

**Part-57-One Pager Snapshot to the Latest Cases**

**CA Arpit Haldia**

S. N.	Section	Case Subject	Case	Held
1.	<b>Section 83</b>	<b>Exercise of Re-course under Rule 159(5) before exercising the writ option</b>	Smt. Lalita v. Central Goods And Service Tax [2023] 153 taxmann.com 171 (Allahabad)	<p>An investigation was initiated for availing and passing on wrong Input Tax Credit by creating various firms without supply of goods. During the course of investigation an order dated 2-4-2022 was passed attaching the Bank account of the petitioner. Since attachment order under section 83 ceases to have effect after expiry of one year as contemplated under section 83 (2) of the CGST Act, 2017 petitioner moved application requesting for the de-attachment of the Bank account on 3-4-2023. Petitioner then sent another letter on 18-4-2023 and responding to the letter, the authority passed impugned order on 21-4-2023 attaching the Bank account of the petitioner. It was also submitted that impugned order dated 21-4-2023 was invalid having been issued without DIN number in violation of Circular dated 5-11-20219 and 23-12-2019. It was further contended that order impugned proceeds on the premise that proceeding under Section 122 of the Act have been launched against the petitioner through no show cause notice in form DRC-01 under Rule 142 has been issued so far.</p> <p>The High Court observed that the petitioner approached the Court without availing the remedy available under Rule 159(5) of CGST Rules, 2017. Further the Bank account of the petitioner remained under attachment since long once under order dated 2-4-2022 and thereafter under the order dated 21-4-2023 but partially the petitioner herself was held to be responsible for not taking recourse to Rule 159 (5) of the Rules early. The High Court thus, directed the petitioner to approach the authority under Rule 159 (5) by filing objections.</p>
2.	<b>Section 18</b>	<b>Can Claim of ITC in GSTR-3B since Form in ITC-02 was not live on the portal be justified</b>	Tikona Infinet (P.) Ltd. v. State of U.P. [2023] 153 taxmann.com 170 (Allahabad)	<p>The petitioner entered into a Business Transfer Agreement on 17-8-2017 with another Company <i>i.e.</i> M/s Tikona Digital Network Pvt. Ltd. under which the business was transferred to the petitioner. M/s Tikona Digital Network (TDA) had accumulated ITC balance of more than Rs. 3,1313,68,997/- which was unutilized. The petitioner attempted to transfer ITC as per the procedure prescribed under Rule 41 of the CGST Rules, 2017, however functionality for filing Form ITC-02 was not available on the common portal. The non availability was communicated to the jurisdictional Assessing Authority. Faced with serious working capital issues, the petitioner manually accepted and availed the ITC of Rs. 3,13,68,997/- . After a lapse of five years, the petitioner was served with a show cause notice dated 28-2-2023 requiring the petitioner to serve the differential ITC of Rs. 2,88,35,905.60/- along with interest and penalty. The total ITC available in Form GSTR-2A is Rs. 2,22,24,921.08/- whereas petitioner availed the ITC of Rs. 5,10,60,826.68/-. The petitioner submitted the reply but impugned order creating the demand was passed.</p> <p><b>The High Court found that the petitioner has been non suited on the ground that Form ITC-02 for transfer of input tax credit was not available on the GST Portal which was in nascent stage during the initial months after its implementation on 1-7-2017 and it was incumbent upon the petitioner to have raised a proper grievance on the GST portal help-desk and ought to have waited for the relevant Form to go live on the GST portal instead of making illegal adjustment by use of the Form GSTR-3B of the transferor and the transferee company and mere shortage of working capital cannot be an excuse to bypass the legal procedure laid down under the law. Further the high court was of the view that the stand of the Respondent No. 2, for rejecting the claim of the petitioner in the wake of the admitted fact that the GST common portal was not online cannot be justified. Therefore, the order dated 17-4-2023 was set aside with liberty to the Respondent No. 2 to pass fresh order taking into consideration the objections of the petitioner and also affording it opportunity of hearing, strictly in accordance with law.</b></p>
3.	<b>Section 29 and 30</b>	<b>Cryptic SCN for cancellation of Registration</b>	Bhati Enterprise v. Union of India [2023] 153 taxmann.com 167 (Gujarat)	<p>SCN was issued by the department on the ground that the registration was obtained by means of fraud, wilfull misstatement or suppression of facts. The petitioner contended that the impugned SCN violated the principles of natural justice inasmuch as the show-cause notice was vague and cryptic and did not state the exact case against the petitioner firm that how the petitioner committed fraud, wilful misstatement or suppression of facts; while obtaining the registration as no documents were supplied to the petitioner alongwith the said show-cause notice so as to enable the petitioner to file a reply.</p> <p><b>The High Court quashed the impugned SCN being without reasons and cryptic with a liberty to issue a fresh SCN.</b></p> <p><b>Cases Referred-Sarvoday Impex v. Union of India rendered a decision on 07.06.2023 in Special Civil Application No. 903 of 2023</b></p>