

A.C. BHUTERIA & Co.

CHARTERED ACCOUNTANTS

16, STRAND ROAD
DIAMOND HERITAGE, ROOM 703
KOLKATA - 700001

PH: 033-46002382/ 40042183
EMAIL: INFO@ACBHUTERIA.COM

www.acbhuteria.com

GST Newsletter

May 27, 2024

NEWS FEED

Where demand was raised against assessee under section 73 of CGST Act, proper officer had not considered detailed reply submitted by assessee before passing impugned order, merely held reply was devoid of merits and without any justification, had not applied his mind to reply, impugned order was to be set aside-Delhi HC

Where assessee participated in jewellery exhibition outside India, supply of services had taken place outside India, as per Notification No. 10/2017- Integrated Tax (Rate), dated 28-6-2017 issued in exercise of powers conferred under sub-section(3) of section 5 of IGST Act, receiver of service i.e., assessee was person registered in taxable territory, services received outside India, taxable at hand of assessee-Rajasthan HC

Where impugned order was passed confirming tax proposal on ground that assessee did not respond to show cause notice, since assessee's reply to notice in Form GST ASMT-10 was not taken into consideration in impugned order, impugned order was to be set aside and matter was to be remanded for re-consideration-Madras HC

Where tax proposal under section 73 of CGST Act was confirmed only because assessee failed to reply to show cause notice by enclosing relevant documents, intimation and show cause notice were uploaded on “View Additional Notices and Orders” tab on GST portal, impugned order was to be set aside and assessee permitted to contest tax demand on merits-Madras HC

Where assessee involved in alleged commission of economic offences, for making huge unlawful gain by causing huge loss to State Exchequer, was putting up show for sincere involvement in business and carrying out same, as also entitlement to huge sum as incentive in form of ITC, was not to be granted anticipatory bail-Orissa HC

Service of ‘marketing/recruitment/referral consultant’ provided to foreign colleges isn’t intermediary service-Telangana AAR

Where pursuant to impugned assessment orders, bank account of assessee was attached and a sum was appropriated therefrom, however, assessee was unaware of proceedings culminating in impugned orders as he was under complete bed rest on doctor's advice, impugned order was to be set aside subject to condition that assessee remitted 10 per cent of disputed tax demand in respect of each assessment period-Madras HC

Where impugned order was passed imposing penalty on assessee for non-filing of annual return, whereas assessee submitted that turnover of assessee did not cross threshold limit of 2 crores, thus he was not required to file return, impugned order was to be set aside and matter was to be remanded for re-consideration-Madras HC

Delay in invoking proviso to Rule 23 by petitioner-assessee was to be condoned and application for revocation of cancellation of registration was to be considered in accordance with law by respondent-department as long as petitioner-assessee deposited all taxes, interest, late fee, penalty etc. due and comply with other formalities

1. High Court of Allahabad in the case of Axrecycle (P.) Ltd Vs Assistant Commissioner Mobile Aquad[WRIT TAX NO. 712 OF 2024 Dated 07.05.2024]

Assessee impugned order passed under section 129(3) of CGST/UPGST Act levying penalty and appellate order dismissing appeal filed against said order. Only controversy involved was with regard to non filling up of Part 'B' of e-Way Bill. Undisputed facts were, invoice had details of truck that was carrying goods; goods were not in variance with invoice; and, department had not been able to indicate any kind of intention of assessee to evade tax.

HELD: Non filling up of Part 'B' of e-Way Bill by itself without any intention to evade tax cannot lead to imposition of penalty under Section 129(3) of CGST/UPGST Act. Further, respondent-authorities had not been able to indicate any *mens rea* on part of assessee for evasion of tax. Thus, imposition of penalty was not sustainable. Accordingly, impugned orders were to be set aside [Section 129(3) of Central Goods and Services Tax Act, 2017/Uttar Pradesh Goods and Services Tax Act, 2017].

2. High Court of Allahabad in the case of Ashok Kumar Vs State of U.P.[WRIT TAX NO. 736 OF 2024 Dated 08.05.2024]

Assessment order was passed against assessee on 5-11-2022 raising demand in

excess of Rs. 2,44,21,574. In notice issued on 6-8-2022 assessing officer had sought reply within 30 days and mentioned "NA" against column description "Date of personal hearing" and against columns for "Time of personal hearing" and "Venue where personal hearing will be held". Assessee claimed, thus, he was denied opportunity of oral hearing before Assessing Authority.

HELD: Once it has been laid down by way of a principle of law that a person/assessee is not required to request for "opportunity of personal hearing" and it remained mandatory upon Assessing Authority to afford such opportunity before passing an adverse order. Fact that assessee had signified 'No' in column meant to mark assessee's choice to avail personal hearing, would bear no legal consequence.

Even otherwise in context of an assessment order creating heavy civil liability, observing such minimal opportunity of hearing is must. Stand of assessee may remain unclear unless minimal opportunity of hearing is first granted and only thereafter, explanation furnished may be rejected and demand created. Not only such opportunity would ensure observance of rules of natural justice but it would allow authority to pass appropriate and reasoned order as may serve interest of justice and allow a better appreciation to arise at next/appeal stage, if required. Accordingly, impugned order was to be set aside.