ACUPRO CONSULTING

WEEK 1,2,3, SEPTEMBER, 2023

The GST PULSE

ONE PLACE FOR ALL THE UPDATES



Recent Judgements and Rulings

AFTER CLOSURE OF BUSINESS, GST AUDIT CANNOT BE CONDUCTED

MADRAS HIGH COURT

Tvl. Raja Stores ("the Petitioner") is a partnership firm, a registered taxpayer under the CGST Act. The Petitioner intended to close the business and submitted a petition before the Revenue Department ("the Respondent"). The Respondent considered the same and passed the order, and allowed the Petitioner to close his business with effect from March 31, 2023. However, the Petitioner failed to pay the collected tax.

Subsequently, the Respondent issued the Show Cause Notice for conducting audit for the period from 2017-2018 to 2021-2022.

Aggrieved by the Impugned SCN the Petitioner filed a writ before the Madras High Court.

The Petitioner contended that as per section 65 of the CGST Act, the Respondent is empowered to conduct audit if the concern is a registered unit but as on the date, the Petitioner's registration was cancelled.

Decision by The Madras High Court:

The Respondent could conduct an audit only while the business wss operational, they could not do so after it had closed. However, this will not preclude the Respondent from initiating assessment proceedings for the said concern under Sections 73 and 74 of the CGST Act.

The court quashed the Impugned SCN, with liberty to the Respondent to initiate assessment proceedings under Sections 73 and 74 of the CGST Act.



HERBAL BODY OIL FOR SOFT, SMOOTH, GLOWING & HEALTHY SKIN ATTRACTS GST @ 28%

ADVANCE AUTHORITY RULING WEST BENGAL

Indranil Chatterjee ("the Applicant") intends to produce Jac Olivol Body Oil ("the Product") and classifies the Product as an ayurvedic patent & proprietary medicine. Further the Applicant submitted that the Product has been granted a licence under section 3(4) of the Drug and Cosmetic Act, 1940 inter alia, an ayurvedic patent and proprietary medicine.

According to the Applicant the classification of the product is under HSN 3004 as the product is classified as a medicament, thereby attracts GST @ 12%.

In order to determine the classification the Applicant relied upon the judgement in the case of Commissioner Of Customs, Central Excise And Service Tax, Hyderabad v. Ashwani Homeo Pharmacy in Civil appeal No. 9525 of 2018, wherein the Supreme Court of India held that, 'medicament' under Chapter 30 and not as 'cosmetic or toilet preparations' under Chapter 33 of the First Schedule to the Central Excise Tariff Act, 1985.

Decision by the AAR, West Bengal:

The primary use of the Product, as it appears from the label, is to care for skin, as the product label reads 'For soft, smooth, glowing and & healthy skin'. The label further indicates the application of the product as —In winter: Before bath & In summer: After bath'.

Therefore the product's ***primary function*** *is "care" and not cure," even if it has subsidiary curative or prophylactic properties.*

Further, the Product is to be classified as a cosmetic product and will be classified under HSN 3304 and is liable to GST @ 28%.

WRITTEN APPEAL NOT AVAILABLE IF ALTERNATIVE REMEDY OF FILING OF APPEAL NOT AVAILED

THE PATNA HIGH COURT

An Inspection was conducted on the Premises of Narayani Industry ("the Petitioner"). On the basis of inspection the Revenue Department ("the Respondent") issued three orders dated March 04, 2023, March 10, 2023 and March 18, 2023 and all these orders were appeal-able under section 107 of the Bihar Goods and Services Tax Act, 2017 ("the BGST Act"). However, the Petitioner did not appeal such orders.

Aggrieved by the Orders the Petitioner filed writ before The Patna High Court.

The Respondent contended that the Petitioner has not availed the appeal remedy and has chosen to approach writ Court under Article 226 of the Constitution of India without exercising appeal.

Decision by The Patna High Court:

The court relied upon the Judgement of State of H.P & Ors. v. Gujarat Ambuja Cement Limited & Anr [(2005) 6 SCC 499] wherein the Supreme Court held that if an assessee approaches the High Court without availing the alternate remedy, the assessee should ensure that it has made out a strong case or that there exists good grounds to invoke the extraordinary jurisdiction.

The court opined that, there is no ground stated in the writ petition which would enable invocation of the extraordinary remedy under Article 226 of Indian Constitution.
Additionally, when there is a specific period for delay condonation provided, there cannot be any extension of the said period by the Appellate Authority or by this Court under Article 226 of the Indian Constitution.



AVAILABILITY OF ITC ON GOLD COINS DISTRIBUTED TO DEALERS AS AN INCENTIVE

ADVANCE AUTHORITY RULING KARNATAKA

Orient Cement Limited ("the Applicant") is engaged in manufacturing and supplying Cement. The Applicant offers various sales promotional schemes to the dealers, wherein the dealer has to purchase specified quantity of material in order to avail the discount. The Applicant, instead of adjusting the amount in account of the dealers, provides gold coins. Higher the quantity purchased by a dealer, higher the eligibility of gold coins.

The Applicant contended that gold coins supplied to the dealers are in the nature of incentive for achieving the sales targets and the same is in the knowledge of the dealers. Thus, the coins cannot be termed as gift.

Accordingly, the Applicant is eligible to avail input tax credit ("ITC") on purchase of such gold coins.

Decision by the AAR, Karnataka:

- *The AAR observed that, the Applicant has issued gold coins as incentives only subject to the fulfillment of certain conditions and stipulations.*

- *Gift is something which is given without any conditions and stipulations and therefore the same cannot be covered under the scope of "gift".*

- *Section 17 (5) (h) of the CGST Act states that ITC is not available on "goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples". Since the gold coin is not given as gifts, ITC is available.*

- *Lastly, ITC is not restricted under any of the provisions of Section 17 more so under section 17(5)(h) of the CGST Act.*

BPO IS NOT AN INTERMEDIATORY SERVICE PROVIDED TO OVERSEAS CLIENT

THE PUNJAB AND HARYANA HIGH COURT

Genpact India Pvt. Ltd. ("the Petitioner") was providing services to foreign entity and filed refund application for claiming unutilized ITC. The Revenue Department ("the Respondent") allowed the refund.

Subsequently a Show cause Notice raised the demand of service tax of INR 16,73,74,91,090/- on the ground that the services provided are in the nature of "Intermediary Services" as per Section 2(13) of the Integrated Goods Services Tax Act, 2017 ("the IGST Act") and do not qualify as "export of services".

Decision by The Punjab and Haryana High Court:

- *The Court relied upon the Judgement of Genpact India Pvt. Ltd v. Union of India and others, wherein the Punjab and Haryana High Court held that the Petitioner was not "intermediary" and, therefore, the refund claim of unutilized ITC used in making zero rated supplies of services without payment of IGST was allowed.*

- *The ratio of Genpact India Pvt. Ltd. case (supra) is directly applicable in this case.*

- *The court set aside the Impugned SCN.*

Notifications

HSN CODE REQUIREMENTS EFFECTIVE FROM OCTOBER 1, 2023

Notification No. 78/2020

The GST E-way bill system has issued an Update dated September 05, 2023 stating that, As per the Notification No. 78/2020 dated October 15, 2020, the taxpayers, having Aggregate Annual Turn Over ("AATO") above Rs 5 Crore, shall use atleast 6 digit HSN code in the e-Invoices and e-Waybills and other taxpayers shall use atleast 4 digit HSN code in E-Invoices and E-Way Bills.

Most of the tax payers are already following this, Other tax payers are requested to adapt to the change and comply by the due date. This will be made Mandatory from October 01, 2023 in e-Waybill and e-Invoice Systems.



GSTN RELEASES TIME LIMITS FOR REPORTING INVOICES ON THE IRP PORTAL

The Government has decided to impose a time limit on reporting old invoices on the e-invoice IRP portals for taxpayers with AATO greater than or equal to 100 crores.

To ensure timely compliance, taxpayers in this category will not be allowed to report invoices older than 30 days on the date of reporting.

Please note that this restriction will apply to the all document types (Invoices/Credit note/Debit note) for which IRN is to be generated.

For example, if an invoice has a date of November 1, 2023, it cannot be reported after November 30, 2023.

This validation will come into effect from 1st Nov, 2023.



2-FACTOR AUTHENTICATION FOR ALL TAXPAYERS WITH AATO ABOVE RS 20 CR IS MANDATORY FROM NOVEMBER 01, 2023

The GST e-invoice system issued an Update on September 11, 2023, mandating 2-Factor Authentication for all taxpayers with Aggregate Annual Turnover ("AATO") exceeding Rs 20 Cr, effective from November 1, 2023.

Purpose of two-factor authentication:

i. Accessing the e-invoice system and e-way bill system more efficiently;
ii. Enabling the e-invoice system to be more efficient and robust;
iii. Ensuring a secure environment for accessing the e-invoice/e-way bill system.



Thank You!

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