

Part-104-One Pager Snapshot to the Latest Cases

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S.N.	Section	Case Subject	Case	Held
1.	Section 112	Refund in pursuance of Appellate Authority order cannot be withheld because revenue intends to file an appeal but Tribunal has not been formed	Zones Corporate Solutions (P.) Ltd. v. Commissioner of Central Goods and Service Tax [2023] 155 taxmann.com 8 (Delhi)	The order of the Appellate Authority was in favour of the Petitioner wherein it was directed to grant the refund to the petitioner. Revenue contended refund has not been granted since the competent authority in pursuance to the opinion of review branch has directed filing of an appeal before Appellate Tribunal challenging order in appeal passed by Commissioner (Appeals) and owing to non-functioning of the GST Appellate Tribunal which was beyond the control, such appeal could not be filed. The Court observed that though nearly a year has passed, yet no proceeding has been filed challenging the said order till date. The petitioner cannot be asked to wait endlessly for the revenue to challenge the order dated 23rd July, 2019. Department was directed to refund the amount as directed by the Commissioner (Appeals).
2.	Section 29 and Section 30	Purpose of SCN is to enable the noticee to respond to the allegations. Since SCN was incapable of eliciting any meaningful response, any order passed pursuant to such a SCN would fall foul of principles of natural justice	Sachin Upadhyay v. Addl. Commissioner, Central Goods and Services Tax, Appeal-I [2023] 155 taxmann.com 5 (Delhi)	SCN was issued by the proper officer proposing to cancel the petitioner's GST registration on account of "Non compliance of any specified provisions in the GST Act or the Rules made thereunder as may be prescribed." The Proper Officer proceeded to cancel the petitioner's GST registration from retrospective date on the ground that petitioner had not uploaded the bank details. The tabular statement set out in the said order dated 3-1-2022 indicates that no tax or penalty is due from the petitioner. The petitioner thereafter, filed an application for revocation of the cancellation order. The petitioner asserted that bank details were uploaded on GST portal prior to issuance of SCN. Pursuant to application for revocation of cancellation, Proper Officer issued a SCN proposing to reject the petitioner's application for "Reason for revocation of cancellation - Reason for revocation of cancellation-." The court thereafter observed that "To add insult to injury, the petitioner's application for revocation of cancellation of the GST registration was rejected on the ground that the petitioner had not replied to the show cause notice within the time specified therein." The petitioner preferred an appeal under section 107 and the same was also rejected. Court observed that "impugned order dated 23-5-2023 is equally cryptic and vague. It is evident from the reasons for rejection of the petitioner's appeal as stated in the impugned order dated 23-5-2023, that the said order has been passed without application of mind." The Court observed that SCN did not provide any clue as to the reason for proposing cancellation of the petitioner's GST registration. SCN which do not specifically state reason for proposing adverse actions cannot be sustained. The purpose of SCN is to enable the noticee to respond to the allegations. Since the said SCN was incapable of eliciting any meaningful response, it did not meet the standards required for a SCN. Any order passed pursuant to such a show cause notice would fall foul of the principles of natural justice. The Court further observed that the reasons for proposing to reject the petitioner's application for revocation of cancelled registration were also vague and unintelligible. This Court was at loss to understand the reason for proposing to reject the petitioner's application as articulated by the Proper Officer. As stated above, the impugned SCN failed to disclose the reason for proposing cancellation of the petitioner's GST registration and therefore, the impugned order cancelling the petitioner's registration falls foul of the principles of natural justice. It was thus set aside and petition was allowed with costs, quantified at Rs. 5,000/-.
3.	Rule 142	Summary in electronic form is required to be furnished along with the SCN	Shubham Gupta v. Additional Commissioner/ Joint Commissioner CGST [2023] 155 taxmann.com 4 (Delhi)	Petitioner's grievance was that although it has received the SCN dated 2-8-2023 proposing imposition of penalty, the summary of proposed demand has not been communicated electronically in FORM GST DRC-01 & FORM GST DRC-02 as required under Rule 142(1). The Court observed that any notice issued under the relevant sections including Section 74 is required to be accompanied by a summary thereof, electronically in FORM GST DRC-01 & FORM GST DRC-02. The learned counsel appearing for the revenue submitted that a summary has not been issued in the requisite form and that the proper officer shall issue the same in compliance with the said provisions. The Court held that although summary in the electronic form is required to be furnished along with the show cause notice, furnishing of the said summary at this stage would be substantial compliance with the said provisions.
4.	Section 73 and Section 74	No Penalty in the matter of Classification Disputes	Atlantic Care Chemicals (P.) Ltd. v. Superintendent Central Tax & Central Excise [2023] 155 taxmann.com 3 (Kerala)	During assessment period from April 2020 to June 2021, the petitioner manufactured hand sanitizers and classified under the Tariff heading 30049088 of HSN and declared tax liability @ 12% applicable to medicament and paid tax as per the returns filed. The return filed by the petitioner got accepted by the jurisdictional CGST authority. However, later on 5-7-2022 action was initiated under section 74(1) by issuing a SCN that the classification was under Hand Sanitizers (alcohol based) under HSN 3808 exigible to GST @ 18%. In pursuant to the said notice, order in original was passed and petitioner paid the assessed amount along with the interest in pursuant to the said order. The petitioner was not disputing the said liability, he was only aggrieved by the initiation of the penalty proceedings. The court referred to the judgement in <i>Chakkiath Brothers v. Assistant Commissioner</i> [2014 (3) KLT 222], wherein it was held that for a mere dispute in classification, no penalty proceedings can be initiated and Court observed that since in the present case also there was a dispute of classification and the authority had not considered the said judgment. Thus, the matter was remanded back for a fresh order in accordance with law, after taking into consideration the Judgment in the case <i>Chakkiath Brothers v. Assistant Commissioner (supra)</i> .