

Part-12-One Pager Snapshot to the Latest Cases

CA Arpit Haldia

Cases Referred

S. N.	Section	Case Subject	Case	Held	Cases Referred
1.	Section 69 and Section 132	Grant of Pre-arrest bail	Kapil Dev Singhal v. State of Assam [2023] 150 taxmann.com 156 (Gauhati)	<p>The High Court observed that sufficient incriminating materials has already been collected by the I.O. against the petitioner and the investigation is still in progress. However, it was also observed that the accused/petitioner appeared before the I.O. on 3-4 occasions and co-operated in the investigation of this case and he also produced the documents which was asked to produce before the I.O. The entire case is mainly based on documentary evidence.</p> <p>Thus, considering all these aspects of the case, the high court found it a fit case to extend the privilege of pre-arrest bail to the petitioner.</p>	
2.	Section 73, Section 74, Section 130	<p>-Assessment/ Determination of tax under Section 130</p> <p>-Levy of Penalty only on the allegations the excess goods were found at the premises</p> <p>-Service of Notice on Accountant</p> <p>-Valuation of Goods by Eye Estimation or production capacity or consumption of electricity.</p>	Maa Mahamaya Alloys (P.) Ltd. v. State of U.P [2023] 150 taxmann.com 158 (Allahabad)	<p>In the course of proceedings under Section 67, quantification was done by eye estimation and goods were held to be in excess of recorded goods. It was contended by petitioner that while proceeding to pass an order under Section 130 of the GST Act, no power is vested in the authority to undertake determination of liability of tax, which can only be done by taking recourse to Section 73 or Section 74 of the Act, as the case may be.</p> <p>-Relying upon the decision in the matter of M/s Metenere Limited vs Union of India and another; Writ Tax No.360 of 2020 wherein it was held that demand for tax can be quantified and raised only in the manner prescribed in Section 73 or Section 74 of the Act, as the case may be, the High Court observed that entire exercise resorted to under Section 130 of GST Act for assessment/ determination of the tax and penalty is neither stipulated under the Act, nor can be done in the manner in which it has been done, more so, in view of the fact that department itself has undertaken the exercise of quantifying the tax due, by taking recourse under Section 74.</p> <p>-Scope of proceedings under Section 130(1)(ii) for not accounting for any goods on which taxpayer is liable to pay tax is only available when an assessee who is liable to pay tax but does not account for such goods, after the time of supply has occasioned.</p> <p>-Scope of Proceedings under Section 130(1)(iv) for contravention of any of the provisions of the Act or the rules made thereunder with intent to evade payment of tax is only available when the department establishes that there were a contravention of the Act and Rules coupled with the 'intent to make payment of tax'.</p> <p>-Service of Notice on the Accountant of the firm is neither contemplated nor provided for under Section 169(1)(a) and thus, service cannot be held to be a valid service and entire proceedings are liable to be quashed.</p> <p>-There is no prescriptions for valuation of goods on the basis of eye estimation under Section 15 of CGST Act, 2017 as has been done by department or the manner in which has been carried out by appellate authority, thus the impugned order was held to be not sustainable.</p>	M/s Metenere Limited vs Union of India and another; Writ Tax No.360 of 2020