ACUPRO CONSULTING

WEEK 2, JULY 2023

THE GST PULSE

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Recent Judgement and Rulings

NO PENALTY IF ASSESSEE WAS BONAFIDE AND E-WAY BILL GETS EXPIRED DURING TRANSIT

THE HON'BLE CALCUTTA HIGH COURT

M/s Perfect Enterprise ("the Petitioner") purchased and transported goods from Kandla Port, Gujarat to Siliguri. The e-way bill was generated and valid up to May 02, 2022. The vehicle reached the destination on May 02, 2023 but the stockyard was closed, due to which the vehicle was parked nearby. On May 3, 2022 was a National Holiday. On May 04,2022 at 3:20 AM the vehicle was seized by the department and held the goods and passed the detention order on the ground that the in transit vehicle was found with an expired e-way bill and issued a Show Cause Notice dated May 7, 2022 ("the SCN") to the Petitioner and levied a penalty of INR 2,48,195. The Revenue Department passed a demand order dated May 12, 2022 ("the Impugned Order") for demand of tax with 100% penalty upon the driver of INR 4,96,390.

The Petitioner filed an appeal before the Appellate authority, which was subsequently rejected. Being dissatisfied with the rejection order the petitioner filed an appeal before the Hon'ble Calcutta High Court and contended that the Petitioner was bona fide and there was no willful misconduct committed by the Petitioner while transporting the goods. **Is the petitioner liable to pay the penalty?**

The Hon'ble Calcutta High Court held that where assessee had no intention to evade payment of tax and also as e-way bill gets expired due to a national holiday then there is no willful misconduct committed by the Petitioner. Further the petitioner may apply for refund to the department and within 15 days, the department has to refund the penalty. **Set aside the impunged order.**



TAXPAYER MADE TO SUFFER DUE TO A SUPPLIER'S ERROR IN GSTIN REPORTING

THE HON'BLE MADHYA PRADESH HIGH COURT

M/s Agrawal and Brothers ("the Petitioner") has acquired goods under e-auction from Railways dated August 12, 2017 at a total consideration of INR 51,97,142 inclusive of GST of INR 9,35,486 and had claimed ITC. The Railway Department reported the supply with wrong GSTIN in the GSTR-1. Although, Railway department had deposited the tax. The Petitioner had claimed the ITC manually, as it was not reflected in GSTR-2A due to a wrong reporting by the Railway Department. The Revenue Department issued a demand notice compelling the Petitioner to repay the GST. Railway Department had mistakenly deposited the GST amount against an incorrect GSTIN, causing this discrepancy. The Petitioner filed various representations before the Railway Department but were not considered by them.

In order to save the GST registration, the Petitioner deposited the amount of ITC along with interest. Further, the Petitioner filed a writ petition before the High Court seeking refund of the amount paid under protest. Whether the petitioner should bear as a result of supplier error in reporting.

The Hon'ble Madhya Pradesh High Court held that the petitioner should not suffer anything because of wrong reporting in GST return. Further the railway department will seek the refund from revenue department as they received the tax twice and the petitioner may seek refund from railway department.



REFUND APPLICATION OF IGST CANNOT BE KEPT PENDING INDEFINITELY ON THE GROUND OF PENDENCY OF PROCEEDINGS

THE HON'BLE RAJASTHAN HIGH COURT

M/s B.C. Power Controls Ltd. ("the Petitioner") is engaged in the business of manufacturing electrical wires and allied products. While exporting goods various export invoices, shipping bills, and bills of lading were generated by the shipping line. The shipping bills are treated as application for refund of IGST as per Section 54 of the CGST Act 2017.
A Show Cause Notice was issued to the Petitioner by DGGI, Gurugram dated July 17, 2020 ("the SCN") alleging the production of fake invoices and the application of refund was kept pending as the proceedings initiated vide the SCN were pending.

Aggrieved, the Petitioner filed the present writ petition. The Petitioner submitted that an application for refund can't be kept pending indefinitely as the provision of law mandate decision of refund applications within a stipulated period.

The Hon'ble Rajasthan High Court Noted that, no order was passed by the competent authority on the Petitioner's application for refund and observed that, application for grant of refund can't be kept pending with an oral information that the claim was withheld and once an application for refund is submitted it has to be decided in accordance with the laws applicable.
The Hon'ble Rajasthan High Court held that, the refund application cannot be pending indefinitely on the ground of pendency of the proceedings. The writ Petition is disposed of.



Thank You!

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