

Indirect Tax

February 2023



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Notifications

CBIC reduces GST rates on certain goods/services:

CBIC vide Notification No- 01/2023 of Compensation Cess Rate dated February, 28 2023, has amended the entry at Sl. No. 41 A of Notification No. 1/2017-Compensation Cess (Rate) so that exemption benefit covers both coal rejects supplied to and by a coal washery, arising out of coal on which compensation cess has been paid and no input tax credit thereof has been availed by any person. This Notification came into force with effect from 1st March, 2023.

Source: Notification No- 01/2023 of Compensation Cess Rate

CBIC vide Notification No- 01/2023 of Central Tax Rate dated February, 28 2023, has inserted an Explanation in Notification No. 12/2017- Central Tax (Rate) by which any authority, board or body set up by the Central Government or State Government including National Testing Agency for conduct of entrance examination for admission to educational institutions shall be treated as educational institution for the limited purpose of providing services by way of conduct of entrance examination for admission to educational institutions. This Notification came into force with effect from 1st March, 2023

Source: Notification No- 01/2023 of Central Tax Rate

CBIC vide Notification No- 02/2023 of Central Tax Rate dated February, 28 2023, has provided that services provided by Courts and Tribunals which are commercial in nature like renting of space to telecom towers and renting of lawyers' chambers etc. shall be covered under RCM and that provisions of RCM notification shall apply to Courts and Tribunals as applicable to the Central Government and State Governments. This Notification came into force with effect from 1st March, 2023

Source: Notification No-02/2023 of Central Tax Rate

CBIC vide Notification No- 03/2023 of Central Tax Rate dated February, 28 2023, has reduced the rate of GST from 18% to 12 % in case of pencil sharpeners. This Notification came into force with effect from 1st March, 2023.

Source: Notification No-03/2023 of Central Tax Rate

CBIC vide Notification No- 04/2023 of Central Tax Rate dated February, 28 2023, has reduced the rate of GST from 18% to 5% in case of 'Rab' when it is sold in prepackaged and labelled form and in all other cases the rate of tax will be 'Nil'. This Notification came into force with effect from 1 March, 2023.

Source: Notification No-04/2023 of Central Tax Rate



Judgements

Hon'ble Orissa High Court allows assessee to rectify GSTR-1 in order to avail ITC

Facts of the case

The petitioner argued that they had incorrectly filed their outward supply return for GSTR-1, showing supplies under B2C instead of B2B, which prevented the recipient from availing input tax credit. The department, on the other hand, maintained that the time limit for rectification had already passed.

Ruling

In a similar case, the High Court had accepted such a plea and given directions to file the corrected form. Allowing the petitioner to rectify the error would not cause any loss to the department since there is no tax escape. On the other hand, if relief is not granted, the petitioner would be prejudiced. Therefore, the petitioner is permitted to resubmit the corrected GSTR-1 return, and the authorities are directed to receive forms manually and enable uploading in the GST portal. The petition is disposed of.

Source: *Judgement dated February, 22 2023 in case of M/S M/s. Y. B. Constructions Pvt. Ltd Vs Union of India and others Writ petition No 12232 of 2021*



Judgements

Hon'ble Allahabad High Court orders to provide opportunity of hearing to establish principal of natural justice

Facts of the case

The petitioner argued that despite issuing a show cause notice and requesting a response, the authority chose not to grant a personal hearing and instead marked "NA" in the "Date of personal hearing" column.

Ruling

As per the principle of law, it is mandatory for the authority to grant an opportunity of personal hearing to the assessee before passing an adverse order, and the assessee is not required to request such an opportunity. The marking of "NA" against the column of "Date of personal hearing" has no legal significance. A minimal opportunity of hearing is necessary as the order may create a significant civil liability, and the stand of the assessee may not be clear unless a minimal opportunity is provided. Not only would such an opportunity ensure the observance of natural justice, but it would also enable the authority to pass an appropriate order and allow for better appreciation at the appellate stage. The impugned order is set aside, and the matter is remanded to the Adjudicating Authority to issue a fresh notice.

Source: Judgement dated February, 13 2023 in case of M/S Mohan Agencies vs State Of U.P. Writ Tax No-58 of 2023.

Hon'ble Gujarat High court says the order issued for cancellation of GST registration is not only non-speaking but cryptic in nature

Facts of the case

The petitioner argued that the show cause notice did not provide any reasons for the cancellation of registration and was only issued on the grounds of non-functioning of the principal place of business.

Ruling

The petitioner argued that the show cause notice (SCN) issued for cancelling the registration was based on vague grounds and did not mention the reasons for initiating the cancellation process. The petitioner further contended that the impugned order was also vague and lacked material particulars, and the authority had violated the principles of natural justice by cancelling the registration without proper reasoning and without referring to the contents of the SCN and the petitioner's response. The court ruled that the SCN and the impugned order should be set aside and the authority should issue a fresh notice for cancellation of registration, with proper reasoning and adherence to the principles of natural justice.

Source: Judgement dated February, 10 2023, in case of Gigamade Machineris Private Limited Vs State of Gujarat, R/Special Civil application No. 17599 of 2022.



Judgements

Hon'ble Delhi High Court directs CGST Department to disburse the amount of refund

Facts of the case

The Commissioner had ordered an appeal to be filed against the original order granting refund, citing that two invoices were not reflected in the e-vahan portal. However, the Appellate Authority found that this was incorrect, as the two vehicles in question were registered on the portal. Despite this, the Authority allowed the Revenue's case on the basis that the petitioner had not proven that goods had been received, despite providing details of the other vehicles involved in the remaining 124 invoices.

Ruling

As per the provisions, the assessee is not obliged to provide details of all vehicles or establish their registration with e-vahan portal for claiming refund. The petitioner had already furnished the required details in their return for claiming refund and, therefore, conditions prescribed in section 16 were satisfied. Hence, the review order passed by the Commissioner to file an appeal against the Order-in-Original was based on an incorrect finding. The Appellate Authority did not find any flaw in the details provided by the petitioner. Since the details in the invoices furnished by the assessee were accepted by the Appellate Authority, Revenue's appeal was supposed to be rejected outrightly. Therefore, the impugned order of the Appellate Authority was set aside.

Source: Judgement dated February, 06 2023 in case of M/S Mahajan fabrics Pvt Limited Vs Commissioner CGST & ORS, W.P.(C) 6727/2022.

Judgements

Hon'ble Gujarat High Court holds that the Revenue Department cannot withhold the IGST refund on the grounds that the assessee had been marked as "risky exporters"

Facts of the case

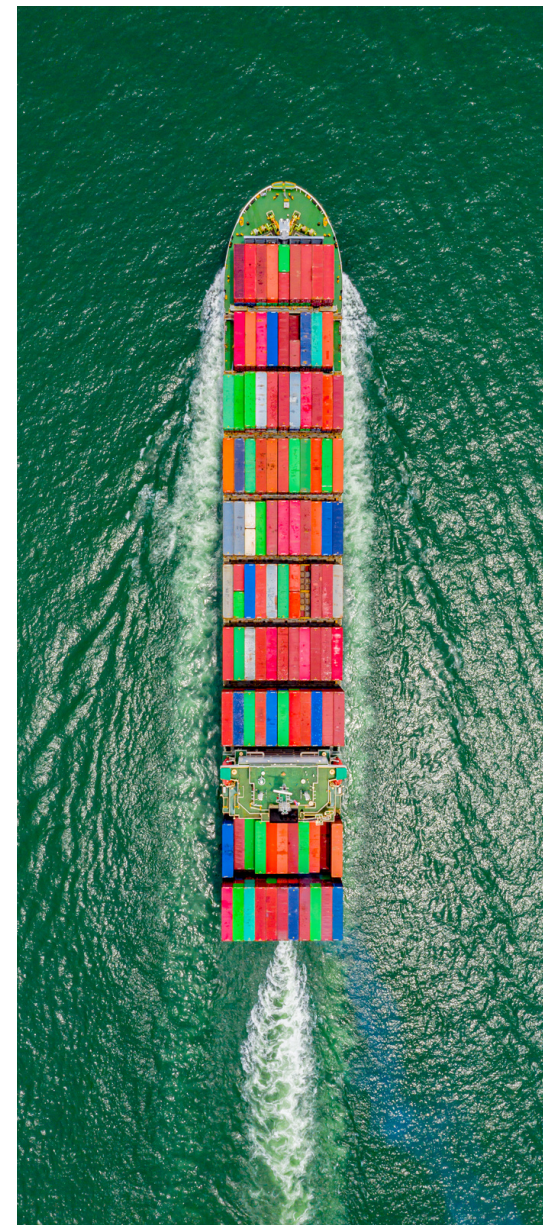
M/s Choksi Exports is a partnership that manufactures and exports organic pigments. The Revenue Department has labelled the Petitioner as a "Risky Exporter," and the refund of IGST amounting to INR 14,80,27,927.67/- has been withheld. In addition, the Petitioner has submitted all the relevant information as prescribed under Circular No.131/1/2020-GST dated January 23, 2020, via email dated January 17, 2022, and other compliance has been met. Afterwards, the Petitioner filed a grievance via a grievance application dated 16 June 2022.

The Respondent is required to issue the refund of 90% of the amount claimed by the registered person within 7 days of the date of the refund application, according to the Petitioner, who claims that the refund of IGST has been unlawfully withheld. This is in violation of Section 54(6) of the CGST Act read with Rule 91(1) of the Central Goods and Services Tax Rules, 2017. Additionally, the petitioner had previously exported a variety of items and had been properly reimbursed for the IGST on those shipments. Yet, due to the pending status of the fund, the Petitioner has incurred a loss of INR 11,00,000/- and is on the verge of ceasing operations.

Ruling

When an assessee has not been prosecuted under the Central Goods and Service Tax Act, 2017 and has also reversed the Input Tax Credit towards the goods purchased from a risky supplier, the Revenue Department cannot withhold the refund on the grounds that the assessee had been marked as "risky exporters." The reason for this is that the Revenue Department cannot withhold the refund on the grounds that the assessee had been labelled as "risky exporters issued a directive to the Department of Revenue requesting that the Integrated Goods and Service Tax refund be issued to the assessee within the next three weeks.

Source: Judgement dated February, 03 2023 in case of M/s Choksi Exports Vs Union of India R/Special Civil Application No. 23798 of 2022.



Customs

CBIC issues exchange rates for import and export of goods.

CBIC issued Circular No- 03/2023-Customs dated February, 07 2023 to amend Circular No. 29/2020-Customs dated June, 22 2020 for allowing trans-shipment of Bangladesh export cargo to third countries through Delhi Air Cargo - reg.

Gross Goods and Services Tax (GST) revenue collected for February 2024 is ₹1,68,337 crore, marking a robust 12.5% increase compared to that in the same month in 2023. This growth was driven by a 13.9% rise in GST from domestic transactions and 8.5% increase in GST from import of goods. GST revenue net of refunds for February 2024 is ₹1.51 lakh crore which is a growth of 13.6% over that for the same period last year.

Source: [Circular No 03/2023 of Customs](#)

CBIC vide Notification No-13/2023 of Customs dated February, 23 2023 exempts basic custom duty(BCD) on Ships/Vessels for breaking up while transport.

Source: [Notification No-13/2023 of Customs](#)

GST Revenue

The gross GST revenue collected in the month of February 2023 is ₹1,49,577 crore of which CGST is ₹27,662 crore, SGST is ₹34,915 crore, IGST is ₹75,069 crore (including ₹35,689 crore collected on import of goods) and Cess is ₹11,931 crore (including ₹792 crore collected on import of goods)

Source: pib.gov.in



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