

Part-78-One Pager Snapshot to the Latest Cases

CA Arpit Haldia

S.N.	Section	Case Subject	Case	Held
1.	Section 73 and Section 74	Appellate Pre-Deposit to be allowed to be paid by Debit to Credit Ledger	Larsen & Toubro Ltd. v. Joint Commissioner (ST) [2023] 154 taxmann.com 81 (Madras)	The High Court directed the revenue to number the appeal by permitting the petitioner to debit the amounts that are lying unutilized in the petitioner's Electronic Credit Ledger towards pre-deposit under Section 107(6) of the Tamil Nadu Goods and Services Tax Act, 2017 and dispose the same on merits and in accordance with law in its turn.
2	Section 107	Petitioner directed to file Appeal before Appellate Authority and Appellate Authority directed to get goods tested on application by petitioner	Aasai Super Tobacco v. Assistant Commissioner of GST & Central Excise [2023] 154 taxmann.com 88 (Madras)	The goods which were subject matter of dispute were Cut Tobacco or Manufactured Tobacco and department had confirmed demand without subjecting product to testing. At the stage of admission, the Court, by its order had directed drawing of sample for being taken for testing before the Authority. However, the report was not available. High Court observed that since petitioner had filed the Writ Petition within limitation prescribed for filing an appeal under section 107 thus, the writ petition was disposed of by giving opportunity to the petitioner to file a statutory appeal before the Appellate Authority under section 107. The Appellate Authority was also directed that if the appeal is filed by the petitioner within the time stipulated, he shall consider the appeal and the petitioner was entitled to have a sample tested before the Authority and make an application before the Appellate Authority to send a sample for testing before the Testing Authority.
3.	Section 74	Date on which SCN was issued, there was no allegation of fraud or misrepresentation on the part of petitioner and opportunity of hearing not provided	Santosh Traders v. State of U.P. [2023] 154 taxmann.com 86 (Allahabad)	Notice was issued under Section 74 and date by which reply was to be submitted was fixed as 12-3-2021, however no date or time of personal hearing was specified in the notice. The petitioner appeared on 18-3-2021 and sought further time to file the reply. Thereafter, without passing any order on the said application, the order came to be passed on 14-7-2021, whereby demand as proposed in the show cause notice was confirmed against the petitioner. The petitioner preferred an appeal against the said order, the same was delayed and was dismissed. High Court held observed that the date on which show cause notice was issued, there was no allegation of fraud or mis-presentation on the part of petitioner and there was no mention as to how the case would fall under section 74. No opportunity of personal hearing admittedly was granted to the petitioner which was required in terms of Section 75(4) even if the petitioner had not filed his reply to the show cause notice. The order passed was thus held contrary to mandate of Section 75 and thus was quashed. Cases Referred- Bharat Mint And Allied Chemicals v. Commissioner Commercial Tax And 2 Others
4.	Section 75	Opportunity of being heard to be provided whether reply filed or not	Party Time Hospitality v. State of U.P. [2023] 154 taxmann.com 85 (Allahabad)	High Court observed that from the order of assessment passed in pursuance to SCN issued under section 74 of GST Act, admittedly, no hearing was accorded to the petitioner, which was contrary to the mandate of law prescribed under section 75(4); as an expropriatory action, even otherwise, the principles of natural justice had to be complied with and it was incumbent to grant an opportunity of hearing irrespective whether a reply was filed or not in terms of the mandate of Section 75(4) of GST Act. Cases Referred- M/s Mohini Traders v. State of U.P. & Anr.; Writ Tax No. 550 of 2023 decided on 3-5-2023; M/s Lari Almirah House v. State of U.P. & Ors.; Writ Tax No. 1569 of 2022 decided on 12-4-2023; Bharat Mint & Allied Chemicals v. Commissioner of Commercial Tax.; Writ Tax No. 1029 of 2021 decided on 4-3-2022
5.	Section 75	Mandatory to afford opportunity before passing an adverse order, even though petitioner may have signified 'No' in column meant to mark choice to avail personal hearing	Dana Pani v. State of U.P. [2023] 154 taxmann.com 84 (Allahabad)	High Court observed by referring to Section 75(4), that once it has been laid down by way of a principle of law that a person is not required to request for "opportunity of personal hearing" and it remained mandatory upon Assessing Authority to afford such opportunity before passing an adverse order, the fact that petitioner may have signified 'No' in the column meant to mark the assessee's choice to avail personal hearing, would bear no legal consequence. Even otherwise in an assessment order creating heavy civil liability, observing such minimal opportunity of hearing is a must. Such opportunity has to be granted in real terms. The stand of the assessee may remain unclear unless opportunity is first granted. Only thereafter, explanation furnished may be rejected and demand created. This opportunity would ensure observance of rules of natural of justice but it would allow authority to pass appropriate and reasoned order as may serve interest of justice and allow a better appreciation to arise at next/appeal stage, if required. Cases Referred- Bharat Mint & Allied Chemicals v. Commissioner Commerical Tax & 2 Ors., (2022) 48 VLJ 325