

**Part-96-One Pager Snapshot to the Latest Cases**

**CA Arpit Haldia**

S.N.	Section	Case Subject	Case	Held
1.	<b>Section 67</b>	Issue of prohibitory order under Section 67(2) not a stop gap arrangement to decide whether to seize goods or not  Notice issued after six months from date of prohibition not invalid but goods to be returned in view of Section 67(7)	Best Crop Science (P.) Ltd. v. Superintendent, CGST [2023] 154 taxmann.com 476 (Delhi)	<b>The Court considered Section 110</b> of Customs Act which it held to pari-materia to Section 67 of CGST Act, 2017. It further observed that action for seizure of the goods is required to be predicated on a reason to believe that the goods are liable for confiscation. This condition was required to be satisfied, before passing any order under the proviso to Section 67(2) of the CGST. The first proviso to Section 67(2) permits to pass an order prohibiting tax payer from parting with the goods in cases where goods were liable for seizure, but is not practicable to do so. Order of prohibition is not a stop gap arrangement for the department to take an informed decision whether to seize goods or not seize goods.  <b>Further regarding provision</b> of Section 67(7) wherein concerned authorities are required to return the seized goods if a notice is not issued within a period of six months; high court stated that the contention that the although goods are required to be returned but order of prohibition can continue indefinitely was held to be militating against the scheme of Section 67 of the CGST Act.  <b>However, for the contention</b> that the impugned show cause notice was liable to be <i>set aside</i> because it was not issued within the period of six months from the date of the order of prohibition was held to be unmerited. The consequence of Sub-section (2) of Section 67 of the CGST Act merely provides that if no notice is issued within the stipulated period, the goods seized were liable to be returned. It did not postulate that the notice, issued after six months, was invalid. Thus, petitioner's challenge to the impugned show cause notice on the ground that it was issued after six months of the order of prohibition was rejected.
2.	<b>Section 73</b>	Order passed without recording contentions and without discussion on the issues raised by Petitioner quashed	Savvy Fabrics v. Union of India [2023] 154 taxmann.com 451 (Bombay)	<b>Petitioner contended</b> that the impugned order was illegal, inasmuch as, although a detailed reply to the show cause notice was submitted by the Petitioner as also a personal hearing was granted to the Petitioner, the impugned order did not record any reasons/findings regarding such contentions as urged by the Petitioner. It was further stated that there was no invocation of Section 122 in SCN regarding penalty. <b>The Court observed that</b> in the impugned order, in the paragraph titled "findings", none of the contentions as urged by the Petitioner were recorded as also there was no discussion whatsoever on the issues as raised by the Petitioner. This more particularly, when the impugned order raises a demand against the Petitioner on interest payable under section 50(3) as also a penalty being imposed under section 122 of the CGST/SGST Act, 2017 read with Section 73(9). Thus, impugned order was quashed with liberty to issue fresh SCN.
3.	<b>Section 29</b>	SCN Issued without containing any reason for the allegations made	Rahul Kumar Jain v. Union of India [2023] 154 taxmann.com 450 (Delhi)	<b>SCN merely alleged</b> that petitioner's GST registration was proposed to be cancelled on account of fraud, wilful misstatement or suppression of facts; however, it did not provide any specific reason and it did not provide any clue as to the facts which were allegedly suppressed. Petitioner responded by denying the allegations and also asked why and on what grounds, department alleged that they have taken registration by means of fraud, wilful misstatements or suppression of facts so that they can submit defence and detailed reply in this regard. <b>The Court observed</b> that it was evident that petitioner had no clue as to why its GST registration was sought to be cancelled and petitioner's request for providing further specific grounds was not acceded to and no further information was provided to the petitioner. Thus, impugned order was quashed being devoid of any reason as it only reiterated that it was order for cancellation of registration in reference to the SCN.
4.	<b>Section 129</b>	Circular No. 76 Dated 31 <sup>st</sup> Dec' 18 to be considered while deciding levy of penalty U/Sec 129(1)(a)/(b)	Western Carrier India Ltd. v. State of U.P. [2023] 154 taxmann.com 449 (Allahabad)	<b>Petitioner was aggrieved</b> by the order whereby liability was fixed upon it to pay penalty in terms of Section 129(1)(b). It was stated that the goods transported were accompanied by E-Way bill and invoice etc. and authorities erred in imposing penalty upon petitioner inasmuch as by virtue of Circular No.76/50/2018 dated 31 <sup>st</sup> December 2018, petitioner was liable to be treated as owner of the goods and consequently provision of section 129(1)(a) alone could have been invoked. <b>The Court stated</b> that goods in transit were carrying necessary documents in the form of E-Way bill and invoice etc, therefore, department ought to have considered the petitioner's prayer for release of goods and vehicle upon compliance of the provisions contained U/s 129 (1) (a). Thus, direction was issued to act in terms of the Circular and release goods upon compliance of conditions stipulated U/s 129(1)(a).
5.	<b>Section 107</b>	Failure to consider submissions of petitioner by proper officer and appellate authority	KS Commodities (P.) Ltd. v. Assistant Commissioner [2023] 154 taxmann.com 447 (Delhi)	<b>The petitioner filed</b> a refund application. SCN was issued to the assessee and which was duly responded. The Adjudicating Authority considered the reply but rejected the petitioner's application for refund, <i>inter alia</i> , on the ground that the petitioner was unable to co-relate the input supplies respect of which ITC refund claim was made and the export of the commodities. The petitioner appealed against the said order, however, same was rejected by impugned order. The petitioner contended that although required proofs were submitted but neither Order-in-Original nor the impugned order passed by Appellate Authority discussed the material produced by the petitioner. <b>The Court observed</b> that none of the said orders indicated any reason as to why authorities did not consider the said material to be relevant for establishing that input supplies in respect of which refund was claimed, were directly correlated to export of sugar. In view of the above, impugned order was set aside and appeal restored with Appellate Authority to examine the material relied upon and to state the reasons if he was of the view that evidences on record cannot be correlated to the export of sugar as claimed by the petitioner.