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INDIRECT TAX UPDATES

MARCH, 2025

An E - Newsletter

Guahati HC: Sri Mohan Mech V. Union of India : 2025 (3) TMI 1335

[Cancellation order quashed due to its procedural deficiencies and lack of reasoning]

Background:

The petitioner M/s Sri Mohan Mech, had obtained GST registration under the Central Goods and Services Tax (CGST) Act, 2017. The Petitioner received a Show Cause Notice asking why his GST registration should not be cancelled due to the failure to furnish returns for a continuous period of six months, as per Section 39 of the CGST Act. The notice directed the petitioner to furnish a reply within thirty days and appear before the Proper Officer on February 11, 2023. It also mentioned that failure to submit a reply or appear for the hearing would result in an ex-parte decision based on available records. Simultaneously, the petitioner's GST registration was suspended from January 15, 2023. Subsequently, on February 24, 2023, an order was passed cancelling the petitioner's GST registration with effect from the same date without mentioning any reasons.

Decision:

The Court found that the impugned cancellation order was not in conformity with the procedure prescribed in FORM GST REG-19, as it did not provide any reasons for the cancellation. The Court emphasized the necessity of a speaking order, which explicitly states the reasons for the decision, to ensure proper application of mind and to provide a check against arbitrary actions by the authorities. The Court held that the absence of reasons in the cancellation order amounted to a violation of the prescribed procedure and principles of natural justice, rendering the order illegal. Consequently, the cancellation order was quashed, and the matter was remanded back.

Jharkhand HC: M/S BLA Infrastructure Private Limited V The State Of Jharkhand : 2025 (2) TMI (352)

[No 2 Year Time Limit for refund of pre-deposit made during the filing of appeal]

Background:

The petitioner, BLA Infrastructure Private Limited, is a registered dealer under the Goods & Services Tax Act, involved in the business of loading, unloading, and transporting coal. In January 2021, the petitioner was issued a show-cause notice under Section 74 of the JGST Act, 2017, for alleged discrepancies between GSTR-1 and GSTR-3B filings for September 2019. An ex parte order was passed, imposing a liability of Rs. 16,90,442, including tax, interest, and a penalty. The petitioner filed an appeal and, as required, made a statutory pre-deposit of 10% of the disputed tax amount under Section 107(6)(b) of the Act. The appellate authority allowed the appeal on February 9, 2022. On September 11, 2024, the petitioner applied for a refund of the pre-deposit amount. This application was rejected via a Deficiency Memo dated November 6, 2024, on the ground that it was time-barred under Section 54(1) of the Goods & Services Tax Act. Aggrieved by this rejection, the petitioner filed a writ petition before the Jharkhand High Court.

Decision:

The High court held that the action of the Respondents in rejecting the refund application as time-barred was not legally sustainable. The Hon'ble High Court allowed the petitioner's writ application. In terms of the interpretation extended by the Hon'ble Apex Court, as also, taking into consideration that the refund of statutory pre-deposit is a right vested on an assessee after an appeal is allowed in its favour, it was held that the Department has no reason to say that the pre-deposit made by an assessee can be forfeited taking aid of section 54 of the Act and the same cannot be the intent of the Act of 2017.

Delhi HC: Creative Travels Pvt. Ltd. V. Union of India & Ors. W.P.(C) 16771/2022

[Invocation of extended period of limitation when the facts are known to the department]

Background:

The petition was filed by the Petitioner Creative Travels Pvt Ltd, challenging a show cause notice (SCN) issued under the proviso to Section 73(1) of the Finance Act, 1994. The dispute revolves around the imposition of service tax. The tax was sought to be levied on amounts spent by the petitioner for operational costs of overseas offices and payments received for arranging outbound tour services.. A key point to note is that the SCN being challenged was not an isolated incident. It was, in fact, the fifth in a series of SCNs issued Petitioner, all pertaining to similar issues of service tax liability. The Impugned SCN under scrutiny was issued for the period of April 2014 to June 2017.

Decision:

The High Court ruled in favor of Petitioner, allowing their writ petition and quashing the show cause notice (SCN) dated 17 October 2019; the court's decision was grounded in the finding that the extended period of limitation under Section 73(1) of the Finance Act, 1994, was incorrectly invoked by the respondents as the facts are known to the Department, as the court found no evidence of willful suppression of facts by the petitioner, given that the issues in the SCN were substantially the same as those in previous notices and the petitioner's position had been consistent throughout.

Key Highlights of the 2025 of GST:

GST Circular No. 248/05/2025-GST dated 27 March, 2025 : Various issues related to availment of benefit of Section 128A of the CGST Act, 2017

This Circular clarify issues related to the waiver of interest or penalty u/s 128 A of the CGST Act, 2017, which applies to demands raised u/s 73 for the period from 01.07.2017 to 31.03.2020.

Representations were received on two key issues:

- It discusses the eligibility of cases where tax was paid through FORM GSTR-3B instead of FORM GST DRC-03.
- It also clarifies the requirements for withdrawing appeals in cases where orders pertain to periods partially covered under Section 128A.
- The circular states that payments made through FORM GSTR-3B before November 1, 2024, are eligible for benefits under Section 128A.
- It is clarified that payments made via Form GSTR-3B before 01.11.2024 can be considered valid for availing benefit u/s 128 A, if the payment was intended to discharge the demand. Proper verification by the officer is required
- In such cases, there is no requirement to make fresh payments through Form GST DRC-03, as mandated under Rule 164, post 01.11.2024.
- For consolidated demands/orders covering both eligible and ineligible periods, the taxpayer may:
 1. Discharge liability only for the eligible period.
 2. Inform the appellate authority/tribunal of non-pursuance of appeal for the eligible period (FY 2017-18 TO 2019-20).

GST Notification No. 11/2025- Central Tax dated 27th March, 2025

In the Central Goods and Services Tax Rules, 2017,–

In rule 164, –

- i. In sub-rule (4), after the words “after payment of the full amount of tax”, the words “related to period mentioned in the said sub-section and” shall be inserted.
- ii. After sub-rule (4), the following Explanation shall be inserted, namely: - “No refund shall be available for any tax, interest, and penalty, which has already been discharged for the entire period, prior to the commencement of the Central Goods and Services Tax (Second Amendment) Rules, 2025, in cases where a notice or statement or order mentioned in sub-section (1) of section 128A, includes a demand of tax, partially for the period mentioned in the said sub-section and partially for a period other than mentioned in the said sub-section.”.
- iii. In rule 164, in sub-rule 7, after the first proviso, the following proviso shall be inserted, namely: - “Provided further that where the notice or statement or order mentioned in sub-section(1) of section 128A of the Act includes demand of tax, partially for the period mentioned in the said subsection and partially for the period other than that mentioned in the said sub-section, the applicant instead of withdrawing the appeal, shall intimate the appellate authority or Appellate Tribunal that he does not wish to pursue the appeal for the period mentioned in the said sub-section and the relevant authority shall, after taking note of the said request, pass such order for the period other than that mentioned in the said sub-section, as he thinks just and proper.
- iv. Explanation,– For the removal of doubt, it is clarified that the appeal application shall be deemed to have been withdrawn to the extent of the said intimation for the period from the 1st July, 2017 to the 31st March, 2020 or part thereof, for the purpose of sub-clause (3) of section 128A.”

Delhi HC: M/s Ismartu India Pvt. Ltd. V. Union of India & Ors. : W.P.(C) 15199/2023

[Subsequent notice u/s 28(4) Customs Act cannot be 'Supplementary' to prior notice u/s 28(1), both provisions operate in separate fields]

Background

The Petition was filed challenging a Show Cause Notice (SCN) issued under Section 28(4) of the Customs Act, 1962. The petitioner sought to quash the SCN on several grounds, including that a prior SCN dated July 25, 2023, had already been issued under Section 28(1) of the Act for similar goods and factual issues, rendering the subsequent SCN unsustainable. The petitioner contended that the impugned SCN did not meet the requirements of Section 28(4) of the Act, as it lacked particulars regarding any alleged collusion, deliberate misrepresentation, or withholding of crucial information. Additionally, the petitioner argued that they had consistently imported the same goods since 2016, and the respondents, for the first time, sought to classify the imported goods under a different tariff heading.

Department Contention

The respondents defended the issuance of the SCN under Section 28(4), arguing that the petitioner failed to provide the necessary data and replies, which amounted to intentional suppression of information. They also claimed that the SCN was issued under Notification No. 42 of 2019, which allows for a supplementary notice, and that the SCN pertained to different periods and bills of entries. The primary contention was that the petitioner misclassified the imported goods, which led to a short payment of duty.

Decision of the Court

The High Court of Delhi ruled in favor of the petitioner, and set aside the Impugned SCN issued under Section 28(4) of the Customs Act, 1962. The court found that the issuance of a second SCN under Section 28(4) was unsustainable, as a prior notice under Section 28(1) had already been issued for similar goods and allegations. The court reasoned that Section 28 of the Act provides for two separate types of notices under different circumstances, and they cannot be interchangeably issued. The court also agreed with the Petitioner's contention that the impugned SCN did not fulfill the requirements of Section 28(4) as there was no indication of collusion or willful misstatement of facts.

Our View

This judgment reinforces that issuing two notices under different sections (28(1) and 28(4)) for similar circumstances is unsustainable, as these sections apply to distinct scenarios. It also highlighted the issue of "change of opinion," where the same officer issued two notices under different sections based on an almost identical set of facts within a short period.



EDITOR'S COMMENTS

This judgment reinforces that issuing two notices under different sections (28(1) and 28(4)) for similar circumstances is unsustainable, as these sections apply to distinct scenarios.

It also highlighted the issue of "change of opinion," where the same officer issued two notices under different sections based on an almost identical set of facts within a short period.

Delhi HC: Mohammad Arham V. Commissioner of Customs : W.P.(C) 2760/2025

The Petition was filed seeking direction to the Respondent to unconditionally release the seized gold bangles of the Petitioner. No show cause notice was issued after seizure of goods and more than a year had passed. The Delhi High Court held that detention of goods by the Customs Department cannot continue beyond a period of one year, if a show cause notice was not issued to the assessee within such period. Section 110 of the Customs Act, 1962 which prescribes a period of six months was relied upon. The Court further noted that the provision also provide that subject to complying with certain formalities, a further extension for a period of six months for the Department to issue a show cause notice can be given in terms of Section 110(5).

Delhi HC: Backbone Overseas V. Assistant Commissioner of Customs : 2025 (3) TMI 1327

The Petition was filed seeking the release of goods entered for export, which were detained by the Customs Department. The petitioner's grievance was that despite multiple requests to the Commissioner of Customs for the release of the goods and the reasons for their detention, no response was received. The Delhi High Court noted that the Customs Department only took action after the writ petition was filed, which they deemed unacceptable. The court emphasized that delays in clearing goods were causing significant issues for the petitioner and others in similar situations. The court directed the Customs Department to make a decision within seven days and provisionally release the goods, subject to reasonable conditions.

Gujarat HC: Rohan Dyes & Intermediates Ltd. & Anr. V. Union of India & Ors.

This case revolves around the question of whether a show cause notice (SCN) issued by the Customs Department, which had remained unadjudicated for an extended period (more than ten years in this instance), should be quashed solely on the basis of the delay. The Petitioner, Rohan Dyes and Intermediates Limited, had been involved in the export of dyes and chemicals, availing benefits under the Duty Entitlement Pass Book Scheme (DEPB). The Directorate of Revenue Intelligence (DRI) initiated a search and investigation, suggesting mis-declaration of the exported products, which led to the issuance of show cause notices in 2010 and 2011 by the Customs Authority. Simultaneously, the Joint Director General of Foreign Trade, Ahmedabad, also issued a show cause notice on the same matter. The impugned SCNs have remained pending for more than 15 years and 13 years respectively. Considering the aforesaid decisions, the Court held that due to an inordinately long lapse of time, the impugned show cause notices could no longer remain pending for adjudication and must be quashed and set aside on that score alone.

- [**No GST e-Way Bill without two factor authentication from April 1, 2025? GSTN to shortly make it mandatory**](#)
- [**Revision of GST returns to be allowed even after deadline in these cases, rules SC**](#)
- [**GST Council may slash rates to boost consumption, weighs scrapping 12% slab: Report**](#)