

Part-62-One Pager Snapshot to the Latest Cases

CA Arpit Haldia

S. N.	Section	Case Subject	Case	Held
1.	Section 73	Giving Date of Hearing before the due date of reply is incorrect	HT Media Ltd. v. Union of India [2023] 153 taxmann.com 339 (Delhi)	The petitioner was to submit its reply by 1-9-2022 and was also informed of a personal hearing scheduled on 19-8-2022. High Court was unable to appreciate the procedure of affording the petitioner an opportunity to be heard prior to the expiry of the time afforded to him for responding to the impugned show cause notice. It was observed that an opportunity to be heard is not required to be a mere formality. It is to enable the noticee to canvas its case before the concerned officer. The purpose of eliciting a reply to the show-cause notice is to enable the noticee to place his stand on record. Thus, it was apposite that noticee be permitted to file a reply prior to being afforded a hearing. The impugned order was <i>set aside</i> and concerned officer was directed to consider the petitioner's response and pass a fresh order after affording the petitioner due opportunity to be heard.
2.	Section 73 and Section 74	Non-Appearance on the date of Hearing	Tvl. RIDA Industries v. Assistant Commissioner (ST) [2023] 153 taxmann.com 338 (Madras)	The petitioner neither had asked for any personal hearing and made submission on merits, though without furnishing any details. The High Court observed that the objection that petitioner was not given an opportunity of hearing cannot be countenanced as the petitioner had given a reply but failed to appear before the respondent in response to notice in DRC-01 issued under Rule 100 of the Tamil Nadu Goods and Services Taxes Rules, 2017 on 26-3-2021. In view of the above, there was no merit in the present writ petition. Therefore, writ petition was held to be liable to be dismissed.
3.	Section 29 and Section 30	Petitioner cannot be left remediless as order of Cancellation of Registration not available on Portal	Ashok Kumar Jha v. Union of India [2023] 153 taxmann.com 335 (Calcutta)	Order for cancellation of registration was not available on the portal and petitioner could not even file application for revocation against the same during suspension. Further another downloaded copy from the official portal of the department reflected the status of the case in question that it is at the stage of show-cause notice of cancellation for registration while the department Counsel produced a downloaded copy from portal showing that registration of the petitioner had been cancelled. Department Counsel submitted that they have written to GSTIN to ascertain as to for whose lapse and how it happened that the order of cancellation is not available in the portal. The High Court observed that order of cancellation of registration of petitioner was neither available on the portal nor revenue was able to hand over a copy of the same and nor petitioner produced hard copy of the same before the Court also. The Court was of the considered view that petitioner cannot be let remediless for the fault in the system and petitioner can't be deprived of its right to make application either cancellation for revocation or by filing appeal. Revenue was directed to hand over hard copy of the order in original cancelling the petitioner's registration and petitioner can thereafter file application for revocation of the same basis upon aforesaid hard copy to be supplied.
4.	Section 83	Cash Credit Account cannot be attached for recovery of Liabilities	Anjani Cotton Industries v. Principal Commissioner of CGST [2023] 153 taxmann.com 334 (Gujarat)	The High Court stated that on more than one occasion, Court had deprecated the practice of the respondent authorities in seeking to enforce tax liabilities by provisionally attaching cash credit account. The petitioner was accorded ad-interim relief till the returnable date of notice. Cases Referred- Manish Scrap Traders v. Principal Commissioner reported in (2022) GSTL, 482 (Guj), Vinodkumar Murlidhar Chechani v. State of Gujarat reported in 2021 (124), taxmann.com, 272 (Guj).
5.	Section 169	Duty of taxpayer to verify Portal for receipt of notice and order	Koduvayur Constructions v. Assistant Commissioner [2023] 153 taxmann.com 333 (Kerala)	The petitioner had been served with order dated 14-10-2022 on the GST portal, calling him to pay an amount of Rs. 19,22,566/-. It was contended that there was no effective service of notice on petitioner by the respondents. The High Court observed that assessment order was made available on the common portal and thus contention of the petitioner was untenable in view of the alternative modes of service provided under Sec.169 (1) of the CGST Act and it was bounden duty of the petitioner to have verified its common portal that is made available as per the provision.