THE TAX ADVISOR

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JUDICIAL ROUND UP- FEW IMPORTANT CASES:

M/s HEC India LLP Vs CGST [Madras High Court]:

The assessee is entitled to know the reasons recorded in writing, based on which the power under Rule 86-A was invoked by the authority. Such reason needs to be communicated to the assessee so as to enable the assessee to put forth his objections and pray for release of the blocking of the electronic credit ledger.

But nevertheless the power under Rule 86-A has been invoked and reasons have been recorded that needs to be communicated to the assessee so as to enable the assessee to put forth his objections and pray for release of the blocking of the electronic credit ledger. It is no doubt true that there is no such procedure provided for under Rule 86-A. Nevertheless, we are required to read the principles of natural justice into the said Rule.

EDITORIAL REMARKS: -

This is a significant judgment from the honorable Madras HC as the Court indicates the importance of communication of reasons to be recorded in writing to the tax payer. The Court also took note of the fact that the rule itself does not provide for the same but the Court inclined to read the principles of natural justice into the said rule. Unfortunately this is the mandate of rule 86A which allows for arbitrary action on the part of authorities without affording an opportunity of being heard. It is clearly against principles of natural justice as it envisages one sided and arbitrary action without issuance of any show cause notice whatsoever.

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North end Food Marketing Pvt. Ltd. Vs State of UP [Allahabad High Court]

The powers conferred upon the authority under Rule 86A could be termed as a very drastic and far reaching power. It should not be used as a tool to harass the tax payer nor should be used in a manner, which may be having an irreversible detrimental effect on the business of the assessee. In the absence of guidelines, Rule 86A could be misused.

Editorial remarks:-

This is another significant judgment in which the honorable Court has come down hard on invocation of rule 86A in a mechanical manner without affording an opportunity of being heard. The CBIC has recently come up with guidelines regarding invocation of rule 86A. These guidelines mention clearly that ban on utilization of e credit ledger must be lifted after expiry of one year, that is something which the GST authorities are aware of but have been defying despite submissions by the assessees. There has been unnecessary litigation on the issue and quite a few High Courts have ruled in assessee's favor in this regard.

Sahil Enterprises Vs UOI [Tripura High Court]

Rule 86A ceases to operative after expiry of stipulated period of one year as envisaged in the rule itself.

AS steel traders Pvt. Ltd. Vs The UOI [Andhra Pradesh High Court]

Rule 86A ceases to have effect after the expiry of one year and the ban on e credit ledger gets automatically lifted.

Aegis Pollymers Vs UOI [Bombay High Court]

The primary concern of the petitioner appears to have been redressed by operation of sub-rule (3) of Rule 86a of the CGST Rules, to the effect that the impugned blockage has ceased to have effect, as already a period of more than one year has passed.

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REGULATORY UPDATES

The CBIC vide CBEC-20/16/05/2021-GST/1552 dated November 02, 2021 issued guidelines for disallowing debit of electronic credit ledger under Rule 86A of the Central Goods & Services Tax Rules, 2017 ("CGST Rules").

The Guidelines can be accessed at: https://www.cbic.gov.in/resources//htdocs-cbec/gst/Guidelines%20on%20Rule%2086A.pdf

The MCA issued General Circular No. 18/2021 dated October 29, 2021 regarding the extension of last date of filing of Cost Audit Report to the Board of Directors under Rule 6(5) of the Companies (Cost Records and Audit) Rules, 2014.

The CBDT issued Order vide F.No.225/155/2020/ITA-II dated October 26, 2021 to authorize DGIT (systems) to upload specific information of Assessees in Annual Information Statement in Form 26AS in electronic filing account registered by the assessee in designated portal.

UNION OF INDIA VS BHARATI AIRTEL [SUPREME COURT OF INDIA]

Supreme court set aside the direction issued by the High Court being in the nature of issuing writ of mandamus to allow the writ petitioner to rectify Form GSTR-3B for the period - July to September 2017 cannot be sustained.

Deccan Wheels [Maharashtra State AAR]

Input Tax Credit cannot be claimed on Indirect Expenses like rent, commission, professional fees, telephone incurred for purpose of business.

CIT Vs Chemsworth Pvt. Ltd. [Karnataka High Court]

Sec. 263 of Income tax Act, 1961—Revision— Assessing Officer has taken one of the plausible views in allowing the claim of the assessee and therefore, CIT could not have set aside the order of assessment merely on the ground of inadequacy of enquiry, the order passed by the CIT is not sustainable in law.

Legal import:

Section 263 cannot be invoked merely on the basis of surmises and conjectures that the order of the AO suffered from inadequacy of enquiry.

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ROLL OUT OF NEW AIS STATEMENT OF INCOME TAX PORTAL BY CBDT-PRESS RELEASE

Income Tax Department has rolled out the new Annual Information Statement (AIS) on the Compliance Portal which provides a comprehensive view of information to a taxpayer with a facility to capture online feedback. The new AIS can be accessed by clicking on the link “Annual Information Statement (AIS)” under the “Services” tab on the new Income tax e-filing portal (https://www.incometax.gov.in) The display of Form 26AS on TRACES portal will also continue in parallel till the new AIS is validated and completely operational.

The new AIS includes additional information relating to interest, dividend, securities transactions, mutual fund transactions, foreign remittance information etc. The reported information has been processed to remove duplicate information. Taxpayer will be able to download AIS information in PDF, JSON, CSV formats.

A simplified Taxpayer Information Summary (TIS) has also been generated for each taxpayer which shows aggregated value for the taxpayer for ease of filing return. TIS shows the processed value (i.e.the value generated after deduplication of information based on pre-defined rules) and derived value (i.e. the value derived after considering the taxpayer feedback and processed value). If the taxpayer submits feedback on AIS, the derived information in TIS will be automatically updated in real time. The derived information in TIS will be used for pre-filling of Return (pre-filling will be enabled in a phased manner).

If the taxpayer feels that the information is incorrect, relates to other person/year, duplicate etc., a facility has been provided to submit online feedback. Feedback can also be furnished by submitting multiple information in bulk. An AIS Utility has also been provided for taxpayers to view AIS and upload feedback in offline manner. The reported value and value after feedback will be shown separately in the AIS. In case the information is modified/denied, the information source may be contacted for confirmation.

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Taxpayers should remember that Annual Information Statement (AIS) includes information presently available with the Income Tax Department. There may be other transactions relating to the taxpayer which are not presently displayed in Annual Information Statement (AIS). Taxpayersshould check all related information and report complete and accurate information in the Income Tax Return.

The taxpayers are requested to view the information shown in Annual Information Statement (AIS) and provide feedback if the information needs modification. The value shown in Taxpayer Information Summary (TIS) may be considered while filing the ITR. In case the ITR has already been filed and some information has not been included in the ITR, the return may be revised to reflect the correct information.

In case there is a variation between the TDS/TCS information or the details of tax paid as displayed in Form 26AS on TRACES portal and the TDS/TCS information or the information relating to tax payment as displayed in AIS on Compliance Portal, the taxpayer may rely on the information displayed on TRACES portal for the purpose of filing of ITR and for other tax compliance purposes.

Taxpayers may refer to the AIS documents (AIS Handbook, Presentation, User Guide and FAQs) provided in "Resources" section or connect with the helpdesk for any queries through “Help”section on the AIS Homepage.

Get in Touch

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