

Part-77-One Pager Snapshot to the Latest Cases

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S.N.	Section	Case Subject	Case	Held
1.	Explanation to Rule 89(4)	Amendment in Rule 89 (4) for considering lower of FOB or Invoice Value is not clarificatory in nature and thus has Prospective Operation Insertion of Explanation does not always signify retrospective amendment. Insertion of a new stipulation will always have a prospective effect. Policy can only be changed by amendment to parent act and not by a circular.	Tata Steel Ltd. v. Union of India [2023] 154 taxmann.com 76 (Jharkhand) (21-08-23)	Explanation was inserted in Rule 89(4) of the CGST Rules, 2017, vide notification no. 14/2022 - Central Tax, which provided that while processing refund claims in case of exports, the lower of the values i.e. FOB value declared in the Shipping Bill or value declared in tax invoice shall be considered. The Court confined interpretation on the question of retrospective effect of the amendment that came in the year 2022, so far as its applicability in the aforesaid writ applications for the sole reason that the vires of the said rule is not under challenge and did not touch the aspect of validity of Paragraph 47 of Circular No. 125/44/2019-GST dated 18-11-2019. a) Insertion of Explanation was from Prospective Effect -Explanation inserted by way of amendment in Rule 89(4) of the CGST Rules, 2017, vide Notification No. 14/2022 - Central Tax dated 5-7-2022 was not in existence at the time of passing of the Order in Appeal dated 11-10-2021. Except for Rules 7, 9, 10, and 19 for which dates with retrospective operation have been provided, no other rules were given any retrospective effect. Thus, from bare perusal of notification itself amendment made to Rule 89 (4) will have a prospective effect. b) Whether Amendment was on similar lines to Para 47 of Circular No. 125/44/2019-GST 18-11-2019 or inserted a new stipulation- High Court held that Paragraph 47 contemplated comparison of the value of export in the tax invoice and in the shipping bill, <i>i.e.</i> , the export document (which can either be FOB or CIF value) whereas explanation required comparison of the value in tax invoice with only FOB value. Thus, explanation cannot be said to be on similar lines as Paragraph 47. A policy can be changed only by way of an amendment under the parent Act and not by a circular and the policy change will be effective from the date of the amendment. c) Whether the term Explanation when used would always signify retrospective Amendment- The 2022 Amendment Rules inserted a new stipulation for comparison between two values. Such an exercise was not contemplated prior to the amendment as what was taken into account was the actual transaction value. Therefore, by way of the amendment, a substantive change was brought about in the law and therefore the amendment ought to operate prospectively. Further, mere use of the term "explanation" will not be indicative of the fact that the amendment is clarificatory/declaratory. d) A policy can be changed only by way of an amendment under the parent act and not by a circular and the law is well settled that no taxes shall be levied or collected by way of executive fiat. The High Court held that amendment in Rule 89 (4) of CGST Rules, 2017 which came into effect vide Notification No. 14/2022-Central Tax dated 5-7-2022 is not clarificatory in nature and thus will have a prospective effect. In all these writ applications since the period involved is prior to the amendment; as such, we hold that the respective impugned orders deserve to be quashed and set aside. Cases Referred- CIT Versus Vatika Township (P) Ltd., reported in 2015 (1) SCC 1, Sedco Forex International Drill. Inc. v. CIT, reported in (2005) 12 SCC 717, Union of India v. Martin Lottery Agencies Ltd., reported in (2009) 12 SCC 209, Kunnathat Thatehunni Moopil Nair etc. - versus State of Kerela and another reported in 1960 SCC Online SC 7
2	Section 29 and Section 30	SCN must specify the reasons for the proposed action	[2023] 154 taxmann.com 73 (Delhi) Singla Exports v. CBIC (09-08-23)	Impugned order was issued pursuant to the impugned Show Cause Notice, whereby the Adjudicating Officer had proposed to cancel the petitioner's GST Registration for the reasons-"1 Non compliance of any specified provisions in the GST Act or the Rules made thereunder as may be prescribed." High Court observed that a SCN must specify reasons for proposed action so as to enable noticee to respond to same. In the present case, impugned SCN did not provide any clue as to which provisions of GST Act or GST Rules were allegedly violated by petitioner thus, impugned SCN was incapable of eliciting any meaningful response. Therefore, impugned order passed pursuant to the impugned Show Cause Notice cannot be sustained for the same reason. Thus the order was <i>set aside</i> matter was remanded to the concerned officer to consider afresh.
3.	Section 129	Penalty for Eway Bill not generated cannot be absolved basis upon reputation	Voltas Limited v. State of Bihar [2023] 154 taxmann.com 34 (Patna) (23-08-23)	The contention of the petitioner was rejected that merely because of reputation of the Company; the Court and the Department should assume that there would be no evasion carried out. As far as the possibility of evasion, when e-way bills were not generated, there could be multiple transport on the very same invoice which could lead to evasion. The High Court was not convinced that the petitioner could be absolved from the liability, either on the ground of their reputation and not at all on the ground of a presumption against such Companies involving themselves in evasion. Penalty levied was held to be valid since there was no reason as to why invoices were not included in the e-way bill generated.