

Part-76-One Pager Snapshot to the Latest Cases

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S.N.	Section	Case Subject	Case	Held
1.	Section 73 and Section 74, Section 122, Section 125 and 126	<p>a) Suppression of facts to evade tax cannot be alleged as due date for filing of Annual Return for 19-20 did not expire</p> <p>b) 3 offences identified for non-maintenance of records, thus cannot be a case of maximum penalty U/Sec 125 since penalty levied was 25000/- against a maximum of 75000/-</p> <p>c) Section 126 is not applicable for levy of penalty under Section 122</p>	<p>Suvarna Fibrotech (P.) Ltd. v. Assistant Commissioner (ST) (FAC) [2023] 148 taxmann.com 39 (Madras) (2-1-2023)</p>	<p>Enforcement Wing Officials inspected the place of business on 24-4-2019 followed by inspection on various dates and the last of the dates being 28-5-2019. For 'Financial Year 2019-20', there were three heads of defects noticed and observation of the Court for three defects was as follows-</p> <p>(a) Invoking Provision of Section 74 for alleged sales suppression- Petitioner contended that for 19-20, he had time for reconciling till the due date of annual return i.e. 31-3-2021, whereas inspection was in April of 2019. <u>High Court by referring section 74 held that as petitioner had time till 31-3-2021 to reconcile, it may not really qualify as suppression. However, petitioner would then fall into rigour of penalty of Section 73 as penalty for the purported suppression under Section 74 was only Rs. 3890/- and if Section 73(9) was to be applied, it would become Rs. 10,000/-.</u> This left the writ petitioner in a situation which was described by the Court as "fire to frying pan or devil to deep sea" and writ petitioner was worse off by filing writ petition. Therefore, writ Court deemed it appropriate to leave it at that and say that interference was refused but it was made clear that it cannot be put against the writ petitioner that there is 'suppression of facts to evade tax' within the meaning of section 74(1) and it is only a case of tax not being paid within the meaning of section 73(1).</p> <p>(b) For contravention of statutory provisions which were 3 in number being (i) non-maintenance of particulars of name/complete address of suppliers qua goods and services chargeable to tax; (ii) non-maintenance of particulars of name/complete address qua entities to whom goods and services were supplied and (iii) monthly production accounts showing quantitative details of raw materials used in the manufacture and quantitative details of goods manufactured including the waste and by-products not maintained qua sub-Rule(12) of Rule 56 of CGST and TNGST Rules- High Court observed that a careful perusal of section 125 made it clear that it is more in the nature of a residuary provision. In the case on hand, <u>as there were three specific non-compliances qua statutory requirements, it was well open to invoke Section 125 with regard to each of the non-compliances and levy Rs. 25,000/- each, which would have added upto Rs. 75,000/-.</u> However, Original Authority levied penalty of only Rs. 25,000/- for all three non-compliances put together. Therefore, maximum penalty to which a general penalty under section 125 can extend, has been exercised in the case on hand.</p> <p>(c) GSTR -1 filed upto 2019 but GSTR 3 B not filed, tax collected but not paid to the Government-For levy of 100% Penalty for failure to pay collected tax to the Government beyond a period of three months from the date on which such payment becomes due, High Court held that by no means provision of Section 122 fits into Section 126 in the light of <i>Explanation</i> thereat. <i>Explanation</i> thereat makes it clear that the tax liability or the amount of tax involved should be less than Rs. 5,000/- or it should be a omission or mistake in documentation which is easily rectifiable in the same as an error apparent on the face of record. <u>Sub-section (6) makes it clear that section 126 will not be attracted, when penalty is expressed as a fixed percentage. In the case on hand, section 122(1)(iii) read with section 122(1) makes it clear that it is expressed in both units namely a fixed sum as well as a fixed percentage. On this ground also section 126 does not come to the aid of the writ petitioner.</u></p>
2	Section 73 and Section 74 vis-a-vis Section 75(12)	<p>Interest payable on delay in deposit of tax need not culminate under Section 73/74 and can culminate straight-away in Section 75(12)</p>	<p>[2023] 148 taxmann.com 166 (Madras) Path FINDER India v. Assistant Commissioner (State Tax) (FAC) (3-1-2023)</p>	<p>Petitioner contended that notice dated 24-3-2022 was served under Rule 142(1A) for non-payment of Interest against which a reply dated 25-4-2022 was sent. Notwithstanding the reply, an order dated 30-9-2022 was made by which bank account was attached under Section 75(12). Petitioner contended that since reply to the notice was made, therefore it should have culminated in proceedings under section 73/74. <u>High Court held that sub-section (12) of section 75 opens with a non obstante expression and is notwithstanding section 73 and section 74.</u> Therefore, as regards the interest component qua section 50(1) of TNGST Act, the argument that the notice dated 24-3-2022 should have culminated in proceedings under sections 73 or 74 was a non-starter. This by itself drew the curtains on the captioned writ petition. However, the court deemed it appropriate to provide one window to the writ petitioner by directing the respondent to consider the reply of the writ petitioner dated 25-4-2022 and take a call on the same as expeditiously as the official business of the first respondent would permit. Another ground raised by the revenue was that the portal now itself points out the Interest but since the court had itself left it to the first respondent to deal with 25-4-2022 reply, therefore the Court refrained itself from expressing any view or opinion on this submission.</p>