

**Part-64-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>
1.	<b>Section 54</b>	Notification No. 9/2022 read with Circular No. 181/13/2022 dt 10 <sup>th</sup> Nov,22 Challenged	<b>Shree Proteins (P.) Ltd. v. Union of India [2023] 153 taxmann.com 406 (Gujarat)</b>	Notification No. 9/2022 Dated 18 <sup>th</sup> July 2022 was issued to enlarge scope of N.No. 5/2017, whereby specified HSNs in which petitioner company's outward supplies were covered were added to the restricted category. It was contended that not only Notification shall have prospective effect but by way of Circular No. 181/13/2022 GST dated 10 <sup>th</sup> Nov, 2022, it has been incorrectly clarified that restriction imposed by the Notification would be applicable in respect of all refund application filed on or after 18-7-2022 and would not be applied to the refund application filed before 18-7-2022. Thus, it was submitted that the said Circular is against the provisions of law contained in Section 54 of the Act, whereby, the period of two years to file an application for refund is given. It was further submitted that no retrospective effect can be given by way of the said Circular to the Notification. Reliance was placed on doctrine of legitimate expectation. <b>High Court observed that issue involved in the petition required consideration and notice was issued.</b>
2.	<b>Section 129</b>	If neither consignor/ consignee are treated as owner, proper officer before levy of penalty is required to decide as who should be owner of goods.	<b>G M R Enterprise v. State of U.P. [2023] 153 taxmann.com 407 (Allahabad)</b>	Goods were intercepted during transportation within the state of U.P and petitioner contended that such goods were accompanied by tax invoices and e-way bill, which clearly indicated the ownership of petitioner over the goods in transit. The department nevertheless proceeded to issue notices in the name of the driver and subsequently orders determining liability of tax have been passed on the premise that the consignee had not accepted the goods to have been purchased by it. The department, therefore, has treated the goods to be not traceable to a registered dealer. High Court prima facie was of the opinion that while the goods were in ' transit it accompanied the tax invoice and e-way bill which indicated the goods to be owned by the petitioner. The order in no manner reflected application of mind on the question as to whether the petitioner was the owner of the goods in question or not? The circular dated 13-3-2019 clearly stipulated that, in such an eventuality, if the goods are accompanied with the invoices then either the consignor or the consignee ought to be deemed to be the owner of the goods. <b>Otherwise, proper officer is required to determine as to who should be declared as owner of the goods. In the facts of the case, such consideration on the question as to ' who is the owner of the goods was held to be lacking. The department, therefore, was held not to be justified in proceeding to hold the goods not to belong to a registered dealer without dealing with the question of ownership of such goods in transit and High Court relying on its earlier decision in Writ Tax No. 178 of 2023 also stated that the question with regard to ownership of the goods shall be determined before levying penalty etc.</b>
3.	<b>Section 29 and Section 30</b>	SCN derives response; <b>"So what is fraud in this transaction?" liable to be set aside</b>	<b>Cuthbert Oceans LLP v. Superintendent of CGST [2023] 153 taxmann.com 410 (Delhi)</b>	Concerned Officer issued the SCN proposing to cancel the petitioner's registration for the following reasons: <b>"Section 29(2)(e)-registration obtained by means of fraud, willful misstatement or suppression of facts"</b> . Apart from the aforesaid reason, the impugned show-cause notice did not disclose any other reason or particulars for proposing the adverse action against the petitioner. The petitioner was called upon to furnish a reply to the impugned show-cause within a period of seven days from the date of service of impugned SCN; it further directed the petitioner to appear before the respondent. High Court held that the impugned SCN was bereft of any particulars. <b>The petitioner's response to the impugned show-cause notice (although sent belatedly) indicates that the petitioner has referred to the transactions carried out by him and had quizzed the respondent; "So what is fraud in this transaction?". This question resonates with us as well. The impugned show-cause notice was set aside.</b>
4.	<b>Section 54</b>	Manual Refund Application to be processed as Rule 97A does not bars it and Circular cannot takeaway plain effect of Rule	<b>Desai Brothers Ltd. v. State Of U.P. [2023] 153 taxmann.com 412 (Allahabad)</b>	Order of the Appellate Authority was in favour of the Appellant and neither, the principal amount Rs. 47,32,040/- has been refunded to the petitioner nor any interest has been paid thereon. The State respondents were of the view that such refund may have been granted only if the petitioner had made an application for refund on the online form RFD-01. The petitioner stated that he was effectively prevented from moving the online application owing to technical glitches that existed on the GSTN portal thus they had moved a physical application to claim the refund within the statutory period of 60 days. <b>High Court observed that the appeal order dated 18-3-2019 has long attained finality. It clearly contained a recital to refund the amount of Rs. 47,32,040/-Therefore, by way of a right, that amount cannot be retained by the State. Only procedural requirements were required to be completed for its refund to be made. So long as Rule 97A remains in the Rule book, Circular cannot take away the plain effect of the said Rule 97A. Therefore, Circular could only provide a directory or an optional mode, to process a refund claim.</b> Therefore, the revenue authorities were obligated in law to deal with that application in terms of Section 54(7) of the Act, within a period of 60 days. Failing that, the revenue further became exposed to discharge interest liability on the delay in making the refund at the statutory rate from the end of 60 days from 2-6-2019. <b>Cases Referred-</b> Savista Global Solutions (P.) Ltd. v. Union of India [2021] 132 taxmann.com 144 All.) and Alok Traders v. Commissioner of Commercial Taxes [2022] 147 taxmann.com 447