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Issuance of Notice and passing of orders - Extension of time - An un-necessary hue and cry?

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VIDE Notification [9/2023-Central Tax](#) Dt. 31.03.2023 and vide Notification [56/2023-Central Tax](#) Dt. 28.12.2023, the time limits for issue of show cause notices and for passing of adjudication orders, under Section 73 of the CGST Act have been extended, which has triggered a big hue and cry among the professional community. On social media, that is!

Let us have deep look into the subject.

Section 73 of the CGST Act deals with determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for any reason other than fraud or any willful misstatement or suppression of facts.

As per sub-section (1) of Section 73 a notice has to be issued by the proper officer on the person who is liable to pay such tax, directing him to show cause as to why he should not be called upon to pay the amount (show cause notice). As per sub-section (2) such notice has to be issued at least three months prior to the time limit specified in sub-section (10) for issuance of order. Sub-section (10) lays down that the order for determination of the tax liability has to be issued within 3 years from the due date for furnishing 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. Hence, unlike Central Excise law or Service Tax law, where the time limit was prescribed only for issuance of show cause notice and not for passing order, GST law prescribes the time limit within which adjudication orders have to be passed and the show cause notice in this regard has to be issued at least three months prior to the last date for issuance of order (giving at least three months to the taxpayer to file their reply).

It may be noted that the time limit for passing adjudication order has to be calculated with reference to the due date for filing annual return under Section 44 of the relevant year. As per Section 44 of the Act, the annual return for every financial year shall be filed on or before 31st December following the end of such financial year. As such, the annual return for the year 2017-18 (From July 2017) has to be filed on or before 31.12.2018. Thus, any adjudication order under Section 73 for the year 2017-18 should be passed on or before 31.12.2021 and the show cause notice has to be issued on or before 30.09.2021.

The time limit for filing annual return for the year 2017-18 was extended vide Notification [6/2020-Central Tax](#) Dt. 03.02.2020 as 5th February 2020 for certain States and 7th February of 2020 for certain States. As a consequence, the time limit for issuing adjudication order and issuing show cause notice for the year 2017-18 under section 73 also stood extended to 5th / 7th February 2023 and 5th / 7th November 2022, respectively.

Vide Finance Act, 2021 a new Section 44 was enacted, which came into force from 01.08.2021. As per this new section, the due date for filing the annual return would be prescribed through rules. Simultaneously, a new Rule 80 was introduced in CGST [Rules, 2017](#), vide Notification [30/2021-Central Tax](#) Dt. 30.07.2021, with effect from 01.08.2021, wherein the due date has been prescribed as 31st December, following the end of the financial year. (The due date for filing annual return, which was prescribed in Section 44 of the Act itself, came to be prescribed in the Rules, from this date).

From March 2020, the normal life of the whole world was affected because of the corona pandemic and various proactive measures have been taken by the Hon'ble Supreme Court as well as the Government to ease various compliance burdens, by relaxing the statutory time lines prescribed in various statutes. The Taxation and other Laws (Relaxation and amendment of certain provisions) Act, 2020 was passed in this regard and vide Section 7 of the said Act, a new Section 168A was introduced in CGST Act, which came into force from 31.03.2020 and the said section is reproduced below -

168A. (1) Notwithstanding anything contained in this Act, the Government may, on the recommendations of the Council, by notification, extend the time limit specified in, or

prescribed or notified under, this Act in respect of actions which cannot be completed or complied with due to force majeure.

(2) The power to issue notification under sub-section (1) shall include the power to give retrospective effect to such notification from a date not earlier than the date of commencement of this Act.

Explanation.- For the purposes of this section, the expression "force majeure" means a case of war, epidemic, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature or otherwise affecting the implementation of any of the provisions of this Act.

It may be observed that this section empowers the Government to extend any time limits under the GST law, on account of any "force majeure" event.

In exercise of this power, Notification [13/2022-Central Tax](#) Dt. 05.07.2022 has been issued whereby the time limit prescribed under sub-section (10) of Section 73, for issuance of adjudication orders for 2017-18 has been extended upto 30.09.2023. As a consequence, the time limit for issuance of show cause notice under Section 73 also stood extended upto 30.06.2023.

Once again, in exercise of the same power, Notification [9/2023-Central Tax](#) Dt. 31.03.2023 has been issued whereby the time limit prescribed under sub-section (10) of Section 73, for issuance of adjudication orders for 2017-18 has been extended upto 31.12.2023. As a consequence, the time limit for issuance of show cause notice under Section 73 also stood extended upto 30.09.2023.

Recently, in exercise of the same power, Notification [56/2023-Central Tax](#) Dt. 28.12.2023 has been issued whereby the time limit prescribed under sub-section (10) of Section 73, for issuance of adjudication orders for 2018-19 has been extended upto 30.04.2024. As a consequence, the time limit for issuance of show cause notice under Section 73 for the year 2018-19 also stands extended upto 31.01.2024. Further, the time limit prescribed under sub-section (10) of Section 73, for issuance of adjudication orders for 2019-20 has also been extended upto 31.08.2024. As a consequence, the time limit for issuance of show cause notice under Section 73 for the year 2019-20 also stands extended upto 31.05.2024.

Such successive extension of time for issuance of show cause notice and issuance of adjudication orders is widely being criticized. No doubt, certainty is a hallmark of taxation and especially in indirect taxation, indiscriminate extension of time for raising demands creates lot of uncertainty.

But let us delve deep into the issue.

It may be recalled as and when any due date for filing any returns approaches, there will be a big hue and cry from the professional community seeking extension of time for filing the returns. Even writ petitions would regularly be filed in various High Courts, seeking a mandamus to Government to extend the due date. And when the extension comes in the last hour, there would be joy and jubilation. All of us have forgotten the side effects of such extension that the time limit available for the department to raise the demand also gets extended automatically. So, we ourselves have to be blamed in this regard.

Coming to the extensions granted in exercise of the powers conferred under Section 168A, it may be noted that the normal life was affected due to corona pandemic not only for taxpayers but also for the department and many departmental officers also lost their lives during the pandemic. So, we cannot have a different scale when it comes to extensions granted for the Government.

It may be recalled that the pre pandemic due date for filing annual return for 2017-18 was 5th / 7th February 2020 and hence the due dates for passing adjudication orders and issue of show cause notice stood at 5th / 7th February 2023 and 5th / 7th November 2022 respectively.

It may be noted that the Hon'ble Supreme Court, in its suo moto order passed on 10.01.2022 [[2022-TIOL-04-SC-MISC-LB](#)] has considered that the period from 15th March 2020 to 28th February 2022 as the period affected by corona pandemic. While computing the time limit for filing any refund claims, as per Notification [13/2022-Central Tax](#) Dt. 05.07.2022, the period from 1st March 2020 to 28th February 2022 should be excluded. Hence, the period from 1st March 2020 to 28th February 2022 can be considered as a "difficult period" for all concerned.

Hence, in all fairness, the period between 1st March 2020 to 28th February 2022, shall be excluded while computing the time limit available for department to issue orders and notices.

It may be noted that the starting point of the time available to the department under Section 73 (10) is the due date for filing annual return, i.e. 5th / 7th February 2020 for 2017-18 and the department hardly had 23 / 21 days prior to the onset of the difficult period (upto 28.02.2020). If we exclude the

period from 1st March 2020 to 28th February 2022 (the clock should stop on 01.03.2020 and start running only from 01.03.2022), the remaining period (three years minus 23 / 21 days) available to the department would be upto 05.02.2025 / 07.02.2025 (for passing orders) and 05.11.2024 / 07.11.2024 (for issuance of show cause notice) As against the same, extension have been granted through various notifications, only upto 31.12.2023 and 30.09.2023, for issuance of orders and issuance of show cause notice respectively, for 2017-18.

So, though it appears that the extension of time granted to the department is harsh on the taxpayers, legally, it may not be so.

The argument that since the time limit prescribed under Section 73 is linked to due date for filing annual return, without extending the due date for filing annual return, the time limits under section 73 cannot be extended, must fail in view of the extra-ordinary powers available under Section 168 A.

Rather, our focus of argument should be as to why a period of three years should be prescribed for passing orders, from the due date for filing annual returns (which itself is 9 months after the end of the financial year) in cases not involving fraud, etc., while it was only two years under Central Excise and 30 months under Service Tax.

[The views expressed are strictly personal.]

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