ACUPRO CONSULTING

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THE GST PULSE

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Recent Judgement and Rulings

SEZ UNITS ARE NOT EXEMPTED FROM SEARCH AND SEIZURE PROCEEDINGS CONDUCTED BY GST AUTHORITIES

HON'BLE GUJARAT HIGH COURT

M/s. RHC Global Exports Pvt. Ltd. ("the Petitioner"), a Gem and Jewelry business based in Surat SEZ, is accused of fraudulently availing Input Tax Credit (ITC) using fake invoices from non-existent suppliers. The business premise was searched and sealed by GST authorities, while the residential premise of the directors was also searched and seized by State Tax officers. The Revenue Department issued summons to the directors under Section 70 of the CGST Act, directing them to appear on a specified date. Additionally, another agency conducted parallel proceedings under Section 67 of the CGST Act, searching the company's Mumbai premises, seizing books of accounts, and issuing an order of seizure for the confiscated documents.

The Petitioner has filed a writ challenging the search and seizure proceedings conducted by the Revenue Department. The Petitionerclaim that as an SEZ unit, they are outside the jurisdiction of the CGST Act. However, the Revenue Department contends that their actions are justified under the SEZ Act and the GGST (Gujarat Goods and Services Tax) Act, which authorize them to carry out such proceedings without prior intimation or approval. Further, The Revenue Departmentalso refer to the IGST Act, stating that transactions involving SEZ units are considered as interstate trade.

The Hon'ble Gujarat High Court held that GST authorities have the power to conduct search and seizure against the assesseeoperating in Special Economic Zones (SEZs). The court clarified that officers authorized by the Central Government, under Section 22 of the SEZ Act, can perform these actions without prior approval or intimation. It also stated that SEZ units are not exempted from GST investigations or inspections, as the provisions of the IGST Act apply to whole of India. Further, The court imposed a cost of INR 10,000/- on the petitioner for abusingthe due process of law.



IF DRC-04, SCN, OR ORDER IS NOT ISSUED, THE PAYMENT MADE VIA DRC-03 TOBE REFUNDED.

HON'BLE PUNJAB AND HARYANA HIGH COURT

M/s. Samyak Metals Pvt. Ltd., a manufacturer of aluminium ingots, was searched by the Revenue Department. The department questioned the Petitioner about purchases from M/s D.G. Enterprises, but no supporting documents were provided. As a result, the Petitioner was forced to deposit INR 71,46,294/- to cover input tax credit, interest, and penalty, which was paid on February 26, 2021, through DRC-03. In response, the Petitioner filed a writ with the Punjab and Haryana High Court, raising concerns about the non-issuance of DRC-04 despite the deposit. The Revenue Department contendedthat the Petitioner's Director, Mr. Ankur Jain, had admitted accepting bills without receiving the goods, and he voluntarily paid the required amount, including interest and penalty, under Section 74(5) of the CGST Act, as per his statement under Section 70.

Being Aggrieved the Petitioner filed an appeal before the Hon'ble Punjab and HaryanaHigh Court. Whether the proper officer is liable to issue acknowledgement in case the Petitioner made voluntary payment vide DRC-03?

The Hon'ble Punjab and Haryana High Court held that the deposit of tax during a search is not considered voluntary if no summons was issued under Section 74(1) of the CGST Act. The court noted that the Revenue Department had not issued DRC-04 or any notice under Section 74(1) and had not followed the Instruction or the provisions of Rule 142(2) of the CGST Act. Therefore, the court directed the Revenue Department to return the amount paid by the petitioner along with simple interest at a rate of 6% per annum from the date of deposit until the payment is made.



RECIPIENT'S ITC NOT TO BE DENIED IN CASE SUPPLIER BECOMES NON-EXISTENT OR HIS REGISTRATION CANCELLED RETROSPECTIVELY

HON'BLE CALCUTTA HIGH COURT

M/s. GargoTraders ("the Petitioner"), a registered taxable person, claimed input tax credit (ITC) based on supplies from M/s. Global Bitumen and a debit note from M/s. International Transport Corporation, amounting to INR 13,04,586/- in the financial year 2018-19. The Revenue Department discovered that the supplier was non-existent, and their GST registration was cancelled retrospectively, covering the transaction date with the Petitioner. Consequently, the Revenue Department issued an Order denying ITC benefits, imposing penalties and interest under the CGST Act.

Being Aggrieved by the order, The Petitioner filed a writ before the High Court, submitting a supplementary affidavit with supporting documents to refute the allegations. The Revenue Department contended that the transaction with the supplier was invalid due to their retrospective registration cancellation, making the refund inadmissible. The question is whether the Petitioner can avail input tax credit (ITC) when the supplier's registration is cancelled retrospectively.

The Calcutta High Court, set aside the order rejecting the GST refund claim. The court heldthat the supplier was registered on common portal at the time of the transaction and the cancellation of registration was done retrospectively. Further The Court directed the Revenue Department to consider documents submitted by the Petitioner substantiating genuineness of the transaction



SHOW CAUSE NOTICE SET ASIDE AS IT DID NOT DISCLOSE ANY CLEAR REASON FOR CANCELLATION OF GST REGISTRATION

HON'BLE DELHI HIGH COURT

M/s Rishiraj Aluminium Pvt. Ltd. (the petitioner), received a show cause notice (SCN) on March 13, 2023, which stated that their GST registration was suspended and called upon them to justify why the registration should not be cancelled. The SCN cited the reason for proposing cancellation as "ceased to be liable to pay tax."

Being Aggrieved by SCN The Petitioner filed a Petition in High Court that Whether the SCN is valid if it did not sufficiently disclose the reason of suspension of GST registration?

The Hon'ble Delhi High Court, setasidetheSCNand restored the petitioner's GST registration. The court held that the show cause notice must clearly disclose the reasons for proposing adverse action, allowing the concerned party to effectively respond. Since the notice in this case failed to sufficiently disclose the grounds for cancelling the petitioner's GST registration, the petitioner was unable to present a suitable defense. Consequently, the court invalidated the show cause notice and directed the restoration of the petitioner's GST registration.



Thank You!

ALOK VASANT
PARTNER
TEL: + 91 9811008421
ALOK.VASANT@ACUPROCONSULTING.COM

BALWAN BANSAL
PARTNER
TEL: + 91 9871767277
BALWAN.BANSAL@ACUPROCONSULTING.COM

ANKIT JAIN
PARTNER
TEL: + 91 9811665549
ANKIT.JAIN@ACUPROCONSULTING.COM



NEWSLETTER CONTRIBUTORS
PANKAJ BANSAL
RONAK AGRAWAL

FOR MORE INFO VISIT
WWW.ACUPROCONSULTING.COM

COMMUNICATION ADDRESSES:
DELHI/NCR

ACUPRO CONSULTING
2ND FLOOR, 108, UDYOG VIHAR,
PHASE I,
GURGAON - 122016
HARYANA, INDIA
PH: +91 124-4ACUPRO(228776)

HTTPS://WWW.LINKEDIN.COM/COMPANY/ACUPROCONSULTINGINDIA/