

Part-81-One Pager Snapshot to the Latest Cases

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S.N.	Section	Case Subject	Case	Held
1.	Section 74	<p>Conclusion of entire proceedings under Section 74 within 2 months of Notice was not reasonable period</p> <p>Taxpayer paid entire tax, interest although after one month but allowed benefit of 15% Penalty</p>	<p>P. R. Hardwares v. State Tax Officer, Tuticorin. [2023] 154 taxmann.com 151 (Madras)</p>	<p>In the present case the notice was issued on 1-12-2022 and 3-1-2023 and Summary Order was passed on 7-3-2023, <i>i.e.</i> within two months of issue of notice. Petitioner contended that Section 74(10) states that officer shall issue the order under section 74(9) within a period of five years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilized relates to or within five years from the date of erroneous refund. Therefore, since the entire proceedings have been concluded within one month, therefore, respondent has failed to grant opportunity granted under section 74(9) and 74(10). Taxpayer further contended that since he had paid entire tax demand on 26-6-2023, therefore he was entitled to the benefits under section 74. However, Learned Additional Government Pleader submitted that the petitioner has paid the tax beyond the period of one month from the date of the order, hence the petitioner was not entitled to such concession granted under the section 74.</p> <p>High Court observed that even if period of five years is considered as outer time limit prescribed for the respondents to pass orders but then assessee must be given sufficient opportunity. Even though provisions prescribe five years as outer limit but provisions do not prescribe minimum time from passing order, in such circumstances the respondents ought to have passed order within reasonable time. Two months period was not reasonable time and petitioner was held right in stating that adequate opportunity was not granted to the petitioner. The High Court further held that since petitioner has already paid the entire tax liability and the interest. Therefore, Court directed the department to collect 15% of penalty alone. On such payment respondents were directed to conclude the proceedings in respect of the notice as stated in section 74.</p>
2	Section 78	<p>High Court Lays down guidelines for recovery of demand in case of rejection of Appeal pending constitution of Tribunal</p> <p>Recovery of Entire demand on rejection of Appeal held to be excessive use of power</p> <p>When an Appellate Authority was not constituted what could have been recovered is only for twenty per cent</p>	<p>Sita Pandey v. State of Bihar [2023] 154 taxmann.com 152 (Patna)</p>	<p>The only issue with which the high court was concerned was with the recovery made from bank accounts the assessee, on the very next day of rejection of the appeal.</p> <p>-Applicability of Provisions of Section 78-High Court observed that Section 78 allows three-month time to taxable person to pay amount due from date of service of order. Proviso to section 78 enables proper officer in expedient situations, for reasons recorded in writing, to require taxable person to make such payment within such period, less than a period of three months, as may be specified by him.</p> <p>-Even if coercive action to be taken, it has to be taken for 20% of Tax Amount- The Legislature had, in the event of an appeal filed to the Tribunal, only intended twenty percent of the tax dues alone to be paid; on which payment the entire demand was liable to be stayed till the disposal of the appeal. Thus, even if coercive action could have been taken the tax officer should have confined it to the twenty percent of the total amounts assessed, in addition to the ten percent paid at the first appellate stage and any admitted tax, if remaining unpaid.</p> <p>-Guidelines for Recovery- High Court following dictum laid down in UTI Mutual Fund v. Income-Tax Officer and Others; [2012] 345 ITR 71 (Bom), issued following guidelines in so far as the recoveries are concerned:-</p> <ol style="list-style-type: none"> 1. There shall be no recovery of tax within the time limit for filing an appeal and when a stay application is filed in a properly instituted appeal, before the stay application is disposed of by the Appellate Authority; 2. Even when the stay application in the appeal is disposed of, the recovery shall be initiated only after a reasonable period so as to enable the assessee to move a higher forum; 3. However, in cases where the Assessing Officer has reason to believe that the assessee may defeat the demand or that it is expedient in the interest of Revenue, as is provided under the proviso to Section 78, there can be a recovery but with notice to the assessee, which notice shows the reasons for initiating it and specifies the lesser time within which the assessee is directed to satisfy the dues; 4. Though a bank account could be attached; before withdrawing the amount, reasonable prior notice should be furnished to the assessee to enable the assessee to make a representation or seek recourse to a remedy in law; <p>Therefore, when an Appellate Authority was not constituted even when the Assessing Officer acted under the proviso to Section 78 what could have been recovered is only twenty per cent of the tax amount due in addition to that paid up to institute a first appeal. The High Court also held that the officer who acted in complete derogation of the statutory provisions and established principles of law, should pay an amount of Rs. 5,000/- (five thousand) as cost to the assessee; a receipt of which shall be filed within two weeks in the instant writ petition.</p>