

**Part-6-One Pager Snapshot to the Latest Cases**

**CA Arpit Haldia**

| <b>S. N.</b> | <b>Section</b>                  | <b>Case Subject</b>   | <b>Case</b>  | <b>Held</b>  | <b>Cases Referred</b>   |
|--------------|---------------------------------|---|--|--|---|
| 1.           | <b>Section 95</b>               | <b>Can a recipient file an application before AAR</b>   | <b>Anmol Industries Ltd. v. West Bengal Authority for Advance Ruling, Goods and Services Tax [2023] 150 taxmann.com 3 (Calcutta)</b> | <p>AAR in the order impugned in the writ petition concluded that appellants being recipients of service is not entitled to maintain an application before the AAR .</p> <p>The High Court held that Section 95(c) of the CGST Act defines “applicant” to mean any person registered or desirous of obtaining registration under the Act and in the said case, the appellants being registered dealers under the provisions of the Act would fall within the definition of “applicant” as defined under Section 95( c) of the Act.</p>  | <b>M/s. Gayatri Projects Limited &amp; anr. Vs. The Assistant Commissioner of State Tax, Durgapur Charge &amp; Ors. in M.A.T. No.2027 of 2022</b> |
| 2.           | <b>Section 54</b>               | <b>Whether order of Apex Court for Suo Motu Extension applies for Refund Application</b>              | <b>44 EMB Studio (P.) Ltd. v. Union of India [2023] 150 taxmann.com 4 (Bombay)</b>   | <p>It was contended by the petitioner that though it is correct that for part of the claim which has been rejected refund was sought after a period of two years, however, the period was extended by the orders passed by the Hon'ble Supreme Court in Suo Motu Writ Petition No. 3 of 2020 extending the period of limitation.</p> <p>The High Court held that implications of the orders passed by the Hon'ble Supreme Court was not considered while calculating the limitation period. The appropriate course of action therefore as decided by the High Court was to set aside the impugned order, restore the appeal filed by the Petitioner in respect of the refund which has not been granted and direct the Appellate Authority to examine the aspect of limitation on merits afresh in the light of the decision/order passed by the Hon'ble Supreme Court in the Suo Motu Writ Petition.</p>  | <b>Saiher Supply Chain Consulting Pvt. Ltd. v/s. The Union of India (O.S. WP(L) 1275/21) dated 10 January 2023</b>                                |
| 3.           | <b>Section 29</b>               | <b>Cancellation of Registration by a non-speaking order</b>   | <b>Manoj Kumar Sah v. State of Bihar [2023] 150 taxmann.com 5 (Patna)</b>  | <p>The High Court observed that with the passing of the said order, petitioner was liable to both civil and penal consequences. To say the least, the authority ought to have at least referred to the contents of the show cause and the response thereto, which was not done. Not only the order is non-speaking, but cryptic in nature and the reason of cancellation not decipherable therefrom. Principles of natural justice stand violated and the order needs to be quashed as it entails penal and pecuniary consequences. Therefore, the order passed was quashed with the petitioner's registration restored.</p>   | -   |
| 4.           | <b>Section 7 and Section 16</b> | <b>Treatment of subsidized food provided by the Taxpayer to its Employees and availability of ITC</b> | <b>Cadila Pharmaceuticals Ltd [2023] 150 taxmann.com 32 (AAR - GUJARAT)</b>  | <p>- The subsidized deduction made by the applicant from the employees who are availing food in the factory/corporate office would not be considered as a 'supply' under the provisions of section 7 of the CGST Act, 2017 and the GGST Act,2017.</p> <p>- ITC will be available to the applicant on GST charged by the service provider in respect of canteen facility provided to its direct employees working in their factory and the corporate office, in view of the provisions of Section 17(5b) as amended effective from 1.2.2019 and clarification issued by CBIC vide Circular No. 172-dated 6.7.2022 read with provisions of section 46 of the Factories Act, 1948 and read with provisions of Gujarat Factory Rules, 1963 and Gujarat Shops and Establishment (Regulation of Employment and Condition of Service) Act, 2019. ITC on the above is restricted to the extent of the cost borne by the applicant for providing canteen services to its direct employees, but disallowing proportionate credit to the extent embedded in the cost of goods recovered from such employees</p> | -   |