

Part-101-One Pager Snapshot to the Latest Cases

CA Arpit Haldia

S.N.	Section	Case Subject	Case	Held
1.	Section 73	SCN on same subject matter issued by two authorities to be decided by one of the authorities	LGW Industries Ltd. v. Assistant Commissioner, Salt Lake Charge [2023] 154 taxmann.com 611 (Calcutta) (15-03-2023)	SCN was issued by Assistant Commissioner, Salt Lake Charge on dated 29 th Dec 2022 and on the very same issue, Assistant Commissioner, State Tax, Bureau of Investigation, South Bengal (HQ) had issued notice dated 7 th Nov, 2022. The Court was of the view that if the subject issue is one and the same or if the subject is inter-related, it is always better that one authority adjudicates the matter. By directing the assessee to face multiple authorities may result in conflicting decisions. Therefore, not only in the interest of the assessee but in the interest of the revenue also, one authority should take the decision. Admittedly, Bureau of Investigation, South Bengal was centralised agency and if that agency has already taken up the matter for consideration and the concerned Assistant Commissioner has issued notice dated 7 th Nov, 2022, it was held to be appropriate that issues be considered by the said authority including the issue, which was raised by the respondent in the SCN dated 29 th Dec 2022.
2.	Section 73/74 and Rule 86A	An earlier order passed under Rule 86A(2) lifting the blocking of ITC Ledger, will not preclude the assessing officer in passing an order under Section 73/74 to hold that ITC was wrongly availed.	D. Ranganathan & Co. v. Assistant Commissioner (RAL) (FAC) [2023] 154 taxmann.com 606 (Madras) (11-04-2023)	For the period 2017-18, petitioner's ITC had been blocked under Rule 86A on the basis that ITC had been availed allegedly, fraudulently. The petitioner was called upon to file objections and was also heard. Pursuant thereto, an order was passed on 16-7-2021, considering the request of the petitioner for unblocking of credit under Rule 86A in its favour. Thereafter, notices came to be issued to the petitioner on the basis of information received by the assessing officer (hereinafter referred as "R 3") to the effect that suppliers were non-existent or were not conducting business from the place in which registration had been obtained. The petitioner responded to the SCN by relying on proceedings dated 16-7-2021. The submissions made before R1 were reiterated before R3, the assessing officer, and, infact response dated 15-11-2022 relies, lock, stock and barrel, on proceedings dated 16-7-2021 only. After considering the explanation and hearing the petitioner in detail, R3 proceeded to pass the impugned order on 5-1-2023. The Court observed that while passing an order lifting the blocking of credit, the assessing authority was undoubtedly required to examine whether such block has been validly made. It was thus incumbent upon the officer concerned to examine every aspect of the matter prior to arriving at a proper decision. However, at the same time, it was also incumbent upon the dealer to establish receipt of the goods or services. R3, in the impugned order of assessment had proceeded on the basis that the petitioner did not establish movement of goods. In fact, he referred to various particulars called for by him, such as weighment slips, vehicle receipts for goods transportation, freight for inward and outward related documents, fuel expenses, stating that such documents were not produced. He thus concluded, that petitioner did not discharge burden placed upon him to establish movement of goods and, based on such failure as well as the departmental enquiries, concluded that the transactions were fictitious as the suppliers did not exist. As regards the bank statements, there was an explanation put forth in the order to the effect that cash has been credited and debited the same day and hence the transactions constituted classic circular transactions. The High Court, thus concluded that true, R3 ought to have made reference to order of R1 dated 16-7-2021 and undoubtedly, this was a flaw in the assessment order but not a fatal flaw. The power of an assessing officer under section 73/74 is wide and proceedings for assessment may be initiated in any circumstance where it appears to the proper officer that the claim of ITC by an assessee is incorrect. The mere fact that an order has been passed under Rule 86A(2) will not stand in the way of the assessing officer making an assessment or curtailing his powers in any way, in such an exercise.
3.	Section 129	Conduct of the assessee to be considered in case of expired Eway Bill and having found that the conduct was not with the intention to evade tax, relief to be granted to the assessee	Usha Martin Ltd. v. Deputy Commissioner of State Tax [2023] 154 taxmann.com 610 (Calcutta) (16-06-2023)	The goods in question were meant for export and the appellants had generated an e-Way Bill which was valid till 12 th September, 2019. The appellants' case was that the goods while being loaded into the vessel had got damaged and as a result, the goods had to be taken back to the appellants factory at Ranchi for repairs. For such purpose the e-Way Bill was generated based on a challan on 7 th September, 2019 which was valid till 12 th September, 2019. In terms of Rule 138(10), an option is given to extend period of e-Way Bill and such extension should be done before eight hours. Admittedly, eight hour period expired about 8.10 a.m. on 13-9-2019 and at about 8.20 a.m., goods were detained. The Court observed that on perusal of e-Way Bill, it was seen that no tax was payable since the goods which were owned by the appellants were taken back to their factory at Ranchi for repairs. The identical issue was considered in various matters earlier by the Court and in all those matters, conduct of the assessee was considered and having found that the conduct was not with the intention to evade tax, relief was granted to those assessee's. The Court thus concluded that case on hand would also fall under the said category since there was no allegation of any evasion of tax rather it was not disputed that goods were being transported under a cover of challan to the factory of appellants for carrying out repairs and thus, it was not a fit case where tax and penalty should have been levied on the appellants. Cases Referred- Progressive Metals Pvt. Ltd. v. The Deputy Commissioner, State Tax, Bureau of Investigation, South Bengal, Durgapur Zone & Ors. in MAT 562 of 2023 dated 28-4-2023; KDG Projects Pvt. Ltd. v. Assistant Commissioner of State Tax, Bureau of Investigation (North Bengal) reported in 2022(66) G.S.T.L. 262 (Cal.); Medha Servo Drives Private Limited & Anr. v. The Assistant Commissioner of, State Tax, Bureau of Investigation (South Bengal), Durgapur Zone & Ors. in MAT 1751 of 2022 dated 17-11-2022