

## Part-49-One Pager Snapshot to the Latest Cases

CA Arpit Haldia

S. N.	Section	Case Subject	Case	Held
1.	Section 75 and Section 75	Request for personal hearing cannot be rejected merely because the reply in which such request was made was filed beyond the prescribed period	<b>Principle Mahendra (P.) Ltd. v. Deputy Commissioner of Commercial Taxes. Bang [2023] 152 taxmann.com 120 (Karnataka)</b>	<p>In the instant case, reply was rejected stating that, it was filed beyond the prescribed period. However, in the reply filed by the petitioner, a request was made for personal hearing</p> <p>The High Court observed that the mandate under Section 75(4) of the CGST Act, 2017 is clear that, when a written request is made from the person chargeable with tax or penalty seeking for personal hearing, the same is required to be considered and contention of the revenue that request for personal hearing was made out in the reply, which having been rejected, the request for personal hearing was also to be rejected was held to be a hyper technical interpretation which resulted in rejection of the opportunity under Section 75(4) of the Act. <b>The order was set aside and respondents were directed to afford an opportunity of personal hearing before proceeding with the order and petitioner was asked to pay costs of Rs.10,000/- to the respondents for lapse in filing a delayed reply.</b></p>
2.	Section 29 and Section 30	Merely stating the reason without providing relied upon documents is violation of principle of natural justice	<b>Sarvoday Impex v. Union of India [2023] 152 taxmann.com 113 (Gujarat)</b>	<p>SCN for cancellation of registration stated the reason for issuance of notice (as in case, Registration has been obtained by means of fraud, wilful misstatement or suppression of facts). The High Court observed that respondents have not provided details to petitioner as to how petitioner has committed fraud, wilful misstatement, or suppression of facts; while obtaining registration.</p> <p><b>The High Court quashed the impugned and set-aside the show-cause notice and granted liberty to the authorities to issue fresh SCN.</b></p> <p><b>Case Referred-</b> Aggrawal Dyeing and Printing Works Vs. State of Gujarat &amp; Ors Special Civil Application No.18860 of 2021 decided on 24.02.2022</p>
3.	Section 129	Unless the revenue makes opinion to falsify the genuineness of documents available at the time of detention, consignor or consignee mentioned therein has to be treated as owner	<b>Shahil Traders v. State of U.P. [2023] 152 taxmann.com 24 (Allahabad)</b>	<p>The goods were detained upon statement of the driver of the truck being recorded. The High Court observed that it does not appear to be the case of the revenue that tax invoice and E-way bill relied by the petitioner were not produced by the driver of the truck at the time of detention of the goods but rather it appears that such documents were produced at the time of first interception, however, revenue authorities entertained a doubt as to the genuineness of the consignee.</p> <p>The High Court stated that revenue has not formed any opinion to falsify the genuineness of the tax invoice and the E-way bill claimed by the petitioner. It also does not dispute that those documents were found present on the vehicle in question at the time of its first detention. It is further not in dispute that the present petitioner claims to be the owner of the goods. <b>Therefore, petitioner may remain liable to pay security in terms of Section 129(1)(a) of the Act.</b></p> <p><b>Cases-Referred-</b> M/s Margo Brush India and Others v. State of U.P. and Others decided on 16.1.2023 and M/s Riya Traders v. State of U.P. and Another decided on 17.1.2023.</p>
4.	Section 61 and Section 74	Notice under Section 61 is not mandatory before issuance of notice under Section 74	<b>Devi Traders v. State of Andhra Pradesh [2023] 152 taxmann.com 22 (Andhra Pradesh)</b>	<p>The question before the High Court was whether Scrutiny U/Sec 61 is mandatory before issuance of notice U/Sec 74.</p> <p>The High Court observed that Section 74 starts with the clause “where it appears to the proper officer that any tax has not been paid”. If the intendment of legislature was to make Section 74 bound by Section 61 and 65 alone, that fact would have been clearly depicted in Section 74. However, there is no specific reference to Section 61 or 65 in Section 74 except the usage “where it appears”. <b>The phrase “where it appears” is a free, unfettered and unbound usage made by legislature, thus the source for the proper officer to proceed U/s 74 may be either Section 61 or 65 or some other fact. The High Court distinguished judgement of Madras High Court that therein certain defects were pointed out in DRC-01 out which were different from the defects mentioned in the Form ASMT -10 which was earlier issued U/s 61.</b></p> <p><b>Case Distinguished-</b> Vadivel Pyrotech Private Limited v. The Assistant Commissioner (ST), Circle-II, Commercial Tax Department</p>