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## GST Digest

- Recent case laws

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Where assessee did not reply to show cause notice being unaware of proceedings, show cause notice uploaded in GST portal but not communicated to assessee through any other mode, impugned order denying input tax credit relying on section 17(5) of CGST Act was to be set aside-Madras HC

Orders cancelling GST registration and dismissing appeal as time-barred quashed due to lack of reasoned decision-making, adjudicating authority was directed for fresh order after providing assessee opportunity to reply and be heard-Allahabad HC

Where assessee contended non-availment of ITC on cancelled invoices, matter remanded for reconsideration, allowing opportunity to establish non-availment-Madras HC

Where appeal against GST registration cancellation was dismissed as time-barred, writ jurisdiction can still examine original cancellation order and remand for reconsideration if sufficient cause shown-Karnataka HC



HC remanded matter for re- adjudication since assessee was unaware of SCN due to non-access of GST portal after closing business-Delhi HC

Where adjudicating authority noticing discrepancies between ITC claimed as per GSTR-3B and GSTR-2A directed excess claim of ITC for financial year 2017-18 to be reversed, Circular No.183/15/2022-GST dated 27-12-2022, prescribing procedure w.r.t. such discrepancies not followed by adjudicating authority, impugned order was to be set aside-Karnataka HC

Fresh order to be issued after giving opportunity to assessee to explain discrepancy in ITC on payment of 10% of disputed amount-Madras HC

Where petitioner-assessee did not monitor GST portal in view of cancellation of GST registration and petitioner-assessee agreed to remit 10% of disputed tax demand as a condition for remand, therefore, impugned assessment order was to be set-aside-Madras HC

Where clubbed common impugned order for two financial years passed under section 73(9) of CGST Act, opportunity including contemplated under section 75(4) of CGST/KGST Act not given to assessee before adverse impugned order passed, impugned order was to be set aside-Karnataka HC

Writ petition challenging show cause notice without exhausting available remedies may be dismissed as not maintainable at show cause notice stage-Karnataka HC

Tax and penalty demand under Section 129 against assessee, a Mercedes Benz distributor, due to a vehicle number mismatch on e-way bill and actual replacement truck used after a breakdown, was to be set aside as discrepancy was deemed a minor error per Circular No. 64/38/18, warranting a penalty of Rs 500 under Section 125 of GST Act and Rs 1000 under IGST Act-Gujarat HC

Where assessee sought cancellation of GST registration due to closure of business and responded to department's notice regarding incorrect cancellation date, Proper Officer was directed to dispose of the application for cancellation of GST registration expeditiously within four weeks-Delhi HC

**1. Orissa HC in the case of M/s. BPD Steel Syndicate (P.) Ltd. v. Union of India [Writ Petition (Civil) No. 6518 of 2023 Dated 22.02.2024]**

The Honorable Court noted that the Government of India based on the recommendations made by the GST Council issued the Central Goods and Services Tax (Ninth Removal of Difficulties) Order, 2019 on December 03, 2019, where Clause-2 talks about the calculation of removal of difficulties as the "three months from the date on which the order is sought to be appealed against is communicated to the person preferring the appeal" in sub-section (1) of section 112, the start of the three months shall be considered to be the later of the following dates:- date of communication of order, or the date on which the President or the State President, as the case may be, of the Appellate Tribunal after its constitution under Section 109 of the CGST Act, enters office.

Further noted that the CBIC, GST Policy Wing vide Circular No. 132/2/2020-GST Dated 18th March, 2020 has come out with the clarification in respect of the appeal having regard to non-constitution of the Appellate Tribunal.

Hence, the High Court decided to dispose of the writ petition, Subject to verification of deposit of a sum equal to 20% of the remaining amount of tax in dispute, or deposit of the same, if not already deposited, in addition to the amount deposited earlier under Sub Section (6) of Section 107 of the CGST Act / OGST Act, the Petitioner must be extended the statutory benefit of stay under Sub-Section (9) of Section 112 of the CGST Act / the OGST Act. The Petitioner cannot be deprived of the benefit, due to non-constitution of the Tribunal by the Respondents themselves.

**2. Andhra Pradesh High Court in the case of Raghavaiah Thelapalli v. State of Andhra Pradesh and Ors. [Writ Petition No. 1743 of 2024 dated 07.03.2024]**

The HC Noted that, though the Petitioner did not file the reply to the SCN, the Impugned Order has been passed mechanically, without application of mind.

Further noted that, the reason for non-filing of reply to the SCN i.e. the person handling the GST matter of the Petition firm has left abruptly and the Petitioner was not aware of the issuance of the SCN could be considered as sufficient reason.

Opined that, the Petitioner is entitled to the opportunity of hearing in consonance with the principles of natural justice. Held that, the writ petition is allowed and the Impugned Order is set aside.