

LATEST JUDGEMENTS

NATIONAL PLASTO MOULDING VS STATE OF ASSAM, WP(C)/2863/2022 (GAUHATI HIGH COURT)

A purchasing dealer cannot be punished for the act of the selling dealer in case the selling dealer had failed to deposit the tax collected by it, the Show Cause Notices issued to the purchasing dealer were set aside by placing its reliance over the Judgment of **On Quest Merchandising India Private Limited - Vs- Government of NCT of Delhi & Ors., reported in 2017 SCC OnLine Del 11286.**

SUBODH ENTERPRISES VS THE UNION OF INDIA WP NOS. 13043 OF 2024 DATED 05.08.2024 (ANDHRA PRADESH HIGH COURT)

Any communication or notice or order pertaining to any Central Law i.e. CGST/IGST require to be in both in Hindi (or regional language) and English normally. It was held that the orders passed by the Commissioner (Appeals) would not come into effect until English copies of the said orders have been served on the assessee.

SARASWATI TRADING COMPANY VS UNION OF INDIA, W.P.(C) 11063/2024 (DELHI HIGH COURT)

Cancellation of GST registration does not affect the taxpayer's past liability under relevant enactments of GST. It also does not preclude the concerned authority from initiating proceedings for any statutory violation or for recovery of dues from the taxpayer after the cancellation of Registration.

UTTAM ELECTRIC STORE VS STATE OF UP, (2024) 21 CENTAX 189 (ALLAHABAD HIGH COURT)

Penalty under Section 129(3) set-aside, as the error can occur due to human error while filling up the form/e-way bill as there was no finding recorded by the authorities below that there was a *mens-rea* for evading payment of tax.

EVEREADY INDUSTRIES INDIA LTD. VS STATE OF UP, (2024) 21 CENTAX 234 (ALLAHABAD HIGH COURT)

Opportunity of personal hearing was not provided during the proceedings under Section 74, the Writ Petition allowed by way of remand.

AMENDMENTS BY FINANCE Act No 2 of 2024:

Clause 118 of Finance Act amends Section 16 of the Central Goods and Services Tax Act, with retrospective effect from the 1st day of July 2017, after sub-section (4), the following sub-sections shall be inserted, namely: —

“(5) Notwithstanding anything contained in sub-section (4), in respect of an invoice or debit note for supply of goods or services or both pertaining to the Financial Years 2017-18, 2018-19, 2019-20 and 2020-21, the registered person shall be entitled to take input tax credit in any return under section 39 which is filed upto the thirtieth day of November, 2021.

Clause 116 of Finance Act 2024 inserts section 11A of the Central Goods and Services Tax Act i.e. Power not to recover Goods and Services Tax not levied or short-levied as a result of 'general practice'.

The insertion of this provision is very interesting and having far-reaching effect, it has provided powers to the Government on the recommendation of the GST Council by Notification in the official Gazette, as per the 'general practice' of the business or industry to non-levy of the central tax on any supply of goods or services even if such supplies may be liable to the central tax in accordance to the law. Thus, as per one line of interpretation the 'general practice' of not levying or short levying of tax due under the law have been given an overriding effect over the law made by the Parliament.

Clause 138 of Finance Act 2024 inserts section 74A while Clause 136 & 137 amends section 73 and 74 restricting their application upto the period of financial year 2023-24. From 1st April, 2024 the distinction between section 73 & 74 has done away with and their purpose has been replaced by merging them and introducing a new section 74A, now the distinct requirement of existence of fraud or any wilful mis-statement or suppression of facts for invoking extended period of time as per section 74 shall not be in existence. Now onwards from financial year 2024-25 in all circumstances section 74A shall be used and notices as well as orders can be issued up to the period as earlier provided in section 74. Thus, the time period exclusively available with the proper officer to adjudicate the matters involving fraud or any wilful mis-statement or suppression of facts shall not be available, which probably may adversely affect the quality of adjudication.

Clause 146 of Finance Act 2024 inserts section 128A of the Central Goods and Services Tax Act which envisage an 'Amnesty Scheme' for full or part waiver of interest or penalty or both relating to demands raised under section 73 pertaining to the period from 1st July, 2017 to 31st March, 2020. The 'Amnesty Scheme' shall be announced after all the states make necessary insertion of these provisions in their respective state GST law. GST Council in 54th meeting held on 9 September, 2024 has decided to implement the 'Amnesty Scheme' through introduction of Rule 164. The final demand as per the last order of any Authority as on the date of adoption of 'Amnesty Scheme' by the taxpayer/assessee shall be considered for allowing the benefit.

GST COUNCIL KEY DECISIONS:

- GST Council recommends Group of Ministers (GoM) on life and health insurance related GST with existing GoM on Rate Rationalisation; to submit report by end of October 2024
- GST Council recommends reduction in GST rates on cancer drugs - Trastuzumab Deruxtecan, Osimertinib and Durvalumab from 12% to 5%
- GST Council recommends to exempt supply of research and development services by a Government Entity; or a research association, university, college or other institution notified u/s 35 of Income Tax Act using government or private grants.
- GST Council recommends roll out of a pilot for B2C eInvoicing
- GST Council recommends to reduce rate of GST from 18% to 12% on Namkeens and Extruded/Expanded Savoury food products falling under HS 1905 90 30
- GST Council recommends to introduce (RCM) on supply of metal scrap by unregistered person to registered person provided that the supplier shall take registration as and when it crosses threshold limit and the recipient who is liable to pay under RCM shall pay tax even if supplier is under threshold. A TDS of 2% will be applicable on supply of metal scrap by registered person in B to B supply.
- GST Council clarifies Roof Mounted Package Unit (RMPU) Air Conditioning Machines for Railways would be classified under HSN 8415 attracting a GST rate of 28%.
- GST Council clarifies car seats are classifiable under 9401 and attract a GST rate of 18%. GST rate on car seats classifiable under 9401 to be increased from 18% to 28%. This uniform rate of 28% will be applicable prospectively for car seats of motor cars in order to bring parity with seats of motorcycles which already attract a GST rate of 28%

- GST Council decides GST @ 5% on the transport of passengers by helicopters on seat share basis and to regularise the GST for past period on 'as is where is' basis. GST Council also clarify that charter of helicopter will continue to attract 18% GST.
- GST Council clarifies approved flying training courses conducted by DGCA approved Flying Training Organizations (FTOs) are exempt from the levy of GST.
- GST Council clarifies location charges or Preferential Location Charges (PLC) paid along with the consideration for the construction services of residential/commercial/industrial complex before issuance of completion certificate forms part of composite supply where supply of construction services is the main service and PLC is naturally bundled with it and are eligible for same tax treatment as the main supply that is, construction service.
- GST Council decides to exempt import of services by an establishment of a foreign airlines company from a related person or any of its establishment outside India, when made without consideration. The council also recommended to regularise the past period on 'as is where is' basis.
- GST Council decides to bring renting of commercial property by unregistered person to a registered person under Reverse Charge Mechanism (RCM) to prevent revenue leakage.
- GST Council clarifies ancillary/intermediate services are provided by GTA in the course of transportation of goods by road and GTA also issues consignment note, the service will constitute a composite supply and all such ancillary/intermediate services like loading/unloading, packing/unpacking, transshipment, temporary warehousing etc. will be treated as part of the composite supply. If such services are not provided in the course of transportation of goods and invoiced separately, then these services will not be treated as composite supply of transport of goods.
- GST Council recommended insertion of rule 164 in CGST Rules, 2017, along with certain Forms, providing for the procedure and conditions for availment of benefit of waiver of interest or penalty or both, relating to tax demands under section 73 of CGST Act, pertaining to FYs 2017-18, 2018-19 and 2019-20 as per section 128A of CGST Act.
- GST Council recommended that section 118 and 150 of the Finance (No. 2) Act, 2024, which provides for insertion of sub-section (5) and sub-section (6) in section 16 of CGST Act, 2017 retrospectively with effect from 01.07.2017, may be notified at the earliest. The Council also recommended that a special procedure for rectification of orders may be notified under section 148 of the CGST Act, to be followed by the class of taxable persons, against whom any order under section 73 or section 74 or section 107 or section 108 of the CGST Act has been issued confirming demand for wrong availment of input tax credit on account of contravention of provisions of sub-section (4) of section 16 of the CGST Act, but where such input tax credit is now available as per the provisions of sub-section (5) or subsection (6) of section 16 of the CGST Act, and where appeal against the said order has not been filed.
- GST Council recommended Amend rule 89 and rule 96 of CGST Rules, 2017 and to provide clarification in respect of IGST refunds on exports where benefit of concessional/ exemption notifications specified under rule 96(10) of CGST Rules, 2017 has been availed on the inputs.
- The GST Council recommended issuance of circulars to provide clarity and to remove doubts and ambiguities arising in the following issues due to varied interpretations by the field formations:
 - i. Clarification on the Place of Supply of advertising services provided by Indian advertising companies to foreign entities.
 - ii. Clarification regarding availability of Input Tax Credit on demo vehicles by the dealers of the vehicle manufacturers.
 - iii. Clarification on Place of Supply of data hosting services provided by service providers located in India to cloud computing service providers located outside India.

SPEAKING ORDER - "Conclusion" supported by Reasons would constitute a "Finding"- Finding presupposes "Application of Mind" - Application of Mind is demonstrated by "Disclosure of the Mind" - Disclosure of the Mind demonstrated by "Recording of Reasons".

It is trite that a finding can be both, a finding of fact or a finding of law. It may even be a finding on a mixed question of law and fact. In the case of a finding on a legal issue the Adjudicating Authority may on facts that are proved or admitted explore options and lay bare the process by which he arrives at any such finding. It is only when the conclusion is supported by reasons on which it is based that one can logically describe the process as tantamount to recording a finding. It is immaterial whether the reasons given in support of the conclusion are sound or erroneous. That is because a conclusion supported by reasons would constitute a “finding” no matter the conclusion or the reasons in support of the same may themselves be erroneous on facts or in law. It may then be an erroneous finding, but it would nonetheless be a finding. What is important is that a finding presupposes “application of mind”. “Application of mind” is best demonstrated by disclosure of the mind; mind in turn is best disclosed by recording reasons. That is the soul of every adjudicatory process which affects the rights of the parties.

CBIC INSTRUCTIONS

INSTRUCTION NO. 1/2024 DATED 30.05.2024

As per Section 78 and 79, the recovery proceedings can only be made after three months from the date of service of Order and only in exceptional circumstances the recovery can be initiated before three months, the reasons for which have to be properly recorded.

INSTRUCTION NO. 2/2024 DATED 12.08.2024

Second Special All-India Drive against Fake Registrations was launched from 16th August 2024 to 15th October 2024 to detect suspicious/ fake GSTINs as per the laid down guidelines.

INSTRUCTION NO. 3/2024 DATED 14.08.2024

Instruction No. 01/2023-24-GST (Inv.) dt 30-3-2024 would be applicable in Audit matters to promote uniformity and avoiding litigation.

GST PORTAL:

- Advisory for Biometric Based Aadhar Authentication and Document Verification for GST Registration Applicants of Bihar, Delhi, Karnataka and Punjab has been issued.
- Advisory on Reporting of supplies to unregistered dealers have been issued in GSTR-1/ GSTR-5.

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