

Part-63-One Pager Snapshot to the Latest Cases

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S. N.	Section	Case Subject	Case	Held
1.	Section 107	Acceptance of Manual Appeal	Sakthi Steel Industries India (P.) Ltd. v. AAC (State Tax) [2023] 153 taxmann.com 362 (AP)	Petitioner had filed an appeal before appellate authority through official website, but since appellate authority had not been mapped i.e., constituted, digital mode of filing of appeal was not accepted and numbered. Thereafter, petitioner filed appeal manually and same was pending. Considering respective submissions and in the interest of justice, High Court directed to consider the appeal and register if it is otherwise in order.
2.	Section 74	Deposit of Tax by Taxpayer on two different dates i.e. even after the date of Search did not by itself constitute Self-Assessment but should contain material on record of being voluntary and revenue having applied its mind to be treated as Self-Assessment	Parsvnath Traders v. Principal Commissioner, CGST [2023] 153 taxmann.com 361 (Punjab & Haryana)	<p>Facts-Petitioner stated that on 05.02.2021, search was conducted under Section 67 and petitioner was forced to deposit a sum of Rs.20 lacs on the same day. They also deposited an additional amount of Rs.30,70,216/- on 16.02.2021. The respondents did not issue any SCN or order determining its tax liability. Petitioner made request in writing to the respondents to refund the amount of Rs.50,70,216/- but the same was rejected by order dated 18.05.2021. Revenue stated that petitioner deposited the amount through DRC-03 and were voluntary payments amounting to admission. It was denied that the petitioner was forced to deposit the amount of Rs.50.70 lacs.</p> <p>-Section 74(5) is not a statutory sanction for advance payment-Section 74(5) cannot be considered as a statutory sanction for advance tax payment, pending final determination because that would be contrary to scheme of assessment as set out under Section 74. Section 74(6) provides an opportunity for assessee and/or to revenue to ascertain proper amount of tax, interest and penalty and even in cases where there might have been a shadow of wrong declaration, wrong availment or utilisation of ITC, or short payment of tax, there can be closure of proceedings at that stage itself on the basis of either 'self-ascertainment' and acceptance of same by revenue or vice-a-versa.</p> <p>-Deposit of Tax by Taxpayer on two different dates i.e. even after the date of Search did not by itself constitute Self-Assessment but should contain material on record of being voluntary and revenue having applied its mind to be treated as Self-Assessment- There should have been a material on record to show that petitioner had in fact, accepted the ascertainment made by it and the revenue had applied its mind and arrived at the conclusion that 'self-ascertainment' by the assessee was adequate/inadequate. The petitioner on the contrary is shown to have consistently contested its liability to make payment of the tax. The 'self-ascertainment' which is contemplated under Section 74(5) of the Act, 2017 is in the nature of 'self-assessment' and amounts to a determination by it which is unconditional and not as in the present case when shortly after depositing the amount Rs.50.70 lacs, the petitioner approached the revenue for refund.</p> <p>No Crystallised liability on record- Neither any crystallised liability was shown to be existing nor any SCN had been issued either at that time or even till now and amount of Rs.50.70 lacs was recovered from it during investigation and has been retained by it.</p> <p>Held-The petitioner shortly after depositing the amount of Rs.50.70 lacs had approached the revenue for refund of the same therefore, ascertainment as contemplated under Section 74(5) which amounts to an unconditional determination and in the nature of 'self assessment' is not attracted and hence, the deposit could not be stated to be voluntary deposit by any stretch of imagination, irrespective of the fact that deposits were made in the form of GST DRC-03.</p> <p>Cases Referred- M/s Bhumi Associate v. UOI (2021) 46 GSTL 36, Century Metal Recycling Pvt. Ltd.v.UOI, 2009 (234) E.L.T. 234 (P&H), Concepts Global Impex v. UOI, 2019(365) E.L.T. 32 (P&H), Century Knitters (India) Ltd. v. UOI, 2013 (293) E.L.T. 504 (P&H), <i>William E Connor Associates & Sourcing Pvt Ltd v. UOI, Diwakar Enterprises Pvt Ltd v. Commissioner of CGST and Others, 2023(98) GST 322, Modern Insecticides Ltd and Others v. Commissioner, CGST Others</i></p>
3.	Section 74	Refund sanctioned earlier can be reopened under Section 74	Ganesh Ores (P.) Ltd. v. State of Odisha [2022] 137 taxmann.com 164 (SC)	Refund was granted to the Petitioner. Thereafter notice was issued under section 74(1). Petitioner contended that it was open to the department to file an appeal under section 107(1) but having missed the time limit for doing so, the Department cannot indirectly seek to reopen the refund already granted pursuant to an adjudication by resorting to section 74. High Court held that there was no limitation placed in the statute that an order that is otherwise appealable under section 107 cannot be sought to be revisited under section 74(1) and that it does not appear to make any distinction between refund orders that have been passed without an adjudication and those which have been passed after adjudication. There is nothing in section 74(1) to indicate that refund granted after adjudication cannot be sought to be reopened. SLP filed before Apex Court against the judgement of the High Court (Ganesh Ores (P.) Ltd. v. State of Odisha [2022] 137 taxmann.com 163) was dismissed.