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ARTICLES 2020



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VODAFONE VS COMMON-MAN

Author : G. Natarajan

Recently, the Permanent Court of Arbitration has held in the proceedings initiated by Vodafone Group PLC that the Indian Government's move to retrospectively amend the provisions of the Income Tax Act is in violation of the "fair and equitable treatment" guaranteed under the bilateral Investment Protection Pact between India and Netherlands and ordered the Indian Government to pay compensation to Vodafone.

But what if similar commitments towards our own citizens / taxpayers are violated by retrospective amendments in tax laws to plug the poor drafting at the first place?

To quote from the CBIC's Citizen's charter.

Our Mission is to provide an efficient system by:

- Formulating progressive tax policies & processes to enable smooth economic activities.
- Realizing revenue in a fair, equitable, transparent and efficient manner.

We expect citizens to:

- uphold and respect the laws of the land
- voluntarily discharge all tax liabilities
- fulfill their duties and legal obligations in time
- be honest in furnishing information
- be co-operative and forthright in inquiries and verifications
- avoid unnecessary litigation.

This will enable us to provide our services in an effective and efficient manner

We shall strive to:

- carry out our tasks with:

- integrity and judiciousness
- impartiality and fairness
- courtesy and understanding
- objectivity and transparency
- uprightness and conscientiousness
- promptness and efficiency.

GST law is about 40 months old and the following retrospective amendments have been carried out in its provisions so far, to create fresh liabilities on taxpayers or to take away the benefits with retrospective effect.

1. Amendment to Rule 89 (5) of the CGST Rules, 2017 to restrict the refund on inverted rate structure and deny such refund for input services.
2. Retrospective amendment to Section 140 of the CGST Act, 2017 to empower the Government to prescribe a time limit for claiming transitional credit.
3. Retrospective amendment to Section 140 of the CGST Act, 2017 to deny carrying forward the balance of Education Cess and Secondary Education Cess credit balance lying as on 30.06.2017.
4. Substituting new sub rule (5) in Rule 61 to elevate the status of GSTR-3B to that of monthly return, to restrict the time limit for availing input tax credit.

Do the hapless taxpayers have any remedy against such retrospective amendments? Retrospective amendment, to the detriment of taxpayers runs counter to all the above ideals expressed in the Citizens charter. Based on the text of the legal provisions, various business decisions are taken by the taxpayers and if such text is retrospectively amended, to their detriment, the premises based on which the decisions were taken are shattered leaving the taxpayer battered. Such retrospective amendments not only smacks of all the adjectives used in the Citizens Charter, viz., progressiveness, integrity, judiciousness, fairness, courtesy, understanding, objectivity, uprightness, and conscientiousness but also in gross violation of the fundamental right guaranteed under Article 19 (1) (g) of the Constitution.

While criticising such retrospective amendments which are detrimental to the tax payers, I will be failing in my duty if I do not thankfully point out certain retrospective amendments which are beneficial to the tax payers.

1. Amendment in Section 50 of the CGST Act, to provide that interest is payable only on the net tax liability (This retrospective amendment is yet to be made but has been promised to be made).
2. Introduction of sub section (1A) in Section 7 of the CGST Act, 2017 so as to clarify that the activities mentioned in Schedule II should first amount to a supply and the scope of this schedule is to lay down whether it is supply of goods or supply of services and mere mention of an activity under Schedule II would not make it a supply.
3. Exemption from payment of GST on fishmeal.

While exercise of the power to make retrospective amendments to correct the unintended mistakes in law for the benefit of the taxpayers is welcome, making similar retrospective amendments to cast a liability, which did not exist originally is not a good move, especially in the domain of indirect taxes, where passing on such burden at a later time is impossible. The Government should be magnanimous in giving the benefit of such ambiguity to the taxpayers, especially when a massive tax reform is undertaken.

(Published in www.taxscan.com on 08.10.2020)

