

Part-19-One Pager Snapshot to the Latest Cases

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S. N.	Section	Case Subject	Case	Held	Cases Referred
1.	29	Cancellation of Registration- Restoration of Proceedings to be considered afresh considering High Courts observation	Rangappa Krishnappa v. Commissioner of Central Tax (Appeals - 1) [2023] 150 taxmann.com 518 (Karnataka)	<p>The registration of the taxpayer was cancelled for failure to file returns. The petitioner at the time of filing of first appeal stated that he filed response but could not appear for personal hearing because he was suffering from lungs disease and was advised bed rest which had a cascading effect on his business including the failure to file monthly returns. The petitioner's appeal was rejected on the ground of limitation.</p> <p>The High Court held that if the petitioner can demonstrate <i>bonafides</i>, there would be no need to take a pedantic approach. The reasons assigned by the petitioner could be <i>bonafide</i> and the petitioner must have another opportunity of hearing to establish the same. The third respondent was therefore directed to extend an opportunity and consider the circumstances that are relied upon by the petitioner.</p>	-NA-
2.	9954	Allotment of Car Parking Space not a composite Supply	Eden Real Estates (P.) Ltd [2023] 150 taxmann.com 517 (AAAR-WEST BENGAL)	<p>The Authority observed that a sanctioned plan may have open parking spaces but the appellant has no right to transfer ownership or lease out or allow right to use of the said spaces to allottees. The owners' association on joint agreement of its members may lease out the open parking space on rent at a future date. A customer of a flat may avail car parking facility even after the issuance of completion certificate of the project. A customer may choose to opt or not opt for car parking at the time of purchase/booking of an apartment.</p> <p>Therefore, Authority held that it is evident that sale/right to use car parking service and construction services are separate services which are not dependent on sale and purchase of each other. The amount charged by the appellant for right to use of car/two wheeler vehicle parking space, though not permissible as per RERA, constitutes a separate supply under GST Act and appellant is liable to pay tax @ 18% on such supply.</p>	-NA-
3.	142	Condition as per N. No. 27/12-CE(NT) dt. 18.06.12 for debit of CENVAT Account for claim of refund is incorrect and eligible refund of pre-GST Regime applied in Post GST Regime cannot be denied on this condition.	Datamark Prodapt India BPO LLP v. Joint Commissioner of GST Ambattur Division, III Range [2023] 150 taxmann.com 516 (Madras)	<p>The petitioner had credit of CENVAT of a sum of Rs.10 lakh (approx) for the months of April, May, June, 2017. The law entitled assessee to seek refund of CENVAT credit within a period of one year from year from the date of export. It all started with an application dated 25.10.2017 where the petitioner sought refund of CENVAT credit under Rule 5. With the onset of GST, the petitioner was required to make a debit to the CENVAT credit account at the time of effecting the claim but the same was disabled and thus the assessee could not apply for the refund. The petitioner thereafter filed an application for refund under Section 54 of the Act on 17.01.2019. The claim was rejected as against which a first appeal was filed which also came to be rejected on 30.07.2020. The reasoning set out in the order of the appellate authority was based on the provisions of Section 54 and the second proviso to Section 142(4) of the Act as well as a circular issued by the Board on 15.03.2018. The petitioner while not challenging the order of the Appellate Commissioner, made a further representation on 28.08.2020. The impugned order had been passed on 03.11.2010 on the sole ground that, as the order of the first appellate authority dated 30.07.2020 has attained finality, the question of refund does not arise.</p> <p>The High Court held that the eligibility of the petitioner to refund on a substantive basis has itself, never been questioned. The denial was based solely on a technical basis. That apart, the fact that Notification No.27/12 (which propounded credit to be debited from Cenvat Account) had been held to propound an incorrect condition by the High Court as well as by the CESTAT ought to have merited consideration with the authority. Instead he does not advert to this aspect of the matter at all. Further, the claim was fully supported by the provisions of Section 142(3) of the Act. Thus, impugned order was held to wholly incorrect in law and was held liable to be set aside.</p>	-NA-