Tax Digest

- **Recent case laws**

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

9th July 2025

GST Newsletter

NEWS FEED

- **Gross GST collection double in five years to record ₹22.08 lakh crore in FY25**

  "Gross Goods and Services Tax (GST) collection doubled in five years to reach an all-time high of ₹22.08 lakh crore in the 2024-25 fiscal year, from ₹11.37 lakh crore in FY21," government data showed on Monday (June 30, 2025.) The gross GST collection touched its highest-ever level of ₹22.08 lakh crore in 2024-25, registering a 9.4% growth over the previous fiscal year. The average monthly collection stood at ₹1.84 lakh crore in FY25, up from ₹1.68 lakh crore in FY24 and ₹1.51 lakh crore in FY22. In eight years, the number of registered taxpayers under GST has risen from 65 lakh in 2017 to more than 1.51 crore. "Since its rollout, the GST has shown strong growth in revenue collection and tax base expansion.

- **The Section 74 Show Cause Notice was quashed because the preceding Section 73 notice didn't allege fraud or misstatement**

  A Show Cause Notice under Section 74 was quashed in the case of M/s Vadilal Enterprises Ltd. as the preceding Section 73 notice didn't allege fraud or misstatement. The Court observed that a reference to notice issued under Section 73 has been made and that the explanation filed, could not be verified and, therefore, further explanation was expected.

The very fact that the respondents have sought further explanation and not a word has been indicated that the petitioner, inter alia has committed fraud has given willful misstatement or has suppressed material facts, which are the ingredients based on which provisions of Section 74 of the Act can be invoked necessarily shows lack of requisite ingredients in the notice. In view of the above fact situation, the jurisdictional aspect for invoking provisions of Section 74 of the Act insofar as the present notice is convened, being not present, the same cannot be sustained.

1. **CASH CREDIT IS NOT "PROPERTY" UNDER GST ACT FOR PROVISIONAL ATTACHMENT**

SKYTECH ROLLING MILL PVT. LTD. Vs. JOINT COMMISSIONER OF STATE TAX NODAL 1 RAIGAD DIVISION [WRIT PETITION No. 1928 of 2025] HIGH COURT – Bombay DATED: 10.06.2025

Cash credit account is not "property" under Section 83 MGST Act – Provisional attachment held without jurisdiction and quashed.

Provisional attachment – Whether cash credit account constitutes "property" attachable under Section 83 of MGST Act? – Department provisionally attached petitioner cash credit account with bank – Cash credit account represents liability owed by account holder to bank for loan facility not property belonging to account holder – Phrase "including bank account" in Section 83 refers to non cash-credit bank accounts – Gujarat High Court precedents support non-attachability of cash credit accounts.

The department has examined the issue and ultimately passed the order impugned whereby Held: Writ petition allowed – Impugned attachment order quashed as wholly without jurisdiction – Cash credit account cannot be treated as "property" under Section 83 – Respondents directed to withdraw attachment letter immediately and inform bank within 24 hours – Order does not preclude recovery through other lawful modes.

2. **FAILURE TO FOLLOW RULE 42/43 IN ITC REVERSAL; PROPER OFFICER MUST APPLY RULE42/43 FORMULA BEFORE DISALLOWING ITC: CALCUTTA HIGH COURT**

The Calcutta High Court in the case of **Hemraj Rice Mill & Anr. Vs. The Assistant Commissioner, CGST & CX, Bardhaman Division, Bardhaman & Ors. Vide Case No.- WPA 3159 of 2025 dated 16.06.2025,** reinforces the principle that compliance with procedural rules is as critical as substantive tax liability. The authorities must adhere to the structure and safeguards provided under the law and not proceed mechanically. ITC reversal must follow the precise formula and steps outlined in the rules; arbitrary estimation is not legally sustainable.

The issue before the High Court was

whether the adjudication and appellate orders denying ITC were sustainable in law despite failure to apply the prescribed computational methodology under Rules 42 and 43, and allow the petitioner an opportunity to submit reconciliation statements before concluding.

Held that: The Court observed that the appellate authority acknowledged the adjudicating authority's failure to apply the formulae under Rules 42 and 43, but still dismissed the appeal without giving the petitioner an opportunity to submit reconciliation documents.

The Court held that the appellate authority should have called for the reconciliation statements from the petitioner to ensure a just determination, as allowed under Section 107(12) of the Act. Instead of remanding the case to the appellate authority, the Court remanded the matter to the adjudicating authority, with a direction to provide a proper opportunity of hearing to the petitioner.

The petitioner was granted liberty to submit reconciliation statements for the relevant assessment years to assist in the correct computation of ITC and its reversal. The Court quashed and set aside the order of Adjudicating authority, Appellate Authority and demand raised in FORM GST DRC-07.

3. REFUND DENIAL CANNOT BE SUSTAINED UNLESS DEFICIENCIES ARE EFFECTIVELY AND ELECTRONICALLY COMMUNICATED VIA THE GST PORTAL TO THE APPLICANT: CALCUTTA HIGHCOURT

The Calcutta High Court in the case of **TARINIKA & ORS. vs. COMMISSIONER OFCENTRAL GOODS & SERVICES TAX, HOWARH CGST AND CXCOMMISSIONERATE & ANR, vide Case No. WPA 1578 of 2025 dated 18.06.2025,** held that in terms of Rule 90(3), the proper officer is statutorily required to electronically communicate the deficiencies through the common portal within 15 days. Mere backend uploading of RFD-03 without visibility to the taxpayer does not amount to valid service or communication. The Petitioner's inability to view the reasons on the portal creates a communication gap, and thus cannot be penalized. Procedural fairness under Rule 90(3) is mandatory and essential for enforcement of refund rights under Section 54 of the CGST Act.

4. NON-GENERATION OF E-WAY BILL, NO PENALTY IN ABSENCE OF 'MENS REA' Kunal Aluminum Company (Himachal Pradesh High Court) CMPMO No. 40/2025 (DOJ: 26/06/2025)

FACTS OF THE CASE - Vehicle bearing registration No. PB03BC-3791 was intercepted at Dherowal, District Solan on 5.11.2020 at 11:54 P.M. and the Incharge of

the conveyance/vehicle could not produce any e-way bill for the movement of consignment (Aluminum Scrap HSN 760220010) to respondent No.3.Hence, the vehicle and the goods were detained under Section 129 of the CGST Act, 2017 read with Rule 138 of the CGST Rules, 2017.

PETITIONER CONTENTION - It explained to respondent No.3 that the goods were duty paid and the custom duty and IGST tax amounting to Rs. 4,09,144/- had already been paid before clearing the goods from custom port and, therefore, there was no intention for tax evasion from the side of the petitioner. However, despite this, respondent No.3 passed an order on 20.11.2020, thereby imposing tax of Rs.3,56,183/-and penalty amount of Rs.3,56,183/-. Due to urgent need of the imported material, the goods were released by the respondents on furnishing security by the petitioner in the form of bank guarantee for the aforesaid amount. The petitioner thereafter filed an appeal before the Appellate Authority, who dismissed the same on 22.8.2024.

COURT OBSERVATION & ORDER - There has been no sound rationale to pass the order imposing penalty. After all, the essence of any penal imposition is intrinsically linked to the presence of mens rea, a facet conspicuously absent from the record of the instant case. The order, therefore, stands vulnerable to challenge on the grounds of disproportionate punitive measures meted out in the absence of concrete evidence substantiating an intent to evade tax liabilities. The legal foundation for this principle lies in the recognition that taxation statutes are not designed to punish inadvertent mistakes but rather deliberate acts of non- compliance. The burden of proof, therefore, rests on tax authorities to establish the actual intent to evade tax before imposing penalties on taxpayers. This safeguards individuals and entities from punitive measures arising from honest mistakes, administrative errors, or technical discrepancies that lack any malicious intent. The authorities need to meticulously examine the facts and circumstances surrounding each case to establish the presence or absence of intentional tax evasion.

The requirement of intent to evade tax for the imposition of penalties is a fundamental principle that underpins the fairness and integrity of taxation systems. Recognizing the distinction between technical errors and intentional evasion is essential for maintaining a balanced and equitable approach to tax enforcement In view of aforesaid discussions, we find merit in the instant petition and the same is accordingly allowed. Consequently, the impugned orders, Annexures P-14 and P-8 are quashed.

5. **ONLY ONE OPERATIVE ASSESSMENT ORDER CAN EXIST FOR A PARTICULAR TAXPERIOD; SUBSEQUENT VALID ORDERS WOULD OVERRIDE EARLIER VOID ONES.: ORISSA HIGH COURT**

The Orissa High Court in the case of **PALEM ASHOK REDDY Vs. THECOMMISSIONER, GST & CX COMMISSIONERATE ROURKELA, THE COMMISSIONER, CGST & CX AUDIT COMMISSIONERATE MAHARASHTRA., THE COMMISSIONER CGST & CENTRAL EXCISE AURANGABAD COMMISSIONERATE MAHARASHTRA vide Case No. W. P.(C) No. 15481 of 2025 dated 24.06.2025,** has held that where two assessment orders were passed for the same tax period, one ex-parte without service of notice and the other on merits after affording opportunity of hearing, only one valid assessment order can operate at a time. The Court held that where an order is passed after due process, including hearing and consideration of material evidence, such an order carries higher legal weight and overrides any prior procedural irregularity. It underscores the need for proper service of notice and affording reasonable opportunity to the taxpayer.