

S.N.	Subject	Case	Held
1.	Authorisation U/Sec 67 would be in respect of business premises of an assessee and cannot be in respect of each and every person and each and every article, goods, books, and documents which may be discovered during search operation.	<b>Velayudhan Gold LLP v. Intelligence Officer [2023] 156 taxmann.com 21 (Kerala) (20-10-2023)</b>	<b>Search was conducted</b> at the business premises of M/s Sobhana Jewellery. During the search, it was seen that some gold ornaments were kept in a bag of employees of petitioner (i.e. Velayudhan Gold LLP) who were present during the search at the business premises of M/s Sobhana Jewellery. The gold ornaments were found to be accompanied by a delivery challan issued by the petitioner (i.e. Velayudhan Gold LLP) endorsing 22kt gold ornaments with net weight of 1332.590 gms in the name of M/s Sobhana Jewellery. It was issued for transportation of ornaments from the petitioner (i.e. Velayudhan Gold LLP) to M/s Sobhana Jewellery. The net weight of the gold ornaments on verification was found to be 1647.97 grams. Discrepancies were found between documents and actual stock in bag. As a result, gold ornaments found in bag were seized, and seizure memo was prepared. <b>Petitioner contended there was no authorisation in respect of jewellery items of petitioner (i.e. Velayudhan Gold LLP), which were seized from premises of M/s Sobhana Jewellery. The court observed</b> from perusal of Section 67(2), when search and seizure operations are authorised, at that time, it would not be known which are the items or documents or books which might be recovered or which would have been kept at a secreted place. What is relevant is that while granting authorisation for search and seizure operations, the authority granting such permission, i.e., Joint Commissioner or Officer above the rank of Joint Commissioner, should have reasons to believe that the goods, documents or things hold relevance and are useful in any legal proceedings and the same are secreted at a particular place. The petitioner's (i.e. Velayudhan Gold LLP) gold jewellery items were also found stored in a bag at the premises of M/s Sobhana Jewellery. The contention of the petitioner that there was no authorisation for the seizure of 1647.970 grams of gold, the property of the petitioner, does not merit consideration as there was authorisation for the search of the premises of M/s Sobhana Jewellery and these gold items, which the petitioner had later on claimed ownership, was found in a bag in the premises of M/s Sobhana Jewellery. There cannot be authorisation in respect of each and every person and each and every article, goods, books, and documents which may be discovered during the search operation. The authorisation has to be done in respect of the business premises of an assessee, and if things, items, books or documents are found that the authorised officer has reasons to believe that they would be relevant for the purpose of proceeding under the SGST/CGST Act 2017, they are liable to be seized. <b>(Section 67 of CGST Act, 2017)</b>
2.	Tax collected but paid after notice U/Sec 73(1), although within 30 days of the notice will attract 10% penalty by virtue of Section 73(11)	<b>Global Plasto Wares v. Assistant State Tax Officer [2023] 156 taxmann.com 7 (Kerala) (17-10-2023)</b>	<b>Petition was filed</b> against the penalty in the impugned order to the extent of Rs. 40,000/- . Petitioner contended that he had paid all tax before thirty days from the date of the notice. The notice was dated 28-2-2022 and petitioner had paid the tax on 10-3-2022. Petitioner relied upon Section 73(8). Department contended that Section 73(8) comes into play when an assessee has not paid the tax on the transactions. But where assessee had collected tax from the others and not credited it to the Government then Section 73(11) will come into play as Section 73(11) of the GST Act, 2017 begins with a <i>non-obstante</i> clause i.e. ; "notwithstanding anything contained in sub-section (6) or sub-section (8), penalty under sub-section (9) shall be payable where any amount of self-assessed tax or any amount collected as tax has not been paid within a period of thirty days from the due date of payment of such tax". <b>The Court held</b> that considering provisions of Sub-sections 6, 8 and 9 of Section 73, if a person fails to deposit tax collected by him within a period of thirty days from due date of payment of tax, Sub-section 8 will not be applicable and such person would be liable to penalty. <b>(Section 73(11) of CGST Act, 2017)</b>
3	Taxability of Coaching Fees collected from students by an educational Institution to be examined considering Circular dated 3-8-2022 which states that all services supplied by "educational institution" to its students were exempt from GST in first sentence of paragraph 4.3	<b>Alva's Education Foundation v. State of Karnataka [2023] 156 taxmann.com 6 (Karnataka) (05-10-2023)</b>	<b>Petitioner had</b> charged its students the following amounts as 'coaching fees' i.e. Tuition fees towards II PUC CET Crash & Coaching and CA-CPT Coaching, Training fees for providing certification courses & placement and training fee for JV-A IET, Penal fee/fine, Various Misc. Fees viz., towards Alva's Nudisiri event, abacus, students welfare fund, internet, damages to hostel mess property, library fee and college fees. The authority while observing that amounts/fees charged to the prospective students for entrance or admission or eligibility certificate were exempted but not coaching fees. The conclusion was based on definition of "educational institution" contained in clause 2(y) of Notification dated 28-6-2017 and Circular dt 3-8-2022 in No. 177/09/22-TRU. <b>The Court observed</b> that authority while examining expression educational services under Notification dated 28-6-2017 in light of Circular dated 3-8-2022, had to necessarily consider the same in the light of paragraph 4.2 and first sentence in paragraph 4.3 of the Circular which was as follows- 4.2 <i>In this regard, it is stated that educational service supplied by educational institutions to its students are exempt from GST vide Entry 66 of the Notification No. 12/2017 Central Tax(Rate), dated 28-6-2017 relevant portion of which read as under:-</i> "Services provided - (a) <i>by an educational institution to its students, faculty and staff;</i> <i>[aa] by an educational institution by way of conduct of entrance examination against consideration in the form of entrance fee:]"</i> 4.3 <i>Therefore, it can be seen that all services supplied by an 'educational institution' to its students are exempt from GST..."</i> <b>The authority was</b> persuaded not to hold against petitioner relying upon later part of paragraph 4.3 and 4.4 overlooking first part of paragraph 4.3. The Court stated that there was an obvious error in the order as question was not about entrance fee but about coaching fee which would have to be examined considering Circular dated 3-8-2022 which states that all services supplied by "educational institution" to its students were exempt from GST in first sentence of paragraph 4.3. Objection was raised that re-consideration may not include, whether abacus course extended by the petitioner to its students with the assistance of an external agency as abacus course is not recognized in any law as a qualification. Petitioner relied upon the judgement of <i>Educational Initiatives Pvt. Ltd. v. Union of India</i> reported in 12. 2022 (63) G.S.T.L. 45 (Guj.) The Court remanded the matter back to the authority and directed that every aspect should be examined including this aspect in light of judgement of High Court of Gujarat. <b>(Section 9 and 11 of CGST Act, 2017)</b>