

# TAX INFO

Dated 06/01/2023

Latest update on GST Law: **HC condoned the delay in filing of appeal beyond statutory time period regarding case of mismatch between GSTR 3B & GSTR 2A** as given in judgement by **Gujarat High Court**.

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<b>Name of Petitioner</b>	Kishore Projects Private Limited
<b>Name of Respondent</b>	State of Gujarat
<b>Authority</b>	Gujarat High Court
<b>Date of Judgement</b>	22.12.2022
<b>Appeal No.</b>	R/Special Civil Application No. 25604 Of 2022

## **Brief Facts of the Case Law:**

The petitioner is in the business of Construction, Civil Engineering and is registered as a dealer under the GGST/CGST Act. The issue concerns the year 2019-2020. There was a mismatch between GSTR 3B and GSTR 2A. This was due to non-filing of the returns by the suppliers of the goods from whom he purchased the goods during the period of 2019-20 to be used in its projects and the suppliers issued invoices bearing GGST and CGST Act. He made payments through the bank of those invoices. The STO had issued the notice for return scrutiny under section 61 of the GST Act, on the ground that he has claimed excess ITC than the amount reflected in form GSTR 2A. He filed online Reply on 08/12/2021 in form GST ASMT-11 against the Notice issued in form ASMT-10 on the GSTN portal, pointing out that it was due to non-filing of return by the parties, from whom, purchases have been made. Intimation was given on 31/12/2021 under section 73 of the GST Act, 2017 to the petitioner of the wrong claiming of ITC. The order dated 07/04/2022 was passed under Section 73 of the Act for mismatch of ITC between GSTR 2A vs GSTR 3B. The petitioner could not file the appeal within three months under section 107 of the Act, as his mother had passed away in January, 2022 and sister was suffering from cancer. Only after provisional attachment order came to be passed in the month of October, 2022 that he has no other alternative but to rush this court under Article 226 of the Constitution of India.

## **Contention of the Petitioner:**

The order dated 07/04/2022 is wholly without jurisdiction, illegal and in violations of the provisions of law. The fact is that suppliers had not filed the returns and hence in GSTR 2A certain bills are not reflected but the entire responsibility of payment of tax is settled on the petitioner. The decision of **Union of India vs. Bharti Airtel Ltd. & Ors. reported in (2022) 4 SCC 328** says that the Form GSTR 2A is only a facilitator for taking any firm decision while doing the self-assessment. He requires to go back to the officer concerned for him to present his case and because of limitation of the Act is unable to do it.

## **Findings and Decision of the Court:**

Since the petitioner has expressed his desire to go back to the appellate authority for his matter to be considered on merits. Considering the decision of the Hon'ble Apex Court rendered in the case of Union of India Vs. Bharti Airtel Ltd. & Ors. reported in (2022) 4 SCC 328, where the Hon'ble Apex Court has held that Form GSTR-2A is only a facilitator for taking an informed decision while doing self-assessment and also bearing in mind the personal circumstances of the petitioner, this court allowed the petitioner to go to the appellate authority, which shall without taking an objection with regard to the limitation, decide the matter on merits. An amount of pre-deposit i.e. Rs.2,02,245/- be deposited by the petitioner within a period of two weeks. Once that amount is deposited, he shall be entitled to make a request for the release of his bank account, before the appellate authority.

**Suresh Aggarwal, Advocate**

**Compliance & Litigation under GST**

**Address: House No. 54, Pocket A-3, Sector-5, Rohini- 110085**

**Phone: 91-9810032846; 011 - 45131427**

**Email: sureshagg@gmail.com**

**Website: <http://www.sureshtaxation.com>**