

Part-97-One Pager Snapshot to the Latest Cases

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S.N.	Section	Case Subject	Case	Held
1.	Section 75	Opportunity of being heard be provided before an adverse order	Tvl. Sree Amman Metal Works v. State Tax Officer (Adjudication)-2 [2023] 154 taxmann.com 496 (Madras)	Petitioner challenged the impugned orders, apart from questioning them on merits, because of the objections filed by the petitioner were not taken note of by the respondent and non-speaking orders was passed. The Court observed that reading of the impugned orders did not imply the reasoning of the authority concerned. That apart, though adverse orders were being passed against the petitioner, no opportunity of personal hearing was afforded to him, which was contemplated under section 75(4) of the Central Goods and Services Act, 2017. Therefore, on this limited ground, without addressing the merits of the case, the Court allowed Writ Petitions and set aside the impugned orders and remitted the matter back to the respondent
2.	Section 140	No Interest and Penalty for Transitional credit which could not have been availed due to technical glitches on portal maintained by the Government	Nithya Packaging (P.) Ltd. v. Assistant Commissioner of GST and Central Excise [2023] 154 taxmann.com 494 (Madras)	Petitioner faced difficulty in transitioning ITC on capital goods and communicated with Department and officials named on Web Portal. However, he was unable to transfer the transitional credit. Thereafter, petitioner decided to avail such Credit. The credit was confirmed by Sanction Order (Tran-1 Credit) dated 20-2-2023. Meanwhile, proceedings were initiated to recover the amounts from the petitioner, which culminated in the impugned order. By the impugned order dated 28-3-2023, officer had imposed penalty and interest on the petitioner under section 50 and Section 73(9) read with Section 122(2)(a). The impugned order was passed as petitioner filed a revised return in terms of the decision of Bombay High Court in <i>Chep India Private Limited v. Union of India and others</i> dated 27-6-2022 and decision of the Hon'ble Supreme Court in <i>Union of India and another v. FILCO Trade Centre Private Limited</i> dated 22-7-2022, claiming ITC, which was earlier sanctioned by the Sanction Order (Tran-1 Credit) dated 20-2-2023. The only point that arose for consideration was whether petitioner could be mulcted with interest and penalty even though the credit which was taken was sanctioned and merely because the petitioner had also filed returns to transition the same credit. The Court observed that petitioner was entitled to Rs. 11,06,396/- on the eve of implementation of GST with effect from 1-7-2017 and by Sanction Order (Tran-1 Credit) dated 20-2-2023, proper officer had confirmed that petitioner was entitled to the aforesaid transitional credit. Therefore, merely because petitioner had filed subsequent return and had given up the same would not mean that petitioner could be subjected to pay interest and penalty. The difficulty arose only on account of technical glitches in the web portal maintained by the Central Government at the time of implementation of GST. The petitioner cannot be penalized as the credit itself was allowed after the implementation of GST by Sanction Order (Tran-1 Credit) dated 20-2-2023. Therefore, order seeking to impose interest and penalty on the petitioner was held to be unsustainable and thus quashed
3.	Section 107	Appeal could not be dismissed as certified copy of order not produced	KPMG India (P.) Ltd. v. Joint Commissioner of State Tax (Appeals) [2023] 154 taxmann.com 492 (Punjab & Haryana)	Petitioner contended that they had filed appeal along with digitally uploaded order on the common portal and hence, appeal could not be dismissed on the ground that certified copy was not attached with the appeal. The Court observed that since uploaded copy was already part of the appeal, it would amount to substantial compliance of Rule 108 and Joint Commissioner would not dismiss the appeal by impugned order on the ground that appellant had not submitted certified copy of order impugned therein. Since fact was further clarified by notification dated 25-1-2023 whereby it has been clarified if an order against which appeal has been filed is uploaded on common portal, then final acknowledgement shall be considered as date of filing of the appeal. The writ petition was thus allowed.
4.	Section 67	No roving or fishing inquiries be conducted under the garb of authorisation U/Sec 67	Bhagat Ram Om Prakash Agro (P.) Ltd. v. Commissioner of Central Tax, GST [2023] 154 taxmann.com 491 (Delhi)	Petitioner contended that the search authorisation was illegal as the same was issued without proper officer having any reason to believe that conditions as specified under Section 67(1) of CGST Act, 2017. Petitioner stated that search was conducted in view of directions issued by the Special Judge (P.C. Act) to Income Tax Department, GST Department, and Enforcement Directorate to check source of Rs. 50,00,000/- received by petitioners. Petitioner no.2 purchased a property from one Mr. Rajesh Kumar Anand for a sum of Rs. 50,00,000/-. Mr. Rajesh Kumar Anand had deposited the said consideration in a fixed deposit receipt which was offered as a collateral for securing the bail of Sh. Kapil Wadhawan and others. The Court issued notice to the revenue but at the same time observed that they had serious reservations whether any such roving and fishing inquiry under the CGST Act, 2017 could have been directed to be conducted by the Special Judge. Further, the proper officer can authorise the search only if the conditions specified in Section 67 of the Act are fulfilled.
5.	Section 29	Opinion for cancellation of registration cannot be formed by DGGI	Muhammad Salmanul Faris k v. Superintendent, CGST & Central Excise [2023] 154 taxmann.com 414 (Kerala)	Deputy Director, DGGI , Kochi Zonal Unit has requested the Range Officer, Ottapalam to cancel GST registration of the petitioner and petitioner was given a personal hearing by the proper officer on 27-3-2023. However, petitioner did not appear on the said date and new date was fixed on 19-4-2023. The petitioner did not appear for the said hearing on 19-4-2023 and therefore, impugned order for cancellation of the GST registration of petitioner was passed. The petitioner contended that when DGGI Cochin Unit has already taken a decision and directed for cancellation of the GST registration of the petitioner, the competent authority could not have taken a decision contrary to the said direction issued by the higher authority. The Court observed that considering the aforesaid submissions, there was no denial of fact that the DGGI, Kochi Zonal Unit has already taken the decision for cancelling the GST registration of the petitioner and the proper officer was only required to form the formalities and could not have taken an independent decision. Therefore, the impugned order was set aside and remanded back for decision on merits. However, the said order was not revived further for a period of one month.