

Part-73-One Pager Snapshot to the Latest Cases

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S.N.	Section	Case Subject	Case	Held
1.	Section 129	While deciding the owner of the goods, revenue has to form opinion to falsify genuineness of documents with the goods	Bhawani Traders v. State of U.P. [2023] 153 taxmann.com 86 (Allahabad)	<p>Petitioner contended that goods were duly accompanied by the tax invoice, e-way bill and bilty in the name of the petitioner and as such, there was no intent to evade. It was further contended that the petitioner is the owner of the goods. However, Revenue levied penalty under Section 129(1)(b). High Court relied upon its earlier Judgement wherein it was held that petitioner may remain liable to pay security in terms of Section 129(1)(a) of the Act as not only present petitioner claims to be the owner of the goods but neither revenue has formed any opinion to falsify the genuineness of the tax invoice and the E-way bill claimed by the petitioner and nor it has disputed the claim that documents were found present on the vehicle in question at the time of its first detention. The writ petition was allowed with revenue directed to pass fresh order treating the petitioner to be eligible to the benefit of Section 129(1) (a).</p> <p>Case Referred- M/s Sahil Traders v. State of U.P. decided on 25-5-2023 which relied upon M/s Margo Brush India and Others Vs. State of U.P. and Others), decided on 16.1.2023 and M/s Riya Traders Vs. State of U.P. and Another), decided on 17.1.2023.</p>
2	Section 29	Order beyond the scope of SCN	K B Processing & Trading v. Commercial Tax officer [2023] 153 taxmann.com 84 (Karnataka)	<p>SCN for cancellation was issued under section 29(2)(e) on the ground that registration was obtained by means of fraud, wilful misstatement or suppression of facts however, order for cancellation was on the ground that "Rule 21(a) - person does not conduct any business from declared place of business".</p> <p>High Court set aside the order on the ground that order was passed on grounds not made out in the show-cause notice and directed the Revenue to dispose of the proceedings within one week from receipt of reply to the Show cause notice.</p>
3.	Section 107	Commissioner (Appeals) to issue defect memo calling upon Petitioner to remove procedural defects	JEM Exporter v. Union of India [2023] 153 taxmann.com 80 (Bombay)	<p>Commissioner (Appeal) in his order observed that Appellant had not provided challan or proof of having made pre-deposit, fling of certified copy of the order against which the appeal is filed has not been complied and appeal is not signed by the proprietor nor has Appellant submitted any authority letter of the signatory. Therefore, it was held that appeal was to be rejected. However, Commissioner (Appeal) after having given a finding that the appeal was required to be rejected on these grounds recorded a finding on merits of the case and upheld cancellation of registration.</p> <p>High Court observed that Commissioner (Appeal) was not justified in deciding the matter on merits after having concluded that appeal was to be rejected on the ground of no proof of pre-deposit, failure to file certified copy of the order and the appeal not having been authenticated as per rule 26(2)(a) of the CGST Rules. Further, justice cannot be denied for failure to comply with the procedure without giving an opportunity to the Appellant to rectify the procedural defects. Commissioner (Appeal) ought to have issued a defect memo calling upon the Petitioner to remove procedural defects. The Order in Appeal dated 17th June 2022 was set aside and restored to the file of the Commissioner (Appeal) and Commissioner (Appeal) was directed to issue a defect memo to the Petitioner pointing out the procedural defect in the appeal and would give adequate opportunity for rectifying the same and then consider the matter a fresh on merit.</p> <p>Cases Referred- Inspecting Assistant Commissioner Vs. K. B. Nagarala,(1986) 162 ITR 170, Jagat Dhis Bhargava Vs. Jawahar Lal Bhargava AIR 1961 SC 932, Bharat Industries Vs. State of Maharashtra (1995) 98 STC 417, United Bank of India Vs. Naresh Kumar & Ors (1996) 6 SCC 660, Commissioner of Income-Tax Vs. Hope Textiles Ltd. [2006] 287 ITR 321 (MP) , Uday Shankar Triyar Vs. Ram Kalewar Prasad Singh & Anr. (2006) 1 SCC 75 and Remfry & Sons Vs. Commissioner of Income-Tax [2005] 276 ITR 1 (Del), Ashishkumar Kar Vs. Central Board of Excise and Customs (2023) 152 Taxmann.com 642 (Orissa)</p>
4.	Section 29	SCN intended to take action in respect of registration shall also be sent by email and/or by hand delivery	Mayel Steels (P.) Ltd. v. Union of India [2023] 153 taxmann.com 50 (Bombay)	<p>SCN was issued on 1st August 2022 peculiarly calling upon the Petitioner to remain present on 2nd August 2022 at 2.01 p.m. SCN was merely uploaded on Web-Portal. Petitioner became aware of SCN and submitted reply on 8th August 2022. Petitioner thereafter filed the wit petition and put the officer to notice of filing of petition however officer proceeded to pass an order dated 2nd January 2023, cancelling the Petitioner's registration.</p> <p>High Court observed that such short notice could not be issued, calling upon the Petitioner to remain present on next date and, that too, at a very peculiar time at about 2.01 p.m. Further, impugned order takes within its ambit some issues, which were not part of SCN. Therefore, Court held that officer had acted in an arbitrary manner in exercising powers vested in him when he passed impugned order in breach of principles of natural justice.</p> <p>High Court further observed that whenever an action is intended to be taken in respect of registration of dealers, it was expected that SCN is not merely uploaded on Web-portal but also forwarded by e-mail and/or by hand delivery, so that they are effectively replied.</p>