

LATEST JUDGEMENTS

**Dinesh Kumar Pradeep Kumar v Add. Commissioner
WRIT TAX No. 1082 of 2022 (Allahabad High Court)**

Proceedings under Section 130 (confiscation of goods) could not be effectuated, if excess stock on the basis of eye measurement is found at time of survey. The better course would be to initiate proceedings under Section 73 or 74.

**Creative Labs v State of UP
WRIT TAX No. - 1036 of 2024 (Allahabad High Court)**

Penalty under Section 129 of CGST Act cannot be imposed just on mere expiry of e-way bill during the transit of goods when the department is already having access to Tax Invoice, E-way Bill with correct details which was available on the GST portal and its genuineness have not been assailed due to any other reason. Authority concerned was directed to refund the amount deposited by the petitioner pursuant to the impugned orders

**Ishwar Deen Auto Mobiles v Asst. Commissioner of State Tax
WRIT TAX No. - 1448 of 2024 (Allahabad High Court)**

Personal hearing must be offered to the Noticee before any adverse order is passed in an adjudication proceeding. The said observations have been made after following the Judgment of **Mahaveer Trading Company vs. Deputy Commissioner State Tax and another (Writ Tax No.303 of 2024)**. Thus, now it is well established principle that Personal Hearing must be provided to the Taxpayer before passing of any adverse order.

**Fukran Malik v Directorate General, DGGI
APPLICATION U/S 482 No. - 27821 of 2024 (Allahabad High Court)**

Pre-requisite condition for the bail to deposit the whole outstanding amount cannot be sustained where wrongful availment of Input Tax Credit of a huge amount was involved as per the Judgment of the Hon'ble Supreme Court **Subhash Chouhan Vs. Union of India 2023 SCC Online SC 110**.

**SM Trading Co v Asst Comm. of CGST
WRIT (Civil) No. - 11785/2024 (Delhi High Court)**

GST Registration of a Taxpayer cannot be cancelled by the department on the reason of fraud, wilful-mis-statement, or suppression of facts by the taxpayer from retrospective date if the Show Cause Notice does not spell out allegation of fraud, wilful-misstatement, or suppression of facts by the taxpayer as well as does not propose cancellation of GSTIN from Retrospective Date. Any such order passed in such proceedings is liable to be set aside as the same would be in violation of principles of natural justice.

**Union of India v Gautam Garg
S.B. Criminal Bail Cancellation Application No. 168/2023 (Rajasthan High Court)**

The bail was cancelled by Hon'ble High Court and it was observed the Lower Court completely ignored the incriminating material collected against the Petitioner. The factual aspects show that many documents and electronic evidence were collected and petitioner was found to be directly involved in generating the false and fabricated goodless invoices. The Lower Court ignored the factual aspect put forth by the Department and also failed to appreciate that the respondent had wrongly availed ITC by

generating fake invoices causing wrongful gain to the three companies and wrongful loss to the Government. On such facts the bail was cancelled by the Hon'ble Rajasthan High Court.

Man Singh Tanwar v Commissioner CGST

D.B. Civil Writ Petition No. 14658/2024 (Rajasthan High Court)

Appeal against order of Cancellation of GST registration could not be filed within the statutory period of limitation. The Hon'ble High Court under Article 226 of the Constitution of India restored the appeal of the Petitioner as the petitioner could not file the Appeal due to illness of the grandfather of the proprietor. In support petitioner-firm had produced medical reports and certificates. Therefore, an opportunity was provided to the petitioner-firm to contest the matter on merits for restoration of its GST Registration.

Stalwart Alloys India Private Limited v Union of India

CWP No. 1661 of 2022 (O&M), (Punjab and Haryana High Court)

The proceedings cannot be transferred to DGGI when the proceedings have already been initiated by State GST Authorities. It has also been observed that such action, if allowed, would be contrary to the provisions contained in Section 6 (2)(b) [Authorisation of officers of State tax or Union territory tax as proper officer in certain circumstances].

CIRCULARS ISSUED BY CBIC

**Circular on clarification in respect of advertising services provided to foreign clients
(Circular No. 230/24/2024-GST dated 10-09-2024)**

CBIC has issued a circular to clarify that the advertising company which is involved in the main supply of advertising services, including resale of media space, to the foreign client on principal-to-principal basis does not fulfil the criteria of "intermediary" under section 2(13) of the IGST Act. Further, the recipient of the advertising services provided by the advertising company in such cases is the foreign client.

**CBIC issued clarification on availability of input tax credit in respect of demo vehicles
(Circular No. 231/25/2024-GST dated 10-09-2024)**

CBIC has issued a circular to provide clarification that input tax credit in respect of demo vehicles is not blocked under clause (a) of section 17(5) of CGST Act. Also, the availability of input tax credit on demo vehicles is not affected by way of capitalization of such vehicles in the books of account of the authorized dealers, subject to other provisions of the Act.

**Data hosting services provided to overseas cloud computing service providers are not intermediary services
(Circular No. 232/26/2024-GST dated 10-09-2024)**

CBIC has issued a circular to clarify that data hosting services provided by service providers located in India to cloud computing service providers located outside India shall not be considered as intermediary services and hence, the place of supply of the same cannot be determined as per section 13(8)(b) of IGST Act.

**Clarification regarding regularization of refund of IGST availed in contravention of rule 96(10) of CGST Rules, 2017
(Circular No. 233/27/2024-GST dated 10-09-2024)**

CBIC has issued a circular to clarify that where the inputs were initially imported without payment of integrated tax and compensation cess by availing exemption but subsequently, GST on such imported inputs are paid at a later date, then the IGST, paid on exports of goods, refunded to the said exporter shall not be considered to be in contravention of provisions of sub-rule (10) of rule 96 of CGST Rules.

TAX CANNOT BE COLLECTED WITHOUT ‘AUTHORITY OF LAW’

Article 265 of the Constitution of India lays down that collection of tax has to be by the ‘*authority of law*’. If tax is collected ‘without any authority of law’, the same would amount to depriving person of his property and would infringe his right under Article 300A of the Constitution. The only provision which permits deposit of amount during pendency of investigation is Section 74 (5) of CGST Act, which is not always attracted and thus needs to be very carefully invoked. The amount collected without any ‘authority of law’ from assessee is in absolute violation of Article 265 and 300A of the Constitution.

GST PORTAL - NEWS & UPDATES:

Invoice Management System – Taxpayers will efficiently be able to address invoice corrections/amendments with their suppliers through the portal, a new communication process called the Invoice Management System (IMS) is being brought up at portal. This will also facilitate taxpayer in matching of their records/invoices vis a vis issued by their suppliers for availing the correct Input Tax Credit (ITC) and shall allow the recipient taxpayers to either accept or reject an invoice or to keep it pending in the system, which can be availed later. **This facility shall be available to the taxpayer from 1st October onwards on the GST portal.**

RCM Liability/ITC Statement - To assist taxpayers in correctly reporting Reverse Charge Mechanism (RCM) transactions, a new statement called "*RCM Liability/ITC Statement*" has been introduced on the GST Portal. This statement will enhance accuracy and transparency for RCM transactions by capturing the RCM liability shown in Table 3.1(d) of GSTR-3B and its corresponding ITC claimed in Table 4A(2) and 4A(3) of GSTR-3B for a return period. This **statement will be applicable from tax period August 2024 onwards for monthly filers and from the quarter, July-September-2024 period for quarterly filers.** The RCM Liability/ITC Statement can be accessed using the navigation: *Services >> Ledger >> RCM Liability/ITC Statement.*

Deadline to declare Opening Balance: Opening balance can be declared till 31.10.2024.

Amendments in Opening Balance: Taxpayers can rectify any errors committed while declaring the opening balance on or before 30.11.2024, he shall be provided three opportunities for the same. This amendment facility shall be discontinued after 30.11.2024.

GST Portal Help Desk Number:
1800-103-4786

Upcoming Due Dates – GST Compliances in September 2024

Monthly	Quarterly	Other Due Dates	
GSTR-3B (Aug. 2024)	GSTR-38 (July -Sep, 2024)	GSTR-5 (Aug, 2024)	GSTR-5A (Aug, 2024)
Sep 20th, 2024	Oct 22nd, 24th, 2024	Sep 13th, 2024	Sep 20th, 2024
GSTR-1 (Aug, 2024)	GSTR-1 (Jul-Sep, 2024)	GSTR-6 (Aug, 2024)	GSTR-7 (Aug, 2024)
Sep 11th, 2024	Oct 13th, 2024	Sep 13th, 2024	Sep 10th, 2024
IFF (Optional) (Aug,2024)	CMP-08 (Jul-Sep, 2024)	GSTR-8 (Aug, 2024)	RFD-10
Sep 13th, 2024	Oct 18th, 2024	Sep 10th, 2024	18 Months after the end of quarter for which refund is to be claimed

LEGAL MAXIMS/ PHRASES:

Legal maxim/ phrase	Legal Principle/ concept
<i>Ab initio</i>	<i>From the beginning or inception. From the first act.</i>
<i>Actio Personalis Moritur Cum Persona</i>	<i>A persona right of person dies with the person.</i>
<i>Actus Curiae Neminem Gravabit</i>	<i>An act of the Court shall prejudice no man.</i>
<i>Actus Non Facit Reum Nisi Mens Sit Rea</i>	<i>The intent and act must both concur to constitute the crime.</i>

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