

Latest News of October 2022

1.

GST proceedings initiated by the anti-evasion and range office at the same time are not permissible.

2.

A grace period of at least 30 days will be provided for responding to the GST. Show Cause Notice.

3.

There can be no promissory estoppel against the legislature in the exercise of its legislative function - the only exception about the applicability of the doctrine of estoppel is where it is necessary to prevent fraud and manifest injustice.

4.

Rate reduction benefit from price reduction the Delhi High Court orders Loreal to deposit the principal profiteered amount after deducting GST already imposed on such amount.

5.

Madras High Court rules that show cause notice responses sent via post will be accepted by GST Department.

6.

Appellate authority to consider the Issues taxpayers faced with the implementation Of GST procedures; Orissa High Court

6.

Madras High Court rules that all proceedings are nullified for failure to issue ASMT 10 with regard to matters at issue

LEGAL UPDATES

HIGH COURT OF CALCUTTA

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

[04-10-2022]

GST proceedings initiated by the anti-evasion and range office at the same time are not permissible.

Brief Facts of the Case:

The brief facts of this case were that the petitioner company namely M/s. R. P. Buildcon Private Limited & Anr. moved the High Court of Calcutta against the proceedings initiated by the Anti-Evasion Wing. In view of the proceedings already initiated by the Audit Wing of the same Commissionerate, under Section 65 of the CGST Act, the High Court of Calcutta held that the audit proceedings should first be taken to their logical conclusion. It was therefore held that the proceedings that had been initiated by the Anti-Evasion Wing and the Range Officer for the same tax period shall not proceed any further till the subsistence of Audit Proceedings.

A writ petition was filed by the M/s R.P. Buildcon Private Limited & Anr. to quash the show cause notice issued by the Respondent contending that once an audit under section 65 of the CGST act 2017 is pending, the scrutiny of returns under section 61 cannot initiate the same tax period.

Key Highlights of the Order:

The Hon'ble Calcutta High Court held that the proceeding initiated by the Range Office and the Anti-Evasion Wing cannot proceed any further till the time audit proceedings under Section 65 of the CGST Act are pending it was held that the current audit proceeding should be taken to its logical end before initiating any further proceedings for the same tax period.

The Court directed the Audit Wing to issue a show cause notice to the appellants within the period of six weeks from the date of receipt of the of this judgment and order and provide a reasonable opportunity for the appellant to submit their reply along with the documents and speaking order should be passed within a period of three weeks from the date of personal hearing.

The Court restrained the Anti-Evasion Wing and the Ranged Office from proceeding any further in respect of the tax period for which audit proceedings have already been initiated.

HIGH COURT OF BOMBAY

Sheetal Dilip Jain

vs.

The State of Maharashtra & Ors.

W.P. (L) NO.17591 OF 2022

[20-9-2022]

A grace period of at least 30 days will be provided for responding to the GST. Show Cause Notice.

Brief Facts of the Case:

A show cause notice was issued by the GST Department under section 73 to the petitioner. On the eighth day, an order against the petitioner was issued. In the

order, the petitioner was directed to make payment within 30 days, but no payment was made within 30 days of the issuance of the order. On the basis of the documents available to the department and the information provided, the demand was generated. The petitioner filed a writ petition against the notice and order.

Key Highlights of the Order:

The Bombay High Court observed that Section 73(8) of the Maharashtra Goods and Service Tax Act (MGST Act) authorizes a taxable person allowance of 30 days after the issuance of the show cause notice to make payment of such tax along with any interest payable under section 50. According to section 73(8) of the MGST Act, a reply could be filed to the show cause notice within the period of 30 days by the taxable person.

The court held that the order was erroneous since the show-cause notice provided just seven days to respond in contravention, while the order was issued on the eighth day. Therefore, the issue of nonpayment within thirty days of the issuance of order will not arise. The time limit given by the statutory provision cannot be arbitrarily reduced to seven days by the assessing officer.

The court ordered the copy of its order to be forwarded to the CBIC and the Chief Commissioner of State Tax, Maharashtra, with the motive of training and/or orientation session/course, etc. to apprise and educate its officers on the prevailing law and rules framed thereunder.

The court emphasized that authorities must be cognizant of the substantial harm caused to taxpayers by blatantly unlawful instructions. Authorities must be cognizant of this reality and the influence and repercussions of their orders on the people.

Contrary to Rule 40 of the MGST Rules 2017, the petitioner was granted seven days to answer to the notice dated 2 March 2022, which expired on 9 March 2022.

This was manifestly against the statutory provision of 30 days' time period and therefore the impugned show cause notice and order were set aside.

SUPREME COURT OF INDIA

M/S HERO MOTOCORP LTD

vs.

UNION OF INDIA & ORS.

W.P.(C) 505/2020

[17-10-2022]

There can be no promissory estoppel against the legislature in the exercise of its legislative function – the only exception about the applicability of the doctrine of estoppel is where it is necessary to prevent fraud and manifest injustice.

Brief Facts of the Case:

The Government of India adopted the office memorandum in 2003 based on a statement made by the Hon'ble Prime Minister during his March 2002 visit to Uttaranchal (now Uttarakhand). The Ordinance of 2003 stipulated that for the states of Uttaranchal and Himachal, for a period of ten years from the date of commercial production initiation, new industrial units and existing industrial units undergoing substantial expansion in both states would be exempted from excise duty. The Ordinance of 2003 additionally stipulated that such units would be exempt from income tax for the first five years, followed by a reduction to 30% for businesses and 25% for other companies for a further five years from the date of commercial production with the introduction of GST law the benefit of these reductions was deceased.

Hero Motocorp and Sun Pharma Laboratories Ltd. filed writ petitions seeking 100% budgetary support in lieu of 100% excise tax exemption for ten years from

the start of commercial production. Since the implementation of the 2017 GST regime, the benefit enjoyed by both companies was reduced to 58%. The High Court of Delhi dismissed the applications.

Key Highlights of the Order:

In appeals, the question arose as to whether the advantages provided under an earlier Act should be revoked even though a subsequent statute expressly provides for their cancellation.

The question was whether the promissory estoppel concept could operate against a statute.

The court pointed out that the proviso to Section 174(2)(c) states that any tax exemption offered as a reward for investment through a notice must not remain as a privilege if the relevant notification is revoked. The court noted that the appellants' promissory estoppel claim is not entirely without merit. They are entitled to believe that their claim merits reasonable attention.

Therefore, accepting all of the department's arguments, the court dismissed the SLPs but permitted the appellants to make representations to the respective State Government and to the GST Council and directed that these representations be given due consideration.

HIGH COURT OF DELHI

L' Oreal India Private Limited

vs.

Union of India and Ors.

W.P.(C) 12557/2022

[08-10-2022]

Rate reduction benefit from price reduction the Delhi High Court orders Loreal to deposit the principal profiteered amount after deducting GST already imposed on such amount.

Brief Facts of the Case:

In this case, filed by L'Oreal India Private Limited challenged the order passed by the National Anti-Profiteering Authority and the notice seeking to examine whether or not there is profiteering, along with challenging Section 171 of Central Goods and Services Tax Act, 2017, and Rules 126, 127 & 133 of the CGST rules as unconstitutional, ultra vires and violative of Article 14, Article 19(1)(g), Article 265 and Article 300-A of the Constitution of India.

Key Highlights of the Order:

The Delhi High Court has ordered L'Oreal to deposit the principal profiteered amount deducting GST already imposed on such amount. The court has emphasized that pursuant to Section 171, any benefit of a reduction in the tax rate or benefit of an input tax credit on any supply of goods or services can only be realized through a proportional price reduction.

Division bench of Delhi High Court has ruled that the interest amount ordered to be paid by the Department, as well as the penalty proceedings and investigation

by the National Anti-Profiteering Authority (NAA) regarding product other than the complained product, are to be stayed pending further orders.

The petitioner argued that the application filed by the Secretary, NAA, to the Standing Committee requesting the beginning of proceedings under Section 171 was not a genuine initiation of proceedings against the petitioner for the purpose of determining whether profiteering occurred or not. The petitioner said that even though they couldn't reduce pricing on some products, they have passed on the benefit by increasing product weight. The petitioner also argued that an increase in customs tax on a subset of goods should be omitted.

The NAA contended that the petitioner had collected from its clients excess base prices that they were no longer compelled to pay due to the fall in the tax rate. In addition, the petitioner obliged them to pay additional GST on these excessive base prices, which they were not required to pay.

The court held that in accordance with Section 171 of the CGST Act, any benefit of a reduction in the rate of taxes or benefit of input tax credit on any supply of goods or services can only be by way of commensurate reduction in prices. As a result, the court held that the post-sale discount does not qualify as a commensurate reduction in prices.

HIGH COURT OF MADRAS

Asia (Chennai) Engineering Company Pvt. Ltd.

vs.

The Assistant Commissioner (ST) (FAC) and Anr.

W.P.(MD). No.13851 of 2022

[16-10-2022]

Madras High Court rules that show cause notice responses sent via post will be accepted by GST Department.

Brief Facts of the Case:

Asia Chennai Private Limited received a show cause notice dated 30-11-2021 for revoking the erroneous refund claim. The petitioner replied to the show cause notice on 07-01-2022. There's an impugned order was passed by the Assistant Commissioner in exparte manner due to lack of representation in personal hearing.

Being aggrieved by the impugned order the petitioner claimed that the reply to the show cause notice was sent to the respondent in hard copy and the same was not considered. The respondent contended that after the online filing of returns all the communication by the petitioner to the respondent as well as the respondent with the assessee is through the portal. The SCN is issued through the portal it is for the assessee to reply within 30 days via portal.

Therefore, being aggrieved of the impugned order the petitioner filed two writ petitions for the violation of the principle of natural justice and prayed to direct the respondent to re-do the assessment after granting a personal hearing.

Key Highlights of the Order:

The Madras High Court held that the filing of the reply to the show cause notice in FORM GST.DRC-06 which is an electronic filing of reply is not mandatory under section 73(9), 74(9) & 76 (3) of CGST Act, 2017, a reply filed via post shall also be treated as valid.

The court determined that the department's sole contention was that the postal or physical response was not evaluated because it was not transmitted through the portal. The petitioner is entitled to a personal hearing in order for his objections to be heard.

The court disposed the petition and directed the respondent to set a date for the petitioner's personal hearing, receive any document if produced, and then proceed with the show cause notices.

HIGH COURT OF ORISSA

M/s. Durga Raman Patnaik

vs.

Additional Commissioner of GST

W.P.(C) No. 7728 of 2022

(20-10-2022)

Appellate authority to consider the Issues taxpayers faced with the implementation Of GST procedures: Orissa High Court

Brief Facts of the Case:

The petitioner's order-in-appeal was rejected solely on the ground of being barred by limitation even after according to the benefit of the Supreme Court Order

extending the limitation period. The High Court observed that although the appellate authority was correct in rejecting the petitioner's appeal, not reinstating the petitioner's registration certificate would be an impairment on the petitioner's right to subsistence in Article 21 and right to engage in business in Article 19(1)(g) of the Constitution.

As per Section 109 of the CGST Act, the Appellate Tribunal has not yet been established, hence the High Court of Orissa exercised its authority to rectify the prejudice and unfairness suffered by the petitioner. There was no further recourse for the petitioner to challenge the order-in-appeal.

The petitioner is allowed to submit returns for the prior period. If such returns have not been made, registration may get cancelled. If such returns have not been filed, along with tax defaults in addition to interest on amounts that have such late tax, fee, and statutory payment rectified for the defaulting period return filing according to the Act's provisions, if it is not already been paid within sixty days following the day the copy is provided.

Key Highlights of the Order:

The Orissa High Court has held that the Appellate Authority should have taken into account the problem encountered by taxpayers upon the introduction of a new set of processes through the issuance of the CGST Act and rules, and that time must be allotted to familiarise oneself.

The petitioner/assessee challenged the Appeal Order issued by the Additional Commissioner, GST (Appeals) (Appellate Authority) and questioned the legality of the Order of the Superintendent, Berhampur-I Range, Berhampur Division (Registering Authority). In accordance with Section 29(2)(c) of the CGST Act, the Registering Authority revoked the registration.

The petitioner approached the high court as the Registering Authority moved to terminate the assessee's GSTIN for failing to file returns for six consecutive months.

Instead of denying the appeal on the basis of the statute of limitations, the petitioner argued that the authorities should have recognized the genuine difficulties encountered not just by the petitioner but also by other similarly situated suppliers and recipients.

The court held that if the GST registration number is not reinstated, the petitioner will be unable to issue a bill because the GST regime has implemented an e-invoice system. Therefore, if the petitioner is denied the reinstatement of his GST registration number, it would damage his right to subsistence (Article 21 of the Constitution of India) and his right to engage in business (Article 19(1)(g)). If he is deprived of his right to subsistence as a result of the cancellation of his GST registration, he has no right of appeal, particularly as the Appellate Tribunal has not been created in accordance with Sections 109 and 112, read together. It would be comparable to a breach of the provision enshrined in Article 21 of the Indian Constitution, as the right to a means of subsistence derives from the right to life enshrined in Article 21.

The court made it clear that the petitioner can't pay taxes, interest, penalties, fines, fees, etc. with any unused or unclaimed Input Tax Credits. The court ordered the Department to take appropriate action by asking GST Network, to modify the design of the GST Web Portal to allow the petitioner to file his returns and pay the tax, interest, penalty, fine, and fee. It is the responsibility of the department to ensure that there are no technological issues.

HIGH COURT OF MADRAS

M/s.Vadivel Pyrotech Private Limited

vs.

The Assistant Commissioner (ST)

W.P.(MD) No.22642 of 2022

[20-10-2022]

Madras High Court rules that all proceedings are nullified for failure to issue ASMT 10 with regard to matters at issue

Brief Facts of the Case:

The petitioner/assessee is registered under the TNGST Act as a manufacturer and supplier of pyrotechnic products (fireworks). The petitioner had filed GST returns in accordance with the TNGST Act, periodically discharging applicable taxes and claiming Input Tax Credit under Section 16 of the TNGST Act. The department scrutinized the returns of the petitioner as provided under Section 61 of The TNGST Act. A notice in FORM ASMT 10 dated 22.12.2021 pointed out anomalies in the petitioner's GSTR3B, GSTR1, and GSTR2A returns and demanded taxes and interest.

After more than six months, the department called the petitioner to enquire if taxes, interest, and penalties had been paid.

The petitioner argued that the faults were distinct from the problems and discrepancies listed on FORM ASMT 10. Until the respondent notified them, neither the summary of the Notice in GST DRC-01 nor the Order in GST DRC-07 was known to them.

Key Highlights of the Order:

The Madras High Court has held that ASMT 10 is required prior to issuing the GST DRC-01. Failure to grant ASMT 10 for the differences referred to in GST DRC-01, resulting in GST DRC-07, would invalidate the entire procedure. FORM GST ASMT-10 is the statutory form issued under Section 61 of the CGST Act of 2017 read with Rule 99 of the CGST Rules of 2017, and it requests an explanation for any discrepancies in the taxpayer's filed GST returns.

The Madurai bench of Madras High Court held that any procedure beginning from GST DRC-01A/DRC-01 leading to an Order in GST DRC-07, if pursuant to a review under Section 61 of the TNGST Act, should be preceded by the issuance of Form ASMT 10.

The court stated that despite the fact that FORM ASMT 10 had been issued highlighting certain disparities, the GST DRC-01 and the order in Form GST DRC-07 were based on fundamentally different concerns than those outlined in FORM ASMT 10.

The court ordered, "It is open to the Respondent to issue appropriate Form (Form ASMT 10) and after affording a reasonable opportunity to the petitioner in the manner contemplated under the Act proceed further in accordance with the law. The petitioner shall also cooperate in the proceedings,"

STATUTE SECTION

NOTIFICATIONS ISSUED BY CBIC:

Notification No. 18/2022-Central Tax, dated 28-09-2022

The Central Government has appointed 01.10.2022 as the date on which the provisions of sections 100 to 114, except clause (c) of section 110 and section 111, of the Finance Act, 2022 shall come into force.

Doubts have been raised whether the said extended timelines are applicable in respect of compliances for FY 2022-23 onwards or whether the same are also applicable to the compliances for FY 2021-22. Doubts have also been raised whether the timelines for the said compliances stand extended to the date of filing/ furnishing of the return/ statement for the month of November 2022 or the said compliances can be carried out in a return or the statement filed/ furnished up to 30th November, 2022.

In this regard, it is clarified that the extended timelines for compliances listed in para 2 are applicable to the compliances for FY 2021-22 onwards. It is further clarified that the said compliances in respect of a financial year can be carried out in the relevant return or the statement filed/ furnished upto 30th November of the next financial year, or the date of furnishing annual return for the said financial year, whichever is earlier. It is also clarified that no extension of due date of filing monthly return/ statement for the month of October (due in November) or the due date of filing quarterly return/ statement

INSTRUCTION ISSUED BY CBIC

Instruction No. CBIC-240137/14/2022-Service Tax dated 28-10-2022

It has been brought to the notice of the Board that appeals have been rejected by some Commissioner (Appeals) for non-compliance of pre-deposit requirements as mandated under section 35F of the Central Excise Act, 1944 (CEA) and Section 83 of the Finance Act, 1994 read with section 35F of the CEA, where such payments have been made through Form GST DRC-03 on common GST portal, by holding that it is not a prescribed method of payment of such pre-deposit.

The matter has been examined. It may be seen that Form GST DRC-03 is prescribed for payment of tax, interest, penalty under sub-sections (5) and (8) of both sections 73 and 74, and section 129 (1) of the CGST Act, 2017 or any other payment due in accordance with the provisions of the CGST Act, 2017 as specified in rule 142 (2) and 142 (3) of the CGST Rules, 2017, Further, in GST regime, in connection with appeal mechanism under section 107 of the CGST Act, 2017. Rule 108(1) of the CGST Rules, 2017 provides Form GST APL-01 for filing an appeal with option of payment of admitted amount and pre-deposit through electronic cash/credit ledger. Thus, under GST Act also Form GST DRC-03 is not a prescribed mode for payment of pre-deposit.

Attention is invited to Miscellaneous transitional provisions sub-section (6)(b), sub-section (7)(a) and sub-section (8)(a) of section 142 of the CGST Act, 2017, which, inter alia, provides that any credit, tax, interest, fine or penalty recoverable from the person before, on or after 1st July, 2017 under the existing law (Central Excise Act and Chapter-V of Finance Act, 1994) shall be recovered as an arrear of tax under CGST Act. It is, however, settled that pre-deposit as a requirement for exercising the right to appeal neither is in the nature of duty nor can be treated

as arrears under the existing law and hence cannot be said to be covered under transitional provisions of CGST Act.

In view of above, it is clarified that payments through DRC-03 under CGST regime is not a valid mode of payment for making pre-deposits under section 35F of the Central Excise Act, 1944 and Section 83 of Finance Act, 1994, read with section 35F of the CEA. There exists a dedicated CBIC-GST integrated portal, which should only be utilized for making pre-deposits under the Central Excise Act, 1944 and the Finance Act, 1994.



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