

Part-66-One Pager Snapshot to the Latest Cases

CA Arpit Haldia

| S.N. | Section | Case Subject | Case | Held |
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| 1. | Section 73 | Service of Notice through Portal is valid service of Notice | S. K. Eldhose v. State Tax Officer [2023] 153 taxmann.com 477 (Kerala) | The petitioner contended that that it was only on account of the peculiar circumstances where it was not aware of the assessment order that it could not take steps to file the appeal within time. The High Court held that the assessment order was served on the appellant in a manner prescribed under the statute, namely, an intimation through the GST portal. The statutory period of limitation for preferring an appeal was three months from the date of communication of the order, with a further period of one month towards condonation of delay, if any. The appellant, not having availed the alternate remedy under the statute, cannot feign ignorance of statutory scheme under GST Act, which accords a finality to those orders that have not been appealed against. |
| 2. | Section 129 and Section 130 | Section 130 not required to be preceded by Section 129 | Muhammad Saleem Shemsudeen v. Enforcement Officer [2023] 153taxmann.com 479 (Kerala) | The main contention was that the respondents were obliged to proceed sequentially through provisions of Section 129 before confiscating the goods under Section 130 since provisions were dependent upon each other. The said submission did not, however, found favour with the learned Single Judge who found that provisions of Section 130 were independent and could be invoked without invoking Section 129 of the Act. The High Court observed that the impugned judgment of the learned Single Judge calls for no interference since it is well settled that the provisions under Sections 129 and 130 are independent provisions and there is no requirement in law that the proceedings under Section 130 should be preceded by the proceedings under Section 129. |
| 3. | Section 107 | Appellate Authority relying upon documents which were never supplied to the petitioner | Ashok Kumar Vishwakarma v. Union of India [2023] 153 taxmann.com 481 (Bombay) | It was contended that SCN for cancellation of registration was issued without furnishing any documents and merely on a statement that Petitioner's registration was liable to be cancelled because of "Issue any invoice or bill without supply of goods and/or services in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilization of input tax credit or refund of tax." The High Court observed that no documents were furnished to the Petitioner in support of the sole ground. The Petitioner had sought for an adjournment that he was not available in the town, however still the proper officer proceeded to cancel the registration that too by erroneously recording that the Petitioner was heard and the documents and reply submitted by him was examined, when neither the Petitioner was heard nor any documents were filed by the Petitioner. There is a categorical obligation on the authority to grant a personal hearing as contemplated below proviso to Sub-section 2 of Section 29. Appellate Authority also proceeded to overlook the ground and in fact has proceeded on a fresh material, namely, range officer's report in regard to the short paid tax and other materials regard to the cancellation of registration of the suppliers of Petitioner's. Petitioner was held correct in contending that Appellate Authority relied on materials which were never supplied while rejecting his appeal. |
| 4. | Finance Act 1994 (Notification no. 41/2012-ST dated 29.06.2012 | Review of Earlier Judgement which held that Duty free shops being outside customs frontiers of India cannot be saddled with indirect tax burden | Commissioner of CGST and Central Excise v. Flemingo Travel Retail Ltd [2023] 153 taxmann.com 492 (SC) | Basis of Earlier Judgement for which review was sought- The Court affirmed judgment of the CESTAT noting that against a judgment of the High Court of Judicature at Bombay dated 28 November 2018 in Al Cuisine Pvt Ltd v Union of India, a Special Leave Petition was dismissed by an order dated 14 Dec 2018 of the Apex Court. From the judgment under review, it was also observed that after recording the view which was taken by CESTAT, Court adverted to decision of High Court at Bombay in Sandeep Patil and Kerala in CIAL Duty Free & Retail Services Ltd. Why Union wanted Review- Position as it obtains in relation to goods is distinct from the applicable statutory regime in respect of services. Sixteen appeals involving a similar issue are pending before this Court arising from orders dated 28 September 2017 and 26 October 2018 of the CESTAT at its West Zonal Bench in Mumbai. Hence, it was requested to tag this appeal with the appeals pending in this Court was made. Decisions of Bombay and Kerala High Court relied upon pertained to goods and not to levy of service tax on the renting of immovable property. What Apex Court said accepting the request to review- Substantial grounds on law were advanced during oral hearing in support of its case that applicable regime regarding goods stand on a distinct footing from regime applicable to levy of service tax and later, under IGST. Apex Court also observed that whether objection raised regarding reliance upon judgement of Bombay and Kerala High Cour would make any difference to ultimate outcome is debatable, and would, therefore, require substantial consideration. Therefore, at this stage, absent such a consideration in the judgment under review and since issue which was raised would have large consequential ramifications, review was allowed. |