

Part-56-One Pager Snapshot to the Latest Cases

CA Arpit Haldia

S. N.	Section	Case Subject	Case	Held
1.	Section 107	Intimation in DRC-05 is an appealable order	Savita Oil Technologies Ltd v. Union of India [2023] 152 taxmann.com 577	<p>The petitioners had deposited the disputed tax under protest and were issued an intimation in Form GST DRC-05. The petitioner approached to contend that intimation issued in Form GST DRC-05 by the adjudicating authority itself is an appealable order as the CGST Act would clearly provide. It is therefore, contended that as the portal is not allowing filing of appeal, it will render the remedy of an appeal illusory.</p> <p>The High Court observed that petitioners have a legitimate right to file an appeal being aggrieved by intimations issued in Form DRC-05. Merely because electronic portal does not make a provision for filing of an appeal against an intimation issued in Form DRC-05, the petitioners cannot be faulted and for such technical reason, it cannot be countenanced that a statutory right of appeal available to the petitioners is rendered otiose. In the above circumstances, the high court held that till an appropriate provision is made for acceptance of such appeal electronically, the filing of such appeal is required to be permitted by the manual method.</p>
2.	Section 107	Failure to do through a statutory remedy cannot be permitted to be done through a writ petition	Marvel Associates v. State Tax officer [2023] 152 taxmann.com 576 (Kera)	<p>The petitioner's grievance was that, as time period prescribed under Section 107 (4) of the CSGT Act to challenge the impugned orders by way of a statutory appeal had lapsed, the petitioner was left remediless. Therefore, the present writ petition was filed.</p> <p>The High Court observed that without taking recourse to the above statutory remedies, the petitioner assailed the impugned orders in the writ petition, that too after a year. What the petitioner had failed to do directly through a statutory remedy cannot be permitted to be done indirectly through a writ petition, that too at its own sweet will and pleasure. A Constitutional Court is not an open Forum to be approached at the whims and caprice of a litigant. The Court's extraordinary power can be exercised sparingly and in exceptional cases. The High Court did not find any such circumstances in the present case to entertain the writ petition under Article 226 of the Constitution of India. The writ petition was held to be groundless and was thus, dismissed.</p>
3.	Section 54	Refund allowed for Tax Excess Paid @ 18% instead of 0.1%	Tagros Chemicals India (P.) Ltd. v. Union of India [2023] 152 taxmann.com 570 (Gujarat)	<p>The petitioner had supplied goods at the concessional rate of IGST at the rate of 0.1% in terms of Notification No.41/2017 - Integrated Tax (Rate) dated 23.10.2017. The petitioner thereafter supplied goods to the buyer on payment of full duty (under an error) of IGST at the rate of 18% instead of concessional rate of 0.1%. Thereafter, the petitioner issued credit note dated 16.03.2020 for the excess amount of tax to the buyer. The details of credit note were duly mentioned in GSTR-1 return for the month of March, 2020, however, the petitioner could not reduce the turnover and GST liability as there were no outward supplies during the said month and subsequent month. The refund application was however rejected without assigning any reason.</p> <p>The High Court relied upon the judgement of Hon'ble Apex Court in the matter of Bonanzo Engineering & Chemical Pvt. Ltd. v. Commissioner of Central Excise reported in 2012(4) SCC 771 (Principle- Assessee paid duties on the goods which are exempted from payment does not mean that the goods would become goods liable for the duty under the Act) and Share Medical Care v. Union of India reported in 2007(4) SCC, 573 (Principle- even if an applicant does not claim benefit under a particular notification at the initial stage, he is not debarred, prohibited or estopped from claiming such benefit at a later stage). The refund was thus allowed and the impugned order set aside.</p>
4.	Section 140	Transitional Credit denied as Return for 30.06.2017 was having Nil Balance	Tvl. Devesh Spices v. Assistant Commissioner (CT)/(ST) [2023] 152 taxmann.com 553 (Madras)	<p>The petitioner carried forward credit of Rs.1,36,563/- through TRAN-1. However, she did not have any excess credit for the year 2017.</p> <p>The High Court observed that on perusal of the relevant record for the month ending June, 2017, the entry under the head "excess input tax credit" at column 11 was shown as '0.00'. Thus, contention of the petitioner that she had a credit limit was held to be incorrect and thus petitioner was held no to be entitled for any relief.</p>