

S.N.	Section	Case Subject	Case	Held
1.	Section 54	Amendment to Rule 89(4)(C) to definition of Export would apply prospectively. - Right for refund of the accumulated ITC stands crystalised on the date when subject goods are exported. - ITC relatable to the turnover of a period must be ascertained in terms of the rules as in force during the said period.	<b>Indian Herbal Store (P.) Ltd. v. Union of India [2023] 155 taxmann.com 189 (Delhi)</b>	<b>The bone of contention</b> amended Rule 89(4)(C) w.e.f. 23-03-2020 wherein export turnover would mean the value, which is 1.5 times the value of the similar goods domestically supplied by the same, or similarly placed supplier, was added as a condition for computing the turnover of zero-rated supplies. <b>Petitioner had filed</b> refund applications for quarters comprising 1-10-2018 to 30-9-2019. The said applications were rejected by orders dated 15-9-2020, 24-9-2020, 22-10-2020 and 5-11-2020. The said applications were rejected as computation of eligible export turnover was not compliant with amended Rule 89(4)(C). Petitioner contended that Sub-rule (4)(C) of Rule 89, which was substituted with effect from 23-3-2020, had no application for refund in respect of exports made prior to the said date. <b>The Court observed</b> that the right for refund of the accumulated ITC stands crystalised on the date when subject goods are exported. This is also reflected in Section 54 of the CGST Act. In terms of Section 54(1) of the CGST Act, the application for refund is required to be made "before the expiry of two years from the relevant date in such form and manner as may be prescribed". The Court further observed that the expression 'turnover' must necessarily read to mean the period during which the turnover is affected, that is, the date when the supplies are made. It would thus follow that ITC relatable to the turnover of a period must-unless it is indicated otherwise either expressly or by necessary implication-be ascertained in terms of the rules as in force during the said period. Thus, it was held that the appellate authority erred in applying Rule 89(4)(C) of the Rules as amended with effect from 23-3-2020 for computing the export turnover for the purposes of determining the refund as claimed by the petitioner. The High Court further stated that We do not consider it necessary to examine the challenge in view of the decision of the Hon'ble Karnataka High Court in <i>M/s Tonbo Imaging India Pvt. Ltd. v. Union of India and Ors., decided on 16-2-2023</i> .
2.	Section 75	Notice issued with time, place and venue of hearing mentioning "NA" was contrary to provisions of Section 75(4).	<b>Sumit Enterprises v. State of U.P. [2023] 155 taxmann.com 190 (Allahabad)</b>	<b>Notice was issued</b> under Section 74 wherein the date by which the reply was to be submitted was mentioned as 26.07.2021, however, date of personal hearing, time of personal hearing and venue of personal hearing were not indicated and simply the word "NA" was transcribed. Even in the reminder notice sent to the petitioner, in the column of date of personal hearing, time of personal hearing and venue of personal hearing, "NA" was transcribed. <b>The Court observed</b> that provisions of Section 75(4) was interpreted in <i>Party Time Hospitality Prop. Smt. Punita Gupta Lko. v. State Of U.P. &amp; 2 Others (Writ Tax No.176 of 2023)</i> decided on 28.08.2023 wherein it was held that compliance of Section 75(4) of GST Act is mandatory. Thus, the Court quashed the order as it was contrary to the mandate of Section 75(4) and was violative of principles of natural justice.
3.	Section 129	Seven Days for issuance of notice U/Sec 129(3) have to be calculated from the date of detention and not from the following date	<b>Tvl. V. V. Iron and Steels v. State Tax Officer [2023] 155 taxmann.com 220 (Madras)</b>	<b>The goods/conveyance were</b> intercepted on 30-8-2023 and order for physical verification/inspection of goods/conveyance and documents was issued in Form GST Mov-02 on the same date <i>i.e.</i> , on 30-8-2023. The notice was received by the petitioner on 8-9-2023. The petitioner contended that the impugned notice in Form GST Mov-07 was issued beyond the period of limitation prescribed under section 129(3). The revenue contended that the notice was dispatched to the petitioner through e-mail at about 5.54 p.m. on 7-9-2023 and on the same date <i>i.e.</i> , on 7-9-2023, the notice was also affixed on the vehicle. <b>The Court observed</b> that provision of Section 129(3) has not used the expression "within seven days from the date of detention or seizure". The language in Section 129(3) is clear. Notice specifying payment of penalty has to be issued within seven days of detention or seizure of goods. Issuance of notice within seven days has to be calculated from the date on which seizure was to be effected and not from the following date. Thus, the last date for issuance of the impugned notice would have expired on 6-9-2023. However, the impugned notice has been dispatched through e-mail only on the following date <i>i.e.</i> , on 7-9-2023 after the expiry of limitation. Therefore, on this ground alone, the impugned notice was quashed.
4.	Section 29 and Section 30	Reasons are heart and soul of the order and non-communication of same itself amounts to denial of reasonable opportunity of hearing	<b>Suresh Industries v. Superintendent Range VI [2023] 155 taxmann.com 221 (Gujarat)</b>	The petitioner stated that the reason given in the SCN was vague and did not refer to any particular facts so as to enable the petitioner to give reply. The respondent never verified registered premises of petitioner and hence that ground mentioned in SCN was incorrect. The Court observed that reasons are heart and soul of the order and non-communication of same itself amounts to denial of reasonable opportunity of hearing, resulting in miscarriage of justice. Thus, it was held that by issuing a cryptic SCN, authorities had violated the principles of natural justice. From SCN, reasons for cancellation were not decipherable and thus, it was set aside. <b>Cases Referred-</b> Aggarwal Dyeing and Printing Works v. State of Gujarat., reported in [2022] 137 taxmann.com 332 (Gujarat), A.K. Kraipak v. Union of India, (1970) 1 SCR 45. The Hon'ble Supreme Court vide judgments in the cases of Ravi Yashwant Bhoir v. District Collector Raigad, (2012) 4 SCC 407, Sant Lal Gupta v. Modern Cooperative Group Housing Society Limited, (2010) 13 SCC 336; Kranti Associates Private Limited v. Masood Ahmed Khan, (2010) 9 SCC 496; Abdul Ghaffar v. State of Bihar, (2008) 3 SCC 258,