

MARCH EDITION

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GST CASE LAW COMPENDIUM



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Does expiry of E-way Bill creates any scope for evasion?

No, mere expiry of E-way does not create any scope for evasion.

The Hon'ble Madras High Court in case of *Tvl. Thiruvannamalaiyar Transport v. the Deputy State Tax Officer &Anr.* [W.P. No. 32960 of 2022 and WMP. No. 32361 of 2022 in W.P. No. 32960 of 2022 dated December 13, 2022] has set aside and revoked detention order passed against the assessee on the grounds of expiry of E-way bill. It was decided that there is no loss to Revenue Department on expiry of E-way bill so; it does not create any scope for evasion. The court further directed the Revenue Department to release the truck with the consignment on payment of penalty of INR 5,000/- by the assessee.

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Author's Comments:-

As per Circular No.64/38/2018 dated 14.09.2018 and various judicial pronouncements, general penalty under section 125 of the GST Act must be imposed in case of minor breach or discrepancies.

In our view, all the discrepancies in relation to movement of goods except the fatal errors like Non issuance of tax invoices, no e-way bill etc are minor discrepancies and no penalty u/s 129 of the GST Act can be imposed. As per Section 129 and Rule 138A of the GST Act, until and unless mensrea exists and is proved, all the errors and omissions have to be termed as non-fatal errors and no penalty U/s 129 can be imposed.

The Hon'ble Supreme Court of India has decided on the same issue in case of *Assistant Commissioner ST &Ors. Versus SatyamShivam Papers Pvt. Ltd.* [Special Leave to Appeal (C) No(s). 21132/2021 dated January 12, 2022].

Similar judgment was passed by the Hon'ble Tripura High Court in case of *NE Equipment Solutions Pvt. Ltd. Versus The State of Tripura and others* [WP(C) No. 577/2021] dated August 24, 2021 and also a similar judgment was passed by the Hon'ble Gujarat High Court in the case of *M/s. Shree Govind Alloys Pvt. Ltd. Versus State of Gujarat (R/Special Civil Application No. 23835 of 2022)* dated December 01, 2022.



Does an Ex-parte assessment order passed in violation of the principles of natural justice entails civil consequences?

Yes. The Hon'ble Patna High Court in case of *M/s Balram Singh v. Union of India & Ors.* [Civil Writ Jurisdiction Case No. 88 of 2023 dated January 20, 2023] has set aside and revoked the ex-parte assessment order passed by the Revenue Department rejecting the claim of Input Tax Credit by the assessee and imposing the tax liability of INR 10,06,826/-, on the grounds that it was passed without providing opportunity of being heard or sufficient time to the assessee to represent its case which is in violation of the principles of natural justice, which entails civil consequences. It was held that opportunity of being heard shall be provided to the assessee to place on record all essential documents and materials.
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Author's Comments:-

Violation of Principles of natural justice is a major issue faced by the taxpayers across the country and this calls for robust and continuous training of the Proper Officers of the State and Central GST Departments.

Similar Judgments were passed by the Hon'ble Patna High Court in the case of *National Co-operative Consumer Federation of India Limited Versus State of Bihar* [Civil Writ Jurisdiction Case No.16790 of 2022 dated December 9, 2022], also in case of *M/s G. Power Solution Versus State of Bihar* [Civil Writ Jurisdiction Case No. 11384 of 2022 dated August 17, 2022] and also in case of *Rambabu Singh Versus State of Bihar* [Civil Writ Jurisdiction Case No.14475 of 2021 dated August 26, 2021].



Can a Demand order u/s 129 of the CGST Act be passed after the period of 7 days from the date of service of notice?

No, the demand order cannot be passed after 7 days from the date of service of notice.

The Hon'ble Madras High Court on the grounds of Section 129(3) of the Central Goods and Services Tax Act, 2017 (***“the CGST Act”***) in the case of ***Deepam Roadways v. the Deputy State Tax Officer and Ors. [W.P. No. 476 of 2023 and Ors. dated January 23, 2023]*** quashed the notice of detention of goods and the consequential demand order issued to the assessee. It was held that, the demand order passed beyond the period of seven days from the date of service of the notice is in contrary to Section 129(3) of the CGST Act.

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Author's Comments:-

Procedures laid down in the GST statute for every action by the Proper Officer must be adhered to strictly. Officers are not allowed to exercise extra legislation at their free-will to safeguard the interest of the Revenue.

This is a welcome judgment and will serve as a ground to challenge any authority by-passing or deviating from the laid procedures.



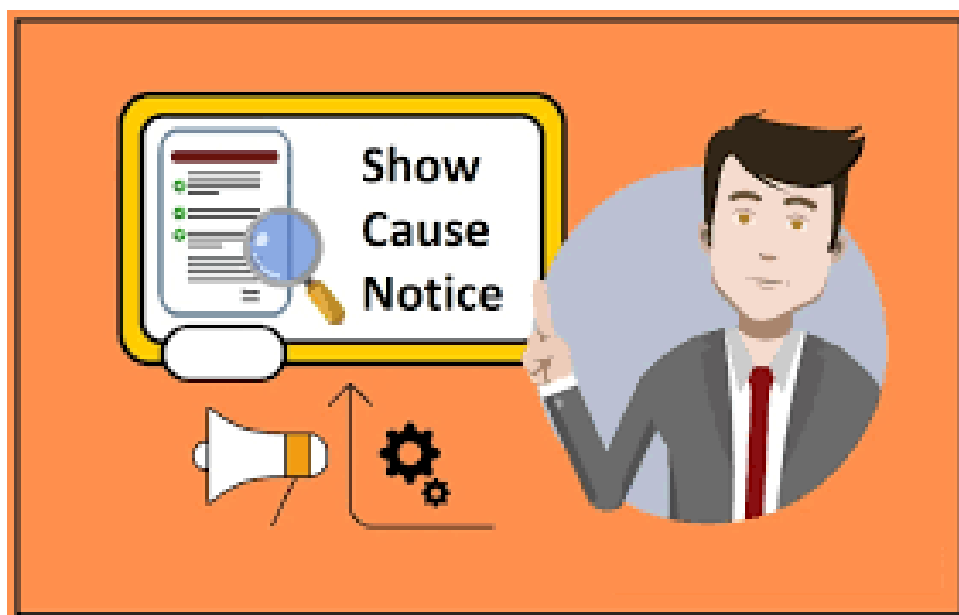
Is alternative remedy against order applicable when SCN is issued in violation of principles of natural justice?

The Hon'ble Jharkhand High Court in case of ***Santosh Kumar Roy v. the State of Jharkhand & Ors. [W.P.(T) No. 4782 of 2022 dated January 24, 2023]*** as per Section 73 (1) of the Central Goods and Services Tax Act, 2017 (***“the CGST Act”***) has set aside and revoked the Show Cause Notice (***“SCN”***) and the consequential order passed by the Revenue Department, on the grounds that the SCN issued to the assessee is not in compliance of Section 73(1). It was held that, stating specific charges in the SCN is part of due procedure and fair play in action which are essential requirements of rule of law and has its genesis in Article 14 of the Constitution of India and since the principles of natural justice is not complied with, the ground of alternative remedy is not acceptable. The court directed to pass a fresh order after following the due procedure of law from the stage of issuing fresh SCN.

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Author's Comments:-

This is again a matter of big concern because there are lot of instances where SCN's are poorly drafted and cryptic orders are passed by the authorities which are completely inconsistent with the provisions of the statute.



Can the delay in period of limitation for filing the appeal by the assessee be condoned?

Yes, The Hon'ble Gujarat High Court in the matter of ***M/s. Manjeet Cotton Pvt. Ltd. v. Commissioner of State Tax [R/Special Civil Application No. 16857 of 2022 dated December 15, 2022]*** condoned the delay of period of limitation to file appeal before the Appellate Authority by the assessee. Held that, assessee has the right to challenge the assessment order by appealing to the Appellate Authority, and such right should be exercised to maintain the possibility of addressing a larger issue.

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Author's Comments:-

In the GST regime, greater reliance has been placed on the strict procedures and timelines. Taxpayers are advised to strictly adhere to all the timelines.

The appellate authorities are not vested with the powers to condone the delay beyond specified timelines. This judgment comes in for the rescue of taxpayers' rights of being heard.

Assessment/ self-assessment could be altered only through appeal proceedings

The CESTAT, New Delhi in the matter of ***M/s. Holy Land Marketing Private Limited v. Commissioner of Customs, New Delhi [Customs Appeal No. 51055 of 2020 dated January 31, 2023]*** has held that a reassessment order cannot be issued under Section 17(5) of the Customs Act, 1962 (***"the Customs Act"***) after the goods have already been cleared for home consumption. Further held that, once clearance for home consumption is granted, the goods are no longer considered as "imported goods" and are no longer subject to customs duty and in case any mistake is identified in the assessment/ self-assessment, the importer has the option to file an appeal with the Commissioner (Appeals).

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Is there a need to rely on website and Wikipedia for the meaning, when the test reports of the product by laboratories are available?

No, there is no need to rely on website and Wikipedia for the meaning.

The CESTAT, Ahmedabad in ***Pradipkumar P Patel v. C.C. – Ahmedabad [Customs Appeal No. 10047 of 2022 in Final Order No. A/10118-10134/2023 dated January 25, 2023]*** has set aside the order passed by the Revenue Department denying the exemption from duty of Customs and Integrated Goods and Services Tax (***“IGST”***) on the import of concentrated ‘Boron Ore’ on the grounds that the same has been obtained after removal of impurities, whereas, only naturally mined products are eligible for such exemption. Held that, the Revenue Department had not properly considered the defence submission made by the assessee and the relevant test reports showing that the imported product is ‘Boron Ore’. Further held that, when the test reports were available on record, there was no need to go to the website and Wikipedia for the meaning of the product. Remanded the matter back for reconsideration in the light of the test reports.

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Is GST applicable on issuance of Prepaid Payment Instrument vouchers?

No. GST is not levied on the prepaid payment instrument vouchers.

The Hon'ble Karnataka High Court in case of ***M/s Premier Sales Promotion Pvt Limited v. Union of India [Writ Petition No. 5569 of 2022 (T-RES) dated January 16, 2023]*** has set aside and revoked the order passed by AAAR, Karnataka, which upheld the ruling passed by AAR, Karnataka, which stated that tax is applicable on vouchers as Goods. It was decided that vouchers being similar to pre-deposit instruments, have no inherent value of their own and therefore, does not fall under the category of supply of goods or services. Hence, vouchers being neither goods nor services, are exempted from the levy of tax.

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Author's comments:

Even in the service regime, the taxability of prepaid vouchers has always been a grey area. Considering the continuing legacy disputes even in GST era, the above judgment has provided much-needed clarity to the industry and trade.

In this regard, the AAAR, Tamil Nadu in ***Re: KalyanJewellersIndia Ltd. [Order-in-Appeal No. AAAR/1/2021(AR) decided on March 30, 2021]*** had held that, Prepaid Payment Instruments fall under the definition of vouchers, which are neither goods nor services but instrument of consideration for future supply.

Further, the Hon'ble Supreme Court in ***Sodexo Svc India Private Limited v. State of Maharashtra & Others [2016 (331) E.L.T. 23 (SC) dated December 9, 2015]*** had also held that the vouchers are not goods.

Therefore, prepaid vouchers are to be considered as “**Money**”, which is kept outside the ambit of GST. There should not be any GST on the issuance of vouchers in the nature of Pre-Paid Instruments.

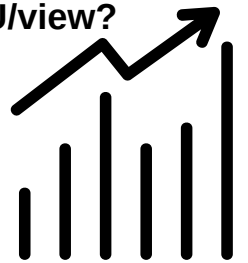


Can the Department raise demand without examining the reversal of Cenvat credit and calculating proportional credit?

No, the department cannot raise demand without examining the reversal of Cenvat credit and calculating proportional credit.

The CESTAT, Ahmedabad in case of ***Sanofi India Limited v. C.C.E. & S.T.- SURAT-II [Excise Appeal No. 10583 of 2013 in Final Order No. A/10115-10117/2023 dated January 25, 2023]*** has held that, no demand of 10% of the value of goods can be raised by the Revenue Department, once the assessee had reversed the proportionate credit attributed to the exempted goods. Further it was held that, Revenue Department cannot choose any particular option and impose on the assessee since the reversal of Cenvat credit is one of the option provided and it is upon the assessee to avail such option. The CESTAT further remanded the matter back due to failure in examining the reversal of Cenvat credit and non-calculation of the proportionate credit.

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Can the credit of unadjusted TDS under VAT be transitioned into GST regime?

YES, the credit of unadjusted TDS under VAT can be transitioned into GST.

The Hon'ble Jharkhand High Court in case of ***M/s SubhashSingh Choudhary v. State of Jharkhand [W.P.(T) No. 2404 of 2020, dated January 9, 2023]*** has set aside the order denying transfer of unadjusted Tax Deducted at Source ("TDS") amount available under the Value Added Tax ("VAT") regime to GST regime. As per Section 140(1) of the Central Goods and Services Tax Act, 2017 ("**the CGST Act**") it was held that the assessee is entitled for migration of the TDS amount. Further it was held that, restriction on Input Tax Credit ("**ITC**") only applies if there is an express prohibition under the CGST Act. Any contrary interpretation would have an effect of nullifying and/or setting at naught the real object of the transitional provision.

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Is the discrepancy in documents carried along with the Gold sufficient to suspect GST evasion?

Yes. The Hon'ble Kerala High Court in the matter of ***SasiPathirakunnath and Anr. v. Assistant State Tax Officers and Ors. [WP(C) No. 31445 of 2022 dated January 18, 2023]*** held that, there is no malice or lack of jurisdiction of the Revenue Department to initiate proceedings and passing the order for confiscation of gold and levy of penalty, as the discrepancy in the quantity mentioned in the documents and the quantity recovered was sufficient reason for the Revenue Department to suspect Goods and Services Tax ("**GST**") evasion. Further held that, it will be open to the assessee to raise all their contentions before the appellate authority.

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Does the SCN issued without reasons/allegations violates the Principles of Natural Justice?

Yes. The Hon'ble Delhi High Court in ***Surender Kumar Jain v. Principal Commissioner & Anr. [W.P.(C) 17700/2022 dated January 25, 2023]*** set aside the Show Cause Notice ("**SCN**") and consequential order cancelling the GST registration of the assessee. Held that, a SCN must clearly state the allegations that the concerned noticee has to meet, being the essence of a SCN, any notice that does not qualify this criterion, cannot be considered as a SCN, which are not meant to be issued mechanically to comply with a formality, but to serve the principles of natural justice and to enable the concerned authority to take an informed decision. Further held that, the entire purpose of the SCN is to enable the noticee to respond to the allegations on the basis of which an action is proposed.

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Author's Comments:-

In our view, most of the SCN's are issued mechanically, especially in case of GSTR-2A Versus GSTR-3B mismatch as it does not specify the violation of exact provision of the law. Officer is duty bound to issue SCN clearly leveling allegations and the exact provisions of the law which are violated. As in case of GSTR-2A versus GSTR-3B mismatch, SCN must specify the exact provision i.e. 16(2)(C) or any other provision in the opinion of PO which is violated and warrants action against taxpayer.

Can the Bail be denied to accused of fake invoices due to ongoing investigations to unearth more fake suppliers?

Yes. The Hon'ble Supreme Court of India in ***Basudev Mittal v. Union of India [Petition(s) for Special Leave to Appeal (Crl.) No(s). 8128 of 2022 dated December 12, 2022]*** has refused to interfere with the order passed by the Hon'ble Chhattisgarh High Court, wherein bail was denied to the accused in the alleged matter for availment of wrong Input Tax Credit ("**ITC**"), on the ground that investigations were still going on for detecting more fake suppliers and investigations might be hampered if bail was granted.

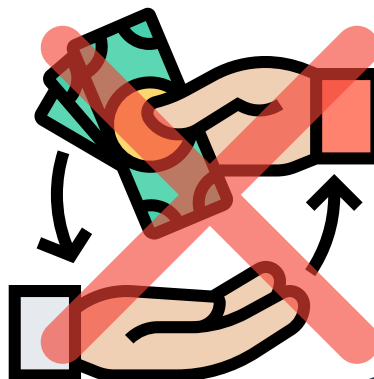
https://drive.google.com/file/d/1WZTcjcDVYTkR3SKiquQc7PYuS4mGPDEi/view?usp=share_link



Can a Refund be denied for an inadvertent error which was subsequently rectified?

No. The Hon'ble Delhi High Court in the matter of ***M/s. ShriShyam Footwear v. the Commissioner of Central Goods and Services Tax and Anr. [W.P. (C). 5845 of 2022 dated January 31, 2023]*** has set aside the order of the Revenue Department rejecting the refund application of the assessee on the grounds that the rectified information submitted by the assessee was not taken into account while passing such order. Held that, the assessee cannot be penalised for an inadvertent error in submitting an erroneous information, which had already been rectified. Further that, it is essential for the Revenue Department to examine the information as submitted by the assessee and process its claim for refund of unutilized Input Tax Credit ("**ITC**") in accordance with law.

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Can the Parallel proceedings be initiated by Central/ State Tax Authorities on the same subject matter?

No. The Hon'ble Madras High Court in the case of *M/s. VGN Projects Estates Private Limited v. Assistant Commissioner (State Taxes) and others [W.P.No.2391 of 2023 and W.M.P.No.2481 of 2023, dated January 30, 2023]* has directed the assessee to file a reply to the Show Cause Notice ("**SCN**") issued by the State Tax Authority, wherein, parallel proceedings had been initiated by the State Tax Authorities on a similar matter which is already pending before the Central Tax Authority. Held that, if the defects are similar in the SCNs then it shall be omitted and no proceedings to be initiated against the assessee w.r.t. the defects, which are already the subject matter of consideration by the Central Tax Authority.

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Can the IGST refund claim be withheld when ITC towards purchase from risky supplier had already been reversed?

No. The Hon'ble Gujarat High Court in *M/s Choksi Exports v. Union of India [R/Special Civil Application No. 23798 of 2022 dated February 03, 2023]* has held that, the Revenue Department cannot withhold the refund on the grounds that the assessee had been marked as "risky exporters", when the assessee has not been prosecuted under the Central Goods and Service Tax Act, 2017 ("**the CGST Act**") and has also reversed the Input Tax Credit ("**ITC**") towards the goods purchased from a risky supplier. Directed the Revenue Department to grant the Integrated Goods and Service Tax ("**IGST**") refund to the assessee within 3 weeks.

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Can the CGST and SGST Authorities simultaneously prosecute the assessee on the same subject matter?

No. The Hon'ble Madras High Court in the matter of ***Tvl Metal Trade Incorporation v. the Special Secretary, Head of the GST Council Secretariat and Ors. [W.P. No. 3033 of 2023 And W.M.P. No. 3125 of 2023 dated February 6, 2023]*** has held that, the State Tax Authority cannot prosecute the assessee, when the Central Tax Authority has already initiated action in respect of the very same subject matter. Further held that, to substantiate such defence, the assessee has to participate in the personal hearing/ enquiry and only then it can be ascertained whether the proceedings initiated by the Central and State Tax Authority are one and the same involving the same subject matter. Directed the assessee to appear before the Revenue Department and state all its objections.

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Can the non-reply to SCN be a ground for cancellation of GST Registration?

No. The Hon'ble Allahabad High Court in ***Acambis Helpline Management (P.) Ltd. v. Union of India [Writ Tax No. 185 of 2022 dated December 15, 2022]*** has set aside the order cancelling the Goods and Services Tax ("**GST**") Registration of the assessee, passed on the ground that the assessee had failed to reply to the Show Cause Notice ("**SCN**"). Held that, even if the assessee has failed to furnish a reply to a SCN, it is necessary for the Revenue Department to consider the facts of the case and accordingly conclude that the facts necessitated cancellation of the GST Registration. Directed the assessee to submit a reply to the SCN within 3 weeks. Further, directed the Revenue Department to decide the matter afresh in accordance with the law.

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Can the Appeal filed offline be denied on technical grounds?

No. The Hon'ble Allahabad Court in **M/s. Yash Kothari Public Charitable Trust v. the State of U.P and Ors. [Writ Tax No. 1027 of 2022 dated January 16, 2023]** has held that taxing authorities cannot stop any assessee from claiming its statutory right of appeal, in the garb of technicality and cannot deny to entertain the appeal filed offline on technical grounds, due to the mistake of the department or the technical glitch in software when an appeal of assessee is not reflected on the portal. Further, directed the Revenue Department to consider the offline appeal of the Petitioner.

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Does Assessment proceedings suffer from major procedural flaws due to the lack of a proper SCN?

Yes. The Hon'ble Jharkhand High Court in **M/s. Solex Energy Limited v. the State of Jharkhand and Ors. [W.P (T) No. 404 of 2022 dated January 31, 2023]** has set aside the summary of order issued in **Form GST DRC-07** to the assessee by the Revenue Department on the grounds of non-issuance of a proper Show Cause Notice ("**SCN**"). Held that, the assessment proceedings suffer from serious procedural errors in absence of a proper SCN, where there were serious discrepancies in the proceedings. Thus, the entire proceedings are vitiated.

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Assessee allowed to submit an additional reply to a SCN against non-payment of tax within prescribed period under the SVLDRS

The Hon'ble Madras High Court in **M/s. P.K. Japee & Co. v. Deputy Commissioner of GST and Central Excise and Ors.** [W.P.No.3587 of 2023 and W.M.P.No.3647 of 2023 dated February 7, 2023] has allowed the assessee to submit an additional reply to a Show Cause Notice ("SCN") issued by the Revenue Department. Held that, no prejudice will be caused to the Revenue Department if such additional reply is allowed. Directed the Revenue Department to consider the assessee's reply to the SCN on its merits and to pass fresh orders after providing the opportunity of fair hearing to the assessee and by following the principles of natural justice.

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Can a SCN/Order issued without giving any specific details or reasons for taking any action sustainable?

No. The Hon'ble Delhi High Court in **Marg Erp Ltd v. Commissioner of Delhi Goods and Service Tax & Anr.** [W.P.(C) 872/2023 dated February 3, 2023] has set aside the demand order passed by the Revenue Department on the ground that such order was unsigned. Held that, an unsigned notice/order cannot be considered as an order and hence cannot be sustained. Further, directed the assessee to submit the reply within 2 weeks and directed the Revenue Department to pass the fresh orders after the assessee has been heard.

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Writ petition filed before the passing of the final order is premature and not maintainable

The Hon'ble Madras High Court in the matter of **Geethanjali v. the Assistant Commissioner of CGST & CE [W.P. No.35024 of 2022 and W.M.P. Nos. 34458 and 34461 of 2022 dated February 7, 2023]** has held that the petition filed by the assessee challenging the Show Cause Notice ("**SCN**") for reversal of Input Tax Credit ("**ITC**") even before the final order has been passed, is considered to be premature and cannot be entertained. Directed the Revenue Department to consider the reply submitted by the assessee and decide on merits and in accordance with law.

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Assessee allowed to file an appeal after the delay of a negligible period

The Hon'ble Calcutta High Court in the matter of **SikhaDebnath v. the Assistant Commissioner of State Tax and Ors. [WPA 304 of 2023 dated February 10, 2023]** condoned the delay of period of limitation to file appeal before the Appellate Authority by the assessee. Held that, the court can allow the assessee to file an appeal where there is delay of a negligible period by extending time as stipulated under Section 107 of the Central Goods and Services Tax Act, 2017 ("**the CGST Act**"). Further, directed the Appellate Authority to accept the memorandum of appeal and decide on the merits within six weeks.

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Is the Cancellation of registration without providing the reason in the SCN/Order cryptic in nature?

Yes. The Hon'ble Gujarat High Court in **Neha Enterprise v. State of Gujarat [R/Special Civil Application No. 20505 of 2022 dated January 19, 2023]** has quashed and set aside the Show Cause Notice ("SCN") and the consequential order passed by the Revenue Department solely on the ground of violation of the principles of natural justice as no reasonable opportunity of hearing was given to the assessee. Further, directed the Revenue Department to issue a fresh SCN and provide reasonable opportunity of hearing. Further that, the Goods and Service Tax ("GST") Registration of the assessee to be restored.

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Can the Refund claims be considered as dubious on the basis of erroneous findings?

No. The Hon'ble Delhi High Court in **M/s. Mahajan Fabrics Pvt. Ltd. v. Commissioner, CGST and Ors.**

[W.P. (C) 6727/2022 dated February 6, 2023] has set aside the order passed by the Appellate Authority, disallowing the refund claimed by the assessee. Held that, the foundation of the Revenue's appeal was flawed and based on erroneous finding that the vehicles mentioned in invoices used for transport of goods were not registered on the e-vahan portal. Hence, there was no tangible reason to doubt that the particulars as stated in the invoice by the assessee were untrue. Directed the Respondent to disburse the refund amount previously sanctioned to the assessee.

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Can Penalty order be passed without serving SCN in prescribed manner?

No. The Hon'ble Delhi High Court in **M/s. Sun Aviation Pvt. Ltd. v. Commissioner of Customs (Export) [W.P. (C) 17189/2022 dated February 7, 2023]** has set aside the penalty order passed by the Revenue Department, on the ground that the order was passed in violation of principles of natural justice as there were no material facts to indicate that the Show Cause Notice ("**SCN**") was served in the prescribed manner and the assessee was not afforded the full opportunity to contest the allegations against it.

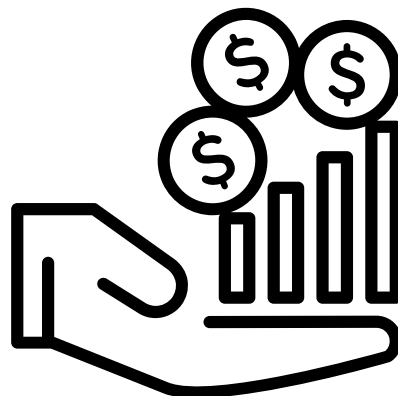
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Can the Revenue department go beyond the scope of SCN to create new ground at the stage of adjudication?

No. The Hon'ble Jharkhand High Court in **M/s. CJ DarclLogistics Limited v. Union of India [W.P.(T) No. 215 of 2022 dated February 9, 2023]** has quashed and set aside the Show Cause Notice ("**SCN**") and the consequent orders demanding reversal of excess Input Tax Credit ("**ITC**"), on the ground that, the same were passed without providing the opportunity of personal hearing to the assessee. Hence, violative of principles of natural justice. Held that, the SCN was vague and cryptic in nature and the orders passed were beyond the scope of the SCN.

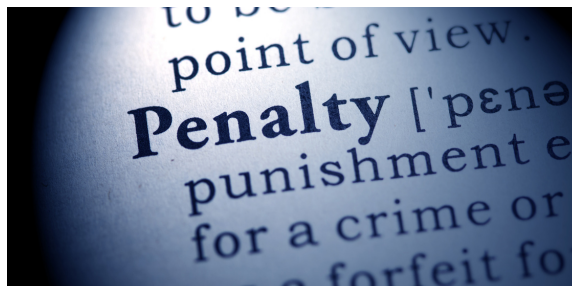
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Does the Minor discrepancy in the e-way bill attract penalty proceedings?

No. The Hon'ble Allahabad High Court in **M/s. VarunBeverages Limited.v. State of U.P. and Ors. [Writ Tax No. - 958 of 2019 dated February 2, 2023]** has set aside the order imposing the penalty upon the assessee, on the grounds that, there was no intention on the part of the assessee to evade taxes. Held that, minor discrepancy in mentioning the registration number of the vehicle in the e-way bill would not attract proceedings for penalty under Section 129 of the Central Goods and Services Tax Act, 2017 (**"the CGST Act"**).

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Can Revenue department initiate assessment proceedings once moratorium order has been passed by NCLAT?

No. The Hon'ble Madras High Court in **Tvl. ITNL-KMB (J.V.) v. the Deputy Commissioner of (ST), [W.P. Nos.2850 and 2852 of 2023 and W.M.P. Nos.2968 and 2973 of 2023 dated February 3, 2023]** quashed the assessment order and the consequential recovery notice issued by the Revenue Department on the grounds that no opportunity of hearing was afforded to the assessee and contentions of the assessee were also not considered, thus the same was a violation of the principles of natural justice. Remanded the matter back to the Revenue Department for fresh consideration in accordance with the law after providing the opportunity of hearing to the Petitioner.

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Can the GST provisions be interpreted to deny the right to trade and commerce to any citizen?

No. The Hon'ble Bombay High Court in **Rohit Enterprises v. the Commissioner and Ors.** [Writ Petition No. 11833 of 2022 dated February 16, 2023] has quashed and set aside the Notice issued under Section 29(2) of the Central Goods and Services Tax Act, ("the **CGST Act**") and the consequential order of cancellation of GST Registration. Held that it is not the object of the GST law to curtail the right of the assessee to carry out business. Further restored the GST registration of the assessee which was cancelled due to non-filing of GST returns.

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Can the GST Registration be cancelled when the reply to the SCN is not considered?

No. The Hon'ble Delhi High Court in **M/s. Rakesh Enterprises v. the Principal Commissioner Central Goods and Services Tax & Ors.** [W.P. (C) 14250/2022 dated February 9, 2023] has set aside the order for cancellation of GST Registration of the assessee, on the grounds that the order is not sustainable as the reply to the Show Cause Notice ("**SCN**") furnished by the assessee was not taken into consideration by the Revenue Department. Directed the Revenue Department to restore the GST Registration of the assessee.

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Providing opportunity of hearing ensures natural justice and allows Revenue Department to pass appropriate orders

The Hon'ble Allahabad High Court in **M/s Mohan Agencies v. State of U.P. And Another [Writ Tax No. 58 of 2023 dated February 13, 2023]** has set aside the order passed by the Revenue Department, on the grounds that the opportunity of personal hearing was not given to the assessee, as the same was not opted by the assessee in reply to the Show Cause Notice (**"the SCN"**). Held that, providing the opportunity of hearing would ensure observance of rules of natural justice and allow the Respondent to pass appropriate and reasoned orders in order to serve the interest of justice and allow a better appreciation to arise at the appeal stage. Remitted the matter back to the Revenue Department.

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Assessee should not be left without remedy due to non-constitution of GST Tribunal

The Hon'ble Telangana High Court in **M/s. Southern Enterprises v. Appellate Joint Commissioner ST [W.P. No. 2471 of 2023 dated January 31, 2023]** has set aside the order cancelling GST Registration of the assessee due to non-filing of GST Returns for the continuous period of 6 months, on the ground that the GST Tribunal has not been constituted and the assessee should not be left without remedy. Remanded the matter back to the Revenue Department to decide the matter afresh in accordance with the law and to provide reasonable opportunity of hearing to the assessee. Further, permitted the assessee to submit the GST Returns as per the statute.

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Assessee directed to file representation for release of blocked funds w.r.t. alleged non-payment of GST and excess availment of ITC

The Hon'ble Madras High Court in **M/s Lucas TVS Limited v. Superintendent of GST and Central Excise and Ors. [W.P. No. 3636 of 2023 and W.M.P. No. 3720 of 2023 dated February 10, 2023]** has directed the assessee to file a fresh representation before the Revenue Department stating grievances pertaining to technical glitches in the GST portal. Held that, no prejudice will be caused to the Revenue Department, if the assessee's representation seeking for release of the blocked funds in the Petitioner's Bank account is considered, on merits and in accordance with law.

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Can the Appeal filed offline be denied on technical grounds?

No. The Hon'ble Allahabad Court in **M/s. Yash Kothari Public Charitable Trust v. the State of U.P and Ors. [Writ Tax No. 1027 of 2022 dated January 16, 2023]** has held that taxing authorities cannot stop any assessee from claiming its statutory right of appeal, in the garb of technicality and cannot deny to entertain the appeal filed offline on technical grounds, due to the mistake of the department or the technical glitch in software when an appeal of assessee is not reflected on the portal. Further, directed the Revenue Department to consider the offline appeal of the Petitioner.

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Is the Cancellation of GST Registration without stating a reason in SCN/Order is cryptic in nature?

Yes. The Hon'ble Gujarat High Court in **GigamadeMachineries Private Limited v. State of Gujarat [R/Special Civil Application No. 17599 of 2022 dated February 10, 2023]** quashed and set aside the Show Cause Notice ("SCN") and consequential order cancelling the GST Registration of the assessee, on the grounds of being violative of principles of natural justice, as the reasons for cancellation of GST Registration were not stated. Held that, the order is not only non-speaking but also cryptic in nature, which entails penal and pecuniary consequences and the Revenue Department ought to have referred to the contents of the SCN and have followed the principles of natural justice.

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