first appeal, this Court prefers to exercise its writ jurisdiction to undo prejudice and injustice caused to the petitioner.
- ii. Thus, this Court is of the considered view that grave injustice would ensue if extraordinary jurisdiction under Article 226 of the Constitution of India is not exercised.
- iii. In the event GST registration number is not restored, the petitioner would not be in a position to raise a bill as e-invoice system has been put in place in the GST regime.
- iv. So, if the petitioner is denied of revival of GST registration number, it would affect his right to livelihood (Article 21 of the Constitution of India) as also right to carry on business [Article 19(1)(g)].
- v. If he is denied of his right to livelihood because of the fact that his GST Registration has been cancelled, and that he has no remedy of appeal especially when Appellate Tribunal has not been constituted in terms of Section

109 read with Section 112, then it would tantamount to of provision enshrined under Article 21 of the Constitution of India as the right to livelihood springs from the right to life avowed under Article 21.

- vi. High Court held that Appellate Authority should have borne in mind the predicament faced by taxpayers on the introduction of new set of procedures by way of promulgation of the CGST Act and the OGST Act and rules framed thereunder and time required to be taken to get acquainted.
- vii. It is taken into consideration that as the consequential effective step is required to be taken by the proper officer/Registering Authority/Superintendent, it is, therefore, deemed necessary instead of directing the Appellate Authority to do the needful, this Court requests the proper officer to grant opportunity to the petitioner for taking all required step to revive registration.
- viii. The High Court passed these judgements
 - a. The petitioner is permitted to file returns for the period prior to the cancellation of registration, if such returns have not already been filed, together with tax defaulted which has not been paid prior to cancellation along with interest for such belated payment of tax and statutory payments and fee fixed for belated filing of returns for the

- defaulted period under the provisions of the Act, within a period of sixty days (60) days from the date of receipt of a copy of this Judgment, if it has not been already paid.
- b. It is made clear that such payment of tax/interest/penalty/ fine/fee etc. shall not be allowed to be made or adjusted from and out of any Input Tax Credit which may be lying unutilized or unclaimed in the hands of the petitioner.
- c. On payment of tax, interest, penalty and late fee, if any, and uploading of returns, as conceded by both the parties, the petitioner is at liberty to file the application for revocation of cancellation of registration within a period of 7 days therefrom along with petition for condonation of delay. In such eventuality, the proper officer/registering authority/competent authority shall consider the same favourably by condoning the delay and revoke the cancellation of registration.
- d. The opposite parties shall take suitable steps by instructing GST Network, New Delhi or any other agency responsible for maintaining the Web Portal to make suitable changes in the architecture of the GST Web Portal to enable the petitioner to file his returns and to pay the tax/interest/penalty/fine/fee and it is to be ensured by the department that there shall be no technical glitch during the period specified herein.
- e. The above exercise shall be completed by the opposite parties within a period of ninety (90) days from the date of receipt of a copy of this Judgement.
- f. The Authority concerned is at liberty to verify the veracity of the claim(s) made in the returns so furnished and appropriate steps in accordance with law after affording reasonable opportunity of hearing to the petitioner.
- 2. High Court of Gujarat in the case of Chromotolab and Biotech Solutions v. Union of India[R/Special Civil Application No. 16308 of 2020] Dated 21st October 2022**
- i. The petitioner supplied finished goods to pharmaceutical companies located in Special Economic Zone (SEZ) issuing tax invoices.
- ii. It was stated that the tax invoices were examined and admitted by the competent officer of the Special Economic Zone.
- iii. The supply of the goods by the petitioner was zero-rated supply within the purview of Section 16 of the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as "IGST Act").

- iv. For the supplies of finished goods during the period from August 2017 to October 2017, raising invoices, the petitioners claimed refund claim under Section 54 of the CGST Act.
- v. The petitioner came to be served with the notice (2) of Rule 90 of the CGST Rules.
- vi. The petitioner addressed communication to Assistant Commissioner, CGST & Central Excise, pointing out that proper notice was not issued and the notice was even otherwise given after a lapse of one year without raising any query or point out any deficiency.
- vii. The petitioner also submitted an undertaking stating that they would not file an appeal against the rejection of refund claim and requested to give re-credit of the amount claimed, which was rejected, as above.
- viii. The petitioner approached this Court by filing the present petition as despite the petitioner having continuously followed-up with the respondents since last one year, there had been no response and re-credit was not given.
- ix. The petitioners filed their refund application in the common portal on 28.12.2018 and ARN was generated.
- x. The refund claim of the petitioner otherwise satisfied all requirements of Section 54 of the CGST Act and the attendant Rules and the petitioner was eligible to seek refund.
- xi. The refund claim was however considered as time barred stating that the application was liable to be treated to have been filed on 17.10.2019 and not on 28.12.2018.
- xii. The respondents have relied on Circular dated 15.11.2017, which stipulates procedure to refund of IGST to Special Economic Zone developer or a Special Economic Zone unit.
- xiii. The Circular provided for procedure of filing application and filing of physical application with documents cannot have an overriding operation to the detriment of the assessee, who filed the refund application in the common portal of the respondents, which was acknowledged and ARN was also generated.
- xiv. The date of application filed on the portal has to be treated as one to reckon whether it was filed within two years as contemplated under Section 54 of the CGST Act.
- xv. **In Commissioner of Central Exercise, Bolpur Vs. Ratan Melting & Wire Industries [2008(12) STR 416 (SC)],** it was held by the Supreme Court that the circular contrary to the statutory provisions cannot operate. **In J.K.**

Lakshmi Cement Ltd. Vs. Commercial Tax Officer, Pali [2018(14) GSTL 497 (SC)], the Supreme Court held that the circular cannot alter the statutory provisions to the detriment to the assessee. **The Division Bench of this Court in M/s. Ayana Pharma Ltd. Through its Authorised Reprs. Mulraj K. Chheda Vs. Union of India in SCA No. 14158 of 2021,** recognised the mode of electronic filing.

- xvi. The High Court Held that that the date of filing of the application by the petitioner on common portal would be liable to be treated as date of filing claim for refund to the satisfaction of requirement of Section 54 of the CGST Act and Rule 89 of the CGST Rules. The procedure evolved in Circular dated 15.11.2017 cannot operate as delimiting condition on the applicability of statutory provisions.