

## Part-46-One Pager Snapshot to the Latest Cases

CA Arpit Haldia

S. N.	Section	Case Subject	Case	Held
1.	Section 73	Summary SCN in DRC-01 and Summary Order in DRC-07 are invalid in absence of detailed SCN and order respectively	<b>Shree Ram Agrotech v. State of Jharkhand [2023] 152 taxmann.com 82 (Jharkhand)</b>	<p>The petitioner contended Respondents had not issued detailed SCN and only summary was issued in DRC-01 and order issued was also in DRC-07 without detailed order being issued.</p> <p>The High Court observed that no SCN in terms of Section 73 (1) of the JGST Act, 2017 was served upon the Petitioner and reliance of the Respondents on the alleged Summary show cause in Form GST DRC-01, dated 20.12.2018, was also of not much avail. Also, it was observed that when no detailed adjudication order, as required under Section 73 (9) of JGST Act, 2017, had been passed or issued, the Petitioner was not liable to pay impugned demand only on the basis of the said Form DRC-07. It was also observed that appellate authority should have decided the case on merit and should have given its finding on the grounds of Appeal that DRC-07 has been issued without issuing any no show cause notice in terms of Section 73 (1) of the JGST Act, 2017 and also without any adjudication order.</p>
2.	Section 29 and Section 30 and Section 16	Revocation of Cancelled Registration and Entitlement to Lodge claim for ITC for the intervening period	<b>R.k. Jewelers v. Union of India [2023] 152 taxmann.com 81 (Rajasthan)</b>	<p>The High Court was of the opinion that petitioner firm is covered within the notification dated 31.03.2023 and can move an application before the competent authority with a prayer for restoration of its GST registration subject to fulfilment of the conditions mentioned in the said notification, therefore writ petition was disposed of with liberty to the petitioner-firm to file application for restoration of its GST registration before the competent authority. It was also made clear that when the competent authority would consider the issue of revocation of cancellation of petitioner firm GST registration under the notification dated 31.03.2023, the petitioner-firm, shall be entitled to lodge its claim for availment of Input Tax Credit in respect of the period from the cancellation of the registration till the registration is restored.</p>
3.	Section 129 and Section 130	Invoking Provisions of Section 129 and then switching to Section 130 without providing release of goods under Section 129.	<b>Sharda Batteries and Metals v. Deputy Commissioner of State Tax [2023] 152 taxmann.com 80 (Gujarat)</b>	<p>Petitioner contended that exercise of powers under Section 129 and thereafter switching over to Section 130 and passing order thereunder without availing the petitioner the benefits of release of the goods under Section 129, could be said to be without jurisdiction. It was also submitted that Special Civil Application No.8353 of 2022 and other matters have been entertained by this court involving the same point and interim relief of release of the goods and conveyance has also been granted on condition.</p> <p>The High Court directed by way of interim relief that goods of the petitioner as well as vehicle bearing registration No. TS-12-UC 2787, be released subject to conditions being fulfilled and petition be listed with Special Civil Application No.8353 of 2022.</p>
4.	Section 54	Delay in disbursement of refund	<b>KA Prevulcanised Latex (P.) Ltd. v. Government of Tamil Nadu [2023] 152 taxmann.com 79 (Madras)</b>	<p>The petitioner had applied for refund and had not received refund of 90% of the CGST and IGST. The first respondent had provisionally sanctioned the refund vide its provisional refund and Final orders too had been passed.</p> <p>The High Court observed that the respondent had sanctioned refund both by virtue of the provisional refund orders and the final orders sanctioning the refund and they had not only failed to respond to the request of the petitioner, but even before the Court, they were not able to give any reason as to why refund was not made despite orders of the first respondent. These amounts are rightfully due to the petitioner. Therefore, writ petition was allowed and second respondent was directed to refund the amount due to petitioner.</p>
5.	Section 74	Opportunity of being heard not provided	<b>TK Elevator India (P.) Ltd. v. Assistant Commissioner (GST) [2023] 152 taxmann.com 78 (Delhi)</b>	<p>Notice dated 05.11.2020, pointing out certain discrepancies, was issued under Section 61 of the CGST Act. The petitioner responded to the said notice on 05.12.2020, setting out the explanation for the alleged discrepancies. The petitioner also prayed that in case the proceedings initiated pursuant to the notice dated 05.11.2020 were not dropped, the petitioner might be afforded an opportunity of personal hearing before the final decision was taken. The petitioner's request for personal hearing was rejected and the impugned order was passed under Section 74 of the CGST Act.</p> <p>The High Court observed that a plain reading of the order indicated that there was neither any discussion nor any reference to the notice dated 05.11.2020 or the petitioner's reply to the said notice. The said order is an unreasoned order. The said order was also vitiated as having been passed without following the principles of natural justice as no opportunity for hearing was afforded to the petitioner. In view of the above, the petition was allowed and impugned order dated 21.06.2021 was set aside.</p>