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NEWSLETTER

CHAIRMAN'S MESSAGE

CA SHINE P. JOSEPH
CHAIRMAN

Dear Professional Colleagues,

The modern world struggles for existence are the key to one's success. Apparently, this has made the life of every individual a highly stressful one. There are many aspects attributing to this struggle like health reasons, financial insecurity, work pressure etc. Serious measures need to be taken to overcome this stress. Firstly, a healthy life is the precursor to happiness. So, the major contributor towards the stress in a normal person's life is their unhealthy condition. For instance, an employee who due to health reasons takes a week off from work, get a lot of work pressure when re-joins the organisation, hence, leading toward an enormous stress. People today are increasingly concerned with individual happiness and work-life balance. The main problem for most people is that work takes up too much time and causes mental health issues and the best way to achieve this balance is to work more efficiently.

The primary issues associated with work-life balance are the amount of time people must spend working and how this impacts their mental health. Since the global financial crisis of 2008, the job market around the world has become increasingly competitive. This means that old workers may get pushed out of their jobs by younger graduates willing to work for less and that new graduates have to put in enormous extra hours to catch up. The end result is more work, which eats away at a person's private life. Once your free time becomes restricted there are a variety of related mental health problems that can appear. For example, someone who is overworked can suffer from excessive stress, some forms of depression, and obesity because of the lack of time available to exercise. That is why there has been a sharp rise in the last decade in these problems. Workplace stress is also named as occupational stress or job stress or work place stress Employees' can easily lead to the occupational stress, when they are not able to fulfil job requirements. Nowadays, the main causes of stress at workplace are poor management in the organizations, inferior work designs, inadequate leadership and management, miserable working conditions and cutthroat culture of workplace most important reasons attributing towards stress and the same can be solved by the few changes in the government policies. It is also believed that in future government will make a note and work towards this very critical issue.

On 5th September our Branch along with Branch SICASA celebrated Teachers Day. Representatives from SICASA presented a topic "Our Teachers: Guiding Lights in Every Journey". We also honoured faculty member of our branch on the felicitous occasion.

On 7th September 2024, we conducted a CPE seminar 'GST Proposals in Union Budget 2024 (Including 53rd GST Council Recommendations)

by CA.M. P Tony, Thrissur with 3 hours of CPE credit. I am sure that the programme was a very informative and useful for our members.

Even though September was a busy month, our members celebrated Onam in a big way at their offices and homes. 12th September 2024 our branch also celebrated Onam accompanied by a half day CPE seminar on TAX AUDIT UNDER 44AB by CA. G. Rengarajan, Kochi with 3 hours of CPE credit. We also had special celebration for students, faculty members and staff of branch office.

The activities of our students are going on in top gear. All mandatory classes are going on smoothly in physical mode. Our coaching classes for CA Foundation and CA intermediate for the January 2025 batch is nearing completion.

"Don't try to force anything. Let life be a deep let-go. God opens millions of flowers every day without forcing their buds."

I take this opportunity to wish every member and their family a very happy Navaratri and Deepavali.

Extension of Tax Audit Due Date from 30th September to 7th October, 2024 is a happy news for this month

The CBDT has extended the due date for furnishing tax audit report for all assesses from 30th September to 7th October, 2024 for the Financial Year 2023-24 vide Circular No. 10/2024 dated 29th September, 2024.
Jai Hind ! Jai ICAI !

Jai Hind ! Jai ICAI !

CA SHINE P JOSEPH

CPE Seminar on GST Proposals in Union Budget 2024

CPE Seminar on Tax Audit

Onam Celebrations

Teacher's Day Celebrations

GST CASE LAW COMPENDIUM – September 2024 EDITION

CA. Ritesh Arora

1.	Whether demand can be confirmed if the petitioner fails to prove the actual movement of goods?
2.	Whether issuance of notice in Form ASMT-10 is mandatory before issuing SCN u/s 73/74?
3.	Whether the State tax officer has the jurisdiction to transfer the case to DGGI?
4.	Whether penalty can be levied under section 130 for excess stock found during inspection?
5.	Whether registration of the taxpayer can be cancelled where SCN mentioned reasons as "Others"?
6.	Notification no.56/2023-CE issued by CBIC challenged before the Honorable Gauhati High Court
7.	Whether an adverse order be passed without affording an opportunity of hearing to the taxpayer?
8.	Whether recovery action can be taken without disposing of the rectification application of the Petitioner due to an inadvertent error made in Form GSTR-1?
9.	Whether the writ petition is admissible if the appeal is filed after the limitation period and the benefit of the Amnesty Scheme not availed?
10.	Whether Bail can be granted to an accused of fake-credit racket, when the SCN is issued?
11.	Whether State tax officer has have the jurisdiction to block electronic credit ledger under Rule 86A exceeding monetary limits specified by CBIC in the circular?
12.	SLP dismissed challenging the order for Seizure of cash and silver bars recovered during the search
13.	Whether registration can be cancelled from the retrospective date without assigning any reasons?
14.	Whether interest and penalty can be demanded where ITC is wrongly availed but not utilized?
15.	Whether uploading SCN on the "View additional Notices & Orders" tab is sufficient communication to the notice?
16.	Whether the Appeal can be rejected if no condonation of delay application is filed?
17.	Whether penalty can be imposed if the E-way bill is not accompanied with the consignment, but is generated before passing the seizure order?
18.	Whether the petitioner can file an appeal after the expiry of the statutory time limit allowed?
19.	Whether the assessment order is liable to be set aside when a reply furnished by the petitioner is taken into consideration?
20.	Whether SCN issued in form GST REG-31 proposing cancellation of registration void in nature?
21.	Whether the petitioner is required to be afforded another opportunity to contest tax demand due to the negligent conduct of the Accountant?

1. <u>Whether demand can be confirmed if the petitioner fails to prove the actual movement of goods?</u>

Yes, the Honorable High Court of Allahabad in case of **M/s Anil Rice Mill vs. State of UP and 2 Others (WRIT TAX No. - 886 of 2023 dated 14.08.2024)** dismissed the writ petition filed by the petitioner stating that the primary responsibility of claiming the benefit is upon the dealer to prove and establish the actual physical movement of goods, genuineness of transactions, etc. and if the dealer fails to prove the actual physical movement of goods, the benefit of ITC cannot be granted. The Honorable Court relied on the judgment of the Honorable Supreme Court in the case of **State of Karnataka vs. M/s Ecom Gill Coffee Trading Private Limited (2023)**, which reinforces the principle that the burden of proving the legitimacy of an ITC claim lies with the purchasing dealer. The Honorable Court observed that the petitioner has only brought on record the tax invoices, e-way bills, andpayment through the banking channel, but no such details such as payment of freight charges, acknowledgement of taking delivery of goods, toll receipts and payment thereof has been provided. Thus in the absence of these documents, the actual physical movement of goods and genuineness oftransportation as well as the transaction cannot be established and in such circumstances, further no proof of filing of GSTR 2 A has been brought on record, consequently, the authorities rightly initiated proceedings against the petitioner. In view of

the facts as stated above, no interference is called for by this Court in the impugned orders.

Author's Comments

Where self-assessment is challenged, the burden rests on the Revenue making the allegation and not on the Registered Person-suffering the allegation. The Burden of proof is not discharged by making the allegation. The Burden of proof is discharged only when a mountain of evidence commensurate with the nature of the allegation made is produced and appended to notice. Allegations of severe wrong-doing require proportionately substantial evidence. Evidence is not extracted of books of accounts or statements taken on-oath. Evidence is that proves something. Section 155 of the CGST Act places the burden to prove regarding "eligibility to credit" only on the taxpayer. Once, it is shown that all the conditions of section 16 are fulfilled, the taxpayer's burden is discharged and onus shifts on the department to prove their case.

In the instant case, the petitioner could have disputed the allegation stating that being a trader; if the outward supplies are accepted to be genuine then inward supplies have to be genuine. And if inward supplies are ingenuine and outward supplies are accepted to be genuine, then the allegation is deeply rooted in incomplete investigation, surmise and conjecture only. The Revenue cannot approbate and reprobate on the same issue. The taxpayer must have allowed the revenue to prove their case and in the absence of evidence in support of allegations, allegations are self-defeating.

This is classic case of poor strategy by the petitioner and in coming times, other taxpayers will have to face the heat of this order.

Link to download judgment

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2. **Whether issuance of notice in Form ASMT-10 is mandatory before issuing SCN u/s 73/74?**

No, the Honorable Madras High Court in the case of **Mandarina Apartment Owners Welfare Association (MAOWA) v. Commercial Tax Officer/State Tax Officer [W.P. NOS. 15307 & 15330 OF 2024 dated 16 July 2024]** set aside the assessment order stating that a close examination of sections 61 and 73 shows that scrutiny of returns and issuance of notice in form ASMT-10 do not constitute essential steps for adjudication. The Honorable Court observed that upon selection of returns for scrutiny and discovery of discrepancies, there is a mandatory obligation to issue an ASMT-10 notice. The ASMT-10 notice allows the registered person to provide an explanation; if satisfactory, no further action is taken, otherwise, action is initiated under sections 65, 66, or 67, or tax is determined under sections 73 or 74.Failing to issue an ASMT-10 notice despite noticing discrepancies vitiates the scrutiny process and any resulting quantification. However, scrutiny of returns and issuance of ASMT-10 notice is not a mandatory prerequisite for adjudication under section 73, even if returns were scrutinized. The Honorable Court accepted the contention of the Respondents by relying on the judgment of this Court in case of **Vadivel Pyrotech (W.P.(MD) No.22642 of 2022 and W.M.P.(MD) Nos.16803 and 16804 of 2022 dated 27.09.2022)** and concluded that the said judgment does not lay down the proposition that jurisdiction under Section 74 cannot be exercised without issuing notice under Section 61(3).

Author's Comments

Proceedings under section 73 of the CGST Act are completely different and independent of section 61 proceedings. Proceeding under section 61 of the CGST Act is a pre-adjudication exercise (where no demand can be confirmed and recovered) and certainly not a pre-condition to initiate proceedings under chapter XV of the CGST Act. The opening words of section 73 read as "Where it appears to the Proper officer…" clearly indicates that scrutiny, audit, special audit or Inspection, on the one hand, and adjudication, on the other, operates in silos and the former does not constitute a pre-requisite for the latter. SCN is the conclusion of the investigation and does not limit the proper officer to investigate and draw conclusions on the basis of scrutiny of returns under section 61 only, rather information can be gathered by the proper office from any source. A Similar decision was given by the Division Bench of the Honorable Allahabad High Court in the case of **M/s. Nagarjuna Agro Chemicals Pvt. Ltd. v. State of U.P. and another (2023: AHC: 148454-DB, Writ Tax No.335 of 2023)** wherein the Division Bench held that scrutiny of return proceedings and proceedings under Section 74 are two separate and distinct exigencies and issuance of notice under Section 61(3) cannot be construed as a condition precedent for initiation of action under Section 74 of the Act.

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3. **Whether the State tax officer has the jurisdiction to transfer the case to DGGI?**

No, the Honorable Punjab & Haryana High Court in the case of **M/s Stalwart Alloys India P Limited vs. UOI &Ors (CWP no.1661 of 2022, 7411 of 2023 dated 28.08.2024)** allowed the writ petitions stating that the State tax officer shall continue with the proceedings initiated under section 74(1) of the HGST Act, 2017 against the petitioner. The Honorable Court noted that earlier this courthad directed the respondents to conduct the proceedings at one place alone. Since the proceedings have already been initiated by the State Authorities, there is no occasion to uphold the action of the DGGI or the action of the state authorities to transfer proceedings to DGGI, Meerut pending before it. Further held that 'Subject matter' used in section 6(2)(b) of the Act would mean 'the nature of proceedings'. The Honorable Court also referenced a circular issued by the Ministry of Finance, clarifying that once an officer initiates enforcement action, they are empowered to complete the entire process without transferring the case to another authority. The court further noted that the concept of joint proceedings does not exist under the

GST Act. The court emphasized that in a federal structure; both State and Central authorities must cooperate and not act independently of each other, ensuring that the investigation reaches its logical conclusion. The Honorable Court quashed the orders transferring the proceedings to the DGGI, Meerut, and directed that the State Tax Officer should continue and conclude the proceedings initiated under Section 74(1) of the HGST Act against the petitioner company.

Author's Comments

As per Section 6(2) (b) of the CGST Act, if a proper officer under the SGST Act or the UTGST Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under the CGST Act on the same subject matter. In the considered opinion of the author, there is no bar under the law that once a proceeding is initiated for a particular period by the CGST department, no proceedings can be issued by the SGST or UTGST authorities for the same period. The only bar that the statute places is regarding proceedings based on the same cause-of-action and the same subject matter (in a few circumstances, even for the same cause-of-action, parallel proceedings are permissible).

Issuance of SCN by State authorities cannot mean a 'proceeding' is going on. SCN is the conclusion of the investigation and adjudication is to be carried out after the issuance of SCN. If the SCN is issued based on certain investigations for 2017-18, and 2018-19 by the State authorities, there is no bar under the law to restrict CGST officers from conducting inquiry based on the same investigative material and issuing SCNs for different periods. Cross-empowerment is allowed for proceedings carried out under section 67 and Section 6(2)(b) of the Act comes into play only when overlapping SCN is issued for the same subject matter for the same period. Further, there is no bar under the law that restricts the exchange of investigative material between the Central and State authorities. There is no provision under GST law to transfer adjudication from State Authorities to DGGI (Central authority) but no such restriction exists for transferring investigative material and investigation.

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4. Whether penalty can be levied under section 130 for excess stock found during inspection?

No, the Honorable High Court of Allahabad in the case of **M/s Vijay Trading Company vs. Additional Commissioner Grade 2 and Another (Writ Tax no.1278 of 2024 dated 20.08.2024)** quashed the assessment order stating that the law is clear on the subject that the proceedings under section 130 of the GST Act cannot be put to service if excess stock is found at the time of the survey.

The Honorable Court observed after carefully reviewing the arguments and the relevant legal provisions, it is evident that the petitioner's contentions hold merit. It is not disputed that the survey conducted on 11.05.2022 did result in a finding of excess stock. However, this Court has consistently held that when such findings are made, the appropriate legal recourse is to initiate proceedings under Sections 73/74 of the GST Act. These sections provide a structured process for determining and rectifying discrepancies in tax filings or stock records, ensuring that the taxpayer is given a fair opportunity to respond and rectify any issues. Section 130, on the other hand, is intended for more serious cases where there is evidence of fraudulent intent or gross negligence in tax matters. This position was reaffirmed in the recent judgment of this Court in **Dinesh Kumar Pradeep Kumar**, where it was clearly stated that proceedings under Section 130 should not be invoked for mere discrepancies in stock. The Honorable Court emphasized that the tax authorities must follow the procedures laid out in Sections 73/74 for assessing and resolving such matters. The Honorable Court stated that given these findings, the impugned orders dated 03.04.2024 and 24.01.2023 cannot be sustained in law. The failure to follow the appropriate legal procedures under the GST Act, combined with the questionable method of stock assessment, renders these orders legally unsound. As a result, the orders are hereby quashed.

Author's Comments

"Due Process" of law demands, the exercise of specific powers conferred to the Proper officer within specific boundaries of the law. Passion to protect the interest of revenue does not authorize the by-passing of the law.

Section 35(6) of the CGST Act, 2017 covers the situation of shortage of stock. In the considered opinion of the Author, there is no provision under the law to cover the situation of excess stock is found. In case of excess stock found, Section 130 of the CGST Act cannot be invoked as decided in this case. Further, there is no cause-of-action to invoke section 74 of the CGST Act. In case of Excess stock,it can be alleged that goods are received without invoice, in such a situation; action can be taken against the supplier only for contravention of the provisions of this law and not against the recipient.Necessary ingredients to establish levy are not attracted in case of excess stock found, to demand tax under section 74 of the Act.

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5. Whether registration of the taxpayer can be cancelled where SCN mentioned reasons as "Others"?

Yes, the Honorable High Court of Calcutta in the case of **Limton Metals Ltd. v. Superintendent [W.P.A. NO. 11277 OF 2024] dated 25 June 2024** dismissed the writ petition challenging orders for cancellation of registration. The petitioner argued that the notice did not comply with section 29 provisions, as it did not specify the reasons for the cancellation and the notice mentioned "Others" under the reasons column, which the petitioner claimed was insufficient disclosure. The Honorable Court observed that the pe-

titioners have advanced arguments that the show cause notice did not identify and/or specify the reasons, it would however, transpire from the show cause, that it referred to certain supportive documents which that were also made available to the petitioner along with the aforesaid show cause notice indicating that the petitioner was suspected of being a fake entity used to pass on irregular Input Tax Credit (ITC) without actual supply. However, mere disclosure of reasons does not satisfy the requirement of the provisions contained in Rule 25 of the CGST Rules, 2017. However since the petitioner is reluctant to cooperate with further inspection, it raises serious doubts regarding the bona fide of the petitioners. The Honorable Court stated that although the procedure adopted by the respondents to cancel the petitioner's registration under the said Act may not be strictly as per the procedure laid down, however, the same cannot be said to be per se illegal or without any basis. The writ petition was dismissed, as the court concluded that the petitioner had been informed of the reasons for the cancellation.

Author's Comments

It is common to find that demand in a notice is arbitrary. It is important to note that allegations in support of a demand may lack some essential ingredients and that may offer grounds to assail the notice on the ground of 'arbitrariness'. Now section 160(1) can be relied upon in adjudication to overcome this allegation. Not everything that is vague or difficult to comprehend can be called asarbitrary. Arbitrariness demands a certain minimum level of understanding of the subject before capable of declaring something to be arbitrary. A Defense that relies upon arbitrariness bears the burden to demonstrate the exact level of the unintelligibility of the allegation in the notice that goes to the root of the demand and destroys it completely.

Arbitrariness must be advanced as a defense with great circumspection because faced with arbitrariness, there remains nothing more to be said by way of defense and arbitrariness ends any further defense. Other ground in addition to arbitrariness is a contradiction-of-sorts.

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6. Notification no.56/2023-CE issued by CBIC challenged before the Honorable Gauhati High Court

In the case of **Shree Shyam Steel v. Union of India (WP(C)/3838/2024)**, the Honorable Gauhati High Court admitted the challenge to Notification No. 56/2023-CE issued by the Central Board of Indirect Taxes and Customs (CBIC). The notification extended the deadline for passing orders under Section 73(9) of the CGST Act, 2017 for the financial years. 2018-2019 and 2019-2020. The Honorable Court provided interim protection to the petitioners, prohibiting any coercive action based on the notification. The petitioner contended that the notification was issued without the mandatory recommendation of the GST Council, as required under Section 168A of the CGST Act, 2017. Although the GST Council had previously made a recommendation for extending deadlines, reflected in Notification No. 9/2023-CE dated 31.03.2023, however, no such recommendation was made for the extensions in Notification No. 56/2023-CE. The Honorable Court further noted that the petitioner has argued that there is no corresponding notification issued by the Assam GST department for extending timelines. The Honorable Gauhati High Court held that Notification No. 56/2023-CE was prima facie not in consonance with Section 168A of the CGST Act, 2017. The Honorable Court found that the notification could not stand the scrutiny of law due to the absence of the necessary recommendation from the GST Council. Further directed the respondents to file affidavits.

Author's Comments

At many instances, there is no recommendation of the GST Council, yet CBIC rolls out the notifications and then recommendations are ratified by the GST Council at a later stage. The Argument that there is no recommendation of the GST Council to extend the timelines might not hold the ground tightly to declare such notifications ultra-vires the law. Further, section 11(4) of the state GST Act gives the power to states that notification issued by the Central Government will be deemed to be issued under the State Act also. Thereby, there is no need for separate notifications to be issued by the State.

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7. Whether an adverse order be passed without affording an opportunity of hearing to the taxpayer?

No, the Honorable Karnataka High Court in the case of **M/s. Bangalore Golf Club v. Commercial Tax Officer [W.P. No. 8050 of 2024 dated June 05, 2024]** set aside the order as no opportunity of hearing was granted to the Petitioner before passing an adverse order. The Honorable Court held that it is mandatory to grant the opportunity of hearing as required under section 75(4) of the CGST Act when an adverse order is being contemplated against the Petitioner.

The Honorable Karnataka High Courtmade clear that setting aside the impugned order is not to be taken as recording a finding as regards the contention of the petitioner regarding passing a common order for two different financial years.

Author's Comments

This is expressly given in the statute [Section 75(4) and 126(3)] that the opportunity of being heard must be presented where it is specifically asked by the taxpayer or where an adverse order is contemplated against the taxpayer. The petitioner must have disputed the service of notice and must have allowed the Revenue to discharge their burden to prove regarding service of notice. Approaching a writ court under Article 226 or Article 32 of the Constitution of India must be a strategic and well-thought decision. If the Honorable Court remands back the case for the second round of adjudication and the notice is not vacated, then it turns out to be

a fruitless exercise unable to fetch the desired relief.

It is not always that suffering an ex-parte order will be disastrous. Most of the times, ex parte orders without a reply by taxpayers, are not sustainable on facts and law. Moreover, every mistake of the Revenue cannot become ground to vacate notice and achieve the desired outcome.

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8. **Whether recovery action can be taken without disposing of the rectification application of the Petitioner due to an inadvertent error made in Form GSTR-1?**

No, the Honorable Madras High Court in the case of **Veeran Mehhta v. Deputy Commercial Tax Officer and Deputy State Tax Officer [Writ Petition No. 15789 of 2024 dated June 25, 2024]** directed the disposal of the Order dated January 22, 2024, which was based on a mismatch of tax liability discharged in form GSTR-3B and belatedly filed Form GSTR-1. The Honorable Court held that no recovery or coercive measures could be initiated until the Petitioner's rectification petition was resolved. The Honorable Madras High Court noted that the Petitioner placed on record the Form GSTR-3B for January in the assessment period 2018-2019. The Form GSTR-1, purportedly for July in the assessment period 2019-2020 was also on record. The outward taxable value pertaining to IGST in the two documents was tallied. The Petitioner also placed on record the tax liability comparison report from the GST portal. This document also indicated an excess in liability when the Form GSTR-3B and Form GSTR-1 were compared. Such excess was Rs. 4,17,577/-. In these circumstances, a prima facie case was made out for consideration of the rectification petition. The Honorable Court held that the writ petition is disposed of and the Respondent is restrained from initiating recovery or coercive measures until the rectification petition was disposed of and lastly, directed the Respondent to consider and dispose of the rectification application within three months from the date of the order.

Author's Comments

Section 161 has a very limited scope and it allows for the rectification of any error or mistake that is apparent from the record. It is important to note that 'apparent on the face of record' is not one that involves (i) a conclusion that cannot be reached without taking new facts on record during rectification proceedings or (ii) requiring application of mind to existing facts or interpretation already adopted in reaching the conclusion already reached. In the Author's considered opinion, this is not a fit case to apply for rectification. The only remedy is to prefer an appeal before the first appellate authority against theimpugned order. If an appeal is not filed within the statutory time limit (3+1 months), then this remedy is lost forever and recovery action will be just and proper.

Alternatively, cause-of-action (GSTR-1 vs GSTR-3B) could have been disputed, where notice ought to have been issued as per Section 75(12) in form DRC-01B and not under Section 73. Where a specific section is given under the statute to address the issue of mismatch of data reported in GSTR-1 and GSTR-3B, resorting to Section 73 is a gross misapplication of the law.

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9. **Whether the writ petition is admissible if the appeal is filed after the limitation period and the benefit of the Amnesty Scheme not availed?**

No, the Honorable Patna High Court in **M/s Raj Kishore Sah v. Union of India [Civil Writ Jurisdiction Case No. 8376 of 2024 dated June 19, 2024],** dismissed the writ petition challenging the cancellation of GST registration, where the Petitioner had not availed remedy of the Amnesty Scheme provided by the Government vide Notification No. 03/2023-Central Tax dated March 31, 2023 and filed the appeal after the time limit prescribed under section 107 of the Bihar Goods and Services Tax Act. The Honorable Patna High Court observed that the Petitioner was not a registered dealer and there was no monitoring of activities by the department in the intervening period. Further, there was no way to ascertain whether any transactions were carried out during the period when the Petitioner's registration was canceled. The Honorable Court held that an appeal must be filed within three months of the order and delay is condoned if the appeal is delayed within one month of the expiry of the limitation. Therefore, the appeal ought to have been filed on or before January 11, 2023 or before February 10, 2023 with a delay condonation application. The Petitioner had filed a delayed appeal and had not availed remedy of the Amnesty Scheme offered by the government through the Notification. Hence, the court dismissed the petition and declined to exercise its discretion in favor of the Petitioner stating the law favors the diligent and not the indolent.

Author's Comments

If the appeal is filed after the statutory period permitted in Section 107(4) (3+1 months), no authority can condone the delay, not even if the reasons are ample and deserve to be entertained. The appeal must be dismissed for being fatally belated because the Legislature has imposed certain limitations in the law.

Limitation is when a right continues but is no longer enforceable after the lapse of a certain time. If the appeal is not filed within the time limit given, then the statutory remedy is lost forever.

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10. **Whether Bail can be granted to an accused of fake-credit racket, when the SCN is issued?**

Yes, the Honorable Punjab and Haryana High Court in the case of **Vishal Chauhan v. Haryana State GST (In-**

telligence Unit) [CRM-M-37860 of 2024 (O & M) dated August 14, 2024] granted bail to the Petitioner, where the Petitioner was arrested for alleged wrongful availment of Input Tax Credit by showing purchases from non-existent or fraudulent suppliers. The petitioner was granted regular bail as trial was likely to be prolonged; the Show Cause Notice under Section 74(1) was yet to be adjudicated and the exact liability of the Petitioner was yet to be fixed. The Honorable Punjab and Haryana High Court noted that the Petitioner was in custody since February 20, 2024, and he had no criminal antecedents and had a permanent abode. There was no likelihood of the Petitioner's fleeing from the country. He was also ready to surrender his passport. Further noted that the sentence to be awarded in this case was directly linked with the quantum of evasion of tax and the prosecution of the Petitioner was also linked with the determination of evasion of tax because if there is no evasion of tax, there cannot be any criminal liability. The determination of tax liability is subject to the challenge before tribunals and courts and does not fall within the realm of criminal courts.The Honorable Court relied on the Division bench judgment of this Court in the case of **Akhil Krishan Maggu& another vs. Deputy Director, DirectorateGeneral of GST Intelligence &others : 2020 (77) GST 279 and Jayachandran Alloys (P) Ltd. vs. Superintendent of GST & Central Excise : (2019) 105 Taxmann.com 245 (Madras,)** and observed thatthe provisions of Sections 69 and 132 of HGST Act which empower Proper Officer to arrest a person who has committed any offense involving evasion of tax more than Rs.5 Crores and prescribe maximum sentence of 5 years which fell within the purview of Section 41A of Cr. P.C., the power of arrest should not be exercised at the whims and caprices of anyofficer or for the sake of recovery or terrorizing any businessman or creating an atmosphere of fear, whereas it should be exercised in exceptional circumstances during the investigation.The Honorable Court ordered that the Petitioner to be released on regular bail, subject to his executing personal bonds with two solvent sureties each in the sum of Rs. 50 Lakhs to the satisfaction of the Trial Court and further subject to the condition that he will surrender his passport before the trial Court and shall not leave the country during trial without prior permission of the Court.

Author's Comments

Where self-assessment is challenged, the burden rests on the Revenue making the allegation and not on the Registered Person-suffering the allegation. The Burden of proof is not discharged by making the allegation. The Burden of proof is discharged only when a mountain of evidence commensurate with the nature of the allegation made is produced and appended to notice. Allegations of severe wrong-doing require proportionately substantial evidence. Evidence is not aextract ofbooks of accounts or statements taken on-oath. Evidence is that proves something.

Further, Arrest is not the commencement of a sentence. Pre-trial detention is subject to enlargement (or to be released) on bail. Pre-trial detention is subject to bail as a matter of right under section 167 of the Code of Criminal Procedure (Section 187 of **Bharatiya Nagarik Suraksha Sanhita** 2023). Statutory bail even in case of the offense charged attracts transportation for life or death is set at ninety (90) days. A Delay in filing a charge-sheet is good ground to enlarge on bail. Pre-trail remand, under the custody of the investigating officer or judicial custody, is only until the preliminary investigation is completed in so far as collection of evidence or securing deposition of material witnesses is secured. While the risk of inducement to witnesses may be good grounds to seek remand but this risk cannot last the entire duration of the trial. As soon as necessary evidence from witnesses is secured, this risk stands de-risked and bail must be granted.

Link to download judgment

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11. **Whether State tax officer has the jurisdiction to block electronic credit ledger under Rule 86A exceeding monetary limits specified by CBIC in the circular?**

Yes, the Honorable Orissa High Court in the case of **Atulya Minerals v. Commissioner of State Tax [W.P.(C) No. 14540 of 2024 dated June 20, 2024]** dismissed the writ petition interalia stating that the Circular issued by the Central Government would be binding on the officers of Central GST officers only. The Honorable Orissa High Courtstatedas it appears, the orders impugned relates to State GST and the same having been passed by the Deputy Commissioner of the State Taxes, theContention raised that he has no jurisdiction to pass the order, cannot be a justifiable ground in view of Rule 86 A (1) of the OGST Rules, 2017. Rule 86 (A)(1) makes clear that the Commissioner or an officer authorized by him in this behalf, not below the rank of an Assistant Commissioner, can pass the order and in the instant case, the impugned orders having been passed by the Deputy Commissioner, who is higher in rank to Assistant Commissioner, it is well within his jurisdiction to pass such orders. The Honorable Court further stated that in so far as the contention raised with regard to the Circular issued by CBIC dated 02.11.2021 is concerned, that ipso facto can only be applicable to the Central GST and not to the State GST unless the said circular is adopted by the State Government by making a declaration. Nothing has been placed on record to show that the said circular has been adopted by the State Government for State GST. Therefore, the Honorable Court ruled that the claim of the petitioner that Impugned orders have been passed by an officer having no jurisdiction cannot be sustained in eyes of law. So far as compliance of principle of natural justice is concerned the same has already been set at rest by this Court in the case of **M/s. Bizzare Ispat Pvt. Ltd**. and **M/s. Innojet Projects Pvt. Ltd., Khordha,** and accordingly writ petition is disposed of.

Author's Comments

Rule 86(A)(1) clearly states that the Commissioner or an officer authorized by him inthis behalf, not below the rank of Assistant Commissioner

has the power to block the electronic credit ledger for reasons to be recorded in writing. In this case, power has been exercised by the Deputy Commissioner, who is higher in rank to the Assistant Commissioner. And challenge to jurisdiction lacks persuasive value.

There are only five (5) reasons for which this pre-emptive and emergency power under Rule 86A can be invoked. And if there are any other reasons, not falling with these, the use of this exceptional power would be contrary to law. Blocking the use of input tax credit, which is a vested and indefeasible right in the nature of the property of a Registered Person, would be institutionalized theft. Passion to protect the interests of Revenue does not authorize bypassing the law.

The petitioner should have called reasons to believe by the Authorized officer for this pre-emptive action and in case of any lapses, approaching Writ court would have been a better strategy.

Moreover, the decision by the Commissioner or any other authorized officer under Rule 86 to block ECL is a non-appealable decision, although not specified u/s 121 of the Act.

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12. **SLP dismissed challenging the order for Seizure of cash and silver bars recovered during the search**

The Honorable Supreme Court in the case of **Commissioner of CGST v. Deepak Khandelwal [Special Leave Petition (C) Diary No. 31886 of 2024 dated August 14, 2024],** dismissed the Special Leave Petition and upheld the decision of the Honorable Delhi High Court wherein the Court directed to return the seized currency and other valuable assets to the Petitioner and held that the Revenue Department has no power to seize cash and any other items under Section 67 of the Central Goods and Services Tax Act, 2017.

The Honorable Delhi High Court earlier in the case of **Deepak Khandelwal Proprietor M/s Shri Shyam Metal v. Commissioner of CGST, Delhi West & ANR. [W.P. (C) No. 6739 of 2021 dated August 17, 2023]** allowed the writ petition and held various types of movable assets may be found during the search, although falling under the definition of 'goods' cannot be seized. Only those goods, that are the subject matter of or are suspected to be the subject matter of evasion of tax, would be liable for confiscation. Further, the seizure of documents or books or things is permissible so as to aid in proceedings that may be instituted under the CGST Act, otherwise, documents or books or things cannot be confiscated and have to be returned.

The Honorable Court observed that the purpose of section 67 of the CGST is not recovery of tax, its purpose is to empower authorities to unearth tax evasion and ensure that taxable supplies are brought to tax and, thus, the proper officer has the power to seize goods to ensure that taxes are paid and once department is secured in this regard, either by discharge of such liability or by such security or bond as concerned authority deems fit, goods are required to be released. Further opined that search and seizure operations under section 67 are not for the purpose of seizing unaccounted income or assets or ensuring that same are taxed, the said field is covered by the Income Tax Act, 1961.

Author's Comments:

It is important to note that cash is not 'goods liable to confiscation' under section 130(1) but are 'things' which are considered "useful or relevant" by the Authorized Officer to carry out "any further proceedings". What, therefore, can be the 'use or relevance' of cash to be seized? There is a popular, mysterious, and erroneous understanding that 'cash' is illicit if discovered in search proceedings. Officers tend to seize cash without even ascertaining to whom it belongs. 'Cash' seizure does not directly point to proceeds from unaccounted sales. Seizure is a necessary requirement to 'secure' the specific 'goods and documents, books, or things' and to 'identify' them in later proceedings. A Seizure does not imply a 'transfer of property'.

Care must be taken that Seizure of 'goodsliable for confiscation or any documents, books or things' can be done only and only if they are **"Secreted"** in any place. If such articles are not secreted, then Seizure is not allowed.

Care must be taken that once the SCN is issued, it is the conclusion of the 'investigation' and therefore there is no further reason for Revenue to keep custody of seized articles. The Application must be preferred under section 67(6) to seek provisional release of seized articles.

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13. W**hether registration can be cancelled from the retrospective date without assigning any reasons?**

No, the Honorable Delhi High Court in the case of **M/s Jai Guru Sudarshan Enterprises vs. Delhi State Goods and Services Tax & Anr. [W.P.(C) 9673/2024 & CM APPL. 39749-50/2024 dated 18 July 2024]** quashed an order canceling GST registration retrospectively due to lack of reason and failure to mention the proposed action in the show cause notice. The Honorable Court noted that the SCN cited the violation of Rule 21(e) and Section 16 of the CGST Act for wrongful availment of Input Tax Credit but did not specify details of the alleged violation of Section 16, leaving the noticee without a clear understanding of the charges. The Honorable Court emphasized that the purpose of an SCN is to enable the noticee to respond to the allegations on the basis of which adverse action is proposed. It is, thus, necessary that the show cause notice must clearly specify the allegations along with necessary details for eliciting a meaningful response. Bereft of any details, the noticee is left clueless as to the case, which he is required to meet. The Honorable Court ordered to restorethe GST registration ruling that the SCN was insufficiently de-

tailed to justify the cancellation.

Author's Comments

This is a welcome decision by the Honorable High Court of Delhi and it comes to the rescue of the taxpayer once again and the Rule of Land stands tall against the over-passionate administration. The Revenue Department has to understand that this kind of approach renders the "due process" laid down in the statute "Superfluous, unnecessary and nugatory", which is impermissible in the law.

The Burden always rests on the Revenue making the allegation and not on the Registered Person-suffering the allegation. The Burden of proof is not discharged by making the allegation. The Burden of proof is discharged only when a mountain of evidence commensurate with the nature of the allegation made is produced and appended to notice. Allegations of severe wrong-doing require proportionately substantial evidence.

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14. W**hether interest and penalty can be demanded where ITC is wrongly availed but not utilized?**

No, The Honorable Calcutta High Court in the case of **Utpal Das vs. State of West Bengal & Ors. [WPA 18241 of 2022 dated 18 July 2024]** quashed the orders of the proper officer and the appellate authority related to a clerical mistake in the petitioner's GSTR-09 filing, which led to excess ITC availed. The Honorable Court noted that the petitioner reversed the excess ITC by filing Form GSTDRC-03 and debiting the electronic credit ledger. Notice in Form GST DRC-01A was issued to the petitioner, specifying tax, interest, and penalty payable for the tax period April 2018 to March 2019. The Honorable Court further observed that although the ITC was wrongfully availed, but was not utilized and in terms of retrospective amendment by the Finance Act of 2022 in Section 50(3) of the said Act, interest is not leviable in such circumstances.

The High Court emphasized that interest and penalty payments must be made from the electronic cash ledger, not the electronic credit ledger, as done by the petitioner. The Honorable Court placed reliance on the judgment delivered by a coordinate Bench of this Court in the case of **Ranjan Sarkar v. Assistant Commissioner of State Tax reported in (2014) 163 taxmann.com 414 (Calcutta) and two other judgments; one delivered by the Honorable Madras High Court in the case of Grundfos Pumps India Pvt. Ltd. v. Joint Commissioner of GST & Central Excise reported in (2023) 150 taxmann.com 176 (Madras) and the other judgment delivered by the Honorable Punjab & Haryana High Court in the case of Deepak Sales Corporation., v. Union of India reported in (2023) 156 taxmann.com 325 (Punjab & Haryana)**. The writ petition was disposed of with directions and observations.

Author's Comments

Section 50(3) of the CGST Act, 2017 has been substituted vide section 111 of Finance Act, 2022 applicable w.e.f. 01.07.2017, notified through Notification no.09/2022-CT dated 05.07.2022. Now interest is payable only if ITC is wrongly availed and utilized.

Alternatively, the petitioner could have questioned the jurisdiction of the proper officer to demand only interest and penalty without underlying demand for tax under section 73. Constructof Section 73(1) does not permit demanding only interest and penalty without a primary demand for tax (or credit or refund). While this is a technicality, it cannot be overcome without violating the construct of section 73(1). Notice issued containing only demand for interest or penalty will be defective without primary demand for tax (or credit or refund). Interestingly, in Section 11A of the Central Excise Act or Section 73(1) of the Finance Act 'deposit-demand-appropriation' approach was upheld, the same would apply to GST. And any other approach to demand 'only interest' would be fatal in GST.

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15. **Whether uploading SCN on the "View additional Notices & Orders" tab is sufficient communication to the notice?**

No, the Honorable High Court of Madras in case of the **Trident Home Furnishings (P.) Ltd. v. Assistant Commissioner (State Tax) [W.P. NOS. 15744 & 15747 OF 2024 dated 26.06.2024]** set aside the Impugned demand orders and raised the bank attachment orders. The Honorable Court noted that the petitioner was unaware of the show cause notice and assessment order, which were only uploaded on the GST portal in the "View additional Notices & Orders" taband the revenue imposed a tax liability on the petitioner, alleging sales suppression based on the mismatch between GSTR-2A and GSTR-3B. The Proper officer upon noticing that the outward supply turnover, as per GSTR 3B, was low, as compared to GSTR-2A figures, it was alleged that there was suppression of turnover and output tax was demanded. The Honorable Court considering the facts and circumstances set aside the impugned orders on the condition that the petitioner remits 5% of the disputed tax demand within 2 weeks. The petitioner is allowed to submit a reply to the show cause notice, and the revenue must provide a reasonable opportunity for a hearing and pass a fresh order within 3 months. The bank attachment resulting from the assessment order was also set aside, and the writ petitions were disposed of.

Author's Comments

Although Section 169 of the CGST Act, 2017 specifies 14 different ways/ modes of serving any decision, order, summons, notice, or other communication under the Act, care must be taken by the authorities not to simply pick and choose any option, rather the best possible option must be chosen by which it is mostly likely to reach the intended noticee. The notice or any other communication cannot be termed to be served until it has reached the intended noticee.

In the Author's considered opinion, it is immaterial whether the notice was uploaded on the "View Notices and Orders" tab or the "View Additional Notices and Orders" tab. The only

aspect to consider is whether or not the intended notice was served to the intended noticee.

Alternatively, the petitioner could have disputed that the allegation of suppression of sales which is an allegation of evasion of tax and issuance of SCN under section 73 by Doctrine of Election is not compatible with the allegation of evasion of tax (SCN under Sec 74 was required to be issued). The allegation is self-defeating when SCN is issued under section 73. The Revenue cannot approbate and reprobate on the same issue. If an allegation of evasion of tax is made, then SCN is to be issued under section 74 and if SCN is issued under section 73, then the allegation of evasion of tax cannot survive.

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16. Whether the Appeal can be rejected if no condonation of delay application is filed?

No, the Honorable Madras High Court in the case of **Tvl. Sri Sai Traders v. Deputy Commissioner (ST), Goods and Services Tax Appeals, Coimbatore and Ors. [W.P. No. 12860 of 2024 dated June 07, 2024],** set aside the appellate order passed by the Department, thereby, dismissing the appeal filed by the Petitioner on the ground of limitation, as the order-in-original was passed without granting any opportunity of hearing. The Honorable High Court opined that since the order in original has been passed without granting any opportunity of hearing to the Petitioner, therefore, the Petitioner's appeal should be considered and the order needs to be passed as per merits by the Respondent, despite delay in filing of appeal. Hence, the Impugned Order is set aside and the matter is remanded back to the Respondent for disposal of appeal on merits.

Author's Comments

The Writ Courts generally provide moulding relief to the petitioners and this case is one such example, although the order is issued in-personam and does not have precedential value.

If the appeal is filed after the period of condonation permitted in Section 107(4) (3+1 months), the Appellate authority does not have statutory authority to condone the delay, not even if the reasons are ample and deserve to be entertained. The appeal must be dismissed for being fatally belated because the Legislature has allowed Appellate authority this much authority and not more.

The Honorable Supreme Court has decided in **Singh Enterprises v. CCE 2008 (221) ELT 163** that where the period of limitation is specifically provided in the statute, admitting appeals albeit for 'sufficient cause' would render statutory provisions impossible. And Appellate Authority thus being the denuded of authority to condone (due to lapse of maximum time permitted) is barred from examining the cause and condone the delays even for a "good and sufficient" reason.

The Honorable Allahabad High Court in the case of **M/s. Yadav Steels v. Additional Commissioner and Anr. [Writ Tax No. 975 of 2023 dated February 15, 2024]** and in the case of **M/s. Abhishek Trading Corporation v. Commissioner (Appeals) and Anr. [Writ Tax No. 1394 of 2023 dated January 19, 2024]** has decided that the Central Goods and Services Tax Act, 2017 is a special statute and a self-contained code in itself and Section 5 of the Limitation Act is not applicable to give power to First Appellate authority to condone the delay beyond statutory time limit allowed.

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Whether penalty can be imposed if the E-way bill is not accompanied withthe consignment, but is generated before passing the seizure order?

No, the Honorable High Court of Allahabad in the case of **M/s Bans Steel (Prop: Alpana Jain) vs. State OF U.P. And 2 Ors. (Writ Tax no.577 of 2022 dated 09.08.2024)** quashed the impugned orders stating thatthere is no contravention if the e-way bill is produced before the seizure order is passed u/s 129 and there is no discrepancy. The Honorable Court noted that the consignment of two different dealers was loaded in the vehicle and two separate tax invoices i.e. tax invoice no. 21 dated 12.7.2019 and tax invoice no. 22 dated 12.7.2019 were generated. So far as tax invoice no. 22 dated 12.7.2019 is concerned, admittedly, the E-way bill was not produced at the time of detention and the same was produced before passing the seizure order. It is not in dispute that before the seizure order could be passed, a proper E-way bill was produced and the authorities, at no stage, have pointed out any discrepancy in the said E-way bill. Once the E-way bill was produced before the seizure order could be passed, the discrepancy, if any, was cured. 10nce the E-way bill was produced before the seizure order could be passed, it would not be said that any contravention of the provision of the Act has been made by the petitioner.

Author's Comments

This order will have far-reaching consequences and will come to the rescue of the taxpayers contesting demands under section 129. This order will aid in making good all the discrepancies before passing of orders under section 129 to rebut the allegation of intention to evade payment of taxes.

As per Circular No. 64/38/2018 dated 14.09.2018, a general penalty under section 125 of the GST Act must be imposed in case of minor breaches or discrepancies. In the Author's considered opinion, all the discrepancies in relation to the movement of goods except the fatal errors like not accounting for transaction of supply in the books of accounts, are to be treated as minor discrepancies and no penalty u/s 129 of the GST Act can be imposed.

As per Section 129 and Rule 138A of the GST Act, until and unless mensrea exists and is proved, all the errors and omissions have to be termed as

non-fatal errors and no penalty under section 129 can be imposed.

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17. Whether the petitioner can file an appeal after the expiry of the statutory time limit allowed?

No, the Honorable High Court of Andhra Pradesh in the case of **M/s Venkateswara Rao Kesanakurti vs The State of Andhra (Writ Petition NOs: 13662, 13712 & 14803 of 2024 W.P. No.13662/2024 dated 23 August, 2024)** dismissed all the writ petitions filed against the orders of the appellate authority stating that the appellate authority under Section 107 does not have the power to condone delays in filing an appeal beyond the statutory time period prescribed in the law. The Honorable Court noted that the appeals were filed by the petitioners, being aggrieved by the orders of the assessing authorities under Section 107 of the CGST Act. However, these appeals were filed beyond the prescribed limitation period and exceeded the additional period that the appellate authority is empowered to condone under Section 107(4). Consequently, the appeals were dismissed as they were filed beyond the permissible time limits. The petitioners argued that while Section 107(4) permits a limited extension for condonation of delay, the broader provisions of Section 29(2) of the Limitation Act, 1963, should allow for further condonation. The Honorable Court relied on various judgments, including **Union of India v. Popular Construction Co. and Singh Enterprises v. Commissioner of Central Excise**, to conclude that Section 107 of the APGST Act does not permit the extension of the limitation period beyond what is expressly allowed.

Author's Comments

If the appeal is filed after the period of condonation permitted in Section 107(4) (3+1 months), the Appellate authority does not have statutory authority to condone the delay, not even if the reasons are ample and deserve to be entertained. The appeal must be dismissed for being fatally belated because the Legislature has allowed Appellate authority this much authority and not more.

The Honorable Supreme Court has decided in **Singh Enterprises v. CCE 2008 (221) ELT 163** that where the period of limitation is specifically provided in the statute, admitting appeals albeit for 'sufficient cause' would render statutory provisions impossible. And Appellate Authority thus being the denuded of authority to condone (due to lapse of maximum time permitted) is barred from examining the cause and condone the delays even for a "good and sufficient" reason.

The Honorable Allahabad High Court in the case of **M/s. Yadav Steels v. Additional Commissioner and Anr. [Writ Tax No. 975 of 2023 dated February 15, 2024]** and in the case of **M/s. Abhishek Trading Corporation v. Commissioner (Appeals) and Anr. [Writ Tax No. 1394 of 2023 dated January 19, 2024]** has decided that the Central Goods and Services Tax Act, 2017 is a special statute and a self-contained code in itself and Section 5 of the Limitation Act is not applicable to give power to First Appellate authority to condone the delay beyond statutory time limit allowed.

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18. Whether the assessment order is liable to be set aside when a reply furnished by the petitioner is taken into consideration?

Yes, the Honorable High Court of Madras in the case of **M/s Ram Industries vs. The Assistant Commissioner, Chennai (W.P.No.22306 of 2024 and W.M.P.Nos.24288 and 24289 of 2024 dated 13.08.2024)** set aside the adjudication order and remanded the matter back to the respondent to consider the reply taking into consideration all the final reconciliation and reconciliation of E-Way bill Turnover with GSTR-1 along with seven documents enclosed therewith and afford them an opportunity of personal hearing and thereafter, pass a detailed speaking order. The Honorable Court noted that the show cause notice was issued to the petitioner on 28.12.2023, for which, the petitioner has also filed his reply dated 11.03.2024. In the reply, final reconciliation and reconciliation of E-Way bill Turnover with GSTR-1 along with seven supporting documents were filed, but, the same were not considered by the respondent and the respondent has mechanically passed the impugned order without application of mind and confirmed the allegations in the show cause notice through the impugned order, citing "incomplete documents" as the reason. Consequently, this Court is inclined to set aside the respondent's order dated 30.04.2024.

Author's Comments

Whether to celebrate such an order that remands back the case to the Proper officer for another round of adjudication (re-adjudication) is a matter of choice and strategy. In the Author's considered opinion, such orders are unable to fetch the desired relief because SCN is not vacated; only a short-term relief (at a cost) is provided in this long battle.

In the Author's considered opinion, the petitioner could have chosen a different line of defense to vacate the notice. There is an urgent need to understand that the linear comparison of two different data sets is meaningless in GST. Yes, it may raise suspicion but no adverse inference can be made regarding non-payment, short-payment, or evasion of taxes.

In this particular case, Output tax (GSTR-1 not matching GSTR-3) is demanded citing data differences without stating (i) the nature of supply (ii) the taxability of the same (iii) the HSN code (iv) the time of supply, and (v) the place of supply. Without these taxing ingredients, any demand for output tax is arbitrary and illegal.

This principle has been laid by the Honorable Apex Court in the case of **Govind Saran Ganga Saran v. CST & Ors. AIR 1985 SC 1041**, where it was held that 'four ingredients' are required to be present in any proceedings to demand tax.

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19. Whether SCN issued in form GST REG-31 proposing cancellation of registration void in nature?

Yes, the Honorable Kerala High Court in the case of **Kunhalavi N. v. State Tax Officer [W.P. (C) No. 17333 of 2024 dated June 10, 2024],** set aside the order for cancellation of registration, thereby holding that show cause notice not issued in proper form is void in nature in the case where the notice was issued in Form GST REG-31 instead of required Form GST REG-17.

The Honorable Kerala High Court noted that when the statute provides for a thing to be done in a particular manner, then it has to be done as per the procedure prescribed. The Honorable Court opined that as the SCN has been issued in Form GST REG-31 instead of Form GST REG-17 as required under Rule 22(1) of the Central Goods and Services Tax Rules, the Impugned Order issued for cancellation of GST registration is without jurisdiction and the Impugned Order is set aside. The Honorable Court directed the Petitioner to file the defaulted returns along with tax, late fee, interest, and penalty within the period of two weeks from the date on which the registration of the Petitioner is restored in compliance with the judgment.

Author's Comments

Unlike a suspension, cancellation is final; and for this reason, post-suspension notice in REG31 borrows from pre-cancellation notice in REG17, and given that legislature has specified five (5) explicit delinquencies that taxpayers are well-informed through section 29(2) itself, there should be no violation of principles of natural justice here too by canceling registration without serving notice and that too as per the legislative and administrative mandate.

By the Doctrine of Election, choosing to issue a notice under the wrong section, provision or form turns the action into administrative over reach without jurisdiction. And even if there are any legitimate dues, they cannot be exacted. In the case of Nazir Ahmed v. King Emperor AIR 1936 PC 253, the Privy Council has stated that "Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all"

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20. Whether the petitioner is required to be afforded another opportunity to contest tax demand due to the negligent conduct of the Accountant?

Yes, the Honorable Madras High Court in the case of **Stem Infrastructure v. Assistant Commissioner (GST) [W.P. No. 12406 of 2024 dated June 07, 2024],** set aside the assessment order and granted the opportunity to contest the tax demand wherein the petitioner could not file the reply due to negligent conduct of the accountant as the petitioner was not informed about the proceedings initiated by the revenue department. The Honorable Court held that as per the aforesaid facts, the proper opportunity should be granted to the Petitioner for contesting the tax demand on merits. Hence, the Impugned Order is set aside subject to the condition that the Petitioner remits 10 percent of the disputed tax demand. Further, the Honorable Court permitted the Petitioner to file the reply to the SCN issued andthe Court directed the respondent that after receiving of the deposit, reasonable opportunity should be granted such as a personal hearing, and thereafter fresh assessment order should be passed.

Author's Comments

Whether to celebrate such an order that remands back the case to the Proper officer for another round of adjudication (re-adjudication) is a matter of choice and strategy. In the Author's considered opinion, such orders are unable to fetch the desired relief because SCN is not vacated; only a short-term relief (at a cost) is provided in this long battle. The petitioner could have disputed the cause-of-action (2A v 3B) invoked, and the burden to proof would have been on the revenue to prove their case. Important to mention that mismatch/ linear comparison of two data sets (GSTR-2A-whose authorship is not with taxpayer v GSTR-3B) is meaningless in GST. Yes, it could raise suspicion, but without discharging the burden of proof and evidence in support of it, it is impossible to bring home the allegations leveled against the taxpayer.

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