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## GST Newsletter

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Where assessee while filing returns had inadvertently shown TDS number of awarder in place of awarder's GST number, assessee was to be allowed to make a representation before concerned GST Authorities for rectification through portal or manual mode-Patna HC

Where assessment order was issued to assessee with regard discrepancies between assessee's GSTR 3B returns and auto populated GSTR 2A without considering detailed defence put forth by and Chartered Accountant's certificate was also rejected without explanation, same was to be set aside and matter was remanded back-Madras HC

Where appeal of assessee challenging order rejecting partial refund was rejected on ground of delay in view of notification no. 53/2023 Central tax dated 2-11-2023, which provided that no appeal shall be admissible in respect of a demand not involving tax, writ petition filed by assessee against order in appeal was to be rejected as no cogent reason had been assigned to declare said notification ultra vires to Constitution of India-High Court of Chattisgarh.

Where despite ample opportunities, assessee failed to reply or prove his claim for ITC, writ petition of assessee challenging assessment order disallowing claim of assessee and raising demand was to be dismissed-Kerala HC

Where assessee was required to avail opportunity for release of confiscated goods by depositing amount of tax, penalty, fine etc. within a reasonable time but even on expiry of about one and a half month it did not avail of said opportunity and moreover assessee made oral request for modifying condition of furnishing bank guarantee by permitting assessee to submit bond for total value of confiscated goods, due to disputed facts regarding transaction and recipient firm's existence, instant writ petition was to be dismissed-Jharkhand HC

Where, as per Notification No. 37/2017-CT, dated 13-10-2017, a unit in Domestic Tariff Area (DTA) can supply services to a unit in SEZ without payment of IGST, subject to furnishing of Letter of Undertaking(LUT) to jurisdictional Commissioner, therefore, following aforesaid notification, applicant is not required to pay GST under RCM on specified services-AAR Gujarat

Since no physical/offline notice was issued to or served on assessee before cancelling its registration and essential requirement of rules of natural justice had remained to be fulfilled, impugned order was to be set aside-Allahabad HC

Since issuance of tax invoice and its presence at time of detention of goods was not doubted and inasmuch as on date of transaction being performed, assessee was a registered dealer, penalty was to be reduced-Allahabad HC

Where amount of tax and penalty demanded in impugned order was much more than amount specified in show cause notice, impugned order was to be quashed-Uttarakhand HC

**1. High Court of Telangana in the case of Qualcom India (P.) Ltd Vs Deputy Commissioner (ST)(FAC)[WRIT PETITION NOS. 8869 AND 8871 OF 2023 Dated 20.03.2024]**

Assessees claimed refund of unutilized ITC which were rejected. Assessees appeals against rejection were allowed and refund amounts were disbursed.

Thereafter, applications filed by assesseees for grant of interest on delayed refunds were rejected by department.

HELD: Since there is a specific provision under section 56 of CGST Act, for grant of interest only in event of delay in making of refund by department, said statutory prescription carries an obligation to pay interest.

Section 56 does not provide for any circumstances or situation for, delayed refund not attracting interest - Rule 94 of CGST Rules provides for certain periods which shall not be included in period for which interest is payable, which means interest on delayed refund is automatic .

Moreover, there was no reason or material available with department for not releasing refund amount promptly – There was no preventive or prohibitory order or any such restrictive directions from any Court of law also from making

refund within stipulated time.

Hence, non-granting of interest in such a case amounted to failure to discharge statutory duty/obligation by refund sanctioning authority.

Respondents were therefore, to be directed to make payment of interest on delayed refund immediately [Section 56, read with section 54 of Central Goods And Services Tax Act, 2017/Telangana Goods And Services Tax Act, 2017 - Rule 94 of Goods and Services Tax Rules, 2017] [Paras 8 to 18 and 20]

Interest on delayed refunds – Refund of unutilised ITC Calculation of interest

Assessees claimed refund of unutilized ITC which were rejected. Assessees appeals against rejection were substantially allowed and refund amounts were disbursed.

Thereafter, applications filed by assesseees for grant of interest on delayed refunds were rejected by department.

After decision of grant of interest, State Counsel referring to explanation to section 56, contended that interest was to be calculated from decision in appeal proceedings.

HELD: Order by Appellate Authority, Tribunal or Court of law, as case may be,

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for purpose of its enforceability, has to be treated as if it is an order passed under sub-section (5) of section 54.

Interest was thus to be calculated, immediately after sixty days, within which payment of refund was to be made [Section 56 of Central Goods And Services Tax Act, 2017/Telangana Goods And Services Tax Act, 2017]

### **2. High Court of Jharkhand in the case of East India Udyog Ltd Vs State of Jharkhand[W.P.(T) NOS. 2853 TO 2855 OF 2023 Dated 13.03.2024]**

Assessee firm was engaged in business of manufacturing various types of power distribution transformers, conductors and cables and was duly registered under Jharkhand Goods and Service Tax Act, 2017.

Being manufacturer, assessee firm was engaged in outward and inward supply of goods in connection to its business.

There was some delay in filing of return for period from June 2018 to March 2019 but return could at last be filed within time as notifications were issued on 31st December 2018, 24th June 2020 and 1st June 2021 extending time for filing of return-Assessee firm received notice for the payment of interest to tune of Rs. 92,96,042.91 on account of delayed filing of return.

Show-cause notice under section 73 of the JGST Act was issued and, without affording any opportunity of hearing, Form GST DRC-07 was issued and demand of Rs. 92,96,042.91 under section 73 of the JGST Act was made without any adjudication.

Additional Commissioner State Tax (Appeal) confirmed demand of interest.

Held; recovery proceeding under section 73 of the CJST Act could not be initiated without a final adjudication.

Without initiating any adjudication proceedings under section 73 or 74 of the CGST Act 2017, where liability had been disputed, department could not raise a demand for payment of interest on delayed furnishing of Return under section 39 of the CGST Act.

Since there was no adjudication before demand for payment of interest was raised because of delayed filing of returns, department could not raise a demand for payment of interest. Impugned orders were set aside [Section 38, read with sections 73 or 74 of Central Goods and Services Tax Act, 2017/Jharkhand Goods and Services Tax Act, 2017].