

S.N.	Case Subject	Case	Held
1.	Rule 142(1)(a) is no manner in conflict with any provisions of the Act in view of powers conferred under Section 164	<b>Mahavir Enterprise v. Assistant Commissioner of State Tax [2020] 117 taxmann.com 471 (Gujarat) (22-06-2020)</b>	<b>It was contended</b> that Rule 142(1)(a) travels beyond the provisions of the Act when it provides for procedure to issue Notice for Section 122. Thus, Rule 142(1)(a) deserves to be declared as ultra vires being in excessive delegation of the powers. <b>The Court observed</b> that Section 164 provides for the power to make rules and confers power on the Central Government to frame the rules to make rules generally to carry out all or any of the purposes of the Act. Thus Rule 142(1)(a) is valid and is no manner conflict with any of the provisions of the Act in view of the powers conferred under Section 164. The challenge to the validity of Rule 142(1)(a) was denied. <b>Cases Referred-</b> Registrar, Co-operative Societies v. K. Kunjabmu, AIR 1980 SC 350 and State of Nagaland v. Ratan Singh, AIR 1967 SC 212, St. Johns Teachers Training Institute v. Regional Director, National Council for Teacher Education AIR 2003 SC 1533, Ajay Canu v. UOI, AIR 1988 SC 2027.
2.	No Penalty in the matter of Classification Disputes	<b>Atlantic Care Chemicals (P.) Ltd. v. Superintendent Central Tax &amp; Central Excise [2023] 155 taxmann.com 3 (Kerala) (07-09-2023)</b>	<b>During assessment period</b> from April 2020 to June 2021, petitioner manufactured hand sanitizers and classified under the Tariff heading 30049088 and declared tax liability @ 12% applicable to medicament. However, later on 5-7-2022 action was initiated under section 74(1) by issuing a SCN that classification was under Hand Sanitizers (alcohol based) under HSN 3808 exigible to GST @ 18%. In pursuant to the SCN, order was passed and petitioner paid assessed amount along with interest. petitioner was not disputing the said liability, he was only aggrieved by the initiation of the penalty proceedings. <b>The court referred</b> 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> .
3.	Non-mentioning of Vehicle Number in case of no intent to evade, is a procedural error	<b>Novateur Electrical and Digital Systems (P.) Ltd. v. Additional Commissioner of State Tax [2023] 154 taxmann.com 637 (Punjab &amp; Haryana)(11-09-23)</b>	<b>In the instant</b> 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. <b>The Court referred</b> 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 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	No Interest and Penalty for Transitional credit which could not have been availed due to technical glitches on portal maintained by the Government	<b>Nithya Packaging (P.) Ltd. v. Assistant Commissioner of GST and Central Excise [2023] 154 taxmann.com 494 (Madras) (03-07-2023)</b>	<b>Petitioner faced difficulty</b> in transitioning ITC on capital goods and communicated with Department and officials named on Web Portal. However, he was unable to transfer the transitional credit. Thereafter, petitioner decided to avail such Credit. The credit was confirmed by Sanction Order (Tran-1 Credit) dated 20-2-2023. Meanwhile, proceedings were initiated to recover the amounts from the petitioner, which culminated in the impugned order. By the impugned order dated 28-3-2023, officer had imposed penalty and interest on the petitioner under section 50 and Section 73(9) read with Section 122(2)(a). The impugned order was passed as petitioner filed a revised return in terms of the decision of Bombay High Court in <i>Chep India Private Limited v. Union of India and others</i> dated 27-6-2022 and decision of the Hon'ble Supreme Court in <i>Union of India and another v. FILCO Trade Centre Private Limited</i> dated 22-7-2022, claiming ITC, which was earlier sanctioned by the Sanction Order (Tran-1 Credit) dated 20-2-2023. The only point that arose for consideration was whether petitioner could be mulcted with interest and penalty even though the credit which was taken was sanctioned and merely because the petitioner had also filed returns to transition the same credit. <b>The Court observed</b> that petitioner was entitled to Rs. 11,06,396/- on the eve of implementation of GST with effect from 1-7-2017 and by Sanction Order (Tran-1 Credit) dated 20-2-2023, proper officer had confirmed that petitioner was entitled to the aforesaid transitional credit. Therefore, merely because petitioner had filed subsequent return and had given up the same would not mean that petitioner could be subjected to pay interest and penalty. The difficulty arose only on account of technical glitches in the web portal maintained by the Central Government at the time of implementation of GST. The petitioner cannot be penalized as the credit itself was allowed after the implementation of GST by Sanction Order (Tran-1 Credit) dated 20-2-2023. Therefore, order seeking to impose interest and penalty on the petitioner was held to be unsustainable and thus quashed
5.	To Levy Penalty U/Sec 122(2)(a), procedure U/Sec 73 is to be followed	<b>Nandi PVC (P.) Ltd. v. Union of India [2022] 145 taxmann.com 4 (Andhra Pradesh) (14-09-2022)</b>	<b>An Assessment Order</b> 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. <b>The Court observed</b> 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.