



A.C. Bhuteria & Co.
Chartered Accountants

16, Strand Road, Diamond Heritage,
Room No. H-703,
Kolkata – 700001

Ph: 033-46002382/ 40032841
Email id: info@acbhuteria.com

GST Digest

- Recent case laws

June 24, 2024



ST Council likely to address retrospective taxation on online gaming

The Hon'ble Rajasthan High Court in *Reliance Chemotax Industries Ltd. v. Union of India* [Civil Writ Petition No. 6961 of 2023 dated May 13, 2024] has directed the Revenue not to take coercive measures against the Petitioner w.r.t Recovery pertaining to the wrong claim of IGST Refund as the vires of Rule 96(10) have been challenged by the Petitioner and due statutory process viz. issue of Show Cause Notice ("SCN") was not followed by the Revenue.

The AAR, Gujarat in the case of *M/s. Dormer Tools India Pvt Ltd* [Advance Ruling no. GUJ/GAAR/R/2024/12 dated May 30, 2024], ruled that the nominal amount deducted by the Applicant from employee salary would not be considered as supply of services as per Section 7 of the Central Goods and Services Tax Act, 2017 ("the CGST Act"). The AAR, Gujarat further ruled that ITC would be available to the Appellant as per proviso to Section 17(5)(b) of the CGST Act, wherein the canteen service provided by the Applicant is obligatory in nature.



The law committee under the goods and services tax (GST) council has recommended an amendment to GST act to raise tax notices where the low tax was paid due to interpretation of law or lack of clarity, ET has learnt.

Where assessee's/petitioner's appeal against original assessment order was rejected by appellate authority as being filed beyond condonable period, High Court set aside appellate order and directed appellate authority to receive and dispose of appeal on merits without going into limitation, considering that delay beyond condonable period was only 21 days and assessee's/petitioner's contention that ingredients of Section 74 were not satisfied-Madras HC

Where impugned order demanded ineligible input tax credit in terms of section 73(9) of CGST Act read with section 20 of IGST Act alongwith interest and penalty, extension of period of limitation vide Notification No.09/2023, dated 31-3-2023 challenged by assessee in instant writ being contrary to provisions of section 168(A) of CGST Act, till respondents complete their instructions and file necessary affidavit, no coercive action was to be initiated against assessee-Gauhati HC

Frozen Green Peas' isn't agricultural produce since various processes are involved to change it from 'Raw Green Peas'-Uttarakhand AAR

Assessee, who transitioned input tax credit under GST, received a show-cause notice and confirmed penalties for wrongful ITC availment, but since fraud or misstatement wasn't proven by revenue and credit was reversed post-notice, penalties under Section 74 were deemed inappropriate, thus, a token penalty of Rs.10,000/- was to be imposed on assessee instead of higher penalty initially levied-Madras HC

HC directed petitioner to respond to summons issued by CGST authorities and raise all contentions before them-Madras HC

1. **High Court of Telangana in the case of Laxmi Fine Chem Vs Assistant Commissioner[Writ Petition No. 5256 of 2024 Dated 18.03.2024]**

In the event, if no input tax credit was available in the credit ledger, the rules does not provide for insertion of negative balance in the ledger and therefore what was permissible was only to the block the electronic credit ledger and under no circumstances could there had been an order for insertion of negative balance in the ledger.

If there is a credit balance available, then the authorities concerned in terms of provisions of Rule 86(A) may for reasons to be recorded in writing not allowed the credit of the said amount available equivalent to such credit. However, there is no power conferred upon the authorities for block of the credit to be availed by the petitioner in future.

The action on the part of the respondents is also not sustainable for the reason that blocking of the input tax credit effectively deprived the petitioner of his valuable right to discharge his liability and realize the value in monetary terms.

In the event of the petitioner having wrongly availed input tax credit or have fraudulently availed the input tax credit, the right of the respondents were always open to initiate appropriate recovery proceedings under Section 73 or also under Section 74 rather than invoking Rule 86(A) when there was no input tax credit available in the credit ledger of the petitioner. For this reason also, the writ petition deserves to and is accordingly allowed.

2. **High Court of Uttarakhand in the case of Subhash Singh Vs Deputy Commissioner[Special Appeal No. 100 of 2024 Dated 03.05.2024]**

The short question for consideration in the present special appeal is that the appellant had purchased the goods from the suppliers through proper invoices, and has made proper payments through banking channel along with applicable GST. If the suppliers have not filed their returns, then proceedings under section 74 of the Goods and Service Tax, 2017, cannot be initiated against the appellant for availing the benefit of ITC in a fraudulent manner.

A short point for consideration in the present special appeal is that the appellant is the supplier, and he has neither paid the tax nor has filed the returns. However, the invoices of sale made to the suppliers are with the appellant, and on the basis of the invoices the payments were made. This is his main ground of the appeal.

Keeping in view the provisions of section 107 (6) (d) of the Uttarakhand Goods and Services Tax Act 2017, the order dated 07.03.2024, Annexure no.SA1, of the appeal, is being modified that since the appellant has produced all the invoices from the suppliers, and it was the duty of the suppliers to further file their returns, which they have not done, the order is being modified that appellant will deposit 10% of the amount, which is being demanded by the respondents.