

Part-103-One Pager Snapshot to the Latest Cases

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S.N.	Section	Case Subject	Case	Held
1.	Section 70	Presence of Advocate during statement at visible but not at audible distance	Mayur Chavda v. State of Maharashtra [2023] 154 taxmann.com 641 (Bombay) (10-04-23)	Petitioner contended that the Court, has time and again permitted presence of an Advocate at a visible, but not at an audible distance and has also permitted the petitioner therein to videograph the recording of his statement. The Court allowed petition and permitted the petitioner's Advocate to remain present at the time of recording of the petitioner's statement at a visible, but not at an audible distance. They also permitted videography of the said petitioner's statement, at the cost of the petitioner. A copy of the said videography was to be handed over to the petitioner after show cause notice is issued to the petitioner.
2.	Section 107	Manual Filing of Appeal in case of order served manually acceptable Payment of Pre-Deposit through challan on manual filing of appeal acceptable	Kotla Kanakeswara Rao v. Additional Commissioner [2023] 154 taxmann.com 640 (Andhra Pradesh) (22-09-23)	The appeal was rejected by the Appellate Authority as the original Assessment Order dated 2-1-2022 was duly served on the same date, but the appeal was filed in manual form on 28-2-2022 and later e-appeal was filed on 1-9-2022 with a delay of six months and the pre-requisite deposit of 10% of the disputed tax has not been paid. Petitioner contended that the Assessment Order dated 2-1-2022 was not uploaded on the website and therefore, he was constrained to file appeal in manual form on 28-2-2022. In the interregnum period the Order was uploaded on the official website and thus appeal in electronic form was filed on 1-9-2022. The Court observed that the factum of non-uploading of the Assessment Order dated 2-1-2022 on official website was not disputed and thus, reason given by petitioner for filing the appeal in manual form can be accepted. The explanation also was plausible as subsequently the copy of the Assessment Order was uploaded and thereby the petitioner filed e-appeal. The Court also relied upon the decision of Division Bench in W.P.No.3308/2021 wherein it was observed that manual form of filing appeal is permissible in terms of Rule 108(1). Thus, explanation offered by the petitioner were held to be plausible and tenable. Further, on a perusal of copy of challan filed along with material papers reflect that petitioner made a pre-deposit of 10% of the demanded tax on 25-2-2022 <i>i.e.</i> , at the time of manual filing of the appeal. Therefore, it was held that the said requirement was also complied. Thus, appellate authority ought to have admitted the appeal filed in electronic form.
3.	Section 129	Non-mentioning of Vehicle Number in case of no intent to evade, is a procedural error	Novateur Electrical and Digital Systems (P.) Ltd. v. Additional Commissioner of State Tax [2023] 154 taxmann.com 637 (Punjab & Haryana) (11-09-23)	In the instant case, vehicle number was not mentioned in Part-B of the Eway Bill however, All other documents were shown by the driver. Revenue contended that E-Way Bill was generated without completely filling Part B and thus there was violation of the provisions of law. The Court referred to Circular dated 14-9-2018 wherein Para (f) refers to error in one or two digits/characters of the vehicle no. while generating E-Way Bill. The Court observed that case of petitioner falls under clause (f) as he did not mention vehicle no in part B and thus proceedings under section 129 should not have been initiated. Further, at the time of search of vehicle, Part B was not filled up but the time driver filled up Part B in the presence of the Officer and hence there was no malafide intention on the part of petitioner. Thus, it was held that proceedings under section 129 should not have been initiated, as per circular dated 14-9-2018). It was held that the object of circular dated 14-9-2018 was that in case of circumstances as detailed in the circular, which were procedural in nature and there no intention of misleading the transfer of goods, the proceedings should not be initiated under Section 129.
4.	Section 62 and Section 122	For Levying Penalty U/Sec 122(2)(a), procedure U/Sec 73 has to be followed	Nandi PVC (P.) Ltd. v. Union of India [2022] 145 taxmann.com 4 (Andhra Pradesh) (14-09-2022)	An Assessment Order was passed under Section 62 in Form GSTR ASMT - 13, dated 05.02.2019, demanding the Petitioner to pay tax with interest and penalty. The penalty was levied under Section 122(2)(a) of the CGST Act, 2017. It was contended that, to impose penalty under Section 122 of CGST Act, procedure under Sections 73 or 74 is required to be followed, for which a SCN has to be issued. The Court observed that in order to impose penalty in terms of Section 122(2)(a) of the Act, the demand for recovery should be made following the procedure under Section 73, in which case, the proper Officer shall issue a notice under Section 73 within three months prior to the time specified in Section 73(10). It appeared from the record that such a notice was not issued prior to passing of impugned order. Thus, order imposing penalty was set-aside and matter was remanded back to the authority concerned.
5.	Section 62, Section 122 and Section 127	Having reference to provision of Section 127, penalty can be levied U/Sec 122 for cases wherein order passed U/Sec 62	Spy Agro Industries Ltd. v. Union of India [2022] 139 taxmann.com 69 (Andhra Pradesh) (05-05-2022)	An order U/Sec 62 was passed and thereafter, the very same authority enlarged the order with certain additional liabilities by styling the order as Corrigendum-cum-Addendum and inserting para No.4.8 and consequently, directed the petitioner to pay penalty U/Sec 122(2)(a) Thereafter, the very same authority issued another communication titling it as rectification order under section 161 of CGST Act in order to ratify the Corrigendum-cum-Addendum. The petitioner contended that entire procedure followed by authorities in imposing penalty without hearing the petitioner was illegal and incorrect. Department stated that there is no bar for imposing penalty under sections 62 and 122. The Court observed that as per Section 161 where any rectification adversely affects any person, principles of natural justice shall be followed. Section 127 of the Act which in view of the Court had some importance deals with power to impose penalty in certain cases. In the instan case, penalties were imposed creating additional liability, which was not reflected in the earlier notice and No opportunity of hearing was given to the petitioner. Further, section 62 does not anywhere speak about imposing penalty. It only speaks about liability for payment of interest or for payment of late fee. Therefore, as per section 127, if penalty is to be imposed in cases, which are not covered under section 62 or section 63 or section 64 or section 73 or section 74 or section 129 or section 130, the authority can impose penalty after giving reasonable opportunity of hearing such person. Thus, the orders under challenge were set aside with permission to proceed further by issuing a fresh notice.