

**Part-70-One Pager Snapshot to the Latest Cases**

**CA Arpit Haldia**

S.N.	Section	Case Subject	Case	Held
1.	<b>Section 75(4)</b>	Personal hearing to be afforded , even if petitioner may have signified 'No' in the column to avail personal hearing	<b>B.L. Pahariya Medical Store v. State of U.P [2023] 153 taxmann.com 659 (Allahabad) 22-08-23</b>	High Court observed that once it has been laid down by way of a principle of law that a person/assessee is not required to request for "opportunity of personal hearing" and it remained mandatory upon the Assessing Authority to afford such opportunity before passing an adverse order, <b>the fact that the petitioner may have signified 'No' in the column meant to mark the assessee's choice to avail personal hearing, would bear no legal consequence.</b> It was further observed that even otherwise in the context of an assessment order creating heavy civil liability, observing such minimal opportunity of hearing is a must. <b>Cases Referred-</b> Bharat Mint & Allied Chemicals v. Commissioner Commercial Tax [2022] 136 taxmann.com 275
2.	<b>Section 107</b>	Service of Order on the counsel of the petitioner is valid and limitation to file appeal commences from that day	<b>Manoj Steel Traders v. State of U.P. [2023] 153 taxmann.com 658 (Allahabad) 23-08-23</b>	From the perusal of provisions of Section 169, it is evident that order communicated on an Advocate will be deemed service upon petitioner. As per facts of the case, order was duly communicated to the Advocate of petitioner. Petitioner argued that on 26-6-2019, an application was moved for getting the certified copy of the order through another counsel and on that very day, the appeal was preferred. <b>However, on the pointed query as to how and under what mode the petitioner came to know about the passing the order dated 28-3-2018 on 26-6-2019 and as to why the application was moved on 26-6-2019 by another counsel, when the order dated 28-3-2018 was already communicated to the petitioner's Advocate, petitioner could not reply the same and submitted that the appeal filed below is silent on this point.</b> The fact that it was not disputed at any stage and the only ground taken was that Shri Anil Jain, Advocate has not informed the petitioner about the order dated 28-3-2018, it was held that the impugned order cannot be interfered with.
3.	<b>Section 65</b>	Audit U/Sec 65 cannot be conducted for a dealer subsequent to cancellation of registration	<b>Tvl. Raja Stores v. Assistant Commissioner (ST [2023] 153 taxmann.com 657 (Madras) 11-08-23</b>	The contention of the petitioner was under Section 65, respondents were empowered to conduct audit if the concern was a registered unit. As on the date, the petitioner's registration was cancelled, and he was an unregistered concern. But the contention of the respondent was that the audit was being conducted for a period from 2017-2018, 2021-2022. Therefore, the respondent claimed that for the said period, the petitioner was a registered firm and for the said period, the respondent was empowered to conduct audit. <b>The High Court observed that Section 65 specifically states that the audit can be conducted for 'any registered person', then it ought to be construed as existence concern and the unregistered person would be exempted from the purview of the said section.</b> When the Section provides for periodical audit, the respondent having failed to conduct audit for all these years, suddenly they cannot wake up and conduct an audit. Therefore, impugned order was quashed with liberty to the respondent to initiate assessment proceedings under Sections 73 and 74 of the Act.
4.	<b>Section 107</b>	Appellate Authority even while considering appeal ex parte will have to consider the grounds raised in the memorandum of appeal	<b>Ganesh Kumar v. State of Bihar [2023] 153 taxmann.com 654 (Patna) 11-07-23</b>	Appeal was dismissed that despite opportunity being granted to appellant to produce documents in his support, he did not produce them. <b>High Court observed that</b> Appellate Authority has a duty and an obligation under the statute to look into the merits of the matter and also examine the grounds raised by the appellant and decide the issue on merits. The Appellate Authority even while considering the appeal ex parte will have to consider the grounds raised in the memorandum of appeal, deciding the appeal on merits, failing which it would be abdicating its powers especially looking at the provisions where the Appellate Authority has been empowered to conduct such further enquiry as found necessary to decide the appeal, which decision also shall be on the points raised. <b>Therefore, in view of the above, since the appeal was decided ex-parte, therefore the appellate order was set aside.</b> <b>Cases Referred-</b> Purushottam Stores vs. The State of Bihar & Ors; CWJC No. 4349 of 2023 decided on 25.04.2023
5.	<b>Section 129</b>	In case of shortage of goods found in checking during movement, penalty to be levied on the shortage found and not on entire consignment	<b>Usha Gupta v. Assistant Commissioner of Revenue, Bureau of Investigation [2023] 153 taxmann.com 653 (Calcutta) 30-03-23</b>	In the export invoice, buyer's license number was shown as buyer's order number. <b>The High Court held that this cannot be treated as a discrepancy because in the purchase order of the buyer the sales order number has been correctly shown as SG/2022-23/004. Therefore, authorities could not have imposed 200% penalty on the entire consignment.</b>  For the issue regarding shortage of quantity of goods observed in checking of goods during movement and levy of penalty on entire consignment <b>appeal and writ petition was disposed by setting aside the order passed by the appellate authority for levying penalty on the entire consignment and the matter was remanded back to the appellate authority to recalculate to take note of the order and recalculate the penalty in respect of shortage in quantity and over than quantity penalty shall be levied at 200%</b>