

Part-45-One Pager Snapshot to the Latest Cases

CA Arpit Haldia

S. N.	Section	Case Subject	Case	Held	Cases Referred
1.	Section 29	Cancellation of Registration without following Principle of Natural Justice and illegalities at assessment stage cannot be cured by appellate stage	Ultra Steel Ward v. State of Madhya Pradesh [2023] 151 taxmann.com 285 (Madhya Pradesh)	<p>The High Court observed that the SCN did not contain sufficient reasons to enable petitioner to file a reply. By saying that the registration has been obtained by fraud/wilful misstatement/suppression of facts, is not sufficient. Such terms need to be supported by reasons and some fundamental supporting material as to why, how and under what circumstances the registration was obtained. Further, SCN for rejection of application for revocation of cancellation of registration referred to an application dated 11.02.2022 which was, in fact, a reply to the SCN for cancellation of registration and, therefore, it appeared to the Court that Revenue has not even cared to ensure that true facts are reflected from the SCN. The carelessness on the part of the Revenue was referred to be palpable. The appellate authority while passing the appellate order brushed aside the cogent ground of violation of principle of natural justice (audi alteram partem). Pertinently, the appellate authority conducted a physical verification of the premises of assessee. Such physical verification at the appellate stage in the opinion of the High Court could not validate the illegalities which had crept at the initial stage of show cause notice.</p> <p>The proceedings were held to be illegal and revenue was at liberty to proceed by issuing a fresh, proper and lawful show cause notice to the petitioner-assessee, if they were so advised.</p>	Mohinder Singh Gill and another Vs. CEC and others, (1978) 1 SCC 405; Health Care Medical Devices Pvt. Ltd. Vs. MP Public Health Services Corpn. Ltd. and another, 2021 SCC OnLine MP 3389; Balaji Enterprises Vs. Principal Additional Director General, DGGSTI and Others, 2022 SCC OnLine Del 3201;
2.	Section 83	Writ filed without exhausting statutory remedy and delegation of powers by Commissioner	S. R. Traders v. Additional Director General [2023] 151 taxmann.com 286 (Kerala)	<p>The High Court stated that the petitioner had approached the court without exhausting the statutory remedy under Rule 159. It is well-settled that the writ jurisdiction was only to be exercised in extra-ordinary circumstances.</p> <p>The petitioner had further contended that only Commissioner was invested with the power to pass an order under Section 83 but respondent stated that by notification, powers have been invested in the Additional Director General. The High Court negated the contention and held that the respondent was competent to pass order in view of express delegation of powers read with Sections 3 and 5 of the CGST Act.</p>	M/s. Radha Krishan Industries v. State of Himachal Pradesh and others [AIR 2021 SC 2114]
3.	Section 54	Refun cannot be denied as revenue proposes to file an appeal against order of the appellate authority	Alex Tour and Travel (P.) Ltd. v. Asistant Commissioner, CGST [2023] 151 taxmann.com 331 (Delhi)	<p>The refund due to the petitioner in pursuance of the order of the appellate authority was not granted on the ground that the decision of the appellate authority was erroneous and Revenue proposes to file an appeal against the said decision as and when an appellate tribunal is constituted. The assessing officer also insisted to file fresh refund application.</p> <p>The High Court directed to grant the refund and rejected the insistence of Revenue to file fresh refund application since proceedings emanated from petitioner filing applications for refund which was culminated in Orders-in-Appeals passed by the appellate authority. Revenue cannot ignore the orders passed by the appellate authority mainly on the ground that it proposes to file an appeal. Further there was no order passed by the Court, staying the effect of the Orders-in-Appeal passed by the appellate authority. The respondent was also taking no steps for securing orders to that effect. In view of the above, the petition was held liable to be allowed.</p>	