

Part-60-One Pager Snapshot to the Latest Cases

CA Arpit Haldia

S. N.	Section	Case Subject	Case	Held
1.	Section 73	Principle of Natural Justice	Dr. Ambedakar Enterprises v. Union of India [2023] 153 taxmann.com 323 (Allahabad)	<p>SCN was issued on 10-6-2022, date for personal hearing was fixed on 24-6-2022 whereas date for final reply was fixed thereafter on 9-7-2022. The petitioner could not appear on the date fixed for personal hearing. The order impugned was passed about five months thereafter on 30-11-2022.</p> <p>The High Court observed that Principle of natural justice was breached. The adjudicating authority ought to have fixed reasonable date for filing reply and for personal hearing. The petitioner may have been at fault in not filing reply on the date fixed and having not filed any application thereafter. Yet, the adjudicating authority chose not to pass any order and did not fix any other date for hearing in the matter for a long period of five months. However, there was fault on the part of the petitioner too in neither filing appeal within limitation nor approaching the Court within reasonable time. The writ petition was disposed that in case petitioner deposits a sum of Rs. 75,000/- before adjudicating authority, the impugned order shall stand set aside.</p>
2.	Section 107	Amount deposited under Section 73(5) to be considered as pre-deposit against appeal	Vinod Metal v. State of Maharashtra [2023] 153 taxmann.com 322 (Bombay)	<p>Petitioner intended to filed appeal under section 107 of the CGST Act and contended that the amount as deposited by the Petitioner under sub-section (5) of Section 73 of the CGST Act needs to be accepted towards fulfillment of such pre-deposit, as the said amount is already made, it cannot be contended by the Revenue, that such deposit is not available, when it comes to the compliance of sub-section (6) of Section 107 of the CGST Act.</p> <p>The High Court observed that on a holistic reading of Section 73, an amount deposited under sub-section (5) Section 73 is not an amount, which is deposited in pursuance of any demand or any assessment order. It is a voluntary deposit and which is subject to all contentions of assessee. Also such deposit would be accounted in the event of any the liability of the assessee to pay tax, and would be integral to the assessment. Thus, when it comes to the compliance of mandatory payment of the tax, being a condition precedent for filing of appeal, principle as laid down in Supreme Court in <i>VVF (India) Ltd.</i> would become applicable considering that the provisions of the CGST Act on pre-deposit are not too different from provisions of the MVAT Act, which fell for consideration of the Supreme Court. For the above reasons, High Court held that voluntary deposit as made under protest under the provisions of Section 73(5), cannot be excluded from consideration for the purpose of compliance as mandated by sub-section (6) of Section 107 of the CGST Act. Case Referred- <i>VVF (India) Ltd. v. State of Maharashtra (2023) 4 Centax 421/2023 (72) G.S.T.L. 444 (SC)</i></p>
3.	Section 107	Binding Precedent of Orders passed by Appellate Authority over Assessing Authority	Jacobs Solutions India (P.) Ltd. v. Union of India [2023] 153 taxmann.com 321 (Bombay)	<p>In pursuance of order dated 11 October 2022 passed in an appeal, petitioner filed a refund claim on 29 November 2022. On such refund claim, Assistant Commissioner of CGST & CX (Central Excise) issued a SCN dated 28 December 2022, calling upon the petitioner to show cause as to why refund claim ought not to be rejected on the ground of non disclosure of invoice details of FIRC's. The Assistant Commissioner by the impugned order dated 27 January 2023 rejected the petitioner's refund claim whereby he confirmed the show cause notice. It is against such order the petitioner filed petition before the Court.</p> <p>The High Court observed that when the entire fact finding exercise was subjected to the scrutiny in an appeal resulting in the appeal being allowed, then only remedy for the department against the appeal order was to seek review. It was not open to Assistant Commissioner to pass the impugned order which amounted to sitting in appeal over the order passed by the Additional Commissioner of Appeals. The Assistant Commissioner could not have passed the impugned order, of the nature he has passed as he was certainly bound by the orders passed by the Additional Commissioner (Appeals). Cases Referred- <i>Globus Petroadditions (P.) Ltd. v. UOI[2022]140 taxmann.com 569(Bom), UOI v. Kamlakshi Finance Corpn. Ltd. 1992taxmann.com16(SC)</i></p>
4.	Section 70	Recording of Statement in presence of Advocate	Prakash Kumar Rameshbhai Patel v. State of Maharashtra [2023] 153 taxmann.com 273 (Bombay)	<p>The petitioner prayed for the relief that petitioner's statement be recorded in the presence of his Advocate <i>i.e.</i> at a visible but not audible distance, during his interrogation. The revenue had no objection to the presence of the petitioner's Advocate, at the time of recording of the petitioner's statement, provided that he is at a visible distance, but not at an audible distance.</p> <p>The High Court allowed the petition and, as such, permit the petitioner's Advocate to remain present at a visible, but not at an audible distance at the time of recording of the petitioner's statement.</p>