

S.N.	Subject	Case	Held
1.	<p>-Proceedings not valid as SCN does not provide effective opportunity</p> <p>-Allegations not in SCN cannot be submitted through affidavit</p>	<p>Poonawalla Fincorp Ltd. v. Union of India [2023] 155 taxmann.com 529 (Delhi) (15-09-2023)</p>	<p>Impugned SCN did not disclose any reason for blocking the petitioner's ITC or the shortfall in recovery of tax, penalty, and interest but tabular statement in the impugned SCN indicated proposed demand which was identical to the amount of ITC blocked. Reliance was placed upon Circular No. F.3(429)/GST/Policy/2022/1067-1072 dated 08.03.2022 for recovery of demand.</p> <p>Impugned SCN issued did not effectively provide any reasons for raising a demand. The opening sentence of the impugned SCN appeared to be a mechanical reproduction of the statutory provision. In so far as reliance upon the Circular was concerned, the same was held not to be read as permitting the proper officer to mechanically create a demand. The proper officer must specifically reasons in the SCN. The Court also stated that since impugned SCN did not contain any allegations as stated in the counter affidavit filed by the respondents, the proceedings initiated pursuant to the impugned show cause notice cannot cover the said allegations. Impugned SCN was liable to be set aside as the same failed to disclose any reason for proposing recovery and was incapable of eliciting any meaningful response. (Rule 86A and Section 73 of CGST Act, 2017)</p>
2.	<p>No surviving jurisdiction to pass order U/Sec 74 as adjudication arose from proceeding U/Sec 67 which led to order passed U/Sec 130(2) but was set aside Appellate Authority</p>	<p>Viabhav Edible (P.) Ltd. v. State of U.P. [2023] 155 taxmann.com 328 (Allahabad) (10-08-2023)</p>	<p>The contention of the petitioner was that there was no surviving jurisdiction to pass order U/Sec 74 in as much as, the adjudication proceedings arose from an earlier proceeding U/Sec 67 that led to an order dated 18.2.2019 being passed U/Sec 130(2) making same allegations as have arisen in the adjudication proceedings. The order passed under Section 130(2) was set aside by First Appellate Authority vide order dated 25.6.2020 and has attained finality.</p> <p>The Court observed that the fact allegations giving rise to the adjudication proceedings impugned in the present petition, remained the same as had been considered by the First Appellate Authority in its order dated 25.6.2020. No other or fresh material came into existence as may have given rise to any situation in fact or in law to initiate an adjudication proceeding. The High Court held that the proceedings U/Sec 67 and 74 are distinct in scope and purpose, at the same time, essential facts found non-existent in the proceedings U/Sec 67 would have a material bearing on proceedings under Section 74 of the Act drawn up on the same basis. In the present case, since the substratum of charge in the proceedings U/Sec 74 stood wiped out in entirety, occasioned by First Appellate order dated 25.5.2020 passed with reference to proceedings U/Sec 130, there survived no jurisdictional fact as may have given rise to the adjudication proceedings, on the same facts. (Section 67, Section 74 and Section 130 of CGST Act, 2017)</p>
3.	<p>Can ITC be denied merely on the ground of non-remittance of tax by the supplier as the same tax is not reflected in the Form GSTR-2A.</p>	<p>Goparaj Gopalakrishnan Pillai v. State Tax Officer-1 [2023] 155 taxmann.com 325 (Kerala) (05-10-2023)</p>	<p>Petitioner's claim for ITC to an extent of Rs.19,830/- was disallowed and Interest and penalty have been imposed to an extent of which Rs.12,742/-and Rs.20,000/- aggregating to Rs.52,572/-. In the present case, supplier had not remitted tax collected on the supply nor uploaded such supply details in his return. It was held by assessing officer that petitioner was not entitled to avail ITC for which the supplier/dealer had not remitted the tax collected on the supply.</p> <p>Considering the judgment in Diya Agencies v State Tax Officer WPC No.29769 of 2023, Writ Petition was allowed and the impugned order for denial of ITC to the extent of 19,830/- was set aside and the matter remitted back to the Assessing Office to give one opportunity to the petitioner for giving evidence and documents in support of his claim for input tax credit which has been denied. If on examination of the evidence and documents submitted by the petitioner, the Assessing Officer is satisfied that the claim is bonafide and genuine, the petitioner should be given credit of input tax which has been denied by the order. (Section 16 of CGST Act, 2017)-Cases Referred- Diya Agencies v State Tax Officer WPC No.29769 of 2023</p>
4.	<p>-Alleged incorrect classification of inward supplies which too was substantiated by certificate from supplier cannot result in denial of entire refund</p> <p>-Refund filed for Oct-Dec'20 cannot be denied for ITC claimed in violation of Rule 36(4) for Oct-Nov '20, if supplier filed GSTR-1 on quarterly basis in Dec'20.</p>	<p>Simran Chandwani v. Principal Commissioner of CGST, Delhi [2023] 155 taxmann.com 318 (Delhi) (06-10-2023)</p>	<p>Issue-1-Supplier reflecting incorrect HSN- Petitioner was engaged in the business of selling footwear which was chargeable @ 5% or 12%, depending on whether price of footwear was below Rs. 1,000/- or above Rs. 1,000/-. One of the components used in manufacturing of footwear is PVC straps was chargeable @ of 18%. Refund application of inverted duty structure was rejected as in returns filed by one of the suppliers, one of the suppliers while issuing six invoices had classified PVC straps in the HSN Code for finished products (complete shoes). Petitioner's claim was questioned because if input was the same product as supplied by petitioner, goods supplied would not be chargeable to tax at a lower rate. Petitioner contended that supplier erroneously classified supplies as HSN 6404 instead of 6406 and also produced a certificate from the said supplier certifying that there was an error in classification of goods in invoices.</p> <p>The Court observed that supplies made under six invoices in question, were below Rs. 1,000/-. Therefore, if the said supplier had supplied footwear, it would have charged GST @ 5%. Petitioner also produced certificate from supplier acknowledging that it had classified the goods in incorrect HSN. The fact that GST had been charged at correct rate was in the view of the court a material factor to be considered by Adjudicating Authority. Thus, Court accepted the explanation that classification of goods was in incorrect HSN. Further, Court did not to accept the approach to deny the entire claim basis six invoices OF one supplier as there was no dispute that other suppliers had correctly classified the products. Court rejected the approach of authorities that they accepted classification of the product of a singular supplier under six invoices, as correct but did not accept classification as far as other suppliers were concerned.</p> <p>Issue-2 -Non-compliance of Rule 36(4)- Revenue stated that condition laid down in Rule 36(4) were violated for October and November, 2020 as excessive ITC was availed. Petitioner contended that although ITC availed in October and November, 2020 was more than ITC reflected in GSTR-2A, ITC reflected in the month of December, 2020 was more as some suppliers were filing returns on quarterly basis. Also if there was any excess ITC as per limit provided under Rule 36(4), petitioner may be liable to pay interest, but refund cannot be denied if there is no excess claim for "relevant period" as defined under Rule 89(4)(F).</p> <p>For Rule 36(4)- The counsel appearing for the revenue did not dispute that if petitioner is correct that the mismatch was only on account of suppliers filing quarterly returns, petitioner would be entitled to refund. Thus, the matter was remanded on this point to be considered afresh, with liberty to petitioner to produce all documents to substantiate its claims. (Section 54 of CGST Act, 2017, Rule 89(4), 36(4) of CGST Rule, 2017)</p>