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## GST Newsletter

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Where assessment orders were passed without hearing assessee, same was to be set aside and matter was to be remitted on condition that assessee remitted 10 per cent of disputed tax amount-Madras HC

Where assessee was deprived of ITC as supplier had wrongly mentioned GSTIN of another person in invoice, order rejecting ITC claim of assessee was to be set aside and matter was to be remanded to Assessing Officer to provide assessee with an opportunity to redress said grievance-Madras HC

Where assessee filed a GSTR 1 return, mistakenly uploading duplicate invoices, upon receipt of an intimation regarding said discrepancies, assessee replied thereto by stating that it was an inadvertent error and that correct details were contained in assessee's GSTR 3B return and also certifies that relevant purchasers stated that they had availed of input tax credit (ITC) by excluding duplicate invoices, therefore in view of documents submitted by assessee order imposing tax liability was to be set aside and matter was required to be reconsidered so as to ascertain whether purchasers indeed did not avail of excess input tax credit on basis of duplicate invoices-Madras HC

Delhi HC remanded matter to AO who passed order holding that reply wasn't satisfactory without giving opportunity to clarify

Chattisgarh HC directs GST Council to reconsider exclusion of small scale ice cream manufacturers from composition scheme

Portion of High Court's order pertaining to applicability of good faith clause to officers of State was to be expunged and appeal was to be disposed of as said observation made by high court was deemed as an advance ruling made before initiation of legal proceedings, compromising integrity and independence of adjudication and if such observations remain, they will affect integrity and independence of that adjudication, compromising prosecution and defence equally-Supreme Court

HC directed dept. to hear belated appeal of assessee on merits who inadvertently committed error in GSTR-3B-Madras HC

Petitioner had not suffered any legal injury by 101st Amendment, especially since he was not person involved in commercial activities and he did not claim any prejudice having been caused to him-Patna HC

Services of providing property on lease/rent for commercial use would be covered under SAC 997212 and taxable at 18%: AAR Rajasthan

Requirement to submit certified copy of order would be insignificant in view of availability of order on online portal-Gujarat HC

HC directed assessee to avail statutory alternative remedy of appeal as there was no violation of principle of natural justice-Calcutta HC

**1. High Court of Madras in the case of Kumaran Cotspin VS Deputy State Tax Officer[W.P. NO. 8255 OF 2024/W.M.P. NOS. 9213 AND 9219 OF 2024 Dated 27.03.2024]**

Disparity between GSTR 3B returns and GSTR 2A returns- Petitioner-assessee was a dealer in polyester yarn and had filed returns pertaining to assessment period 2017-2018.

In relation thereto, upon noticing disparity between petitioner's GSTR 3B returns and auto populated GSTR 2A returns, show cause notice was issued to petitioner on 23.08.2023. Petitioner replied thereto on 27.10.2023 by enclosing documents such as cash ledger details, reconciliation report, purchase register, details of taxable inward supplies received from registered suppliers etc.

Assessment order was issued on 30.12.2023.

Assessment order was challenged on ground that documents submitted by petitioner were not duly considered and that petitioner was not provided a reasonable opportunity.

Held: In instant case, entire tax liability was on account of disparity between petitioner's GSTR 3B return and auto-populated of GSTR 2A return.

In accordance with Circular No.183/15/2022-GST dated 27.12.2022, petitioner obtained a certificate from supplier albeit belatedly. As per reply of petitioner, documents which proved that purchases were genuine, were also submitted.

In these circumstances, it was just and necessary that petitioner should be provided with an opportunity of hearing to effectively deal with tax demand after putting petitioner on terms. Therefore, impugned assessment order was set aside on condition that petitioner would remit a sum of Rs.1,00,000/- towards disputed tax demand [Section 73 of Central Goods and Services Tax Act, 2017/Tamil Nadu Goods And Services Tax Act, 2017]

**2. High Court of Bombay in the case of Cowtown Software Design (P.) Ltd. Vs Union of India[WRIT PETITION (L) NO. 31152 OF 2023 Dated 26.03.2024]**

Assessee received a show cause notice under section 73 of GST Act to show cause as to why tax along with applicable interest and penalty, should not be recovered from assessee on ground that excess ITC had been availed by assessee on basis of difference in ITC between GSTR 3B and GSTR 2A returns.

Additionally, said document contained date and time of personal hearing, which skipped attention of assessee.

Assessee made detailed submission denying allegations made in notice and specifically sought an opportunity of personal hearing - While filing aforesaid Form, automatic dialogue box in respect of "option of personal hearing" was marked "NO" – According to assessee it skipped mind of assessee to mark it "YES".

However, authority, without granting a personal hearing, issued impugned order confirming demand.

HELD: Where a request is received in writing from a person chargeable with tax or penalty for a personal hearing, then an opportunity of personal hearing has to be given to that person.

However, no such personal hearing had been given by authority to assessee before passing impugned order .

This was in violation of principles of natural justice and exfacie contrary to provisions of section 75(4) of CGST / MGST Act.

Therefore, impugned order was to be set aside [Section 75(4) of Central Goods and Services Tax Act, 2017/Maharashtra Goods and Services Tax Act, 2017]