

Part-105-One Pager Snapshot to the Latest Cases

CA Arpit Haldia

S.N.	Section	Case Subject	Case	Held
1.	Section 29 and Section 30	Registration cancelled after 31-12-2022 but within the period of amnesty scheme eligible for amnesty scheme of revocation of cancelled registration	Rajeev Kumar v. Principal Commissioner of Central Goods and Services Tax, Ranchi [2023] 155 taxmann.com 54 (Jharkhand) (12-09-2023)	The Court stated that Government of India had issued Notification No. 03/2023-Central Tax dated 31-3-2023 and extended the time up to 30-6-2023, but the extension is granted to taxpayers granting time whose registration was cancelled on or before 31-12-2022. The petitioner's cancellation was on 11-5-2023, hence the benefits of the said notification could not be availed by the petitioner. If the cancellation was <i>set aside</i> and the GST is revoked the petitioner is willing to pay the GST along with late fee. The Court gave anxious consideration and observed that had the cancellation of registration been prior to 31-12-2022, then petitioner would have come within the time prescribed under the said notification. But the consideration for extension was pending during that period, hence the Court was of the considered view that the petitioner was entitled to the benefit. Therefore, the Court allowed the writ petition and the directed to restore the petitioner's GST registration number. Case Referred- Tvl. Suguna Cut piece v. Appellate Deputy Commissioner (ST) (GST) (Mad)
2.	Section 29 and Section 30	Cancellation cannot be retrospective when the same was applied by assessee from the date of closure of business.	Krishna Traders v. Commissioner of Central Goods and Service Tax [2023] 155 taxmann.com 52 (Delhi) (20-09-2023)	Petitioner had closed business with effect from 31-3-2022 and had, applied for cancellation of GST registration. Petitioner after closure of business, shifted from New Delhi to Dehradun. SCN was issued calling upon the petitioner to furnish additional information in connection with his application. Petitioner claimed that he did not receive the said notice as he had shifted to Dehradun. Since said SCN was not responded, Proper Officer rejected application for cancellation. Thereafter, Proper Officer issued a fresh SCN proposing to cancel petitioner's registration on account of failure to file tax returns for a continuous period of six months and cancelled registration with retrospective effect. The impugned order included a tabular statement indicating that no tax was found due and payable by the petitioner. The Court observed that cancellation of the GST registration was not an issue but the issue was related to cancellation of the GST registration with retrospective effect. The Court directed that cancellation of petitioner's GST registration shall take effect from 31-3-2022.
3.	Section 16	ITC of the assessee under the GST regime cannot be denied merely on the difference of GSTR 2A and 3B	Henna Medicals v. State Tax Officer [2023] 155 taxmann.com 29 (Kerala) (19-09-2023)	Impugned order was passed against the petitioner on the ground that there was a difference between GSTR 2A and GSTR 3B. The Court took into consideration earlier judgement passed in the matter of Diya Agencies v. The State Tax Officer and reference made in the said judgement to the judgement of Supreme Court in the case of <i>The State of Karnataka v. M/s Ecom Gill Coffee Trading Private Limited</i> 2023 (3) TMI 533 SC as well as Calcutta High Court judgment in <i>Suncraft Energy Private Limited v. The Assistant Commissioner, State Tax, Ballygunge Charge</i> [Judgment dated 2-8-2023 in MAT No. 1218/2023]. The Court relied upon the principle that ITC of the assessee under the GST regime cannot be denied merely on the difference of GSTR 2A and 3B and thus petition was allowed and matter was remitted back to Assessing Authority to examine evidence of petitioner irrespective of Form GSTR 2A and after examination of evidence placed by the petitioner, order to be passed in accordance with the law. Case Referred- Diya Agencies v. The State Tax Officer [Judgment dated 12-9-2023 in WPC 29769/2023]
4.	Rule 142	As the Order visible to the petitioner on GSTN portal is not complete copy of the order, thus it must be accepted in law that the impugned order does not contain reasons.	[2022] 142 taxmann.com 470 (Allahabad) Dauji Ispat (P.) Ltd. v. State of U.P (10-11-2021)	Contention of the petitioner that the copy of the order uploaded on the GSTN portal and as is visible to the petitioner does not mention/disclose the reasons therefor. The revenue admitted that due to some error copy of the impugned order visible to the petitioner on the GSTN portal is not the complete copy of the order. The Cour observed that it must be accepted in law that the impugned order does not contain reasons. This conclusion was drawn as unless the complete copy of the order containing the reasons was served on the petitioner, he may never have any right to challenge the same before any forum including the appellate forum. The fact that the Assessing Officer may have available to it another copy of the same order which may contain reasons therefor, may be of no help to the Revenue Authority as such copy of the order was not served on the petitioner. Therefore, it cannot be relied upon to any extent. The Court thus held that order served on petitioner was wholly defective and lacking in vital aspect namely reasons for the conclusions drawn therein. Accordingly order DRC-07 dated 20-7-2021 was set aside and the matter remitted to the Assessing Officer for fresh consideration.
5.	Section 62	Notice U/Sec 46 to be issued before passing order U/Sec 62.	[2022] 140 taxmann.com 405 (Jharkhand) Vinman Constructions Ltd. v. State of Jharkhand (22-02-2022)	Petitioner amongst other contentions contended that no notice to file return under Section 46 was served before passing order U/Sec 62. The Court observed that requirement of notice before proceeding to pass order under section 62 has been laid down by Legislature so that defaulter may have an opportunity to file return in case return has not been filed. It was also observed that there is a salutary purpose for service of notice under section 46 before the proper officer proceeds to pass assessment order under section 62. The court also referred to CBIC Circular dated 24-12-2019 which provides for service of notice under section 46 before the proper officer proceeds to assess the tax liability of a return defaulter under section 62 of the Act. Moreover, sub-section (2) of section 62 further provides that if within thirty days valid return has been filed, assessment order shall be deemed to have been withdrawn, the reason being that in case the return has not been filed even after proper service of notice under section 46 of the Act, the penal consequences flows out of such an order passed under section 62. The Court thus, set aside the order passed U/Sec 62 as no notice was served U/Sec 46 for filing of returns.