

Part-67-One Pager Snapshot to the Latest Cases

CA Arpit Haldia

S.N.	Section	Case Subject	Case	Held
2.	Section 67 and Section 54	Refund of Amount collected during the search	Modern Insecticides Ltd. v. Commissioner, Central Goods and Service Tax [2023] 153 taxmann.com 548 (Punjab & Haryana)	Question for consideration, was whether amount paid by the petitioner on 16-1-2021, could be retained by the department without issuing the show cause notice under section 74 (1) of the CGST Act that too after expiry of two years. High Court observed that amount was deposited from the date when search was conducted. However, no notice under section 74 (1) had been issued. Though department can initiate proceedings under section 74 (1) by issuing notice within the period of limitation, they cannot retain the amount of Rs. 1.54 crore deposited by the petitioner, which as per department was voluntary. The amount was deposited during search and as per judgment passed in <i>Vallabh Textiles'</i> case, this deposit cannot be taken to be voluntary. Since no proceedings under section 74 (1) were initiated till date, as per Rule 142 (1A), the department cannot even issue Form GST DRC-01A to ask the petitioner to make payment of tax, interest and penalty due. Therefore, a direction was given to return the amount of Rs. 2.54 crores along with simple interest at the rate of 6% per annum. Cases Referred-Vallabh Textiles v. Senior Intelligence Officer and others, 2022 SCC OnLine Del 4508, Bhumi Associate v. UOI, SCA No. 3196 of 2021.
3.	Article 226 of Constitution	Extraordinary circumstances not made out for Article 226	Muhammad Saleem Shemsudeen v. Enforcement Officer [2023] 153 taxmann.com 547 (Kerala)	The writ petition was dismissed stating that the Court did not any extra ordinary circumstances made out, to entertain the writ petition by exercising the plenary powers of this Court under Article 226 of the Constitution of India. It was left up to the petitioner to invoke his statutory remedies as provided under the GST Acts.
4.	Section 29 and Section 30	No retrospective Cancellation if notice does not provides so	Virender Kumar Jain v. Delhi GST Officer, Ward 76 [2023] 153 taxmann.com 546 (Delhi)	The petitioner was not aggrieved by cancellation of his GST Registration; he was aggrieved because the registration had been cancelled with retrospective effect from 1-7-2017 High Court noted that the show cause notice dated 16-2-2021 did not indicate that the concerned officer had proposed to cancel the same with retrospective effect. SCN also did not indicate that any inquiries were made, which revealed that the petitioner had never existed at his declared place of business. The order was an unreasoned order completely disregarding that the petitioner had filed an application dated 20-11-2020 for cancellation of his GST Registration and disclosed that he had stopped carrying on business. Thus, the question of petitioner being available at principal place of business did not arise. The High Court allowed the petition and directed that cancellation of GST Registration shall be effective from 20-11-2020.
5.	Section 29 and Section 30	Cancellation of Registration by a Cryptic Notice and Equally Cryptic Order	Ottimo Visuals v. Commissioner of GST [2023] 153 taxmann.com 545 (Delhi)	SCN issued initially for cancellation with the reason "Non-compliance of any specified provisions in the GST Act or the Rules made thereunder as may be prescribed." And SCN Issued against application for revocation of cancelled registration for following reasons "Any Supporting Document - Document Upload -Document not legible". were held to be cryptic and liable to be dismissed. SCN also did not propose any action for cancelling the petitioner's GST registration with retrospective effect from 2-7-2017. Order of cancellation dated 18-8-2022 did indicate that petitioner's GST registration was cancelled as the firm was found to be non-existent at the registered place of business on physical verification. However, order did not contain any allegation that premises had been demolished many years ago as stated in the counter affidavit filed on behalf of the respondents. Whilst the cancellation order dated 29-9-2022 recorded that petitioner did not appear on the given date ; In the counter-affidavit, department affirmed that "the petitioner appeared before the concerned officer through their CA" but submitted an "unsatisfactory reply dated 29-9-2022". The impugned order dated 13-10-2022 rejecting the petitioner's application for revocation of cancellation of its GST registration indicated that petitioner's application was rejected as follows-" GST revocation application is rejected as firm was found non-existent, no one appeared for personal hearing scheduled on 29-9-2022, taxpayer did not submit/upload specific reply to the query raised. " The order dated 13-10-2022 neither referred to the reply filed by the petitioner nor considered explanation provided by the petitioner. In view of the above, High Court held that neither the impugned show cause notice nor the show-cause notice dated 23-9-2022 can be sustained. Consequently, the orders passed pursuant thereto are liable to be set aside.