DIRECTORATE OF TRAINING, EXCISE ANDTAXATION DEPARTMENT,

PUNJAB, PATIALA

GST UPDATE

(March 2024)

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Punjab One Time Settlement (Amendment) Scheme for Recovery of Outstanding Dues, 2024

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The Government of Punjab, through the Department of Excise and Taxation, has issued a significant notification regarding the amendment of the Punjab One Time Settlement Scheme for Recovery of Outstanding Dues, 2023. Dated March 10, 2024, this notification aims to ensure transparency and compliance in tax-related matters. Let's delve into the details of this amendment and its implications.

GOVERNMENT OF PUNJAB

DEPARTMENT OF EXCISE AND TAXATION

(EXCISE AND TAXATION II-BRANCH)

Dated: 10.03.2024

NOTIFICATION

No.G.S.R.12/P.A.8/2005/S.29A/C.A.74/1956/S.9/P.A.8/2002/S.25/P.A.5/2017/S.174/Amd(1)/2024.- Whereas, the State Government on being satisfied that it is necessary so to do in public interest and in order to ensure compliance and transparency, notified the Punjab One Time Settlement Scheme for Recovery of Outstanding Dues, 2023, for settlement of unpaid tax liabilities, vide Government of Punjab, Department of Excise and Taxation, Notification No. G.S.R.85/P.A.8/2005/S.29A/C.A.74/1956/S.9/P.A.8/2002/S.25/P.A.5/2017/S.174/2023, dated the 09th November, 2023; AND whereas, the State Government is satisfied that it is necessary to amend the aforesaid Scheme in public interest. Ads by Now, therefore, in exercise of the powers conferred by section 29-A of the Punjab Value Added Tax Act, 2005 (Punjab Act 8 of 2005), sub-section (2) of section 9 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956) and sub-section (3) of section 25 of the Punjab Infrastructure (Development and Regulation) Act, 2002 (Punjab Act 8 of 2002), read with section 174 of the Punjab

Goods and Services Tax Act, 2017 (Punjab Act 5 of 2017), all other powers enabling him in this behalf, the Governor of Punjab is pleased to make the following Scheme further to amend the Punjab One Time Settlement Scheme for Recovery of Outstanding Dues, 2023, namely: – SCHEME 1. Short title and commencement. — (1) This Scheme may be called the Punjab One Time Settlement (Amendment) Scheme for Recovery of Outstanding Dues, 2024. (2) It shall come into force on and with effect from the date of its publication in the Official Gazette. 2. In the Punjab One Time Settlement Scheme for Recovery of Outstanding Dues, 2023 (hereinafter referred to as the said Scheme), in clause 1, for sub-clause (4), the following shall be substituted, namely: – "(4)(i) It shall only be applicable to the cases under the relevant Acts where the assessment has been made till 31st March, 2024 and where the Total Demand in case of any of the relevant Acts, other than the Central Sales Tax Act, 1956, is not more than rupees One Crore; and in case of the Central Sales Tax Act, 1956, where the Net Demand is not more than rupees One Crore. (ii) No application for settlement of outstanding dues under this Scheme for cases mentioned at (i) above shall be entertained after 30th June, 2024.". 3. In the said Scheme, in clause 2, in sub-clause (1), – (i) after item (b), the following item shall be inserted, namely: – "(ba) "Net Demand" means the total demand after reduction of additional demand on account of submission of Statutory declaration forms as applicable in the Central Sales Tax Act, 1956;"; and (ii) for item (e), the following item shall be substituted, namely: – "(e) "Total Demand" means an additional demand due as per the assessment order passed till 31st March, 2024 for a particular assessment year under a relevant Act. Explanation: For the purpose of this Scheme, an assessment order shall include a rectified order, revised order or assessment after remand order passed till 31st March, 2024.". 4. In the said Scheme, in clause 3, – (i) in sub-clause (1) for the word, figures and sign "31st March, 2023" the word, figures and sign "31st March, 2024" shall be substituted; and (ii) in sub-clause (2), after the words and figure "FORM OTS-1", the words "along with additional original statutory forms" shall be inserted. 5. In the said

Scheme, in clause 4, – (i) for sub-clause (1), the following shall be substituted, namely: – "(1) This Scheme shall only be applicable to the cases under the relevant Acts where the assessment has been made till 31st March, 2024 and where the Total Demand in case of any of the relevant Acts, other than the Central Sales Tax Act, 1956, is not more than rupees One Crore; and in case of the Central Sales Tax Act, 1956, where the Net Demand is not more than rupees One Crore."; and (ii) after sub-clause (11), the following sub-clause shall be added, namely: – "(12) No additional Statutory declaration forms shall be entertained after the submission of the application in Form OTS-1." 6. In the said Scheme, for form-OTS-1, the following Form shall be substituted, namely: – "FORM OTS-1 [See clause 3(2)] APPLICATION FORM FOR SETTLEMENT OF OUTSTANDING DUES UNDER THE PUNJAB ONE TIME SETTLEMENT SCHEME FOR RECOVERY OF OUTSTANDING DUES, 2023. To The State Tax Officer/ Excise and Taxation Officer, District _____ Madam/ Sir, I, _____ son/ husband/ daughter/ wife of resident of _____ Proprietor/ Partner/ Managing Director/ Karta/ Chairman or any other duly authorized person of M/s _____holding TIN_____ hereby submit as follows: – PART-A It is applicable to the Acts namely; i. the Punjab General Sales Tax Act 1948; ii. the Punjab Infrastructure (Development and Regulation) Act 2002; and iii. the Punjab Value Added Tax Act, 2005; Name of the Act under which application submitted:_____ (Note: Please submit separate OTS-1 (Part A) for separate Act, if applying under multiple relevant Acts) Assessment year for which application submitted: (Note: Attach original assessment order against which OTS availed) Status of appeal, if any: Appellate Authority/ Court Date of filing of appeal Whether prior payment deposited If deposited, amount Date of deposit (Attach proof of payment) Last date of hearing Remarks The self-assessment of determined tax: Description Tax Interest Penalty Total A) Total Demand as per Assessment order B) Less amount of waiver as per the specified slab C) Determined Amount (A-B) D) Less amount of prior deposit E) Amount

Payable (C-D) Payment Details: – Treasury receipt number Treasury receipt date Amount Deposited Attach copy of the treasury receipt as proof of payment PART-B It is applicable to the Act namely; i. the Central Sales Tax Act 1956 Assessment year for which application submitted: _____ (Note: Attach original assessment order against which OTS availed) Status of appeal, if any: Appellate Authority/ Court Date of filing of appeal Whether prior payment deposited If deposited, amount Date of deposit (Attach proof of payment) Last date of hearing Remarks Detail of original statutory forms submitted with this form: Table (1) Sr No Type of Statutory Form Number of Forms Value of Form (In Rs) 1 C 2 F 3 H 4 E1 /E2 5 I 6 J Gross Total The detail of the above-mentioned statutory forms has been uploaded on the facility provided on the Department's Website: https://taxation.punjab.gov.in/ The self- assessment of determined tax: Table (2) Description Tax Interest Penalty Total A) Total Demand as per Assessment Order B) Less additional demand reduced on account of submission of Statutory declaration forms as detailed above in Table 1. C) Net Demand (A-B) D) Less amount of waiver as per the specified slab E) Determined Amount (C-D) F) Less amount of prior deposit G) Amount Payable (E-F) Payment Details: – Treasury receipt number Treasury receipt date Amount Deposited Attach copy of the treasury receipt as proof of payment Declaration: I hereby undertake to withdraw appeal filed by me under the relevant Acts, if any, within a period of fifteen working days from the date of communication of order of settlement and shall submit the proof thereof to the State Tax Officer/ Excise and Taxation Officer. I hereby undertake that I shall not file any appeal against the settlement order before any of the Appellate Authorities i.e. Deputy Excise and Taxation Commissioner (Appeals) or Punjab VAT Tribunal or Hon'ble Punjab and Haryana High Court or Hon'ble Supreme Court. I hereby declare that the above-mentioned information submitted by me is true and correct and self-assessment of determined amount has been correctly made as per provisions of the relevant Acts. I shall be liable to pay tax along with interest and penalty, as applicable, under the relevant Acts in case any discrepancies are detected at any

stage. I have not been pressurized by any official/person to opt this scheme. I am opting this scheme with my sweet will, without any undue influence. Dated _____ Signature Name _____ M/s _____ TIN ”._____ 7. In the said Scheme, for the existing Schedule, the following Schedule shall be substituted, namely: – “SCHEDULE [See clauses 2(1)(b] Serial No. Slab of Total demand/Net demand in case of CST Act, 1956 (in Rs.) Waiver of Tax Waiver of Penalty Waiver of Interest 1. Upto 1,00,000 100% 100% 100% 2. 1,00,001-1,00,00,000 50% 100% 100% Note: The waiver shall be separately calculated for each for the relevant Act(s).”. VIKAS PRATAP, Additional Chief Secretary- cum- Financial Commissioner (Taxation) to Government of Punjab, Department of Excise and Taxation

Suspension of GST Registration Revoked: Failure to Decide Within 30 Days

CA Sandeep Kanoi 28 Mar 2024 2,538 Views 0 comment Print Goods and Services Tax | Judiciary

Case Law Details

Case Name : Shri Balaji Agro Industries Vs State of Punjab and Another (Punjab and Haryana High Court)

Appeal Number : CWP-6160-2024 (O&M)

Date of Judgement/ Order : 22/03/2024

Related Assessment Year :

Courts : All High Courts Punjab and Haryana HC

Shri Balaji Agro Industries Vs State of Punjab and Another (Punjab and Haryana High Court) Suspension of GST registration revoked if no decision within 30 days as per Rule 22 (3) of CGST/PGST Rules, 2017. In a recent case before the Punjab and Haryana High Court, Shri Balaji Agro Industries brought forth a matter concerning the suspension of their Goods and Services Tax (GST) registration. The petitioner argued that the respondents failed to adhere to the prescribed timeline for deciding on the issue within 30 days, as mandated by Section 22(3) of the CGST/PGST Rules, 2017. Despite an earlier court order directing the respondents to provide reasons for the delay in decision-making, they failed to submit an affidavit. The petitioner's counsel emphasized the urgency of the matter, highlighting that a Show Cause Notice was issued on 21st November 2023, to which the petitioner responded by 28th November 2023. The respondents, upon issuing the show cause notice, suspended the petitioner's registration, effective from 21st November 2023. Per Rule 22(3) of the Rules, the respondents were obliged to decide on the show cause notice and the objections raised within 30 days, either canceling the registration or deciding otherwise.

However, it became evident that more than 30 days had elapsed without any decision from the respondents. Consequently, the petitioner's registration remained suspended for almost four months. In light of Rule 21-A Sub-clause (4) of the Rules, which stipulates that the suspension of registration is deemed revoked upon the completion of proceedings under Rule 22, it was apparent that the suspension should be lifted. Thus, the court held that the suspension of the petitioner's registration, effective from 21st November 2023, shall stand revoked. The court directed for the matter to be listed for further hearing on 18th April 2024, and instructed the respondents to file a reply by the next hearing date. FULL TEXT OF THE JUDGMENT/ORDER OF PUNJAB AND HARYANA HIGH COURT Learned counsel for the petitioner submits that the matter comes up today in terms of order dated 15.03.2024 passed by this Court wherein we directed the respondents to file short affidavit giving out reasons for not deciding the issue within 30 days' period as prescribed under Section 22(3) of the CGST/PGST Rules, 2017 (for short "the Rules"). No affidavit has been filed on behalf of the respondents. Learned counsel for the petitioner insists that an interim order ought to be passed in favour of the petitioner as a Show Cause Notice was issued on 21.11.2023 and the petitioner had filed their reply to the show cause notice on 28.11.2023. The respondents, while issuing the said show cause notice, had suspended the registration of petitioner w.e.f. 21.11.2023, and in terms of the reply filed by the petitioner, the respondents were required to decide the show cause notice and objections raised by the petitioner within a period of 30 days in terms of the Rule 22 (3) of the Rules which empowers the respondents to either cancel the registration w.e.f. the date or decide the same otherwise within 30 days. However, it is apparent that more than 30 days have elapsed and no decision has been taken by the respondents on the show cause notice, while the petitioner suffers suspension of Registration for almost four months, we find that as per the provisions of Rule 21-A Sub-clause (4) of the Rules, the suspension of registration of the petitioner would be deemed to be revoked upon completion of the proceedings under Rule 22 of the Rules, but the

proceedings were not completed within 30 days. Thus, prima facie, we find that the suspension of the petitioner would deserve to be revoked. Accordingly, we pass orders that the suspension of the petitioner w.e.f. 21.11.2023 shall stand revoked. List on 18.04.2024. Let the reply be filed by the next date of hearing.

HC directs disposal of GST registration cancellation application within 4 weeks

Case Law Details

Case Name : Air Pro Styles Through Its Proprietor Ram Bhul Vs Principal Commissioner of Department of Trade And Taxes (Delhi High Court)

Appeal Number : W.P.(C) 4088/2024 & CM APPL. 16700/2024

Date of Judgement/Order : 18/03/2024

Related Assessment Year : Courts : All High Courts Delhi High Court

Air Pro Styles Through Its Proprietor Ram Bhul Vs Principal Commissioner of Department of Trade And Taxes (Delhi High Court) In a recent case before the Delhi High Court, Air Pro Styles, represented by its proprietor Ram Bhul, sought direction for the prompt resolution of its GST registration cancellation application. The court's directive emphasizes the timely disposal of such requests within a specific timeframe. 1. Background of the Case: Air Pro Styles filed an application for the cancellation of its GST registration, effective from 27th December 2023. However, a query was raised on 31st January 2023, requesting additional information. The petitioner promptly responded, yet the application remained unresolved. 2. Court Intervention: Upon hearing the petition, the Delhi High Court intervened, acknowledging the delay in processing the cancellation application. The court directed the respondent to dispose of the petitioner's application within four weeks from the date of the order. 3. Implications of the Directive: The court's directive underscores the importance of timely resolution of GST-related matters. Delays in processing such applications can have adverse effects on businesses, leading to operational uncertainties and financial burdens. 4. Legal Precedent: The court's decision aligns with legal principles emphasizing the need for administrative bodies to adjudicate matters promptly and efficiently. Failure to do so may infringe upon the rights of the petitioner and undermine the efficacy of the legal system. 5. Reserved Rights and Contentions: The court

clarified that its directive does not imply a judgment on the merits of the case. Both parties retain their rights and contentions, and the court refrains from making any substantive decisions beyond the scope of the immediate issue. Ads by Ads by 6. Conclusion: The Delhi High Court's intervention in the matter of Air Pro Styles' GST cancellation application highlights the significance of timely administrative action. By directing the respondent to resolve the application within four weeks, the court ensures procedural fairness and upholds the integrity of the legal process. This case serves as a reminder of the courts' role in safeguarding the rights of litigants and promoting efficiency in the administration of justice.

Delhi HC Cancels GST Registration Retrospectively from Date of SCN

CA Sandeep Kanoi 31 Mar 2024 321 Views 0 comment Print Goods and Services Tax | Judiciary

Case Law Details

Case Name : R8 Space Design Pvt Ltd Vs Principal Commissioner State Tax Delhi & Anr (Delhi High Court)

Appeal Number : W.P. (C) 3930/2024 & CM APPLs. 16201-02/2024

Date of Judgement/Order : 19/03/2024

Related Assessment Year :

Courts : All High Courts Delhi High Court

Download Judgment/Order

R8 Space Design Pvt Ltd Vs Principal Commissioner State Tax Delhi & Anr (Delhi High Court)

In a recent case before the Delhi High Court, R8 Space Design Pvt Ltd challenged the retrospective cancellation of its GST registration by the Principal Commissioner State Tax Delhi & Anr. The petitioner contested the lack of reasons provided for the retrospective cancellation and the effective date chosen for cancellation. Background: R8 Space Design Pvt Ltd, engaged in providing design services, received a show cause notice dated 19.11.2020, citing non-filing of returns for a continuous period of six months as grounds for potential cancellation of their GST registration. Subsequently, their registration was cancelled retrospectively from 01.07.2017, with no clear explanation provided in either the notice or the cancellation order. Contention of the Assessee: R8 Space Design Pvt Ltd argued against the retrospective cancellation, emphasizing the lack of reasons provided in both the show cause notice and the cancellation order. They contended that they were not afforded the opportunity to object to the

retrospective cancellation, thereby denying them procedural fairness. Contention of Revenue: The Revenue sought retrospective cancellation of the GST registration due to non-compliance with filing returns. However, they failed to provide clear and substantive reasons for the retrospective cancellation in either the notice or the cancellation order. Decision by Relevant Judiciary: The Delhi High Court emphasized that retrospective cancellation of GST registration must be based on objective criteria and cannot be carried out mechanically. The court modified the cancellation order, directing that the cancellation should be effective from the date of the show cause notice, allowing R8 Space Design Pvt Ltd an opportunity to comply with regulatory requirements. Conclusion: The Delhi High Court's decision underscores the importance of procedural fairness in tax matters, requiring clear reasons and objective criteria for retrospective cancellation of GST registration. This ruling has broader implications for similar cases, ensuring transparency and fairness in administrative actions related to tax registrations. Ads by Ads by FULL TEXT OF THE JUDGMENT/ORDER OF DELHI HIGH COURT 1. Petitioner impugns order dated 01.12.2020, whereby the GST registration of the petitioner has been cancelled retrospectively with effect from 01.07.2017. Petitioner also impugns Show Cause Notice dated 19.11.2020. 2. Vide Show Cause Notice dated 19.11.2020, petitioner was called upon to show cause as to why the registration be not cancelled for the following reason: – "Any Taxpayer other than composition taxpayer has not filed returns for a continuous period of six months." 3. Petitioner was engaged in business of design services for home and services and possessed GST registration. 4. The Show Cause Notice was issued to the petitioner on 19.11.2020. Though the notice does not specify any cogent reason, it merely states "any taxpayer other than composition taxpayer has filed returns for a continuous period of six months". Further, the said Show Cause Notice also does not put the petitioner to notice that the registration is liable to be cancelled retrospectively. Accordingly, the petitioner had no opportunity to even object to the retrospective cancellation of the registration. 5. Further, the impugned order dated 01.12.2020 passed on the Show Cause Notice

does not give any reasons for cancellation. It states that the registration is liable to be cancelled for the following reason “Whereas no reply to notice to show cause has been submitted”. However, the said order in itself is contradictory. The order states “reference to your reply dated 28/11/2020 in response to the notice to show cause dated 19/11/2020” and the reason stated for cancellation is “Whereas no reply to notice to show cause has been submitted”. The order further states that effective date of cancellation of registration is 01.07.2017 i.e., a retrospective date. There is no material on record to show as to why the registration is sought to be cancelled retrospectively. 6. In fact, in our view, order dated 01.12.2020 does not qualify as an order of cancellation of registration. On one hand, it states that the registration is liable to be cancelled and on the other, in the column at the bottom there are no dues stated to be due against the petitioner and the table shows nil demand. 7. Learned counsel for petitioner submits that the petitioner is no longer interested in continuing business and has closed down his business activities since the lockdown. 8. We notice that the Show Cause Notice and the impugned order are bereft of any details accordingly the same cannot be sustained and neither the Show Cause Notice, nor the order spell out the reasons for retrospective cancellation. 9. In terms of Section 29(2) of the Act, the proper officer may cancel the GST registration of a person from such date including any retrospective date, as he may deem fit if the circumstances set out in the said sub-section are satisfied. Registration cannot be cancelled with retrospective effect mechanically. It can be cancelled only if the proper officer deems it fit to do so. Such satisfaction cannot be subjective but must be based on some objective criteria. Merely, because a taxpayer has not filed the returns for some period does not mean that the taxpayer’s registration is required to be cancelled with retrospective date also covering the period when the returns were filed and the taxpayer was compliant. 10. It is important to note that, according to the respondent, one of the consequences for cancelling a tax payer’s registration with retrospective effect is that the taxpayer’s customers are denied the input tax credit availed in respect of the supplies made by the tax payer

during such period. Although, we do not consider it apposite to examine this aspect but assuming that the respondent's contention is required to consider this aspect while passing any order for cancellation of GST registration with retrospective effect. Thus, a taxpayer's registration can be cancelled with retrospective effect only where such consequences are intended and are warranted. 11. It is clear that both the petitioner and the respondent want the GST registration to be cancelled, though for different reasons. 12. In view of the fact that Petitioner does not seek to carry on business or continue the registration, the impugned order dated 01.12.2020 is modified to the limited extent that registration shall now be treated as cancelled with effect from 19.11.2020 i.e., the date when the Show Cause Notice was issued. Petitioner shall make the necessary compliances as required by Section 29 of the Central Goods and Services Tax Act, 2017. 13. It is clarified that Respondents are not precluded from taking any steps for recovery of any tax, penalty or interest that may be due in respect of the subject firm in accordance with law including retrospective cancellation of the GST registration. 14. Petition is accordingly disposed of in the above terms.

Re-filing ITC refund Petition after Unconditional Withdrawal Barred by Estoppel: Delhi HC

CA Sandeep Kanoi 30 Mar 2024 375 Views 0 comment Print Goods and Services Tax | Judiciary

Case Law Details

Case Name : Jetibai Grandsons Services India Pvt Ltd Vs Union of India & Ors (Delhi High Court)

Appeal Number : W.P. (C) 438/2024

Date of Judgement/Order : 18/03/2024

Related Assessment Year :

Courts : All High Courts Delhi High Court

Download Judgment/Order

Jetibai Grandsons Services India Pvt Ltd Vs Union of India & Ors (Delhi High Court)

The case of Jetibai Grandsons Services India Pvt Ltd Vs Union of India & Ors presented a complex legal scenario before the Delhi High Court. The petitioner sought a declaration against the reversal of input tax credit and a refund of a substantial amount. However, the respondents raised a preliminary objection, arguing that a previous petition with identical relief had been unconditionally withdrawn, invoking the principles of res judicata and issue estoppel. This article provides a detailed analysis of the court's judgment and its implications. The crux of the matter revolved around the petitioner's attempt to re-file a petition seeking relief that had previously been withdrawn. The respondents contended that the withdrawal of the earlier petition, without any liberty granted to the petitioner, barred them from seeking the same relief again. The court examined the circumstances surrounding the withdrawal of the previous petition and

scrutinized whether the petitioner was entitled to pursue the same relief in light of subsequent developments. In its analysis, the court considered the principle of issue estoppel, emphasizing the importance of finality in legal proceedings and the prevention of abuse of process. It referenced previous judicial precedents to elucidate the rationale behind these principles, particularly emphasizing the need to discourage litigants from engaging in "bench hunting" tactics. Furthermore, the court highlighted the absence of any offer for an amicable settlement by the respondents, indicating that the withdrawal of the petition appeared tactical rather than bona fide. The court also underscored the significance of the investigation's findings, noting that the petitioner had been found culpable and was subject to a show cause notice. This crucial development influenced the court's decision, as it indicated that the petitioner's withdrawal was not based on exoneration but rather on the lack of agreement with the bench. Consequently, the court concluded that the petitioner was estopped from re-filing the petition seeking the same relief. In conclusion, the Delhi High Court's judgment in Jetibai Grandsons Services India Pvt Ltd Vs Union of India & Ors elucidates important principles regarding the re-filing of petitions after unconditional withdrawal. The court's meticulous analysis of the circumstances surrounding the withdrawal, coupled with its consideration of the investigation's findings, underscores the importance of fairness and finality in legal proceedings. This case serves as a reminder of the consequences of strategic litigation tactics and the judiciary's role in upholding the integrity of the legal process. FULL TEXT OF THE JUDGMENT/ORDER OF DELHI HIGH COURT Ads by Ads by 1. Petitioner seeks a declaration that the reversal of the input tax credit by the respondents on 22.07.2021 is illegal and petitioner seeks refund of input tax credit amounting to Rs 19,65,00,000/-. 2. A preliminary objection is raised by the respondents on the ground that petitioner had earlier filed a petition being WP (C) 10647/2021 claiming exactly the same relief. However, said petition was unconditionally withdrawn on 29.10.2021 and as such the present petition would be barred applying the principle of resjudicata and issue estoppel. 3. This is disputed by learned counsel for the petitioner, who

submits that said petition was withdrawn though unconditionally however petitioner had clarified that he would not wish to press for refund till the investigation was completed. He submits that the investigation is now completed and as such the petitioner has filed the subject petition. 4. We are informed that the investigation has found the petitioner culpable and liable and show cause notice has been issued to the petitioner. We may refer to order dated 29.10.2021 in WP (C) 10647/2021 which reads as under:- "Present Writ Petition has been filed with the following prayers: "(a) Issue a writ, order or direction in the nature of declaration to declare the reversal of input tax credit by the Respondent on 22.07.2021 illegal as the same has been made under force and coercion on the date of search conducted at residential premises of the director and made under the signature of the director who is not authorized for the same; and/or (b) Issue a writ, order or direction in the nature of mandamus to the Respondents to refund the input tax credit amounting to Rs. 19,65,00,000/-, which has been reversed on 22.07.2021 with interest @ 7% per annum from the date of payment till date of refund; and/or (c) Issue a writ, order or direction in the nature of mandamus to direct the Respondents to restrain from coercing the Petitioner to make any payment without issuing notice under Section 74(1) of the Central Goods and Services Tax Act, 2017 and follow the procedure therein; and/or (d) Issue a writ, order or direction in the nature of mandamus to the Respondents to provide copy of panchnama with regard to search which was conducted at the office premises of the Petitioner on 20.07.2021 and/or 21.07.2021 as also that of residential premises; and/or (e) Issue a writ, order or direction in the nature of mandamus to the Respondents to provide the DSC / digital signatures of the directors of the Petitioner; and/or (f) Issue a writ, order or direction in the nature of mandamus to the Respondents to provide the copies of documents that have been seized under the provisions of Section 67(5) of the Central Goods and Services Tax Act, 2017; and/or (g) Grant cost of the petition; and" Learned counsel for the petitioner on instructions states that he wishes to withdraw the present writ petition unconditionally. He also clarifies that the petitioner does not wish to

press for refund or reversal of input tax credit till the investigation is complete. Learned counsel for the respondents states that the petitioner has not complied with the directions passed by this Court on 24th September, 2021 wherein the petitioner's director Mr. Tarun Jain was directed to join investigation. This Court is of the view that if Mr. Tarun Jain has not joined the investigation, the respondents are at liberty to take action in accordance with law. The statement made by learned counsel for petitioner is accepted by this Court & petitioner is held bound by the same and accordingly, the present petition is dismissed as withdrawn. It is clarified that no liberty has been given to the petitioner." 6. In the said petition, the prayers that have been made by the petitioner are as under:- "(a) Issue a writ, order or direction in the nature of declaration to declare the reversal of input tax credit by the Respondent on 22.07.2021 illegal as the same has been made under force and coercion on the date of search conducted at residential premises of the director and made under the signature of the director who is not authorized for the same; and/or b) Issue a writ, order or direction in the nature of mandamus to the Respondents to refund the input tax credit amounting to Rs. 19,65,00,000/-, which has been reversed on 22.07.2021 with interest @12% per annum from the date of payment till date of refund; and/or c) Grant cost of the petition; and" 7. We note that the prayers in the present petition are identical to prayer (a) & (b) of the prayer in WP (C) 1064 7/2021. 8. Order dated 29.10.2021 in WP (C) 10647/2021 clearly records that petitioner had withdrawn the writ petition unconditionally. Further, the Court also recorded that no liberty was granted to the petitioner while the petition was being dismissed. 9. Reliance placed by learned counsel for the petitioner on the judgment in the case of Sarva Shramik Sanghatana (KV) vs State of Maharashtra (2008) 1 SCC 494 is misplaced. 10. Reference may also be have to Sarva Shramik Sanghatana wherein the Supreme Court has held that :- "13. We are of the opinion that the decision in Sarguja Transport case (supra) has to be understood in the light of the observations in paragraphs 8 & 9 therein, which have been quoted above. The said decision was given on the basis of public policy that, if while hearing the

first writ petition the Bench is inclined to dismiss it, and the learned counsel withdraws the petition so that he could file a second writ petition before what he regards as a more suitable or convenient bench, then if he withdraws it he should not be allowed to file a second writ petition unless liberty is given to do so. In other words, bench-hunting should not be permitted. 14. It often happens that during the hearing of a petition the Court makes oral observations indicating that it is inclined to dismiss the petition. At this stage the counsel may seek withdrawal of his petition without getting a verdict on the merits, with the intention of filing a fresh petition before a more convenient bench. It was this malpractice which was sought to be discouraged by the decision in Sarguja Transport case (supra)." 11. Another decision of Supreme Court in Sarguja Transport Service vs STAT (1987) 1 SCC 5 wherein the Supreme Court explained the said decision and held that the principle underlying Order 23 Rule 1 CPC should be extended to Writ Petition in the interest of administration of justice not only ground of resjudicata but on the ground of public policy and to discourage litigants from indulging in the bench hunting tactics. The Supreme Court noticed that very often when the arguments are advanced and parties are of the view that the Court is not agreeing with them, they seek to withdraw the petition, so that they can file a second petition before a more suitable or convenient bench. The Supreme Court discouraged the said move on the ground of bench hunting. 12. However, in Sarva Shramik Sanghatana (supra) the Supreme Court noticed that in that case application had been made for withdrawal on a bonafide ground where the respondents therein had called for a meeting for amicable settlement. 13. In the instant case, we note that there was no such offer made by the respondents calling for petitioner to come for an amicable settlement. It appears that at the time of hearing of the matter when the bench was not agreeing with the petitioner, petitioner unconditionally sought to withdraw the petition. Our abovesaid observation is being made keeping in view the last line of the last paragraph of the order where the Court had specifically clarified that no liberty has been granted to the petitioner is clearly indicates that when the bench were not

agreeing with the petitioner, petitioner sought to unconditionally withdraw the petition. Further, this Court has also noticed that the director of the petitioner was not joining investigation and as such, the department was constrained to take the coercive steps. 14. Reference may also be had to the decision of the Supreme Court in Bhanu Kumar Jain vs Archana Kumar (2005) 1 SCC 787 wherein the Supreme Court referred to the decision in Hope Plantations Limited vs Taluk Land Board, Peermade and Another 1999 (5) SCC 590 and explained the principle of resjudicata which was based on the public policy in order to put an end to litigation. 15. In view of the above, we are of the view that the petitioner having unconditionally withdrawn the earlier petition and liberty being specifically declined to the petitioner, the petitioner is precluded from filing the present petition seeking the same relief which was earlier withdrawn by the petitioner. No doubt petitioner had withdrawn the proceedings pending investigation. However the said qualification would have only applied in case the investigation had exonerated the petitioner. In the instant case, the investigation has found petitioner culpable and accordingly, a show cause notice has been issued to the petitioner which is pending adjudication. 16. In view of the above, we note that the present petition is barred on the principle of the issue of estoppel and as such the petition is not maintainable and same is consequently dismissed.

GST Refund Rejection: HC directs consideration of notification extending Limitation

CA Sandeep Kanoi 30 Mar 2024 279 Views 0 comment Print Goods and Services Tax | Judiciary

Case Law Details

Case Name : Zenon analytics Pvt. Ltd. Vs Union of India & Anr (Delhi High Court)

Appeal Number : W.P.(C) 8338/2022

Date of Judgement/Order : 21/03/2024

Related Assessment Year :

Courts : All High Courts Delhi High Court

Download Judgment/Order

Zenon analytics Pvt. Ltd. Vs Union of India & Anr (Delhi High Court)

The case of Zenon Analytics Pvt. Ltd. vs Union of India & Anr before the Delhi High Court revolves around the rejection of refund applications for specific tax periods solely on the grounds of limitation. The petitioner contested this decision, citing a crucial notification issued by the Central Board of Indirect Taxes and Customs (CBIC). The crux of the matter lies in the notification dated 05.07.2022, which excludes a particular period for the computation of the limitation period concerning refund applications. Despite the petitioner's reliance on this notification, the respondent argued that their counter affidavit was filed before the notification was published. However, the Delhi High Court found merit in the petitioner's argument, stating that their case falls within the ambit of the CBIC notification. Consequently, the rejection of the refund claim based solely on limitation was deemed unsustainable by the court. In its verdict, the court set aside the impugned orders dated 11.01.2022 and restored the refund applications

for the respective tax periods. The Assessing Authority was directed to adjudicate on these applications within a stipulated timeframe. The judgment in the Zenon Analytics case highlights the significance of regulatory notifications in tax-related matters. The decision underscores the principle of fairness in administrative proceedings, ensuring that taxpayers are not unduly disadvantaged due to procedural limitations. By setting aside the refund rejection and restoring the applications, the Delhi High Court reaffirmed the importance of adhering to statutory provisions and upholding the rights of taxpayers. FULL TEXT OF THE JUDGMENT/ORDER OF DELHI HIGH COURT Ads by Ads by 1. Petitioner impugns two orders both dated 11.01.2022, whereby the applications of the petitioner seeking refund for the period May, 2019 to July, 2019 and August, 2019 to September, 2019 have been rejected solely on the ground of limitation. 2. Learned counsel for petitioner relies on notification dated 05.07.2022, issued by the Central Board of Indirect Taxes and Customs whereby the period between 01.03.2020 to 28.02.2022 has been excluded for the purposes of computation of period of limitation for filing an application for refund. 3. Learned counsel for respondent submits that counter affidavit in the present case was filed on 28.06.2022 i.e. before the subject Notification was published. 4. Clearly, the case of the petitioner is covered by the notification dated 05.07.2022, which excludes the aforesaid period for computation of period of limitation. Accordingly, rejection of the claim for refund of the petitioner solely on the ground of limitation is not sustainable. 5. Impugned orders both dated 11.01.2022 for the respective tax period are set aside. Refund applications are restored on the record of the Assessing Authority, who is directed to decide the applications in accordance with law and pass appropriate orders within a period of four weeks from today. 6. Petition is allowed in the above terms. It is clarified that this Court has neither considered nor commented upon the merits of the contentions of either party. All rights and contentions of parties are reserved.

Delhi HC Sets Aside order rejecting ITC Claim Without Proper Hearing

CA Sandeep Kanoi 30 Mar 2024 291 Views 0 comment Print Goods and Services Tax | Judiciary

Case Law Details

Case Name : Mother Dairy Fruit & Vegetable Private Limited Vs Sales Tax Officer (Delhi High Court)

Appeal Number : W.P. (C) 3736/2024 & CM APPL. 15402/2024

Date of Judgement/Order : 13/03/2024

Related Assessment Year :

Courts : All High Courts Delhi High Court

Download Judgment/Order

Mother Dairy Fruit & Vegetable Private Limited Vs Sales Tax Officer (Delhi High Court)

Introduction: In the case of Mother Dairy Fruit & Vegetable Private Limited vs. Sales Tax Officer, the Delhi High Court addressed the rejection of an Input Tax Credit (ITC) claim by the Proper Officer without affording the petitioner a fair opportunity for a hearing. The court found the order passed under Section 73 of the Central Goods and Services Tax (CGST) Act, 2017, to be inadequate in considering the petitioner's detailed reply and lacking proper justification. Detailed Analysis: The petitioner had submitted a detailed reply to the Show Cause Notice, providing full disclosures regarding the excess claim of Input Tax Credit (ITC), under declaration of ineligible ITC, and ITC claims from cancelled dealers, return defaulters, and tax non-payers. However, the impugned order passed on December 23, 2023, dismissed the petitioner's response as unsatisfactory without proper consideration. The Delhi High Court observed that the Proper Officer failed to adequately assess the petitioner's reply on its merits.

Instead, the officer deemed the reply as incomplete and unsupported by adequate documents without proper justification. The court highlighted the necessity for the Proper Officer to engage with the petitioner's submissions and provide an opportunity for clarification if deemed necessary. Moreover, the court emphasized that the petitioner was not afforded the opportunity to address any deficiencies in their reply or provide additional documents or details, which is essential for a fair adjudication process. Consequently, the impugned order was deemed unsustainable and set aside by the Delhi High Court. Conclusion: In conclusion, the Delhi High Court's decision in the case of Mother Dairy Fruit & Vegetable Private Limited vs. Sales Tax Officer underscores the importance of procedural fairness in adjudicating matters related to tax disputes. The court's ruling serves as a reminder to Proper Officers to carefully consider taxpayers' responses and provide them with adequate opportunities to present their case before making any adverse decisions. FULL TEXT OF THE JUDGMENT/ORDER OF DELHI HIGH COURT Ads by Ads by 1. Petitioner impugns order dated 23.12.2023, whereby the impugned Show Cause Notice dated 23.09.2023, proposing a demand against the petitioner has been disposed of and a demand of Rs. 7,95,34,5 14.00 including penalty has been raised against the petitioner. The order has been passed under Section 73 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the Act). 2. Learned counsel for Petitioner submits that a detailed reply dated 08.12.2023 was filed to the Show Cause Notice, however, the impugned order dated 23.12.2023 does not take into consideration the reply submitted by the petitioner and is a cryptic order. 3. Perusal of the Show Cause Notice shows that the Department has given separate headings, inter alia, excess claim Input Tax Credit ["ITC"], under declaration of ineligible ITC and ITC claim from cancelled dealers, return defaulters and tax non-payers. To the said Show Cause Notice, a detailed reply was furnished by the petitioner giving full disclosures under each of the heads. 4. The impugned order, however, after recording the narration, records that the reply uploaded by the tax payer is not satisfactory. It merely states that "And whereas, the taxpayer had

filed their objections/reply in DRC-06 and appeared personally. However, during the personal hearing, the taxpayer reiterated the contents of the reply filed in form DRC-06. On scrutiny of the same, it has been observed that the same is not acceptable being incomplete, not duly supported by adequate documents, without proper justification and thus unable to clarify the issue..” The Proper Officer has opined that the reply is unsatisfactory. 5. The observation in the impugned order dated 23.12.2023 is not sustainable for the reasons that the reply filed by the petitioner is a detailed reply. Proper Officer had to at least consider the reply on merits and then form an opinion whether the reply is not clear and unsatisfactory. He merely held that the reply is not clear and satisfactory which ex-facie shows that the Proper Officer has not applied his mind to the reply submitted by the petitioner. 6. Further, if the Proper Officer was of the view that reply was unsatisfactory and further details were required, the same could have been specifically sought from the petitioner. However, the record does not reflect that any such opportunity was given to the petitioner to clarify its reply or furnish further documents/details. 7. In view of the above, the order cannot be sustained, and the matter is liable to be remitted to the Proper Officer for re-adjudication. Accordingly, the impugned order dated 23.12.2023 is set aside. The matter is remitted to the Proper Officer for re-adjudication. 8. As noticed hereinabove, the impugned order records that petitioner’s reply is not satisfactory. The Proper Officer is directed to intimate to the petitioner details/documents, as maybe required to be furnished by the petitioner. Pursuant to the intimation being given, petitioner shall furnish the requisite explanation and documents. Thereafter, the Proper Officer shall re-adjudicate the show cause notice after giving an opportunity of personal hearing and shall pass a fresh speaking order in accordance with law within the period prescribed under Section 75(3) of the Act. 9. It is clarified that this Court has neither considered nor commented upon the merits of the contentions of either party. All rights and contentions of parties are reserved. 10. The challenge to Notification No. 9 of 2023 with regard to the initial extension of time is left open. 11. Petition is disposed of in the above terms.

SCN & REG 31 liable to be set aside, If not served as per provision of GST Act: Delhi HC

CA Santosh Vasantrao Dhumal 29 Mar 2024 459 Views 0 comment Print Goods and Services Tax | Judiciary

Case Law Details

Case Name : Rajkumar Singhal, Sole Proprietor Shri Balaji Agro Industries Vs The Goods And Services Tax Network & Ors. (Delhi High Court)

Appeal Number : W.P.(C) 3773/2024

Date of Judgement/Order : 14/03/2024

Related Assessment Year :

Courts : All High Courts Delhi High Court

Download Judgment/Order

Rajkumar Singhal, Sole Proprietor Shri Balaji Agro Industries Vs The Goods And Services Tax Network & Ors. (Delhi High Court)

Show cause notice and REG 31 is liable to be set aside, If same is not served as per provision of GST Act – Delhi HC Introduction: In the recent case of Rajkumar Singhal, sole proprietor of Shri Balaji Agro Industries, the Delhi High Court addressed the validity of a show cause notice (SCN) and Form GST REG 31. The petitioner challenged the SCN on grounds of procedural irregularities, including the absence of necessary details and attachments. Let's delve into the detailed analysis of this significant judgment. Detailed Analysis: The petitioner raised several issues regarding the defective nature of the SCN. Firstly, it lacked essential details such as the name and designation of the issuing officer. Secondly, although reference was made to supportive documents, none were attached to the

SCN. Thirdly, the SCN bore digital signatures of the Goods and Service Tax Network instead of the proper officer's signature. Additionally, Form GST REG 31, which purportedly supported the SCN, was physically dispatched to the petitioner instead of being served electronically as required by law. The Court scrutinized Rule 21A of the Central Goods and Services Tax Act, 2017, which mandates electronic intimation of contraventions to the concerned party. It emphasized that physical dispatch of Form GST REG 31 does not comply with the prescribed mode of service. Moreover, the Form GST REG 31 produced in court did not align with the SCN's allegations. Consequently, the Delhi High Court set aside both the SCN and Form GST REG 31. It clarified that respondents could issue a proper SCN to the petitioner in accordance with the law, followed by a fair opportunity for a personal hearing. Conclusion: The judgment in Rajkumar Singhal's case underscores the importance of strict adherence to procedural requirements in issuing SCNs and related documents under the GST Act. It emphasizes the necessity for clarity, proper service, and adherence to statutory provisions to ensure the validity of such notices. This ruling serves as a reminder for tax authorities to follow due process diligently, respecting the rights of taxpayers. Ads by Ads by FULL TEXT OF THE JUDGMENT/ORDER OF DELHI HIGH COURT 1. Learned counsel for petitioner submits that the subject Show Cause Notice is defective for the reason it does not mention the name and designation of the concerned officer who has issued the same. He further submits that there is reference to certain supportive documents attached, however, there is no attachment to the Show Cause Notice and there is no indication as to where the petitioner will find the supportive documents. Learned counsel for petitioner further submits that the Show Cause Notice has not been signed by the proper officer but bears the digital signatures of Goods and Service Tax Network. 2. Issue notice. Notice is accepted by learned counsel appearing for respondent No.2. 3. Learned counsel for respondent No.3 submits that the subject Notice has been issued by the Central Authorities and the State Commissionerate is neither necessary, nor a property party. 4. In view of the above, learned counsel for

petitioner prays for deletion of respondent No.3 from the array of parties. Accordingly, respondent No.3 is deleted from the array of parties. Amended memo of parties be filed within two days. 5. Learned counsel for respondents submits that Form GST REG 31 dated 19.02.2024 was physically dispatched to the petitioner on 20.02.2024, calling upon the petitioner to submit a reply within 30 days on receipt of notice. A copy of the Form GST REG 31 dated 19.02.2024 has been produced in Court. The same is taken on record. 6. Learned counsel for the petitioner submits that petitioner has not received the Form GST REG 31 and reserves his right to take appropriate remedy against the same. 7. A perusal of show cause notice dated 19.02.2024 shows that the same has been issued on the ground that registration has been obtained by means of fraud, willful misstatement or suppressing of facts. The notice is unclear as to which of the ground applies i.e. fraud, willful misstatement or suppressing of facts. The notice neither bears the name and designation nor the signatures of the issuing authority. 8. As per the petitioner, notice was signed by the Goods and Services Tax Network. Further, we note that the notice states that the noticee is to refer to supporting documents attached to have case specific details, however, admittedly, no such documents were attached with the notice. 9. The Form GST REG 31, relied upon by the respondents does not further their case for the reason that Form is not show cause notice for cancellation of registration. Cancellation of registration was proposed by the show cause notice dated 19.02.2024, which also suspended the registration of the petitioner. 10. We note that Rule 21A of the Central Goods and Services Tax Act, 2017, requires that the person who is alleged to be in contravention shall be intimated in Form GST REG 31 electronically on the common portal or by sending the communication to the e-mail address provided at the time of registration or as amended from time to time. 11. Form GST REG 31 admittedly has not been uploaded on the portal or sent electronically over e-mail to the petitioner but is stated to have been sent to the petitioner by physical mail, which cannot be a mode of service, as prescribed under Rule 21A. In any event, Form that has been produced in Court today, is not

the show cause notice, which was sent to the petitioner. 12. In view of the above impugned show cause notice dated 19.02.2024 as well as Form GST REG 31 also dated 19.02.2024 are set aside. It is, however, clarified that it would be open to the respondents to issue a proper show cause notice to the petitioner in accordance with law in case there is any infraction, and if issued, the same be disposed of in accordance with law after giving an opportunity of personal hearing to the petitioner. 13. It is clarified that this Court has neither considered nor commented on the merits or contentions of either party. All rights and contentions are reserved.

Suspension of GST Registration Revoked: Failure to Decide Within 30 Days

CA Sandeep Kanoi 28 Mar 2024 2,538 Views 0 comment Print Goods and Services Tax | Judiciary

Case Law Details

Case Name : Shri Balaji Agro Industries Vs State of Punjab and Another (Punjab and Haryana High Court)

Appeal Number : CWP-6160-2024 (O&M)

Date of Judgement/Order : 22/03/2024

Related Assessment Year :

Courts : All High Courts Punjab and Haryana HC

Download Judgment/Order

Shri Balaji Agro Industries Vs State of Punjab and Another (Punjab and Haryana High Court)

Suspension of GST registration revoked if no decision within 30 days as per Rule 22 (3) of CGST/PGST Rules, 2017. In a recent case before the Punjab and Haryana High Court, Shri Balaji Agro Industries brought forth a matter concerning the suspension of their Goods and Services Tax (GST) registration. The petitioner argued that the respondents failed to adhere to the prescribed timeline for deciding on the issue within 30 days, as mandated by Section 22(3) of the CGST/PGST Rules, 2017. Despite an earlier court order directing the respondents to provide reasons for the delay in decision-making, they failed to submit an affidavit. The petitioner's counsel emphasized the urgency of the matter, highlighting that a Show Cause Notice was issued on 21st November 2023, to which the petitioner responded by 28th November 2023. The respondents, upon issuing the show cause notice, suspended the petitioner's registration, effective from 21st November 2023. Per Rule 22(3) of the Rules, the

respondents were obliged to decide on the show cause notice and the objections raised within 30 days, either canceling the registration or deciding otherwise. However, it became evident that more than 30 days had elapsed without any decision from the respondents. Consequently, the petitioner's registration remained suspended for almost four months. In light of Rule 21-A Sub-clause (4) of the Rules, which stipulates that the suspension of registration is deemed revoked upon the completion of proceedings under Rule 22, it was apparent that the suspension should be lifted. Thus, the court held that the suspension of the petitioner's registration, effective from 21st November 2023, shall stand revoked. The court directed for the matter to be listed for further hearing on 18th April 2024, and instructed the respondents to file a reply by the next hearing date. Ads by Ads by FULL TEXT OF THE JUDGMENT/ORDER OF PUNJAB AND HARYANA HIGH COURT Learned counsel for the petitioner submits that the matter comes up today in terms of order dated 15.03.2024 passed by this Court wherein we directed the respondents to file short affidavit giving out reasons for not deciding the issue within 30 days' period as prescribed under Section 22(3) of the CGST/PGST Rules, 2017 (for short "the Rules"). No affidavit has been filed on behalf of the respondents. Learned counsel for the petitioner insists that an interim order ought to be passed in favour of the petitioner as a Show Cause Notice was issued on 21.11.2023 and the petitioner had filed their reply to the show cause notice on 28.11.2023. The respondents, while issuing the said show cause notice, had suspended the registration of petitioner w.e.f. 21.11.2023, and in terms of the reply filed by the petitioner, the respondents were required to decide the show cause notice and objections raised by the petitioner within a period of 30 days in terms of the Rule 22 (3) of the Rules which empowers the respondents to either cancel the registration w.e.f. the date or decide the same otherwise within 30 days. However, it is apparent that more than 30 days have elapsed and no decision has been taken by the respondents on the show cause notice, while the petitioner suffers suspension of Registration for almost four months, we find that as per the provisions of Rule 21-A Sub-clause (4) of the

Rules, the suspension of registration of the petitioner would be deemed to be revoked upon completion of the proceedings under Rule 22 of the Rules, but the proceedings were not completed within 30 days. Thus, prima facie, we find that the suspension of the petitioner would deserve to be revoked. Accordingly, we pass orders that the suspension of the petitioner w.e.f. 21.11.2023 shall stand revoked. List on 18.04.2024. Let the reply be filed by the next date of hearing.

Delhi HC modifies GST Registration Cancellation date to align with cessation of activities

CA Sandeep Kanoi 28 Mar 2024 171 Views 0 comment Print Goods and Services Tax | Judiciary

Case Law Details

Case Name : 3 Shades Events Through Its Proprietor Vs Principal Commissioner of Department of Trade And Taxes (Delhi High Court)

Appeal Number : W.P.(C) 3118/2024

Date of Judgement/Order : 13/03/2024

Related Assessment Year :

Courts : All High Courts Delhi High Court

Download Judgment/Order

3 Shades Events Vs Principal Commissioner of Department of Trade And Taxes (Delhi High Court)

Introduction: In a recent judgment, the Delhi High Court scrutinized the retrospective cancellation of GST registration in the case of 3 Shades Events. The court highlighted the absence of a valid reason and procedural fairness, setting a significant precedent in tax matters. Detailed Analysis: The petitioner, 3 Shades Events, contested the cancellation of its GST registration, which was retrospectively revoked from May 11, 2022. The decision was based on a show cause notice citing Rule 21(b) of the Act, alleging the issuance of invoices without actual supply of goods or services. However, the notice lacked specificity and failed to inform the petitioner about the retrospective nature of the cancellation, depriving them of a fair opportunity to contest. Furthermore, the subsequent order did not provide substantial grounds for cancellation, merely citing the petitioner's non-appearance during a hearing and failure to conduct

business from the declared premises. The lack of detailed reasoning raised concerns about procedural fairness. The court emphasized that cancellation with retrospective effect should be based on objective criteria and not merely due to non-filing of returns. It highlighted the adverse implications of retrospective cancellation on the input tax credit of the taxpayer's customers, emphasizing the need for careful consideration. Both the petitioner and the department sought cancellation, albeit for different reasons. Considering that the petitioner had ceased business operations since May 16, 2023, the court modified the cancellation date to align with the cessation of activities, ensuring fairness and compliance with Section 29 of the Central Goods and Services Tax Act, 2017. Conclusion: The Delhi High Court's decision in the 3 Shades Events case underscores the importance of procedural fairness and substantive reasoning in tax matters. By setting aside the retrospective cancellation of GST registration and providing clarity on the permissible grounds for such actions, the court reaffirmed the principles of justice and legality in administrative proceedings. This judgment serves as a guiding precedent for future cases involving similar issues, promoting transparency and fairness in tax administration. Ads by Ads by FULL TEXT OF THE JUDGMENT/ORDER OF DELHI HIGH COURT 1. Petitioner impugns order dated 03.07.2023, whereby the GST registration of the petitioner has been cancelled retrospectively with effect from 11.05.2022. Petitioner also impugns Show Cause Notice dated 14.06.2023. 2. Vide Show Cause Notice dated 14.06.2023, petitioner was called upon to show cause as to why the registration be not cancelled for the following reason:- "Rule 21(b)-person issues invoice or bill without supply of goods or services or both in violation of the provisions of the Act, or the rules made thereunder." 3. Petitioner is engaged in the business of event, exhibitions, conventions and possessed GST registration. 4. Petitioner had submitted an application seeking cancellation of GST registration dated 07.06.2023 on the ground of closure of business. 5. Pursuant to the said application, notice was given to the Petitioner on 31.05.2023 seeking additional information and documents relating to application for

cancellation of registration. On account of unsatisfactory reply, order dated 14.06.2023 was passed rejecting the application for cancellation. 6. Thereafter, Show Cause Notice dated 14.06.2023 was issued to the petitioner. Though the notice does not specify any cogent reason, it merely states "Rule 21(b)- person issues invoice or bill without supply of goods or services or both in violation of the provisions of the Act, or the rules made thereunder". Further, the said Show Cause Notice also does not put the petitioner to notice that the registration is liable to be cancelled retrospectively. Thus, the petitioner had no opportunity to even object to the retrospective cancellation of the registration. 7. Thereafter, impugned order dated 03.07.2023 passed on the Show Cause Notice also does not give any tenable reasons of cancellation. It, however, states that the registration is liable to be cancelled for the following reason "Whereas no reply to the show cause notice has been submitted and on day fixed for personal hearing, you did not appear in person or through an authorized representative; and whereas, the undersigned based on record available with this office is of the opinion that your registration is liable to be cancelled for following reason(s): Rule 21(a)-person does not conduct any business from declared place of business". The order further states that effective date of cancellation of registration is 11.05.2022 i.e., a retrospective date. 8. Pursuant to the said impugned order, Petitioner filed an application dated 19.07.2023 seeking revocation of cancellation of registration. On the said application Petitioner was issued a Show Cause Notice for rejection of application for revocation of cancellation of registration dated 03.08.2023, whereby it was merely stated "Reason for revocation of cancellation – Reason for revocation of cancellation – The reason entered for revocation of cancellation is not appropriate.." Thereafter, vide order dated 21.08.2023 the application for revocation of GST cancellation was rejected. 9. Learned counsel for the Petitioner submits that the Petitioner is no longer continuing business and the business activities of the Petitioner have been closed down w.e.f 16.05.2023. 10. We notice that the Show Cause Notice and the impugned order are also bereft of any details accordingly the same cannot

be sustained and neither the Show Cause Notice, nor the order spell out the reasons for retrospective cancellation. 11. In terms of Section 29(2) of the Act, the proper officer may cancel the GST registration of a person from such date including any retrospective date, as he may deem fit if the circumstances set out in the said sub-section are satisfied. Registration cannot be cancelled with retrospective effect mechanically. It can be cancelled only if the proper officer deems it fit to do so. Such satisfaction cannot be subjective but must be based on some objective criteria. Merely, because a taxpayer has not filed the returns for some period does not mean that the taxpayer's registration is required to be cancelled with retrospective date also covering the period when the returns were filed, and the taxpayer was compliant. 12. It is important to note that, according to the respondent, one of the consequences for cancelling a taxpayer's registration with retrospective effect is that the taxpayer's customers are denied the input tax credit availed in respect of the supplies made by the tax payer during such period. Although, we do not consider it apposite to examine this aspect but assuming that the respondent's contention in required to consider this aspect while passing any order for cancellation of GST registration with retrospective effect. Thus, a taxpayer's registration can be cancelled with retrospective effect only where such consequences are intended and are warranted. 13. It may be further noted that both the Petitioner and the department want cancellation of the GST registration of the Petitioner, though for different reasons. 14. In view of the fact that Petitioner does not seek to carry on business or continue the registration, the impugned order dated 03.07.2023 is modified to the limited extent that registration shall now be treated as cancelled with effect from 16.05.2023 i.e., the date when the Petitioner closed down his business activities. Petitioner shall make the necessary compliances as required by Section 29 of the Central Goods and Services Tax Act, 2017. 15. It is clarified that Respondents are also not precluded from taking any steps for recovery of any tax, penalty or interest that may be due in respect of the subject firm in accordance with law including retrospective

cancellation of the GST registration. 16. Petition is accordingly disposed of in the above terms.

AO cannot reject a reply by merely stating that reply was unsatisfactory

CA Sandeep Kanoi 27 Mar 2024 9,348 Views 0 comment Print Goods and Services Tax | Judiciary

Case Law Details

Case Name : Ethos Limited Vs Assistant Commissioner Department of Trade And Taxes & Anr. (Delhi High Court)

Appeal Number : W.P.(C) 3797/2024

Date of Judgement/Order : 14/03/2024

Related Assessment Year :

Courts : All High Courts Delhi High Court

Download Judgment/Order

Ethos Limited Vs Assistant Commissioner Department of Trade And Taxes & Anr. (Delhi High Court)

Introduction: In a recent judgment, the Delhi High Court addressed the legality of rejecting a claim for Input Tax Credit (ITC) without due consideration of the taxpayer's response. The case of Ethos Limited Vs Assistant Commissioner Department of Trade And Taxes & Anr. sheds light on the importance of a thorough review process in tax matters. Detailed Analysis: The petitioner contested an order dated 23.12.2023, which imposed a demand of Rs. 1,36,98,144.00, including penalties, under Section 73 of the Central Goods and Services Tax Act, 2017. The crux of the petitioner's argument lay in the assertion that their detailed reply to the Show Cause Notice dated 25.09.2023 had not been adequately considered by the authorities. Despite the petitioner's comprehensive response addressing each aspect of the Show Cause Notice, the impugned order merely dismissed it as unsatisfactory. The court highlighted the lack of proper assessment and failure to seek further clarification or documents if deemed

necessary. This disregard for due process rendered the rejection of the claim invalid. The court emphasized the obligation of the Proper Officer to diligently evaluate the taxpayer's submissions before concluding on their adequacy. By setting aside the impugned order and remitting the matter for re-adjudication, the court reaffirmed the principles of fairness and procedural correctness. Conclusion: The judgment of the Delhi High Court in Ethos Limited Vs Assistant Commissioner Department of Trade And Taxes & Anr. underscores the significance of a meticulous review process in tax assessments. Rejecting a taxpayer's claim without proper consideration of their response violates procedural fairness. This ruling serves as a reminder to tax authorities to conduct thorough assessments and afford taxpayers the opportunity to address any deficiencies in their submissions. FULL TEXT OF THE JUDGMENT/ORDER OF DELHI HIGH COURT Ads by Ads by Petitioner impugns order dated 23.12.2023, whereby the impugned Show Cause Notice dated 25.09.2023, proposing a demand against the petitioner has been disposed of and a demand of Rs. 1,36,98,144.00 including penalty has been raised against the petitioner. The order has been passed under Section 73 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the Act). 2. Learned counsel for Petitioner submits that a detailed reply dated 08.11.2023 was filed to the Show Cause Notice, however, the impugned order dated 23.12.2023 does not take into consideration the reply submitted by the petitioner and is a cryptic order. 3. Perusal of the Show Cause Notice shows that the Department has given separate headings under declaration of output tax, excess claim Input Tax Credit ["ITC"], ITC to be reversed on non-business transactions & exempt supplies and under declaration of ineligible ITC. To the said Show Cause Notice, a detailed reply was furnished by the petitioner giving full disclosures under each of the heads. 4. The impugned order, however, after recording the narration, records that the reply uploaded by the tax payer is not satisfactory. It merely states that "And whereas, the taxpayer had filed their objections/reply in DRC-06 but he failed to avail the Personal Hearing opportunity on the given due date. On the basis of reply

uploaded by the taxpayer, it has been observed that the same is incomplete, not duly supported by adequate documents and unable to clarify the issue. As such, taxpayer is not entitled to get benefit on the basis of its plain reply which is not supported with proper calculations/reconciliation and relevant documents. Since, the reply filed is not clear and satisfactory, the demand of tax and interest conveyed via DRC-01 is confirmed." The Proper Officer has opined that the reply is unsatisfactory. 5. The observation in the impugned order dated 23.12.2023 is not sustainable for the reasons that the reply filed by the petitioner is a detailed reply. Proper Officer had to at least consider the reply on merits and then form an opinion whether the reply was unsatisfactory, incomplete and not duly supported by adequate documents. He merely held that the reply is not clear and unsatisfactory which ex-facie shows that Proper Officer has not applied his mind to the reply submitted by the petitioner. 6. Further, if the Proper Officer was of the view that the reply is unsatisfactory and if any further details were required, the same could have been specifically sought from the petitioner. However, the record does not reflect that any such opportunity was given to the petitioner to clarify its reply or furnish further documents/details. 7. In view of the above, the order cannot be sustained, and the matter is liable to be remitted to the Proper Officer for re-adjudication. Accordingly, the impugned order dated 23.12.2023 is set aside. The matter is remitted to the Proper Officer for re-adjudication. 8. As noticed hereinabove, the impugned order records that it is incomplete, not duly supported by adequate documents. Proper Officer is directed to intimate to the petitioner details/documents, as maybe required to be furnished by the petitioner. Pursuant to the intimation being given, petitioner shall furnish the requisite explanation and documents. Thereafter, the Proper Officer shall re-adjudicate the show cause notice after giving an opportunity of personal hearing and shall pass a fresh speaking order in accordance with law within the period prescribed under Section 75(3) of the Act. 9. It is clarified that this Court has neither considered nor commented upon the merits of the contentions of either party. All rights and contentions of parties are reserved. 10. The challenge to Notification No. 9 of

2023 with regard to the initial extension of time is left open. 11. Petition is disposed of in the above terms.

Mistaken mentioning of same invoice number in multiple GST e-way bills: Madras HC Quashes Order

CA Sandeep Kanoi 31 Mar 2024 726 Views 0 comment Print Goods and Services Tax | Judiciary

Case Law Details

Case Name : Vimal Traders Vs Assistant Commissioner (State Tax) (Madras High Court)

Appeal Number : W.P. No.7117 of 2024

Date of Judgement/Order : 20/03/2024

Courts : All High Courts Madras High Court

Download Judgment/Order

Vimal Traders Vs Assistant Commissioner (State Tax) (Madras High Court)

In a recent judgment, the Madras High Court addressed a crucial issue concerning the inadvertent error of mentioning the same invoice number in multiple GST e-way bills. The case of Vimal Traders Vs Assistant Commissioner (State Tax) highlights the importance of procedural fairness and consideration of evidence in tax assessments. The petitioner, a registered entity under GST laws, faced a challenge to an assessment order primarily due to the non-consideration of their reply and accompanying documents. The error arose during the uploading of e-way bills, where the same invoice number was mistakenly entered for multiple transactions. Despite providing an explanation and relevant bill copies, the assessing authority proceeded with the assessment, leading to the issuance of the impugned order. While the petitioner's reply acknowledged the error and provided supporting documents, the impugned order failed to address these submissions adequately. The court observed that the reasons for rejecting the petitioner's explanation were not outlined, necessitating intervention. In its judgment, the Madras High Court quashed the impugned order and remanded the

matter to the assessing officer. The petitioner was granted an opportunity to submit a fresh reply with all relevant documents within a specified timeframe. This ruling underscores the significance of procedural fairness and thorough consideration of evidence in tax assessments, ensuring that taxpayers are afforded due process and opportunities to present their case effectively. FULL TEXT OF THE JUDGMENT/ORDER OF MADRAS HIGH COURT An assessment order dated 30.09.2023 is challenged in this writ petition primarily on the ground that the petitioner's reply and documents annexed thereto were not taken into consideration. The petitioner is a registered person under applicable GST enactments. During the assessment period 2018-2019, the petitioner had issued six invoices. While uploading the e-way bills pertaining to above mentioned supplies, the petitioner asserts that an error was committed by entering the same invoice number in multiple e-way bills. In relation thereto, a show cause notice was issued to the petitioner on 10.05.2023 and such show cause notice was replied to on 28.08.2023 by explaining the mistake committed and attaching bill copies. Eventually, the impugned order dated 30.09.2023 was issued. 2. Learned counsel for the petitioner referred to the reply dated 08.2023 and pointed out that the inadvertent error was explained by enclosing the relevant bill copies. By turning to the impugned order, learned counsel points out that the petitioner's reply was not discussed therein and no reasons were set out for rejecting the said reply. Therefore, it is submitted that the petitioner should be provided another opportunity to persuade the assessing officer. It is further submitted that there was no suppression of sales. 3. Mr. T.N.C.Kaushik, learned Additional Government Pleader, accepts notice for the respondent. He submits that the petitioner had submitted bills, which did not contain the GST registration number. He further submits that the dispute relates to questions of fact and, therefore, should be addressed in appellate proceedings. 4. From the petitioner's reply dated 28.08.2023, it appears that the petitioner conceded that an inadvertent error was made by including the same invoice number under multiple e-way bills. The petitioner also attached the relevant bill copies with such reply. The findings

recorded in the impugned order, in the operative portion thereof, are as under: “The taxpayer generated two E way bills for the same invoice hence the taxpayer suppressed the turnover in GSTR3B hence an intimation notice DRC-01A has been issued electronically on 13.07.2 022. The taxpayer would have received the notice in SMS and through mail. But the taxpayer did not produce any reply. DRC-01 has been electronically on 10.05.2023. The taxpayer would have received the notice in SMS and through mail. The taxpayer not replied. Personal hearing opportunities were offered to the taxpayer for filing their reply along with supportive documents on 23.08.2 023 at 11:15 AM, and 25.09.2023 at 11:45 AM through online Goods and Service tax common portal. The taxpayer would have received the notice in SMS and through mail. But the taxpayer have not appeared before the proper officer and failed to utilize the opportunity and not filed any reply t the Show cause notice issued. The taxpayer have not paid the penalty. The taxpayer filed reply for the second personal hearing through on line without documentary evidence the taxpayer reply not accepted. Hence, the above proposal is confirmed and orders passed under section 74 of TNGST / CGST Acts 2017 as below;” 5. The above extract discloses that the reply of the petitioner was noticed, but the reasons for rejecting such reply and, in particular, the documents annexed thereto, do not find place in the impugned order. For such reason, the impugned order calls for interference. 6. Therefore, the impugned order dated 30.09.2023 is quashed and the matter is remanded to the assessing officer for re-consideration. The petitioner is permitted to submit a reply to the show cause notice by enclosing all relevant documents within a maximum period of fifteen days from the date of receipt of a copy of this order. Upon receipt thereof, the assessing officer is directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and thereafter issue a fresh assessment order within two months from the date of receipt of the petitioner’s reply. 7. 7. W.P.No.7117 of 2024 is disposed of on the above terms. No costs. Consequently, W.M.P.No.7969 of 2024 is closed.

Kerala HC Dismisses Delayed Writ: Jeweller's GST Refund Petition Rejected

CA Sandeep Kanoi 31 Mar 2024 399 Views 0 comment Print Goods and Services Tax | Judiciary

Case Law Details

Case Name : Coimbatore Jewellers India Private Limited Vs Assistant State Tax Officer (Kerala High Court)

Appeal Number : WP(C) No. 7720 of 2024

Date of Judgement/Order : 18/03/2024

Related Assessment Year :

Courts : All High Courts Kerala High Court

Download Judgment/Order

Coimbatore Jewellers India Private Limited Vs Assistant State Tax Officer (Kerala High Court)

The case of Coimbatore Jewellers India Private Limited vs. Assistant State Tax Officer before the Kerala High Court revolves around a delayed writ petition seeking a refund of GST and penalty paid during the interception of jewellery consignment. Despite the petitioner's claims, the court dismissed the petition, citing its belated filing. Coimbatore Jewellers India Private Limited, a registered dealer under the CGST/SGST Act, had a consignment of jewellery intercepted due to a lack of relevant documents. The petitioner paid the demanded tax and penalty of Rs. 3,59,750/- and filed an appeal against the order rejecting it on the ground of delay. In 2024, the petitioner approached the Kerala High Court seeking a writ of certiorari to quash the order and relief in the form of mandamus or refund of tax and penalty. The Kerala High Court dismissed the petition, stating that it lacked substance due to its belated filing. The court emphasized the

importance of timely legal action and refused to entertain the petition. Any pending interlocutory application in the petition was also dismissed. In conclusion, the Kerala High Court's decision to dismiss the delayed writ petition highlights the significance of adhering to statutory timelines in legal proceedings. Coimbatore Jewellers India Private Limited's attempt to seek relief for GST refund and penalty was rejected due to the untimely nature of the petition. This case serves as a reminder for parties involved in legal disputes to act promptly to avoid adverse outcomes. FULL TEXT OF THE JUDGMENT/ORDER OF KERALA HIGH COURT Petitioner is a private limited Company and, according to the averments made in the writ petition, it is engaged in the business of jewellery. The petitioner is a registered dealer under the provisions of the Central Goods and Services Tax Act/State Goods and Services Tax Act, 2017 ('CGST/SGST Act', for short) and the Rules made thereunder. The petitioner's consignment of jewellery worth Rs.58,21,206/- was intercepted as it was not accompanied with relevant documents as is mandated under the provisions of the CGST/SGST Act and the Rules made thereunder. The said jewellery items were seized and an order was passed determining tax and penalty. The petitioner had remitted the demanded tax and penalty of Rs.3,59,750/- and thereafter the ornaments seized were released to the petitioner, as per order dated 18.12.2017, Ext.P5. The petitioner filed appeal against the said order on 25.5.2019 (Ext.P9), which came to be rejected on the ground of delay, vide Ext.P12 order dated 30.6.2023. Ads by Ads by 2. Now, in 2024, the petitioner has approached this Court with the following prayers: "i. Issue a writ of certiorari, or any other appropriate writ, order or direction, calling for the records leading to Exhibit P.12 order, and quash the same. ii. Issue a writ of mandamus or any other appropriate writ, order or direction, directing the 3rd respondent officer to complete the adjudication with respect to the goods confiscated under section 129 from the petitioner in respect of which petitioner has paid tax and penalty to release the goods and issue an order in FORM GST MOV -09 and summary of order in FORM GST DRC -07 to facilitate petitioner to file appeal if the proceedings are

passed against the petitioner. iii. Alternatively, to issue a writ of mandamus or any other appropriate writ, order or direction, directing the 3rd respondent to refund the tax and penalty collected from the petitioner since no orders are passed so far with respect to the confiscation." This Court finds no substance to entertain such a belated writ petition and the same is hereby dismissed. Pending interlocutory application, if any, in the present writ petition stands dismissed.

Bank Account attachment despite payment of GST Arrears: Kerala HC Remands case Back to State Tax Officer

CA Sandeep Kanoi 30 Mar 2024 240 Views 0 comment Print Goods and Services Tax | Judiciary

Case Law Details

Case Name : A.M Sainudheen Vs Commercial Tax Officer (Kerala High Court)

Appeal Number : WP(C) No. 10787 of 2024

Date of Judgement/Order : 19/03/2024

Related Assessment Year :

Courts : All High Courts Kerala High Court

Download Judgment/Order

A.M Sainudheen Vs Commercial Tax Officer (Kerala High Court)

Introduction: In a recent ruling by the Kerala High Court, a taxpayer, A.M Sainudheen, challenged the attachment of their bank account by GST officers despite paying arrears. The court's decision sheds light on the procedural errors made by tax authorities and emphasizes the importance of fair treatment for taxpayers. Detailed Analysis: The petitioner, A.M Sainudheen, found themselves in a legal battle with GST authorities after receiving a recovery notice for tax arrears amounting to Rs. 88,476 for multiple assessment years. However, Sainudheen had already paid the arrears for certain years and sought a refund of the excess amount paid. Despite raising objections and presenting evidence of payment in their representation, the petitioner's bank account was attached by GST officers. The Kerala High Court, upon reviewing the case, found fault with the actions of the tax authorities. The court noted that the petitioner's

representation, outlining the payment of arrears and requesting a refund, was not adequately considered before taking enforcement action. As a result, the court set aside the order to attach the bank account and remanded the matter back to the State Tax Officer for reevaluation. This ruling underscores the principle of natural justice and procedural fairness in tax matters. It highlights the obligation of tax authorities to thoroughly examine taxpayer representations and evidence before resorting to coercive measures such as bank account attachment. The decision serves as a reminder to tax officials to act prudently and responsibly in enforcing tax laws while respecting the rights of taxpayers. Conclusion: The Kerala High Court's decision in the case of A.M Sainudheen vs. Commercial Tax Officer reaffirms the importance of procedural fairness and due diligence in tax enforcement actions. Taxpayers have the right to be heard and their representations must be duly considered before any punitive measures are taken. This ruling sets a precedent for fair treatment of taxpayers and emphasizes the need for responsible conduct by tax authorities to uphold the principles of justice and equity in tax administration. FULL TEXT OF THE JUDGMENT/ORDER OF KERALA HIGH COURT Ads by Petitioner is an assessee under the provisions of the Central Goods and Services Tax Act/State Goods and Services Tax Act, 2017 having TIN No.3230498362. Show cause notice dated 28.10.2014, Ext.P1, was issued to the petitioner by the 2nd respondent demanding an amount of Rs.57,553/- in respect of the assessment years 2005-06 and 200809. 2. The petitioner challenged the said show cause notice before this Court by filing WP(C) No.30070/2014 and this Court vide Ext.P2 judgment and order dated 13.11.2014 disposed of the said writ petition directing the 1st respondent therein to consider and pass appropriate orders on the representation of the petitioner, in accordance with law, after giving an opportunity of hearing to the petitioner, at the earliest. 3. In pursuance to Ext.P2 judgment and order dated 13.11.2014 in WP(C) No.30070/2014, the representation filed by the petitioner came to be decided vide Ext.P3 order and the competent authority determined the liability and interest at Rs.2,033/- and Rs.1,423/-, respectively. 4. Now, the petitioner has

approached this Court in the present writ petition against the recovery notice dated 22.5.2023, Ext.P4, demanding arrears of tax of Rs.88,476/- for the years 2005- 06, 2008-09 and 2012-13. The petitioner has represented against the said notice in Ext.P5 stating that the petitioner has already paid the arrears in respect of the assessment years 2005-06 and 2008-09 and that the excess amount paid by him may be refunded to him. Learned counsel for the petitioner submits that without taking into consideration the contention of the petitioner in Ext.P5, vide Ext.P6 order dated 24.1.2024, the petitioner's Bank account has been attached.

5. Considering the aforesaid fact, the present writ petition is allowed, the impugned order at Ext.P6 dated 24.1.2024 is set aside and the matter is remanded back to the State Tax Officer, 3rd respondent herein, to consider the representation of the petitioner in Ext.P5 and pass fresh orders, in accordance with law, expeditiously. The petitioner is directed to appear before the 3rd respondent on 25.3.2024. Pending interlocutory application, if any, in the present writ petition stands dismissed.

Bank account attachment for discrepancies in GSTR 3B & 2B: HC directs re-adjudication

CA Sandeep Kanoi 30 Mar 2024 405 Views 0 comment Print Goods and Services Tax | Judiciary

Case Law Details

Case Name : Kamatchi Stores Vs Deputy State Tax Officer-1 (Madras High Court)

Appeal Number : W.P.No.7850 of 2024

Date of Judgement/Order : 25/03/2024

Related Assessment Year

: Courts : All High Courts Madras High Court

Download Judgment/Order

Kamatchi Stores Vs Deputy State Tax Officer-1 (Madras High Court)

In a recent case between Kamatchi Stores and the Deputy State Tax Officer-1, the Madras High Court delivered a significant judgment regarding discrepancies in GSTR 3B and GSTR 2B returns. The petitioner challenged an assessment order and subsequent recovery notices issued without hearing the taxpayer. Let's delve into the details of the case and the court's decision. Detailed Analysis Kamatchi Stores, engaged in trading provisions and vegetables, received a show cause notice on 06.03.2023, citing discrepancies in their GST returns. However, due to inadequate communication from their GST consultant, the petitioner couldn't respond, leading to the issuance of the assessment order without a hearing. The petitioner, upon noticing the confirmed tax liability and the appropriation of a significant sum from their bank account, sought another opportunity to present their case. The court observed that although the petitioner had been given previous opportunities for a hearing, the lack of communication

from their consultant warranted reconsideration. Examining the records, including the petitioner's bank statement showing debits towards tax liability, the court concluded that the assessment order lacked due process. Hence, the court set aside the order and remanded the matter for reconsideration. The petitioner was granted 15 days to submit a reply to the show cause notice, with the respondent directed to provide a fresh order within two months after receiving the reply. Conclusion Ads by The judgment of the Madras High Court in the case of Kamatchi Stores vs Deputy State Tax Officer-1 highlights the importance of procedural fairness in tax assessments. Despite previous opportunities, the court recognized the petitioner's right to be heard and ordered a fresh consideration of the case. This decision underscores the significance of due process in tax proceedings, ensuring fairness and equity for taxpayers. FULL TEXT OF THE JUDGMENT/ORDER OF MADRAS HIGH COURT An assessment order dated 07.06.2023 and the consequential recovery notices and attachment orders are the subject of challenge. 2. The petitioner carries on the business of trading in provisions, vegetables and the like. A show cause notice was issued to the petitioner on 06.03.2023 calling upon the petitioner to show cause in respect of discrepancies between the GSTR 3B return and the GSTR 2B return. The petitioner did not reply thereto because he had engaged the services of a GST consultant, who did not keep the petitioner informed. The impugned assessment order was issued in the said facts and circumstances without hearing the petitioner. Thereafter, a recovery notice was issued on 18.12.2023 and a sum of about Rs.5,39,000/- was appropriated from the petitioner's bank account. The present writ petition was filed in the said facts and circumstances. 3. Learned counsel for the petitioner invited my attention to the impugned order and pointed out that the confirmed tax liability was Rs.10,89,028/-. As against this sum, he submits that a sum of about Rs.5,39,000/- was appropriated from the petitioner's account in the State Bank of India. He refers to the statement of account to corroborate such contention. Since the petitioner was not heard before issuing the impugned order, he seeks another opportunity and also points out that the

petitioner had submitted a reply on 08.03.2024. 4. Mrs. K. Vasanthamala, learned Government Advocate, accepts notice for the respondent. By referring to the impugned order, she points out that such order was preceded by an intimation dated 18.05.2022 and a show cause notice dated 06.03.2023 and a personal hearing/reminder notice dated 08.05.2023. Since several opportunities were provided to the petitioner, she submits that no interference is called for. 5. The documents on record include the statement of account of the petitioner in the State Bank of India. The said statement of account indicates that debits were made towards the tax liability on 10.01.2024 and 30.01.2024. The aggregate value of such debits is about Rs.5,39,000/-. On perusal of the impugned assessment order, it is evident that the tax liability is Rs.10,89,028/- and interest and penalty was levied in respect thereof. By taking into account the fact that about 50% of the tax liability was recovered by making an appropriation from the petitioner's bank account, it is just and necessary to provide the petitioner an opportunity of being heard. Solely for that reason, the impugned order calls for interference. 6. Therefore, the impugned order dated 07.06.2023 is set aside and the matter is remanded for reconsideration. The petitioner is permitted to submit a reply to the show cause notice within a period of 15 days from the date of receipt of a copy of this order by annexing all relevant documents. Upon receipt thereof, the respondent is directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and thereafter issue a fresh order within a period of two months from the date of receipt of the petitioner's reply. In view of the assessment order being quashed, the bank attachment stands raised. 7. The writ petition is disposed of on the above terms. There will be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Madras HC Quashes GST Order for Ignoring Taxpayer's Plea for Extended Reply Time

CA Sandeep Kanoi 30 Mar 2024 279 Views 0 comment Print Goods and Services Tax | Judiciary

Case Law Details

Case Name : Santhosh Kumar Bhavesa Bothra Vs Commercial Tax Officer (Madras High Court)

Appeal Number : W.P.Nos.7698 & 7704 of 2024

Date of Judgement/Order : 22/03/2024

Related Assessment Year : 2017-18

Courts : All High Courts Madras High Court

Download Judgment/Order

Santhosh Kumar Bhavesa Bothra Vs Commercial Tax Officer (Madras High Court)

Introduction: The case of Santhosh Kumar Bhavesa Bothra versus the Commercial Tax Officer before the Madras High Court brings to light the issue of rushed orders by GST authorities despite the taxpayer's request for more time to respond. This article delves into the details of the judgment and its implications. Detailed Analysis: The petitioner, a registered entity under GST laws, received intimation and subsequent show cause notices regarding assessment periods in 2017-2018 and 2018-2019. Upon receipt of the show cause notice, the petitioner promptly requested 30 days' time to prepare a comprehensive response, citing the need to gather information from various sources. However, the impugned orders were issued within a remarkably short span, approximately 15 days from the date of the petitioner's reply, without any acknowledgment or consideration of the petitioner's request. The absence of

reference to the petitioner's reply in the orders raised questions regarding the principles of natural justice and the right to a fair hearing. The petitioner's counsel highlighted this discrepancy, arguing that the rushed issuance of orders without due consideration of the petitioner's request violated the principles of natural justice. On the other hand, the Government Advocate contended that opportunities for personal hearings were provided post the show cause notices, implying that the issuance of orders was justified. The Madras High Court, after careful consideration, observed the petitioner's prompt response and the lack of acknowledgment of the same in the impugned orders. Consequently, the court ruled in favor of the petitioner, quashing the impugned orders and remanding the matters for reconsideration. In its verdict, the court directed the petitioner to submit a reply to the show cause notice within 15 days from the receipt of the court's order. Additionally, it instructed the respondent to provide a reasonable opportunity to the petitioner, including a personal hearing, and to issue fresh orders within two months from the receipt of the petitioner's reply. Ads by Conclusion: The judgment in the case of Santhosh Kumar Bhavesa Bothra vs. Commercial Tax Officer serves as a reminder of the importance of adhering to principles of natural justice and providing taxpayers with a fair opportunity to present their case. It underscores the judiciary's role in safeguarding procedural fairness in administrative actions, particularly in matters concerning tax assessments. FULL TEXT OF THE JUDGMENT/ORDER OF MADRAS HIGH COURT Orders dated 16.10.2023 in respect of the assessment periods 2017-2018 and 2018-2019, respectively, are challenged in these writ petitions primarily on the ground of breach of principles of natural justice. 2. The petitioner is a registered person under applicable GST enactments. The petitioner received the respective intimation in Form GST DRC-01A on 27.01.2023. This was followed by the respective show cause notice dated 28.09.2023. Almost immediately after receipt of such show cause notice, by reply dated 29.09.2023, the petitioner requested for 30 days' time to reply on the ground that it was necessary to collect details from various sources. The impugned orders were issued on 16.10.2023. 3.

Learned counsel for the petitioner referred to the reply dated 29.09.2023 and pointed out that the impugned orders were issued within about 15 days from the date of receipt of such reply in spite of the petitioner requesting for 30 days' time. She also pointed out that such reply was not referred to in the impugned order. 4. Mr. V. Prashanth Kiran, learned Government Advocate, accepts notice for the respondent. He submits that personal hearing opportunities were provided subsequent to the show cause notices. Therefore, he contends that interference is not warranted. 5. It is noticeable that the petitioner replied to the show cause notices on the very next day and requested for 30 days' time to reply. Without responding to the petitioner's reply, the impugned orders were issued within about 15 or 16 days from the date of receipt of the reply. The impugned orders do not refer to the petitioner's reply or set out any reasons for rejecting the reply. Since the petitioner was deprived of a reasonable opportunity to contest the tax demand, these impugned orders are unsustainable. 6. Therefore, impugned orders dated 16.10.2023 are quashed and these matters are remanded for reconsideration. The petitioner is permitted to submit a reply to the respective show cause notice within a period of 15 days from the date of receipt of a copy of this order. Upon receipt thereof, the respondent is directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and thereafter issue fresh orders within two months from the date of receipt of the petitioner's reply. 7. These writ petitions are disposed of on the above terms. There will be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Issuing Summons Not Considered Initiation under CGST Act Section 6(2)(b): Rajasthan HC

CA Sandeep Kanoi 24 Mar 2024 618 Views 0 comment Print Goods and Services Tax | Judiciary

Case Law Details

Case Name : Rais Khan Vs Add. Commissioner (Rajasthan High Court)

Appeal Number : D.B. Civil Writ Petition No. 3087/2024

Date of Judgement/Order : 14/03/2024

Related Assessment Year :

Courts : All High Courts Rajasthan High Court

Download Judgment/Order

Rais Khan Vs Add. Commissioner (Rajasthan High Court)

Introduction: The case of Rais Khan versus the Additional Commissioner before the Rajasthan High Court revolves around the issuance of summons under Section 70 of the Central Goods & Services Tax Act, 2017 (CGST Act). The petitioner challenges the summons issued by the Directorate General of GST Intelligence (DGGI) and seeks their quashing. Detailed Analysis: 1. Petitioner's Argument: The petitioner contends that the initiation of proceedings by State Authorities precludes the DGGI from issuing summons under Section 70 of the CGST Act. Citing Section 6(2)(b) of the CGST Act, the petitioner argues that if State Authorities have initiated proceedings on a subject matter, no further proceedings can be initiated under the CGST Act on the same subject matter. 2. Legal Position: The High Court examines the relevant provisions of the CGST Act, particularly Section 6(2)(b), which restricts the initiation of proceedings if State Authorities have already taken action on the same subject matter. 3. Precedents: The petitioner cites precedents such as "M/s R.P. Buildcon Private

Limited & Anr. vs. The Superintendent, CGST & CX, Circle-II, Group-10 & Ors." and "Vivek Narsaria vs. The State of Jharkhand & Ors." to support their argument that the DGGI cannot initiate proceedings when State Authorities have already acted. 4. Opposing Argument: The respondents argue that the issuance of summons under Section 70 of the CGST Act is not equivalent to initiating proceedings. They contend that summons are part of an inquiry process and do not constitute the commencement of proceedings as envisaged under Section 6(2)(b) of the CGST Act. Ads by 5. Court's Decision: The High Court dismisses the petitioner's writ petition, ruling that the issuance of summons under Section 70 of the CGST Act is not barred by Section 6(2)(b). The court clarifies that the scope of Section 6(2)(b) and Section 70 is distinct, and summons for conducting an inquiry do not fall under the purview of Section 6(2)(b). Conclusion: The Rajasthan High Court's ruling in the case of Rais Khan versus Add. Commissioner provides clarity on the interpretation of provisions under the CGST Act. By distinguishing between the initiation of proceedings and the issuance of summons for inquiry, the court ensures that statutory authorities can exercise their powers under the law without unnecessary hindrance. FULL TEXT OF THE JUDGMENT/ORDER OF RAJASTHAN HIGH COURT 1. Petitioner has preferred this Civil Writ Petition challenging the issuance of summons dated 27.09.2023 & 14.02.2024 under Section 70 of the Central Goods & Services Tax Act, 2017 (hereinafter referred to as the "CGST Act") passed by Superintendent/ Appraiser/Senior Intelligence Officer DGGI and praying for quashing and setting aside of the same. 2. It is contended by counsel appearing for the petitioner that State Authorities had initiated the proceedings and as per Section 6(2)(b) of the CGST Act, if a proper Officer under the State Goods and Services Tax Act or Union Territory Goods and Services Tax Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper Officer under this Act on the same subject matter. It is also contended that since the State Authorities had initiated action, summons under Section 70 of the CGST Act, could not have been issued by the DGGI. It is further contended that proper

Officer has been defined under Section 2(91) of the CGST Act. 3. It is contended that Guidelines have been issued by the GST-Investigation Wing on issuance of summons under Section 70 of the CGST Act, which are binding on the Authorities. Reliance has been placed on "M/s R.P. Buildcon Private Limited & Anr. vs. The Superintendent, CGST & CX, Circle-II, Group-10 & Ors." (M.A.T. No.1595 of 2022 with I.A. No. CAN 1 of 2022), decided by the Calcutta High Court on 30.09.2022. Reliance has also been placed on "Vivek Narsaria vs. The State of Jharkhand & Ors." (W.P. (T) No.4491 of 2023) decided by the High Court of Jharkhand at Ranchi on 15.01.2024. 4. Learned Additional Advocate General-Mr. Bharat Vyas assisted by Ms. Pratyushi Mehta, Adv. as well as learned counsel-Mr. Ajay Shukla along with Mr. Raghav Sharma appearing for the Union of India have vehemently opposed the present Civil Writ Petition. It is contended that present Writ Petition is not maintainable and summons given under Section 70 of the CGST Act cannot be said to be initiation of proceedings. It is also contended that petitioner had made bogus crime and on fake & forged documents he was claiming input tax credit limit and summons were issued under Section 70 of the CGST Act by the DGGI and the bar under Section 6(2)(b) of the CGST Act, would not apply. 5. Learned Additional Advocate General appearing for the State has also contended that when there is inter-se evasion of tax or claim of tax benefit, Union of India is authorized to initiate the proceedings. 6. Learned counsel appearing for the Union of India has placed reliance on "Amit Gupta vs. Union of India & Ors." (W.P. (C) 8625/2022 & CM APPL. 25934/2022) decided by the High Court of Delhi at New Delhi on 04.09.2023; "Indo International Tobacco Ltd. vs. Vivek Prasad, Additional Director General, DGGI" : 2022 SCC OnLine Del. 90; "K. Trading Company vs. Union of India", 2021 (51) G.S.T.L. 288 (All.); "Kuppan Gounder P.G. Natarajan vs. Directorate General of GST Intelligence, New Delhi" 2022 (58) G.S.T.L. 292 (Mad.) and "Yasho Industries Ltd. vs. Union of India", 2021 (54) G.S.T.L. 19 (Guj.). 7. We have considered the contentions and have perused the provisions of the Act as well as judgments cited before us. 8. In "Vivek Narsaria vs. The State of Jharkhand & Ors." (supra), the

proceedings were initiated by the State Goods & Services Tax Department and the petitioner was served with a notice by the Preventive Branch of CGST with a direction to reverse the Input Tax Credit along with interest and penalty on account of alleged purchases from the non-existent entity. The Jharkhand High Court observed that the State Authorities had initiated the proceedings and the same should continue with the State Authorities. 9. In "M/s R.P. Buildcon Private Limited & Anr. vs. The Superintendent, CGST & CX, Circle-II, Group-10 & Ors." (supra), the Calcutta High Court has held that since the audit proceedings under Section 65 of the CGST Act has already been commenced, the proceedings should be taken to the logical end and the proceedings initiated by Anti Evasion and Range Office should not be proceeded with any further. 10. The dispute before us is the issuance of summons under Section 70 of the CGST Act, when notices were already issued by the State Authorities. A prayer is made to quash and set-aside the issuance of the summons under Section 70 of the CGST Act. It is evident that against the issuance of notice by the State Authorities, petitioner had preferred writ petition before the High Court and had not put in appearance before the State Authorities. 10. In the judgments referred to by counsel for the respondents, it is held that scope of Section 6(2)(b) and Section 70 of the CGST Act is different and distinct, as the former deals with any proceedings on subject matter, whereas the latter deals with power to issue summon in an inquiry and therefore, the words "proceedings" and "inquiry" cannot be mixed up to read as if there is a bar for the respondents to invoke the power under Section 70 of the CGST Act. In "G.K. Trading Company vs. Union of India", the Allahabad High Court has held that issuance of summons is not initiation of proceedings referable to under Section 6(2)(b) of the CGST Act. Similar is the view of Madras High Court in "Kuppan Gounder P.G. Natarajan vs. Directorate General of GST Intelligence, New Delhi", wherein, Court has also held that in issuance of summons for conducting an inquiry and to obtain a statement from the appellant cannot be construed to be bar under Section 6(2)(b) of the CGST Act. 12. In view of the above, we are of the considered view that issuance of summons under

Section 70 of the CGST Act is not hit by Section 6(2)(b) of the CGST Act and the present Civil Writ petition being devoid of merits is accordingly dismissed. Stay application stands disposed.

Prima facie Pre-SCN (ASMT-10) Before issue of DRC-01 is Mandatory: HC Grants Stay

UBR Legal Advocates 23 Mar 2024 1,194 Views 0 comment Print Goods and Services Tax | Judiciary

Case Law Details

Case Name : Hindustan Construction Company Limited vs Union of India and others (Himachal Pradesh High Court)

Appeal Number : CWP No. 1827 of 2024

Date of Judgement/Order : 12/03/2024

Related Assessment Year :

Courts : All High Courts Himachal Pradesh HC

Download Judgment/Order

Hindustan Construction Company Limited vs Union of India and others (Himachal Pradesh High Court)

Introduction: The Himachal Pradesh High Court issues notice and grants a stay of recovery proceedings in the case of Hindustan Construction Company Limited vs Union of India. The court acknowledges the mandatory nature of ASMT 10 under Rule 99 of the CGST Rules and references a previous order by the Gauhati High Court in PepsiCo's case. The Hon'ble High Court of Himachal Pradesh, issues notice and grants stay of recovery proceedings against the said order. It prima facie, agrees with the contention that ASMT 10 is mandatory under Rule 99 of the CGST Rules and no show cause notice (Form DRC 01) can be issued without it. It relies on earlier order passed by the Hon'ble Gauhati High Court in PepsiCo's case. The petitioner undertakes work contracts for State Government projects. It is registered and files GST returns. Scrutiny proceedings were initiated under section 61 of the CGST Act, 2017. The ASMT 10 notice was

issued pointing out certain discrepancies. Show cause notice was issued on the said basis. However, another show cause notice came to be issued on issue not covered by ASMT 10. No pre-scn in Form DRC-01A was issued. Order came to be passed in such show cause notice. This order was challenged in writ petition. The Hon'ble High Court of Himachal Pradesh, issues notice and grants stay of recovery proceedings against the said order. It prima facie, agrees with the contention that ASMT 10 is mandatory under Rule 99 of the CGST Rules and no show cause notice (Form DRC 01) can be issued without it. It relies on earlier order passed by the Hon'ble Gauhati High Court in PepsiCo's case. The matter was argued by Ld. Counsel Bharat Raichandani FULL TEXT OF THE JUDGMENT/ORDER OF HIMACHAL PRADESH HIGH COURT Ads by Notice. Mr. Balram Sharma, learned Deputy Solicitor General of India and Mr. Sushant Kaprate, learned Additional Advocate General accept notice on behalf of respondent no.1 and respondents no. 2 to 4, respectively. 2) Heard Sh.Bharat Raichandani, Advocate for the petitioner and Mr. Sushant Kaprate, learned Additional Advocate General, for respondents No.2 to 4. 3) It is the contention of the counsel for the petitioner that the impugned order (Annexure P-3) has been passed with regard to an issue, in respect of which, no ASMT-10 notice was issued to the petitioner, and that the ASMT-10 issued to the petitioner dealt with other aspects other than the ground on which the impugned order is passed. This is not disputed by the learned counsel for the respondents. 4) Similar issue appears to have been considered by the Gauhati High Court in M/s. Pepsico India Holdings Pvt. Ltd. vs. Union of India and others, WP(C)/6960/2023 dt.13.12.2023 as also by this Court vide order dt.11.03.2024 in CWP No. 1793 of 2024. 5) Prima facie there appears to be non-compliance with Rule 99 of the CGST Rules, which requires service of a pre show cause notice in form ASMT-10 before issuing DRC-01 notice. Therefore, there shall be interim stay of all further proceedings pursuant to Annexure P-9 (Recovery Notice), until further orders. 6) List on 05.2024.

Andhra Pradesh HC Denies Police Custody in Rs. 8 Crore GST Scam Case

CA Sandeep Kanoi 22 Mar 2024 204 Views 0 comment Print Goods and Services Tax | Judiciary

Case Law Details

Case Name : State of Andhra Pradesh Vs Prathipati Sarath (Andhra Pradesh High Court)

Appeal Number : Criminal Revision Case No: 234/2024

Date of Judgement/Order : 13/03/2024

Related Assessment Year :

Courts : All High Courts Andhra Pradesh HC

Download Judgment/Order

State of Andhra Pradesh Vs Prathipati Sarath (Andhra Pradesh High Court)

Introduction: The Andhra Pradesh High Court recently ruled on a revision petition filed in a significant case involving alleged GST-ITC fraud amounting to Rs. 8 crores. The petition sought police custody for a prominent political figure's son. Let's delve into the details of the case and the court's decision. Detailed Analysis: The case revolves around allegations of fraudulent practices, conspiracy, and misappropriation of funds by the accused, who was an Additional Director at a private corporation. The prosecution argued for police custody, citing the seriousness of the offenses and the need for further investigation beyond the scope of the previous probe conducted by the DGGI, Hyderabad. The court meticulously examined the arguments presented by both sides. While acknowledging the gravity of the allegations, it emphasized the limited scope of its review in a revisional proceeding. The court's analysis focused on whether the

magistrate's decision to deny police custody was legally sound based on the evidence presented. The prosecution highlighted the financial magnitude of the fraud and the accused's alleged misuse of his position for personal gain. It underscored the necessity of custodial interrogation to uncover hidden facts. However, the defense countered by questioning the validity of the charges and the jurisdiction of the court in certain aspects. Crucially, the court scrutinized the documents and statements presented, including those pertaining to the alleged involvement of shell companies and the diversion of government funds. It also considered precedents and legal provisions governing the grant of police custody in such cases. Conclusion: After a thorough examination of the material before it, the Andhra Pradesh High Court upheld the magistrate's decision to dismiss the petition seeking police custody. The court found no legal basis to overturn the ruling, emphasizing the need for adherence to statutory provisions and judicial scrutiny in such matters. Ads by While this decision marks a significant development in the ongoing legal proceedings, it does not conclusively determine the guilt or innocence of the accused. The case underscores the complexities involved in prosecuting economic offenses and the importance of due process in delivering justice. Note: This detailed analysis provides insights into the court's decision-making process and the key arguments presented by both sides in the case. FULL TEXT OF THE JUDGMENT/ORDER OF ANDHRA PRADESH HIGH COURT This petition is filed by the Petitioner/Complainant under Sections 397 and 401 of Cr.P.C., seeking to set aside the Order dated 06. 03.2024 in Crl. M. P. No. 424 of 2024 in Crime No.63 of 2024 of Machavaram Police Station, Vijayawada City, passed by the learned I Additional "learned Magistrate"). Heard Smt. Y.L. Shivakalpana Reddy, learned Standing Counsel-cum-Special Public Prosecutor, appearing for the Petitioner/Complainant, and Sri B. Rao, learned Senior Counsel for the Respondent/A.1. 3. The Revision Petitioner/Complainant filed a petition under Section 167(3) of Cr.P.C., on behalf of the Prosecution before the Additional Chief Metropolitan Magistrate, Vijayawada, in Crl.M.P.No.424 of 2024 in Crime No.63 of 2024 of Machavaram

Police Station, seeking an order granting Police custody of A.1 for ten days, with the following allegations, which are as under: (i) The Respondent/A.1 was an Additional Director of M/s. Avexa Corporation Pvt. Ltd., whose father is an Ex-Minister in the previous Government, indulged in unethical practices, conspired with the other Accused, who created Shell companies fraudulently, tampered with accounts, submitted forged documents to the Government and committed fraud and caused loss to a tune of Rs.26,25,19,393/- to the State Exchequer and committed serious economical offence by diverting the funds under the guise of developmental works at Amaravati during 2017 to 2022 even though no works were carried out by colluding with other companies and gained illegally Rs.8,00,00,000/-. Based on the report given by the Defacto Complainant, i.e. Deputy Director of Revenue Intelligence, A.P., Vijayawada, a case has been registered for the offences under Sections 420, 409, 467, 471, 477(A), 120(B) r/w. 34 IPC. Later, A.1 was produced by the S.H.O., Machavaram Police Station, before the learned Magistrate on 29.02.2024; after that, he was remanded to judicial custody. (ii) While A.1 was acting as Additional Director of M/s. Avexa Company, a subcontractor, an amount of Rs.50,00,000/- was transferred from M/s. BSR Infra Tech, who was an original contractor to the Government illegally on 31.01.2020. Abusing the position and influence of his father, A.1 entered into a conspiracy with the companies with a common intention of misappropriating funds which were entrusted to carry out the earmarked work contracts at Amaravati region, created false documents as if certain supplies or services were rendered by filing false invoices without actually doing no such work and diverted huge Government amounts to the companies by using false documents as genuine and by creating false GST accounts and claimed Input Tax Credit to a tune of Rs.8,00,00,000/-. As such, it is necessary to order the Police custody of A.1 to elicit the hidden facts. 4. After considering the arguments presented by both parties, the learned Magistrate rejected the Police custody petition on 06.03.2024, citing that the mere assertions in the petition lacked the adequacy required to authorize Police custody. The rationale behind the dismissal was that

the Central GST Department had already completed the entire investigation. According to the learned Magistrate, the petition lacked merit and substantial grounds to warrant the placement of A.1 into Police custody for further questioning. Dissatisfied with this decision, the Petitioner/Complainant has initiated this Revision. 5. It is also established that while considering the legality, propriety or correctness of a finding or a conclusion, normally, the Revisional Court does not dwell at length upon the facts and evidence of the case. A Court, in Revision, considers the material only to satisfy itself about the legality and propriety of the findings, sentence, and order, and it refrains from substituting its conclusion on an elaborate consideration of the evidence. 6. Thus, the scope of the Revision is limited to whether the Order refusing police custody was legally correct or not with regard to the material placed before the learned Magistrate. 7. The learned Special Public Prosecutor, representing the Petitioner/ Complainant, contends that the learned Magistrate failed to recognize the severity of the offence and the necessity for a more in-depth investigation. Emphasizing the financial nature of the offence, involving substantial fraud amounting to crores committed by the Accused, she argues that the investigation conducted by DGGI, Hyderabad, should not be equated with a Police investigation. According to her, custodial interrogation of the Accused is imperative. Notably, the Respondent/A.1 served as an Additional Director of the Company for a mere 47 days. Referring to Section 161 of Cr.P.C., she points out statements from witnesses that indicate the Accused, albeit for a short duration as a Director, actively participated in the company's affairs. Furthermore, as the son of a former Minister, he allegedly exploited his position successfully to obtain input tax credit from the erstwhile Government. 8. The learned Special Public Prosecutor contends that DGGI, Hyderabad's investigation is confined to determining the evasion of input tax credit by the AVEXA company and issued a show cause notice for the payment of Rs.16/- crores as a penalty under section 74(1) of the provisions of the CGST Act, 2017; the investigation done by DGGI, Hyderabad unit established that M/s. Avexa company is in conspiracy with shell companies,

created fake invoices, and committed misappropriation of tax amount to Rs.16,06,78,558/-. 9. The Hon'ble Supreme Court, while considering the grant of custody to the police in a criminal investigation under section 167 (2) of Cr.P.C, in Satyajit Ballubhai Desai v. State Of Gujarat1, at paragraphs Nos. 9, 16 and 19 had held as follows: "9. Having considered and deliberated over the issue involved herein in the light of the legal position and existing facts of the case, we find substance in the plea raised on behalf of the appellants that the grant of an order for police remand should be an exception and not a rule and for that the investigating agency is required to make out a strong case and must satisfy the learned Magistrate that without the police custody, it would be impossible for the police authorities to undertake further investigation and only in that event police custody would be justified as the authorities, especially at the magisterial level would do well to remind themselves that detention in police custody is generally disfavoured by law. The provisions of law lay down that such detention/police remand can be allowed only in special circumstances granted by a Magistrate for reasons judicially scrutinised and for such limited purposes only as the necessities of the case may require. The scheme of Section 167 of the Criminal Procedure Code, 1973 is unambiguous in this regard and is intended to protect the accused from the methods which may be adopted by some overzealous and unscrupulous police officers, which at times may be at the instance of an interested party also. But it is also equally true that police custody, although it is not the be-all and end-all of the whole investigation, is one of its primary requisites, particularly in the investigation of serious and heinous crimes. The legislature also noticed this and has, therefore, permitted limited police custody. 16. While examining the case of the appellants in the light of the aforesaid legal position, it is apparent from the provisions of CrPC that the Order permitting police remand cannot be treated lightly or casually, and strict adherence to the statutory provision is mandatory. In view of this, the Order for police remand of the appellants cannot be sustained for more than one reason " 10. It is not in dispute that M/s Avexa received a work order dated 27.10.2017 from M/s BSR Infratech Private Limited for the

construction of the N9 road from Uddandurayunipalem to Nidamarru in Amaravati on a subcontract basis. 11. The learned Special Public Prosecutor contends that the investigation revealed that Avexa had issued outward invoices having a taxable value of Rs.23,43,92,315/-along with GST of Rs.2,81,27,078/- to M/s. BSR Infratech India Private Limited implies that Avexa received a total amount of Rs.26,25,19,393/- from BSR Infratech Private Limited, the principal contractor. But the statement of Sri Kurra Jogeswarao, present director of Avexa, recorded by the investigation officer of DGGI on 22.07.2022, shows that "they have not provided any services to M/s. BSR Infratech India Limited." Therefore, as per the investigation, M/s. Avexa has transferred funds to the above fake entities outside the state of Andhra Pradesh, and Avexa only received inward bills/invoices without receipt of Goods/Services from them. 12. It is not in dispute that Avexa has received a work order regarding the investigation design and construction of roads and utilities in the green buffer of N6 road in Amaravati capital city from M/s. Jakson Eminence for values of Rs.19,49,94,000/- and Rs.35,85,95,506/- dated 28.02.2019, the above-said work was claimed to have been sub-contracted by Avexa to M/s. Tanisha Infra X Zone Private Limited, M/s. Rollon Projects, M/s. Annai Infra Developers Limited and M/s. Allways Town Planners Private Limited. 13. The learned Special Public Prosecutor further contends that Avexa had diverted huge public money, i.e., Rs.17,85,61,864/- from the M/s. Aditya Enterprises, M/s. Sanjay Kumar Bhatia, M/s. Tanishq Steels Limited and M/s. Mount Business Build Private Limited: several sub-contracts were entered into without the permission of Amaravati Development Corporation Limited (ADCL), a Government body; the subcontract between BSR and Avexa does not have prior approval of the authority mentioned above, violating the terms of the contract, there were invoices issued and transfer of funds were carried out by the Respondent in colour of carrying out of works, whereas there was no supply of any goods and services by the Respondents; hence, stating that there is a diversion of funds. So, the diversion of Government funds by the Avexa through the shell companies has to be investigated. 14. Sri B. Adinarayana Rao,

learned senior counsel appearing for the Respondent/A.1 submits that the parties are the private entities and there is no contractual relationship with the Government; the invoices issued cannot be considered as a valuable security and there is no privity of contract between the parties, thereby charges under sections 471, 420, 477 and 467 of IPC cannot be attracted in the present case; there is no privity of contract between the BSR (Principal) and the Government, hence, case against the Respondent/A.1 cannot be upheld; the execution of work is already done and therefore, there is no question of diversion of funds, as the funds are all utilized towards the works; the claim of investigating agency stating that execution of work nonetheless is of no relevance at this stage of case cannot be upheld; any concerned case against the Respondent is to be carried out by the GST authorities, as the orders are not granted yet in relevance to irregular input tax credits and the present allegations cannot be proved by the Petitioner/State. 15. He further contends that section 132 of the Central Goods and Services Act, 2017 (hereinafter referred to as 'the Act') provides punishment for certain offences.- Whoever commits, or causes to commit and retain the benefits arising out of, any of the following offences, namely: (a) supplies any goods or services or both without the issue of any invoice, in violation of the provisions of this Act or the rules made thereunder, with the intention to evade tax; (b) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilisation of input tax credit or refund of tax; 16. He further contends by relying on section 134 of the Act, Cognizance of Offences.- No court shall take cognizance of any offence punishable under this Act or the rules made thereunder except with the previous sanction of the Commissioner, and no court inferior to that of a Magistrate of the First Class shall try any such offence. 17. He further contends by relying on section 137 of the Act, Offences by companies.- (1) Where an offence committed by a person under this Act is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the

company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. (2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of or is attributable to any negligence on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. (3) Where an offence under this Act has been committed by a taxable person being a partnership firm or a Limited Liability Partnership or a Hindu Undivided Family or a trust, the partner or karta or managing trustee shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly and the provisions of sub-section (2) shall, mutatis mutandis, apply to such persons. (4) Nothing contained in this section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence. 18. At this stage, this Court is not supposed to consider the merits of the case, as if hearing an appeal against an order of conviction or acquittal, as the investigation has yet to conclude. 19. There is no dispute that the Respondent/A.1 served as an Additional Director at Messrs. Avexa Corporation Private Limited for 67 days, specifically from 09.12.2019 to 14.02.2020. In the impugned Order, the learned Magistrate noted that the alleged forged invoices, submitted by the Accused company's Directors to claim the input tax credit, and Annexure-9A, consisting of purported fake bills from the shell company Tanisha Infra Zone Private Limited, as referenced on pages 15, 16, and 17, were relied upon by the Prosecution. Notably, these bills were raised on 18.03.2019, 22.03.2019, and 26.02.2019, respectively, when A.1 was not serving as an Additional Director at M/s. Avexa Corporation Private Limited. The learned Magistrate arrived at this conclusion based on the documents presented by the Prosecution, considering it as one of the reasons for denying the Order for

police custody. 20. The learned Magistrate has additionally considered the remarks provided in the remand report, which highlight that the Directorate General of Goods and Services Tax Intelligence (DGGI) had previously investigated the submission of counterfeit invoice bills by the shell companies associated with the firm. These entities purportedly claimed to be engaged in development activities in the Amaravati region, although no actual work transpired. Consequently, the DGGI recommended a penalty of Rs.16 crores against A.1's company under the Central Goods and Services Tax Act, 2017. This indicates that the DGGI, Hyderabad, has already undertaken a significant portion of the investigation 21. This is evident from the comprehensive report of the committee regarding the allegations against M/s. Avexa Corporation Private Limited by APSDRI, Vijayawada; the matter originated from a letter sent by the Special Commissioner of APSDRI, Vijayawada, to the Special Chief Secretary, Finance (DP-I) Department. The Special Commissioner requested the forwarding of the letter to the Special Chief Secretary, MA & U.D., for further action. In response, the Commissioner of APCRDA constituted a committee comprised of Chief Engineers from APCRDA/ADCL through Rc. No. 23/24-Estt., dated 08.02.2024, to investigate the purported diversion of funds by M/s. Avexa Corporation Private Limited. The committee members include: (i) Sri N. V. R. K. Prasad, Chief Engineer, H&B (ii) Sri P. Siva Prasada Raju, SE/Chief Engineer (FAC) (iii) Sri G.V. Pallam Raju, SE/Chief Engineer (FAC), T&T 22. It is observed in the report that as per note of APSDRI/DGGI, dated 06.07.2023, in Para (11), the main allegation of diversion of public funds by M/s. Avexa Corporation Private Limited, Vizianagaram, A.P., to the extent of Rs.45.37 Crores, is resorting to inward and outward bill trading. After having examined all the available records with ADCL (Amaravati Development Corporation, Vijayawada), it is concluded that there is no agreement between ADCL and M/s. Avexa Corporation Private Limited, the total mobilization advance was paid to M/s. BSRIIL is Rs.20.80 crores. The total bill amount paid to the Principal Contractor, i.e., M/s. BSRIIL so far is Rs.118.82 crores, and the GST Component

Paid & released to the Principal contractor is Rs.5,18,10,138/-. Hence, the allegation has not been substantiated per ADCL's available records. 23. It is also observed in the report that after verifying all the existing records available with ADCL, the payment was released to the extent of work done after following the due procedure of the Department and per the terms and conditions of the agreement and after due certification by PMC M/s. LEA Associates South Asia Private Limited, at every stage, as mentioned in Para No.6(A), to ensure that the requisite quality & quantity checks are done both by the PMC in the presence of the Department & the Principal Contractor. PMC (M/s. LEA Associates South Asia Private Limited) is responsible for "Supervise the construction works of contractor strictly by the performance indicators and other stipulations contained in Contract documents and ensure complete compliance concerning technical specifications and various stipulations contained in the Contract documents with high standards of quality assurance in supervision and the execution of work as per agreement". 24. Having not disputed the detailed report of the committee, it is now somewhat difficult to appreciate the contention of the Petitioner/Complainant that the diversion of Government funds by Avexa through the shell companies has to be investigated. 25. Upon considering the entire material on record, this Court finds no illegality in the Order passed by the learned Magistrate, and it needs not be interfered with. 26. Nothing stated above shall be construed as a final expression of opinion on the merits of the case, and the observations made in the present case are only for adjudicating the present Revision Case. 27. As a result, the Criminal Revision Case is dismissed. Miscellaneous applications pending, if any, in this Criminal Revision Case, shall stand closed.

ITC Claim Cannot Be Denied merely Due to GSTR-2A, 3B Mismatch: Kerala HC

CA Sandeep Kanoi 20 Mar 2024 1,515 Views 0 comment Print Goods and Services Tax | Judiciary

Case Law Details

Case Name : Philips Auto Agencies (India) Pvt. Ltd. Vs State Tax Officer (Kerala High Court)

Appeal Number : WP(C) No. 9312 of 2024

Date of Judgement/Order : 07/03/2024

Related Assessment Year :

Courts : All High Courts Kerala High Court

Download Judgment/Order

Philips Auto Agencies (India) Pvt. Ltd. Vs State Tax Officer (Kerala High Court)

Introduction: Philips Auto Agencies (India) Pvt. Ltd. approached the Kerala High Court after being denied Input Tax Credit (ITC) under the Goods and Services Tax (GST) Act for the fiscal year 2018-19. The denial was attributed to a discrepancy between GSTR-2A and GSTR-3B. Detailed Analysis 1. Grounds of Denial: The petitioner contended that the denial of ITC stemmed from a mismatch between GSTR-2A and GSTR-3B. Notably, GSTR-2A was introduced in September 2018, rendering the denial unjustifiable. 2. Legal Provisions: The petitioner invoked Section 73(3) of the GST Act, which mandates providing a statement of mismatch to the assessee. However, such a statement was not furnished in this case, depriving the petitioner of the opportunity to substantiate their ITC claim. 3. Judicial Intervention: After hearing arguments from both

parties, the court opined that the petitioner's claim merits reconsideration by the Assessing Authority. The court directed the first respondent to reevaluate the claim, considering the Circular dated 27.12.2022 and affording the petitioner an opportunity for a fair hearing. 4. Remittance for Fresh Consideration: The court disposed of the writ petition, setting aside the assessment order and remitting the matter to the Assessing Authority. The petitioner was instructed to appear before the authority for reconsideration on a specified date. Ads by Ads by Conclusion: The Kerala High Court's decision in the case of Philips Auto Agencies underscores the significance of procedural fairness and adherence to legal provisions in GST assessments. Denying ITC solely based on a mismatch between GSTR-2A and GSTR-3B without providing a statement of discrepancy violates the principles of natural justice. The court's intervention ensures that the petitioner's claim is reconsidered in accordance with the law and relevant circulars, emphasizing the importance of due process in tax matters. FULL TEXT OF THE JUDGMENT/ORDER OF KERALA HIGH COURT The petitioner has approached this Court being aggrieved by the fact that he has been denied Input Tax Credit in the assessment of the Goods and Services Tax Act for the year 2018-19. 2. The learned counsel appearing for the petitioner would submit that, the denial of Input Tax Credit was on account of mismatch between GSTR-2A and GSTR-3B. It is submitted that GSTR-2A was introduced only in the month of September 2018 and therefore, the Input Tax Credit could not have been denied on account of such mismatch. It is also pointed out that, in terms of Section 73(3) of the Goods and Services Tax Act, 2017, the statement of mismatch should have been provided to the assessee and this has not been done. It is submitted that, if such a statement had been provided, the petitioner would have been able to substantiate its claim for Input Tax Credit in terms of Circular No183/15/2022-GST dated 27.12.2022. 3. Heard the learned Government Pleader also. 4. Having heard the learned counsel for the petitioner and the learned Government Pleader and having regard to the facts and circumstances of the case, I am of the view that the claim of the petitioner can be directed to be reconsidered by the Assessing

Authority also having regard to the provisions of the Circular dated 27.12.2022 referred to above. If the petitioner requests for a statement in terms of the provisions contained in Section 73(3) of the Goods and Services Tax Act, the same should also be provided to him. Therefore, this writ petition is disposed of setting aside Ext.P4 order of assessment of the petitioner for the year 2018-19 and remitting the matter for a fresh consideration of the first respondent. The first respondent shall consider the claim of the petitioner as directed above also keeping in mind in terms of the Circular dated 27.12.2022 and after affording an opportunity of hearing to the petitioner. The petitioner shall appear before the first respondent at 11.00 a.m. on 20.03.2024 and thereafter, the matter shall be reconsidered as directed above. I make it clear that I have not expressed any opinion on the merits of the matter

Assessment Order Not Sustainable If ASMT-12 Issued for Same tax Demand

Parveen Kumar Mahajan 20 Mar 2024 1,254 Views 0 comment Print Goods and Services Tax | Judiciary

Case Law Details

Case Name : Radiant Cash Management Services Ltd. Vs Assistant Commissioner (ST) (Madras High Court)

Appeal Number : W .P. No. 2981 of 2024

Date of Judgement/Order : 11/03/2024

Related Assessment Year :

Courts : All High Courts Madras High Court

Download Judgment/Order

Radiant Cash Management Services Ltd. Vs Assistant Commissioner (ST) (Madras High Court)

This article in context of the judgement RADIANT CASH MANAGEMENT SERVICES LTD (W.P. No. 2981 of 2024 and W.M.P. Nos. 3246 & 3247 of 2024) given by the Hon'ble Madras High Court on 11-03-2024 in regard to the Assessment Order levying the Demand of Tax – Proceedings on that Demand of Tax have been dropped by issuing the ASMT-12 after being satisfied with explanation furnished by the Petitioner in form ASMT-11. The petitioner challenged the Assessment Order levying the Tax, Interest and penalty. The demand of the Assessment Order except amount of interest and penalty is the same demand as proposed in the ASMT-10. Facts of the Case In relation to assessment year 2017-2018, the petitioner received a notice in Form ASMT-10 alleging discrepancies in returns filed by the petitioner. The notice was replied to by the petitioner on 22.09.2023. Thereafter, an order dated 27.09.2023 was issued in Form ASMT-12 dropping the proceedings upon being satisfied with the

petitioner's explanation. The show cause notice dated 22.09.2023 was issued prior thereto. Therefore, the petitioner replied on 18.10.2023 and pointed out that proceedings initiated pursuant to notice in Form ASMT-10 were dropped by issuing an order in Form ASMT-12 on 27.09.2023. The impugned assessment order was issued, in these facts and circumstances, on 29.12.2023. Grounds before the Court That the demand amount as per the Assessment Order towards IGST, CGST and SGST is the same demand as proposed in ASMT-10. The authorities accepted the petitioner's reply and recorded that no further action is required to be taken in that matter. The ASMT-12 was issued accordingly. The petitioner contended the impugned assessment order is unsustainable. Ads by Ads by Court's Order On examining the notice in Form ASMT-10, the said notice pertains to financial year 2017-2018. The abstract of demand proposed therein is for an aggregate sum of Rs. 1,37,33,386.62 comprising a demand of Rs. 71,59,663.28 towards IGST, a sum of Rs. 32,86,861.67 towards SGST and a sum of Rs. 32,86,861.67 towards CGST. Upon receipt of the petitioner's reply dated 22.09.2023, by order in Form ASMT-12 dated 27.09.2023, the respondents concluded that the reply was satisfactory and no further action is required. In these circumstances, it is necessary to examine the impugned assessment order to verify whether the same demand was resurrected. On examining the impugned assessment order, I find that the confirmation of demand relates to the same assessment period and the same amounts towards SGST, CGST and IGST. The only difference is that interest and penalty has been imposed thereon to arrive at the aggregate sum indicated therein. Upon issuance of an order in Form ASMT-12 recording that no further action is required, the continuation of proceedings culminating in the impugned assessment order is undoubtedly unsustainable. Consequently, the impugned assessment order is quashed. W.P.No.2981 of 2024 is allowed and connected miscellaneous petitions are closed. There will be no order as to costs. FULL TEXT OF THE JUDGMENT/ORDER OF MADRAS HIGH COURT An assessment order dated 29.12.2023 is the subject of challenge in this writ petition. 2. The petitioner is engaged inter alia in the cash logistics

business and is a registered person under applicable GST enactments. In relation to assessment year 2017-2018, the petitioner received a notice in Form ASMT-10 alleging discrepancies in returns filed by the petitioner. The notice was replied to by the petitioner on 22.09.2023. Thereafter, an order dated 27.09.2023 was issued in Form ASMT-12 dropping the proceedings upon being satisfied with the petitioner's explanation. The show cause notice dated 22.09.2023 was issued prior thereto. Therefore, the petitioner replied on 18.10.2023 and pointed out that proceedings initiated pursuant to notice in Form ASMT-10 were dropped by issuing an order in Form ASMT-12 on 27.09.2023. The impugned assessment order was issued, in these facts and circumstances, on 29.12.2023. 3. Learned counsel for the petitioner invited my attention to the notice in Form ASMT-10 and pointed out that the abstract of demand proposed therein indicates the amounts demanded towards IGST, SGST and CGST. She further submits that these amounts tally with amounts indicated in the impugned order. By further referring to the order issued in Form GST ASMT-12 on 27.09.2023, she points out that the GST authorities accepted the petitioner's reply and recorded that no further action is required to be taken in that matter. Consequently, she points out that the impugned assessment order is unsustainable. 4. Amirta Poonkodi Dinakaran, learned Government Advocate, appears for the respondent. On instructions, she states that there is a difference between the amounts indicated in the notice in Form ASMT-10 and the amounts specified in the show cause notice and confirmed in the impugned assessment order. 5. On examining the notice in Form ASMT-10, the said notice pertains to financial year 2017-2018. The abstract of demand proposed therein is for an aggregate sum of Rs.1,37,33,386.62 comprising a demand of Rs.71,59,663.28 towards IGST, a sum of Rs.32,86,861.67 towards SGST and a sum of Rs.32,86,861.67 towards CGST. Upon receipt of the petitioner's reply dated 22.09.2023, by order in Form ASMT-12 dated 27.09.2023, the respondents concluded that the reply was satisfactory and no further action is required. 6. In these circumstances, it is necessary to examine the impugned assessment order to verify whether the same demand was

resurrected. On examining the impugned assessment order, I find that the confirmation of demand relates to the same assessment period and the same amounts towards SGST, CGST and IGST. The only difference is that interest and penalty has been imposed thereon to arrive at the aggregate sum indicated therein. Upon issuance of an order in Form ASMT-12 recording that no further action is required, the continuation of proceedings culminating in the impugned assessment order is undoubtedly unsustainable. 7. Consequently, the impugned assessment order is quashed. W.P.No.2981 of 2024 is allowed and connected miscellaneous petitions are closed. There will be no order as to costs. ***** To reach to me for any suggestions, rectifications, amendments and/or further clarifications in regard of this article my email address is pkmgstupdate@gmail.com.