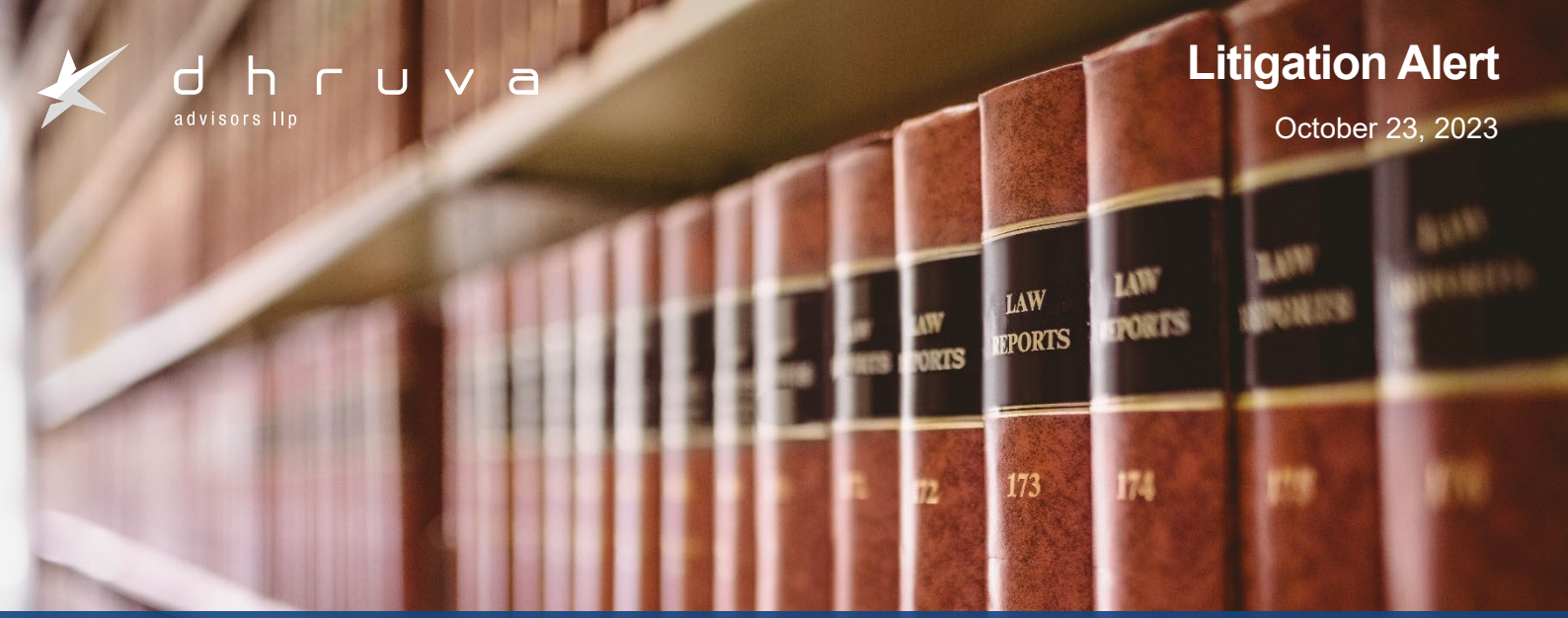

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Litigation Alert

October 23, 2023

Self-assessed return cannot be equated to assessment order

Shree Balaji Warehouse & Ors. v. Commissioner of Central Excise & Service Tax, Panchkula & Ors.[1]

The Larger Bench of the Chandigarh Tribunal has ruled a matter in favor of the assessee by a majority of 2:1, by holding that under the Service tax regime a refund claim is maintainable in the absence of any challenge to the self-assessment unlike under the Customs Act, 1962 (Customs Act).

Facts of the case:

- The Appellant had erroneously paid service tax on export of services. Thereafter, it had filed a refund application which was rejected. The Tribunal referred the matter to a Larger Bench on account of the contrary rulings being pronounced in the case of ***Karanja Terminal & Logistics Pvt. Ltd. v. Asstt. Commissioner, Mumbai South***[2] and division bench of Tribunal, Ahmedabad in the case of ***M/S. Cadila Healthcare Ltd. v. C.S.T.-Service Tax - Ahmedabad***[3]. The contrary views arose on account of the applicability of the judgment of the Supreme Court in the case of ***ITC Limited v. Commissioner of Central Excise, Kolkata-IV***[4] wherein it was held that refund claim cannot be entertained unless the order of assessment or self-assessment is modified (appealed against). The said judgment was delivered in the context of Customs Act, 1962.

Discussion & Findings (by the majority):

- The provisions of the Customs Act with regard to assessment, refund and appeal are not pari-materia with the provisions of Service tax law.
- In Customs Act there is intervention of officer/system in assessment and clearance of imported goods unlike under Service tax.
- In Service Tax, an appeal can be filed only against an order of adjudicating authority and taxpayer furnishing the return on self-assessment basis cannot be treated as an adjudicating authority to pass any order.
- Returns filed by an assessee as per their own assessment cannot be equated to an 'order of assessment against which an appeal can be filed. It will hit the principal of natural justice that "No one should be a judge in his own case".
- Under the Customs law there is a specific provision which requires an order to be passed by the proper officer approving or ratifying the self-assessment made by the importer.

[1] Order No. Interim/9-12/2023
[2] 2021 (2) TMI 300
[3] 2021 (4) TMI 1157
[4] 2019 (9) TMI 802

- The Supreme Court in the case of ***Collector of Central Excise v. Alnoori Tobacco Products***[5] has held that the observations of the Court should not be applied out of the context and must be read in the context in which they appear to have been stated.
- Basis the above, the judgment of ***ITC Limited (supra)*** which was delivered in the context of Customs Act cannot be applied to the refunds filed under the Service tax.

Judgment:

The larger bench ruled in favor of the assessee in majority of 2:1 and the matter was referred back to the Division Bench.

Dhruva Comments

The Larger Bench has extensively analysed the judgment of ITC limited (*supra*) and the context in which it should be applied.

The judgment should benefit the assessee's seeking refund of service tax and hopefully put to rest the ongoing litigations. The ratio of the judgment should also equally be applicable under the GST regime.

[5] 2004 (170) ELT 135 (SC)

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