Part-35-One Pager Snapshot to the Latest Cases

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S. N.	Section	Case Subject	Case	Held
1.	Section 73 and Rule 142	Service of Notice on Email ID not a valid service of Notice	**Shri Shyam baba Edible Oils v. Chief Commissioner [2023] 151 taxmann.com 139 (Madhya Pradesh)**	In the instant case, the service of show cause notice/order was challenged as the same was communicated through Email. The High Court observed that a bare perusal of Rule 142 of CGST Rules, 2017 reveals that the only mode prescribed for communicating the show-cause notice/order was by way of uploading the same on website of the revenue. The State in its reply had provided no material to show that show-cause notice/order No.12 dated 10.06.2020 was uploaded on website of revenue. In fact, learned AAG conceded that the show-cause notice/order was communicated to petitioner by Email and was not uploaded on website of the revenue. Therefore, the High Court held that statutory procedure prescribed for communicating show-cause notice/order under Rule 142(1) of CGST Act was not followed by the revenue, and thus the impugned order was struck down. The revenue was allowed the liberty to follow the procedure prescribed under Rule 142 of CGST Act by communicating the show-cause notice to the petitioner by appropriate mode thereafter to proceed in accordance with law.
2.	Section 29 and section 30	Order passed without giving sufficient time to the petitioner and without considering reply of the petitioner set aside	**Pakiza Steel LLP v. Union of India [2023] 151 taxmann.com 113 (Bombay)**	In the instant case, Petitioner had received a show cause notice on 5th September 2022 to show cause by 6 September 2022 that why the registration should not be cancelled and by the said order, registration of the Petitioner was suspended with effect from that date. The petitioner contended that although he did not have time to adequately prepare yet he submitted the reply and without considering the reply, the final order came to be passed. It was further contended that although the impugned order referred to the reply, but it did consider the same and the Authority proceeded to pass an order on entirely different ground on which the Petitioner did not get opportunity The High Court observing that the impugned order had been passed in above circumstances directed that the petitioner be given an opportunity before the final order of cancellation of registration is made However, they did not restore registration and registration continued to remain suspended as per show cause notice.
3.	Section 61 and Section 74	Exercise of Power under Section 74 not dependent on issue of notice under Section 61 and can be exercised independently	**Naarjuna Agro Chemicals (P.) Ltd. *v.* State of U.P. [2023] 151 taxmann.com 112 (Allahabad)**	The High Court did not accept the argument that unless deficiency in return is pointed out to the assesee, and an opportunity is given to rectify such deficiency, that the department can proceed under Section 74 is not borne out from the statutory scheme and the argument in that regard therefore, must fail. It was observed that the scrutiny proceedings of return as well as proceeding under Section 74 are two separate and distinct exigencies and issuance of notice under Section 61(3), therefore, cannot be construed as a condition precedent for initiation of action under Section 74 of the Act. The High Court further observed that the judgement in the matter of *M/s. Vadivel Pyrotech Private Ltd.* v. *The Assistant Commissioner*, (2022 U.P.T.C. 1769) was limited to the facts of that case and do not lay down any proposition of law which restricts the exercise of jurisdiction under Section 74 upon issuance of notice under Section 61(3) of the Act. Therefore, the High Court held that merely because no notices were issued under Section 61 of the Act would not mean that issues of classification or short payment of tax cannot be dealt with under Section 74 as exercise of such power is not dependent upon issuance of notice under Section 61.
4.	Section 83	Cash-credit facility is not a debt and therefore, not attachable.	**J. L. Enterprises *v.* Assistant Commissioner, State Tax [2023] 151 taxmann.com 111 (Calcutta)**	The High Court held that cash-credit facility is not a debt and therefore, it cannot be made attachable and the Court was bound by the above-stated precedent but cash-credit facility is not a debt and therefore, it cannot be made attachable. This Court is bound by the above-stated precedent; however Rule 159 clearly gives adequate power to the petitioner to file objection for releasing the bank account or, in the instant case cash-credit facility, therefore when there was an efficacious relief in the statute itself, therefore, the High Court was of the view that the petitioner should adopt such efficacious relief and Court was not inclined to afford any relief under Article 226 of the Constitution. **Cases Referred- Jugal Kishore Das v. Union of India reported in 2013 SCC Online Cal 19941, Radha Krishan Industries v. State of Himachal Pradesh reported in 2021 (48) GSTL 113 (SC), Valerius Industries v. Union of India reported in 2019 (30) GSTL 15 (Guj), Mardia Chemicals Limited v. Union of India [2004] 4 SCC 311, Overseas Bank v. Ashok Shaw Mill reported in [2009] 8 SCC 366**