

# Legal Updates

**September 2023**

## Summary of Major Legal Updates

### Key Highlights:

1. Delhi Metro Rail Corporation Ltd. Vs. The Additional Commissioner, CGST Appeals II & ORS.
2. Govinda Construction, Patna, Bihar Vs. Union of India
3. Vikas Enterprises v. Commissioner of Central Tax (GST)
4. Quality Traders V. Yogesh Kumar
5. Deepak Sales Corporation Vs. Union Of India And Ors.
6. Hardik Kaushikbhai Joshi V. Union Of India
7. Kesoram Industries Ltd Vs. Commissioner of C.T. 2023 (9) TMI 1179
8. Boks business services Pvt Ltd Vs Commissioner of CGST 2023 (9) TMI 230-Delhi HC
9. P. R. Hardwares Vs State Tax Officer 2023 (9) TMI 43-Madras High Court
10. Manoj Steel Traders Vs. State of UP and Ors 2023-TIOL-1073-HC-ALL-GST
11. Shri Sachin Upadhyay Vs. The Additional Commissioner of CGST 2023-TIOL-1249-HC-DEL-GST

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## Period of Limitation doesn't apply in cases when the amount has been deposited under a mistake of law

### 1. Delhi Metro Rail Corporation Ltd. Vs. The Additional Commissioner, CGST Appeals II & ORS.

*W.P.(C) 6793/2023, High Court of Delhi*

#### Facts of the Case:

1. DMRC was engaged by Surat Municipal Corporation, to prepare a project report for the Surat Metro Rail Project in Gujarat. DMRC provided services for this project and invoiced for the services, including GST. (DMRC invoiced ₹19,04,520/-, including GST of ₹2,90,520/- at 18%.)
2. Surat Municipal Corporation paid an amount of Rs. 16,14,000/- against the said invoice but did not pay the GST portion. In order to be compliant with the law - DMRC deposited this GST amount for the month of August 2017 with the GST Authorities.
3. Later, DMRC was informed by Surat Municipal Corporation that the services billed were not subject to GST as per **Notification No. 12/2017 – Central Tax (Rate) dated 28-06-2017**.
4. Subsequent to which DMRC filed an application for refund (in Form GST RFD-01) with respondent no.2, but the refund application was denied because the claim was filed after the two-year limit under Section 54(1) of the CGST Act.

#### Arguments of Petitioner :

1. The petitioner challenges an order.(Order-in-Appeal No. 241/2022-2023)
2. DMRC contends that retaining the amount paid under a mistake violates Article 265 of the Constitution of India.
3. DMRC cites the Supreme Court's decision in **State of Madhya Pradesh & Anr. v. Bhailal Bhai** to support the argument that payments made under a mistake of law should be refunded.
4. DMRC also refers to, **M/s Cosmol Energy Private Limited v. State of Gujarat**, which upheld the view that Section 54 of the CGST Act does not apply to amounts collected by the Revenue without authority of law.

#### Judgement :

1. The Court notes that GST is not payable by DMRC for the services provided to Surat Municipal Corporation.
2. **Article 265 of the Constitution of India** prohibits the collection of tax without the authority of law. Thus, the GST amount of Rs. 2,90,520/- deposited by DMRC on an erroneous belief that payment for services rendered by it were chargeable to tax, cannot be retained by respondents.

3. The Court emphasises that GST is an indirect tax, and the burden falls on the final recipient, which in this case is Surat Municipal Corporation. However, since GST is not applicable to these services, Surat Municipal Corporation has not paid the amount.
4. The Court concludes that the period of limitation for refund application, as prescribed under Section 54 of the CGST Act, does not apply when GST is not chargeable, and an amount has been deposited under a mistake of law.
5. Consequently, the Court sets aside the impugned orders and directs the respondents to process DMRC's claim for a refund of ₹2,90,520/-.
6. The petition is allowed in the aforementioned terms.

#### **HNA Comments:**

1. *This is a welcome judgement for the trade & industry, as any amount paid by taxpayer which is not payable by the taxpayer is refundable owing to Article 265 of the Constitution of India, as held in this judgement as well as various other judgements in the past.*

#### **Constitutional Validity of Sub-section (4) of Section 16 of CGST Act**

#### **2. Govinda Construction, Patna, Bihar Vs. Union of India,**

*Civil Writ Jurisdiction Case No. 9108 of 2021*

#### **Facts of the Case:**

1. The petitioner is a partnership firm, who filed its monthly return for the period of February 2019 and March 2019 on 23.10.2019 and 17.11.2019, for the financial year 2018-2019.
2. Respondent No.6 issued a show cause notice on 20.02.2020, proposing to disallow ITC for the tax period February and March 2019 on the ground of late filing of return, as per Section 16(4) of the Act.
3. The respondent had issued a similar show cause notice as a sequel to the said show cause notice, on the same day, where the amount of tax and penalty for the month of February and March 2019 had been computed as Rs. 1,34,12,983/-
4. The petitioner replied to the said show cause notice stating that, disallowance of ITC as per Section 16(4) of the Act was not justified, and claimed that it had filed its return in the prescribed Form and had made necessary disclosures regarding inward and outward supply and had also paid tax by way of ITC. Respondent No.6 however passed an order holding the petitioner liable to pay a sum of Rs. 1,34,12,983/- on the ground of availment of ITC for the tax period February 2019 and March 2019, in breach of the conditions of Section 16(4) of the Act.
5. Aggrieved by the order, the petitioner preferred an appeal before Respondent No. 5, which was dismissed on the ground that ITC availed by the petitioner for the period in question was inadmissible as per Section 16(4) of the CGST Act.

6. The petitioner challenged the show cause notice and order of Respondent No. 6 and the appellant order through this writ petition.

### **Arguments of Petitioner**

1. The petitioner submitted that disallowing ITC as per Section 16(4) of the Act is confiscatory in nature. ITC is a vested right under Article 300A of the Constitution and it cannot be taken away on the ground of belated filing of return.
2. The petitioner contended that the conditions in Section 16(4) are merely procedural in nature and cannot override the substantive conditions in Section 16(1) and Section 16(2) of the Act.
3. The petitioner further contended that the provisions of Section 16(4) of the Act imposes unreasonable restrictions on right to freedom of trade and profession under Article 19(1)(g) and therefore violated Article 300A of the Constitution. He submitted that there is no rationale behind fixing a cut-off date for filing the return.
4. The petitioner also contended that denial of ITC as per Section 16(4) of the Act amounts to double taxation which violates principle of taxation on value addition.

### **Judgement**

1. The Court noted that ITC is not unconditional. The right to take ITC becomes vested only if the conditions to take it are fulfilled, free of the restrictions under Section 16(2) thereof.
2. Upon close reading of Section 16(1) of the CGST Act, the Court viewed that the provision under Section 16(4) is one of the conditions which makes a registered person entitled to take ITC and by no means, it can be said to be violative of Article 300-A of the Constitution of India.
3. The Court is not convinced with submissions made by the petitioner to read down the provisions of Section 16(4) of the CGST Act since it does not find any reason or necessary to do it.
4. The Court did not find any merit in the submissions made that Section 16(4) imposes unreasonable restrictions on the right to freedom of Trade and Profession under Article 19(1)(g) of the Constitution of India, which deserved to be outrightly rejected. It opined that fiscal legislation having uniform application to all registered persons cannot be said to be violative of Article 19(1)(g).
5. The language of Section 16(4) is clear and unambiguous. Concession of ITC under Article 16(1) is dependent on the fulfillment of the conditions laid down under various provisions including Sub-Section 4 of Section 16. Therefore, the submissions made by the petitioner that the Court might declare Section 16(4) as directory and not mandatory, is not at all tenable.
6. Sub-Sections 2 and 4 of Section 16 are independent sections and therefore, Sub-Section 2 shall not override Sub-Section 4.
7. For the reasons noted above, the Court opined that sub-section 4 of Section 16 of the CGST Act is constitutionally valid and is not violative of Articles 19(1)(g) and 300A of the

Constitution of India. The said provision is not inconsistent with any of the fundamental right guaranteed under the Constitution of India.

8. The writ applications are dismissed.

#### **HNA Comments:**

*This is an adverse ruling for the trade & industry as similar decisions were given in other High Courts also. However, in our view, for delay in filing returns, penalties have been prescribed. ITC being an indivisible asset in the business, restricting the same merely because of delay in filing returns is not justifiable, given the objective of GST for seamless flow of credit.*

*Further, as held by the Hon'ble Supreme Court in cases such as Dai Ichi Karkaria Ltd. [1999 (112) ELT 353 (SC)] and in Eicher Motors Ltd. Vs. Union of India 1999 (106) ELT 3 (SC) which held that credit is to be treated as an indefeasible and a vested right. However, these decisions were given under erstwhile law for CENVAT and MODVAT credit. Given that GST, under the same principles is a value-added tax, a similar judgement under GST may be expected.*

#### **Provisional Attachment of Bank Account without Authority**

### **3. Vikas Enterprises v. Commissioner of Central Tax (GST)**

*[2023] 153 taxmann.com 332 (Delhi)[31-07-2023]*

#### **Facts of the Case:**

1. The petitioner filed a Writ Petition impugning a communication issued by Superintendent (Anti-Evasion) to the petitioner's bank, calling upon to furnish certain documents pertaining to the petitioner.
2. The said impugned communication further directed the bank to not to permit any debit from the petitioner's bank account without prior permission from the Department.

#### **Judgement :**

1. The respondent is unable to point out any provision under the CGST Act, 2017 permitting him to issue such an order, directing the bank to freeze the petitioner's bank account. However, he referred to Section 83 of the CGST Act, which empowers the Commissioner to provisionally attach any property, including bank accounts of the tax payer.
2. The power of provisional attachment of assets under Section 83 cannot be passed by any officer other than the Commissioner, and it can be done only if the Commissioner is satisfied that it is necessary to pass such an order protecting the interest of Revenue.
3. In this case, the Commissioner has not issued any such order. Also, It is admitted that the order in Form DRC-22 [Provisional attachment of property under section 83] has not been issued.



4. The impugned communication originated from the respondent [Superintendent (Anti-Evasion) Group 1] and not by the Commissioner exercising jurisdiction over the tax payer nor does it indicate that it was issued with the authority of the Commissioner.
5. The impugned communication has been issued in complete disregard of the provisions of the CGST Act by the respondent. The respondents are required to act in accordance with the statutory provisions.
6. In view of the above, impugned communication is to be set aside. The Court also imposes cost of Rs. 5000/- on the [Superintendent (Anti-Evasion) Group 1].

***HNA Comments :***

*This is a favourable ruling since the step of attaching property is a serious one and puts the taxpayer's business in a grave position, which when done in due process of law is justifiable. Section 83 explicitly grants the authority to pass an order for attaching property solely to the Commissioner, barring any officer below that rank.*

**Cancellation of GST registration based on suspicion of paper transactions, despite having all necessary documents and appearing before the proper officer for examination.**

**4. Quality Traders V. Yogesh Kumar**

*[2023] 154 taxmann.com 235 (Delhi) [05-09-2023], High Court Of Delhi*

**Facts of the Case:**

1. The petitioner is an individual carrying on the business under the name of her sole proprietorship, M/s Quality Traders.
2. Respondent No. 1 issued a Show Cause Notice, proposing to cancel the petitioner's GST registration on the allegation that the petitioner was involved in paper transactions without any movement of goods.
3. It was alleged that E-way Bills submitted on the portal reflected use of certain non suitable vehicles as one of the vehicles was used for supply of building material which could not be used for goods dealt with by the petitioner, and registration certificates of two other vehicles had already expired.
4. The petitioner was called upon to submit the sale and purchase bills and stock register for the Financial Years 2019- 2020 to 2022-2023; bank statements along with party ledger; and a copy of GR/E-way bills for proof of movement of goods. The petitioner was also directed to appear before the Proper Officer on 24.05.2023 at 16:32 hours.
5. The petitioner's registration was cancelled by the impugned order, on the ground that the petitioner had failed to produce the necessary documents or appear at the personal hearing.
6. Aggrieved by the impugned order, the petitioner has filed the present writ petition.

**Contention of the Petitioner**

1. It is the petitioner's case that she was present at the office of the Proper Officer along with the necessary documents on the date and time. However, no one was present in the office on that date. The petitioner has produced the material, including the gate pass to establish that the petitioner's representative, her son, was present on the appointed date and time.
2. The petitioner had also sent a letter to the Proper Officer, stating that she had attempted to visit the office and no one was present at the appointed time. She also stated that she was unable to upload the documents as the soft copy file of the documents exceeded the maximum limit as available for uploading the said documents

### **Judgement**

1. It is evident that the petitioner had not been given an opportunity to be heard and, therefore, the impugned order had been passed in violation of the principles of natural justice.
2. The Court considers it is apposite to set aside the impugned order and remand the matter to the Proper Officer to consider it afresh, after affording the petitioner an opportunity to be heard.
3. The Proper Officer is requested to conclude the said proceedings as expeditiously as possible, preferably, within a period of four weeks.
4. The writ petition is disposed of.

### ***HNA Comments:***

*The ruling is favourable. It has been consistently emphasized that adhering to the principles of natural justice is paramount. Providing the assessee with an opportunity to present their case before issuing an order is crucial. This not only allows the taxpayer to articulate their perspective but also enables the Authority to make an informed decision.*

### **Interest Liability on ITC wrongly availed and later reversed without utilisation**

## **5. Deepak Sales Corporation Vs. Union Of India And Ors.**

*CWP No. 283/2023, IN THE HIGH COURT OF PUNJAB AND HARYANA*

### **Facts of the Case:**

1. In August 2017, the petitioner unintentionally claimed excessive Input Tax Credit (ITC).
2. After offsetting its tax liability, a surplus ITC remained in the petitioner's electronic credit ledger for that month.
3. The petitioner realised the error and rectified it by reversing the excessive ITC in August 2018.
4. A subsequent audit and a show-cause notice led to demands for interest and penalties.

### **Arguments of Petitioner :**

1. The petitioner argued that it did not utilise the excess ITC and reversed it before utilisation.
2. The excess ITC was mistakenly availed in the electronic credit ledger.
3. The petitioner was not aware of the procedure for reversing ITC and had requested guidance from the authorities, by sending E-mail to guide in the matter as being a new entrant in GST regime. Since, no response was received from the respondents, therefore, ultimately, the petitioner could reverse the excess ITC while submitting its return for the month of July 2018
4. The appeal sought to quash the show-cause notice and impugned orders.

### **Judgement :**

1. The Court determined that the petitioner did not utilise the excessive ITC, and as it was rectified before any utilisation, the demands for interest penalties were unfounded.
2. A screenshot from the GST Portal showing the breakup of GSTR-3B return for the month of August 2018 proved the reversal of the excess amount.
3. From a purposeful reading of the provisions underlying Section 50 of the CGST Act, the legislation intent that stands reflected is that where an ITC is wrongfully reflected in electronic ledger, the same itself is not sufficient to draw penal proceedings until the same or any part of such ITC is put to use so as to become recoverable and if such ITC is reversed before utilization, then even the demand of interest and penalty cannot be said to be tenable.
4. The impugned order was set aside, and the petitioner's appeal was upheld, with legal precedents supporting the decision.

### ***HNA Comments:***

*Proviso to Section 50(3) clearly states that the Interest liability shall arise only when the interest has been wrongly availed and utilised both. This judgement is in the line with the same.*

**Assessee's registration cancellation deemed unjust as revenue authorities violated principles of natural justice by proceeding without response for over four months.**

### **6. Hardik Kaushikbhai Joshi V. Union Of India**

*[2023] 154 taxmann.com 517 (Gujarat) [20-09-2023],*

### **Facts of the Case:**

1. The petitioner is a proprietor of M/s. H.K. Tradelink, engaged in the business of trading in waste and scrap, registered under the provisions of the CGST Act having its registration GSTIN No. 24IBPJ2381A2ZX with effect from 12.03.2023, and regularly filing the GST returns.



2. A Show Cause Notice was uploaded on the portal on 20.01.2023, in Form GST REG -17 intending to cancel the petitioner's registration without servicing any document or notice at the registered place of business of the petitioner.
3. The Show Cause Notice had granted seven working days' time to the petitioner to furnish reply from the date of service of notice, and also directed the petitioner to appear personally on 27.01.2023, which was before the period of seven working days to furnish the reply.
4. The petitioner filed reply on 27.01.2023 in Form GST REG-18 on 27.01.2023, to which the respondent remained silent for a period of almost four and a half months and suddenly passed a non-speaking order on 22.06.2023 for cancellation of Registration in Form GST REG -19, wherein, it was stated that the effective date of cancellation of petitioner's registration was 13.03.2021.

### **Contention of the Petitioner**

1. The petitioner submitted that the Show Cause Notice as well as the impugned order are vague, as, no reasons have been assigned for cancellation of registration.
2. The issue is covered by a decision in the case of **Aggarwal Dyeing and Printing Works vs. State of Gujarat**, reported in [2022] 137 taxmann.com 332 (Gujarat)

### **Judgement**

1. It is not in dispute that the issue is covered by the decision in the case of **Aggarwal Dyeing and Printing Works** (supra), which has set out procedure for cancellation of registration.
2. The Court had held that by issuing a cryptic show cause notice, the authorities had violated the principles of natural justice. From the impugned order as well as the show cause notice, the reasons for cancellation are not decipherable therefrom.
3. The Show Cause Notice and the impugned order are quashed and set aside on the ground of violation of principles of natural justice.
4. The respondent is directed to issue a fresh notice with particulars of reasons incorporated with details, and thereafter, to provide reasonable opportunity of hearing to the petitioner and to pass appropriate speaking order on merits.

### ***HNA Comments:***

*The ruling is favourable as it has been consistently emphasized that adhering to the principles of natural justice is paramount. Ensuring that the taxpayer has the opportunity to elucidate their case is crucial in this context. This involves not only granting the taxpayer a chance to present their submissions but also necessitates that they are well-informed about the allegations being levelled.*

**Before issuing garnishee proceedings under Section 79, authorities shall issue notice in terms of Section 73(1)**

## **7. Kesoram Industries Ltd Vs. Commissioner of C.T. 2023 (9) TMI 1179**

### **Facts of the Case:**

1. The petitioner is a Public Limited Company and is engaged in the manufacture and supply of Cement under the brand name of Birla Shakti Cement.
2. The petitioner was regular in payment of GST, however, owing to financial crisis, there was a delay in payment of GST. The department issued a letter dated 19.06.2023 to the petitioner demanding payment of interest of Rs.1,28,97,355/- on account of delayed payment of tax from July, 2017 to January, 2023 along with calculation indicating month-wise interest payable on delay in filing of GSTR 3B return.
3. The petitioner paid the dues along with interest @18% amounting in accordance with section 50 of the GST Act basing on its own calculations. The petitioner submitted letter dated 28.06.2023 seeking three months time for payment of interest in view of severe financial crisis which resulted in late payment of GST and requested the authorities not to take any coercive action.
4. The petitioner further filed letters dated 28.06.2023 and 25.07.2023 sought time for payment of interest and disputed interest liability arrived by respondent.
5. Without considering the above letters and without providing any opportunity respondent issued garnishee proceedings under section 79(1) (C) of CGST Act, 2017. The petitioner received letter from HDFC Bank and Axis Bank about issuance of garnishee proceedings and that in compliance bank has place petitioner account under 'no debit' status.

### **Arguments of Petitioner**

1. The petitioner submitted that impugned garnishee proceedings was issued without issuing any notice to the petitioner under section 73 of the CGST Act, 2017 and without affording an opportunity of personal hearing to the petitioner.
2. The petitioner further submitted that the impugned garnishee proceedings are bad in law and the same were issued without conducting requisite proceedings under section 73 of the CGST Act, 2017 and further, both the garnishee proceedings in Form DRC-13 were not issued to the petitioner.
3. The petitioner contended that respondent Authorities failed to appreciate that the provisions of Section 79 are not invocable in respect of demands which are in dispute and not subjected to the process of adjudication, as contemplated under Section 73 or 74 of the CGST Act, 2017

### **Judgement**

1. The Court noted that a perusal of Sections 73, 74 and 79 of CGST Act and Rules, 2017 indicate that before issuing garnishee proceedings under Section 79, the authorities shall issue notice to the assessee in terms of Section 73(1) and provide an opportunity to the

assessee to submit his reply to the notice and only thereafter, the authorities shall proceed further by taking into consideration the reply / explanation provided by the assessee.

2. The Hon'ble court observed that the respondent authorities are required to issue notice to the assessee seeking their response, clarifications for non-payment of tax, interest on late payment prior to passing garnishee proceedings under Section 79(1) of the CGST Act, 2017. Therefore, the action of respondent authorities in issuing the proceedings under section 73(1) of CGST Act, 2017 are in clear violation of principles of natural justice.
3. The Hon'ble Court held that garnishee proceedings are bad in law and accordingly, set aside such proceedings.

#### **HNA Remarks:**

*This favourable ruling has laid down that any recovery proceedings can be initiated only after issuance of SCN, followed by adjudication proceedings u/s 73 or 74 of the CGST Act. The department cannot straight away initiate garnishee proceedings.*

**Bookkeeping, payroll, and accounts services through the use of cloud technology provided to client of petitioner's does not make petitioner intermediary.**

### **8. Boks business services Pvt Ltd Vs Commissioner of CGST 2023 (9) TMI 230-Delhi HC**

#### **Facts of the Case:**

1. The petitioner is engaged in the business of providing book keeping, payroll, and accounting services through the use of cloud technology to its affiliated entity (TC Outsourcing Limited, previously known as Boks Business Services Limited) incorporated in the United Kingdom.
2. The petitioner made an application for refund of unutilized input tax credit in respect of the export of services for the tax periods, April 2018 to March 2019 and April 2019 to December 2019.
3. The petitioner received a show cause notice dated 24.06.2020 proposing to reject the petitioner's claim for the refund on the ground that the services rendered by the petitioner to its foreign client appeared to fall in the category of "intermediary services" and, therefore, the place of supply of services was within the territory of India.
4. The filed detailed reply. The claims were rejected vide orders dated 23.07.2020. Aggrieved by the said order, the petitioner preferred appeals before the Appellate Authority, which were disposed of by a common order: Order-in-Appeal no.133/20-21 dated 22.04.2021. Hence, the petitioner filed writ petition.

#### **Contention of the Petitioner**

1. The petitioner contended that the petitioner is neither facilitating the provision of services by a third entity nor acting as a middleman for procuring such services for its affiliate. The petitioner is, in fact, contracted to provide the services, and is the principal service provider in the context of the services provided by it – book keeping, payrolls, and accounts through the use of cloud technology.

### **Judgement**

1. It is not in dispute that the issue is covered by the Hon'ble Courts decision in the case of ***M/s Ernst And Young Limited v. Additional Commissioner, CGST Appeals-II, Delhi And Anr.: 2023:DHC:2116-DB and M/s Cube Highways and Transportation Assets Advisor Private Limited v. Assistant Commissioner CGST Division & Ors.: 2023:DHC:5822- DB.***
2. In case of intermediary services, there are three entities – one providing the principal service, one receiving the principal service, and an intermediary who acts as an agent or a broker for facilitating or arranging such services for the service recipient.
3. The Court had held that although the agreement does use the word 'agent' but is clear that the petitioner is not acting as an agent for procurement of services for the service recipient. It is, in fact, providing the principal service of "Bookkeeping, Payroll, and accounts, through the use of cloud technology".

### **H N A Remarks:**

*The Hon'ble Court has shed light on understanding the scope of intermediary services and determining the place of place of supply. This case is vital for understanding the term intermediary. This is a favourable judgment which could bring some clarity on the service of intermediary, at a time when the Department is disputing many kinds of services provided to foreign group entities as intermediary services.*

**Adjudication completed in a short period violates principles of natural justice.**

## **9. P. R. Hardwares Vs State Tax Officer 2023 (9) TMI 43-Madras High Court**

### **Facts of the Case:**

1. The petitioner in doing business of Trading Electrical goods-
2. The respondent has issued notice, namely FORM GST DRC-01A, dated 01.12.2022, directing the petitioner to explain the discrepancies in the returns filed by the petitioner.
3. Thereafter another Notice, dated 03.01.2023 was also issued. The petitioner could not submit his reply due to his illness. Hence the respondent proceeded further and issued a Summary Order, dated 07.03.2023.
4. The allegation levelled against department was that the petitioner has relied on the Invoice No.112 which was issued by the supplier Tvl. Mahaa Agency with GSTIN number, but the said invoice is issued without actual supply of goods received by petitioner. During

the search conducted at the place of business of Tvl. Mahaa Agency it has been ascertained it is a non-existent taxpayer. In turn the petitioner had claimed ITC from a non-existent taxpayer. Therefore, ITC claimed by the petitioner based on such invoice cannot entertained.

### **Contention of the Petitioner**

1. It is the petitioner's case that Section 74(10) states that the officer shall issue the order under Section 74(9) within a period of five years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilized relates to or within five years from the date of erroneous refund.
2. It is the petitioner's case that within one month, the entire process is over, therefore, the respondent has failed to grant opportunity granted under section 74(9) and 74(10) of the Central Goods and Services Tax Act, 2017.

### **Judgement**

1. The Court noted that it is seen that the respondents are empowered to pass order within a period of five years.
2. The court rejected the contention of the respondent the time is only outer limit and it is not barring the respondents from passing an order before five years.
3. The Court held that in the present case, the notice was issued on 01.12.2022 and 03.01.2023 and the Summary Order was passed on 07.03.2023, i.e. within two months the respondents have passed an order. Even though the provisions prescribe five years as the outer limit but the provisions do not prescribe minimum time from passing order, in such circumstances the respondents ought to have passed order within reasonable time. Two months period definitely is not reasonable time and the petitioner is right in stating that adequate opportunity was not granted to the petitioner.
4. As far as the imposition of penalty is concerned, the respondents have imposed 100% penalty. The provisions of Section 74 grants concession. The petitioner's contention that since they have paid the entire tax demand the petitioner is entitled to the benefits under section 74 was rejected by the department.
5. The court took opinion that the respondents have completed the entire proceedings within two months and there is a violation of principles natural justice.
6. The Court held that by passing the orders early, the respondent has denied the valuable right of the petitioner to avail the concession granted under section 74. The petitioner has already paid the entire tax liability and the interest. Therefore, this Court is directing the respondents to collect the 15% of the penalty alone and the petitioner shall pay the 15% penalty within four weeks from the date of receipt of the order.
7. The writ petition is disposed of.

### **H N A Remarks:**



*Understanding the judgment in the context of the presented facts reveals its significance. Being accused of claiming Input Tax Credit (ITC) from a non-existent taxpayer, led to the hasty adjudication proceedings and penalty imposition. The court's ruling stresses the importance of due process and equitable justice, which can serve as a cornerstone for similar cases in the future.*

**Order communicated on the Advocate will be deemed service upon the petitioner.**

## **10. Manoj Steel Traders Vs. State of UP and Ors 2023-TIOL-1073-HC-ALL-GST**

### **Facts of the Case:**

1. The petitioner was a registered dealer and deals with the business of iron & steel. On 18.03.2018, while the goods were transported, the respondent intercepted the goods and found that away bill - 01 was not available with documents and consequently detained the goods and a notice was issued under section 129(3) of the UPGST Act.
2. Aggrieved against the order dated 18.03.2018, the petitioner filed Writ Tax No. 500/2018, in which vide order dated 28.03.2018, an interim order was passed releasing the goods of the petitioner, along with vehicle. Ultimately, on 28.03.2018, the respondent no. 3 passed an order imposing tax amounting to Rs. 3,06,893/- and penalty amounting to Rs. 3,06,893.
3. Against the order dated 28.03.2018, the petitioner preferred an appeal before the respondent accompanied by delay condonation application, which has been dismissed by the impugned order dated 23.02.2021 on the ground of limitation.
4. Accordingly, writ petition was filed challenging the order dated 23.02.2021 passed by which the appeal of the petitioner has been dismissed on the ground of limitation.

### **Arguments of Petitioner :**

1. The petitioner contended that the order dated 28.03.2018 was served upon the local counsel, Shri Anil Jain, who did not communicate the said order to the petitioner. Therefore, an application was moved for getting the certified copy of the order on 26.06.2019 by another counsel, namely, Shri Rajeev Kumar Singh and on the same day, the appeal was preferred.
2. It was submitted by the petitioner that the mistake on the part of the counsel, should not be treated adversely against the petitioner.
3. It was submitted that the petitioner, being an aggrieved person, for the first came to know about the order dated 28.03.2018 on 26.06.2019 and therefore, the appeal was within limitation. It was further contended by the petitioner that the authorities were duty-bound to first serve the copy of the order upon the aggrieved person, i.e., the petitioner, and not upon his earlier counsel.

**Judgement :**

1. The Court referred to Section 107 and Section 169 of CGST Act. In terms of Section 107 of CGST Act the appeal against an order can be preferred within a period of three months from the date of communication.
2. The court noted that Section 169 (1) (a) of the UPGST Act provides for various methods for communication of order which includes services of order to Advocate. Therefore, it is evident that the order communicated on an Advocate will be deemed service upon the petitioner.
3. The Court observed that it is admitted that the order was passed on 28.03.2018 and the said order was duly communicated to the Advocate of the petitioner, namely, Shri Anil Jain. Once an order has been communicated on 28.03.2018, the limitation for filing an appeal within a period of three months ends in the last week of June, 2018.
4. The court further observed that on the pointed query as to how and under what mode the petitioner came to know about the passing the order dated 28.03.2018 on 26.06.2019, learned counsel for the petitioner could not reply the same and submitted that the appeal filed below is silent on this point.
5. Writ petition disposed off holding that the order passed by the respondent cannot be interfered with.

**H N A Remarks:**

*While filing a writ petition before the High Court the petitioner must ensure to convey the correct factual position and must produce evidence in support of their submissions. The above decision laid down that service upon the Advocate is sufficient service as the Advocate represents and appears for and on behalf of the petitioner.*

**Set aside GST registration order for lack of reasons**

**11. Shri Sachin Upadhyay Vs. The Additional Commissioner of CGST 2023-TIOL-1249-HC-DEL-GST**

**Facts of the Case:**

5. The petitioner had filed the present petition impugning an order (Order-in-Appeal No.140/ADC/Central Tax/Appeals-1/Delhi/2023) dated 23.05.2023 whereby, the petitioner's application for revocation of the cancellation of his GST registration, was rejected.
6. The petitioner was registered with the GST authorities on 05.02.2020. The petitioner claims that on 14.03.2020, the petitioner opened a bank account with AU Small Finance Bank Ltd. and uploaded the details of the same on the GST portal.
7. Thereafter on 05.12.2021, the Proper Officer issued a show cause notice proposing to cancel the petitioner's GST registration. The petitioner's GST registration was suspended

and he was called upon to furnish a reply to the show cause notice within a period of seven working days and appear before the Proper Officer on 08.12.2021.

8. The Proper Officer proceeded to cancel the petitioner's GST registration by an order dated 03.01.2022 on the ground that the petitioner had not uploaded the bank details as evident from the response form.
9. Aggrieved by the same, the petitioner filed an application for revocation of the cancellation order. The petitioner also sent emails, once again, setting out the details of his bank accounts. The petitioner also asserted that the same were uploaded on the GST portal prior to issuance of the show cause notice dated 05.12.2021.
10. Pursuant to the said application for revocation of cancellation, the Proper Officer issued a show cause notice dated 28.02.2022 proposing to reject the petitioner's application on vague reasons.
11. Further, the petitioner's application for revocation of cancellation of the GST registration was rejected on the ground that the petitioner had not replied to the show cause notice within the time specified therein.
12. The petitioner filed appeal. The order dated 23.05.2023 issued by the respondent is equally cryptic and vague.

#### **Arguments of Petitioner :**

1. The petitioner contended that, he had furnished the details of his bank accounts and uploaded the same on the GST portal. However, the impugned order dated 23.05.2023 proceeds on the basis that the appellant had not refuted the reason cited in the order rejecting his application for revocation of cancellation dated 10.03.2022.

#### **Judgement :**

1. The Court noted the petitioner submissions that he had submitted the bank details and uploaded on the GST portal since the date of registration. The court also noted that petitioner had also attached the screenshots of the GST portal showing the bank details and had submitted a copy of the blank cheque for reference. Notwithstanding the above, the appeal was dismissed on the ground that the petitioner had not contested the reason as to why his registration was cancelled.
2. The Court held that the impugned show notice dated 5.12.2021 fails to disclose the reason for proposing cancellation of the petitioner's GST registration and therefore, the impugned order cancelling the petitioner's registration falls foul of the principles of natural justice. It is accordingly set aside. The show cause notice dated 28.02.2022 is also unsustainable as it is unintelligible.
3. The impugned show notice dated 5.12.2021 fails to disclose the reason for proposing cancellation of the petitioner's GST registration and therefore, the impugned order cancelling the petitioner's registration falls foul of the principles of natural justice.

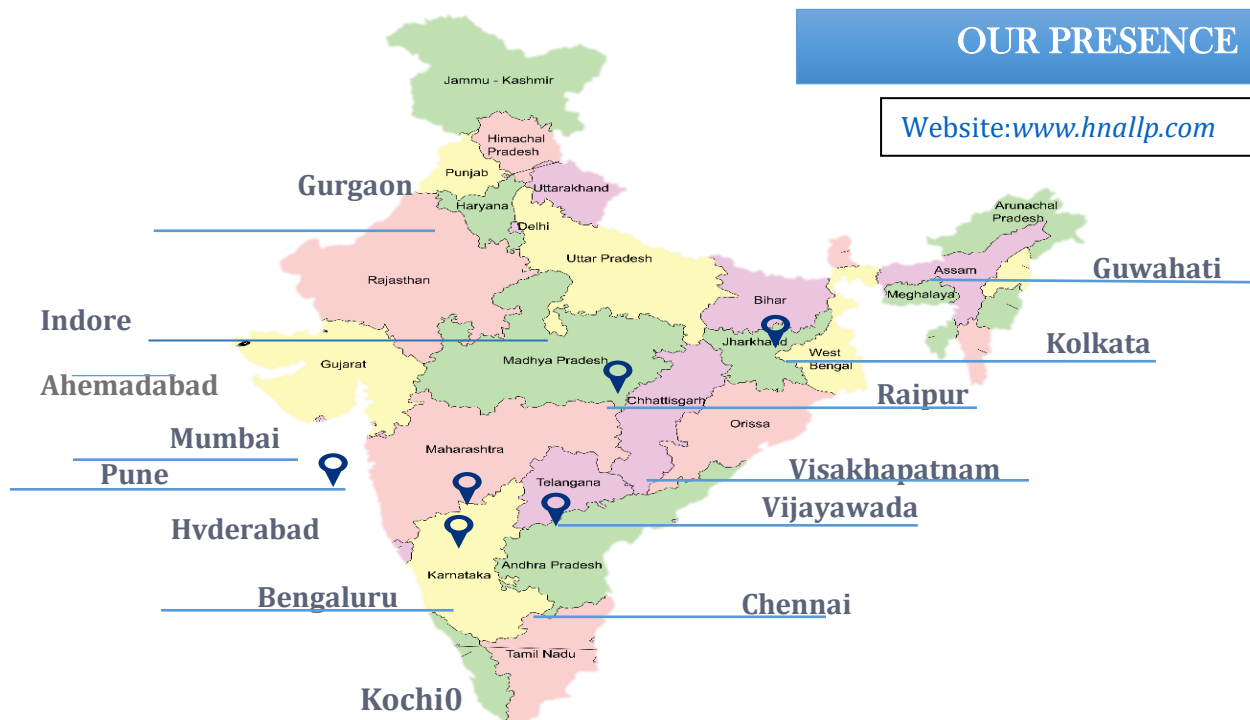
### **H N A Remarks**

*In the above case, the petitioner filed relevant documents as sought by the department. However, the submissions of the petitioner were not taken into account. The Court held that such an act of the department is in violation of principal of natural justice.*

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