

Part-74-One Pager Snapshot to the Latest Cases

CA Arpit Haldia

S.N.	Section	Case Subject	Case	Held
1.	Section 161	Limitation Period in case of Rectification Application and application of order of Suo Motu Extension by Apex Court	Alagu Kannan v. Assistant Commissioner (ST)(FAC) [2023] 154 taxmann.com 9 (Madras) (4-7-23)	High Court observed that application was filed well within the time as per the order of the Hon'ble Supreme Court in Suo Motu application No. 21 of 2022 in Misc.Appl.No.665 of 2021 in Suo Motu Writ Petition (Civil) No. 3 of 2020 and as per this order the period from 15-3-2020 till 28-2-2022 ought to be excluded. It was seen from the records that assessment order was passed on 6-1-2020 and the rectification application ought to have been filed on or before 6-4-2020. However, period from 15-3-2020 to 6-4-2020 ought to be excluded based on the <i>suo motu</i> extension order. Then the 90 days ought to be calculated from 1-3-2022, wherein the time is available until 30-5-2022, but petitioner had filed the application on 2-9-2020 itself, which is within the period of limitation. High court referred to its earlier judgement that while deciding application for rectification, earlier SCN for personal hearing issued to the petitioner, for which, the petitioner has not responded etc., cannot be cited as a reason for rejecting rectification application.
2	Section 29	Order cannot be passed on grounds not part of the SCN	C. P. Pandey & Co. v. Commissioner of State Tax [2023] 154taxmann.com 8 (Bombay) (31-7-23)	High Court observed that impugned order cancelling the registration appeared to be on ground completely outside the scope of SCN. This would certainly cause prejudice to the petitioner as he was never granted an opportunity of being confronted with such grounds in the SCN, so as to have an opportunity to meet such case of the department. Therefore, impugned order was quashed and set aside, with liberty to the respondent to issue a fresh show cause notice to the petitioner. Cases Referred- Ramji Enterprises & Ors. v. Commissioner of State Tax & Ors. [2023] 153 taxmann.com 598 (Bombay)
3.	Rule 86A	Blocking of ITC on report that supplier was non-existent and was passing ineligible ITC	Sri Rameswar Metal House v. Assistant Commissioner (ST) [2023] 154 taxmann.com 5 (Madras) (3-8-23)	High Court declined to interfere with the order of blocking of the Input Tax Credit under Rule 86A stating that no case was made out for interfering with the steps taken by the respondents blocking ITC as the petitioner appeared to have availed ITC on the strength of invoices of the trader/supplier, which was not having any business that was reportedly engaged in passing on ineligible input tax credit to various/numerous tax payers including the petitioner. The decision in Rajnandini Metal Limited case [2022] 140 taxmann.com 325 (Punjab and Haryana) was distinguished on facts as intimation issued in present case categorically stated that Office of the respondents had received report that trader/supplier was non-existing entity and had not conducted any business activity at the address for which, registration was obtained and found to have passed on ineligible ITC.
4.	Section 129	Penalty ought not to be levied on some small technical fault for not carrying the e-way bill, in the absence of any discrepancy in document accompanying the goods	J. K. Cement Ltd. v. State of U.P. [2023] 154 taxmann.com 1 (Allahabad) (28-8-23)	State of Madhya Pradesh had issued a notification dated 24-4-2018 mentioning therein 11 items for which only e-way bills were required during transport and other items were exempted from accompanying the e-way bill. The goods transported were exempted from issuance of Eway Bill in case of Intra Stat Movement. The movement originated from Gwalior, Madhya Pradesh and its destination was Panna, Madhya Pradesh. If the goods were to come from Gwalior to Panna, it had to pass through Jhansi, Uttar Pradesh for a short distance to enter again in Madhya Pradesh for its final destination at Panna. During movement through the State of UP, said goods were intercepted on the ground that e-way bill was not accompanying. During transportation of goods, they were accompanied with tax invoices & G.R.. High Court observed that although goods were not accompanying the e-way bill, seizure ought not to have been made as in the case in hand in State of Madhya Pradesh, the said goods were exempted from carrying the e-way bill at the relevant point of time. It was not a case of the respondent authorities that the goods which were detained and were being unloaded in State of UP or found to be unloaded in State of UP or intent to be unloaded in State of UP but on the contrary. Therefore, mainly on the ground of some small technical fault for not carrying the e-way bill, the penalty ought not to have been levied in the absence of any discrepancy in document accompanying the goods. In view of above, the impugned orders cannot be sustained in the eyes of law.
5.	Section 29	Amnesty for revocation of cancelled registration shall be available to registration cancelled after 31-12-22	Active Pest Control v. Deputy Commissioner, Commercial Taxes Department, Circle-XI [2023] 154taxmann.com2 (Madras) (24-7-23)	Scheme for revocation of already cancelled registration had been extended up to 31.08.2023 vide Notification No.23/2023 – Central Tax, dated 17.07.2023. Although the above scheme applied to those whose registrations which were cancelled before 31.12.2022, the intention of the Government was to allow the registrants, whose registration have been revoked to revive their registration to carry on the business. High Court considering the fact that benefit of the scheme was available for those, whose registrations were cancelled before 31.12.2022, Court was of the view that the benefit of the scheme should ensure to persons like petitioner also whose registrations was cancelled after the cut-off date. The Court disposed directed the petitioner to pay the arrears of tax together with interest before cut-off date on 31.08.2023.