

A scenic landscape featuring a field of purple flowers in the foreground, with a sunset or sunrise in the background. The sky is filled with dramatic, golden clouds, and the sun is low on the horizon, casting a warm glow over the scene. The text is overlaid on the upper half of the image.

**In this world nothing can be
said to be certain, except
death and taxes.**

Benjamin Franklin

Recent Developments in GST
Seminar by ICAI Gurgaon
on 18.03.2021

Compiled By:
Team:
JHA Legal

Agenda



Claim of ITC

Mistake(s) in GST Returns

Export of Goods/ Services

Recovery of Tax

Provisional Attachment

Limitation

Jurisdiction



Statement of Objects and Reasons ...

122nd Constitution Amendment Bill 2014

... The goods and services tax shall replace a number of indirect taxes being levied by the Union and the State Governments and is intended to **remove cascading** effect of taxes and provide for a common national market for goods and services.

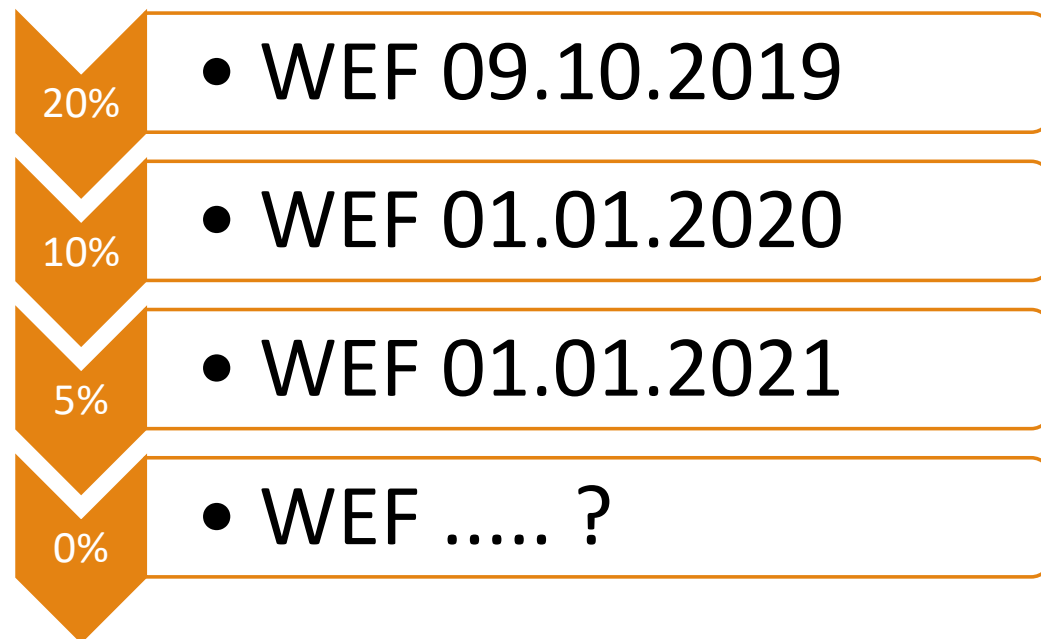
Central Goods and Services Tax Bill 2017

4. ... The proposed legislation will confer power upon the central government for levying goods and services tax on the supply of goods or services or both which takes place within a State. The proposed legislation will simplify and harmonize the indirect tax regime in the country. It is expected to reduce cost of production and inflation in the economy, thereby making the Indian trade and Industry more competitive, domestically as well as internationally. **Due to the seamless transfer of input tax credit from one stage to another in the chain of value addition**, there is an in-built mechanism in the design of goods and services tax that would incentives tax compliances by taxpayers.

Rule 36(4) – Capping on ITC Claim

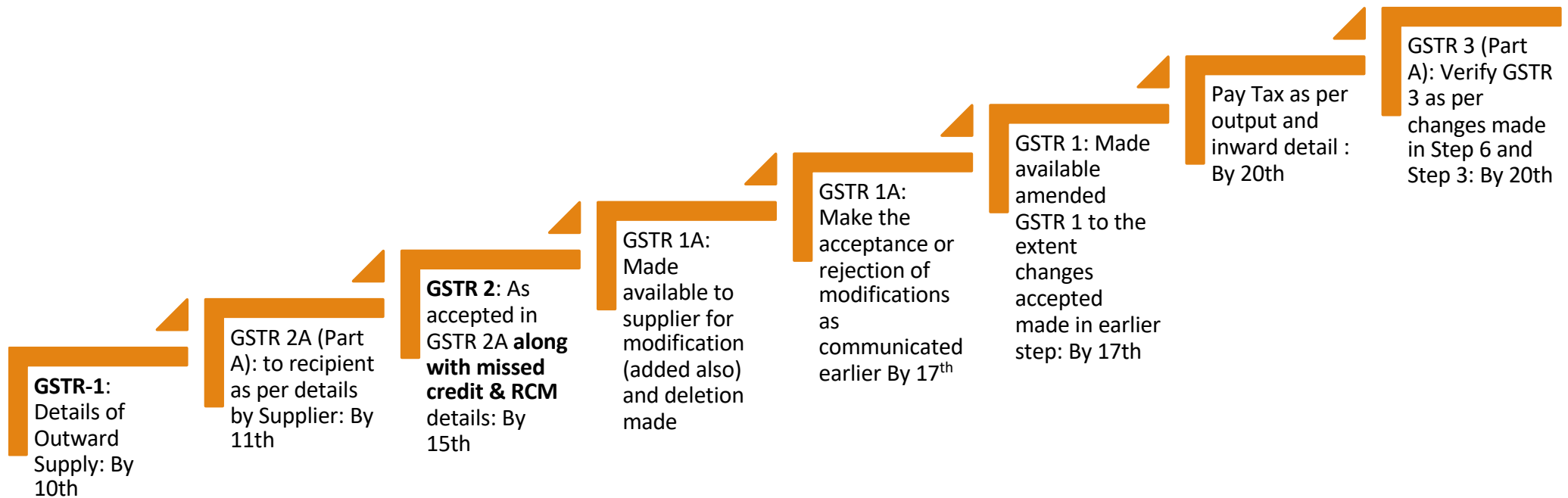
36(4) Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers under sub-section (1) of section 37, shall not exceed 20 per cent. of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers under sub-section (1) of section 37.”.

Provided that the said condition shall apply cumulatively for the period February, March, April, May, June, July and August, 2020 and the return in FORM GSTR-3B for the tax period September, 2020 shall be furnished with the cumulative adjustment of input tax credit for the said months in accordance with the condition above.



Uploaded → Furnished

ITC Claim – Return Process



CGST Act – On Mismatch

*Sec. 38(1) Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52, shall verify, validate, **modify** or delete, if required, the details relating to outward supplies and credit or debit notes communicated under sub-section (1) of section 37 to prepare the details of his inward supplies and credit or debit notes and **may include therein, the details of inward supplies and credit or debit notes received by him in respect of such supplies that have not been declared by the supplier under sub-section (1) of section 37.***

*Sec. 38(3) The details of supplies modified, deleted or **included** by the recipient and furnished under sub-section (2) shall be communicated to the supplier concerned in such manner and within such time as may be prescribed.*

Sec. 42(3) Where the input tax credit claimed by a recipient in respect of an inward supply is in excess of the tax declared by the supplier for the same supply or the outward supply is not declared by the supplier in his valid returns, the discrepancy shall be communicated to both such persons in such manner as may be prescribed.

GSTR-2: Suspended or yet to be filed ?

Notification no. 11 & 12/2017 – CT, Dt. 07.03.2019, reads as under:

*“3. The time limit for furnishing the details or return, as the case may be, under sub-section (2) of section 38 and sub-section (1) of section 39 of the said Act, for the months of **July, 2017 to June, 2019** shall be subsequently notified in the Official Gazette.”*

Notification no. 27 & 28/2019 – CT, Dt. 28.06.2019, reads as under:

*“2. The time limit for furnishing the details or return, as the case may be, under sub-section (2) of section 38 and sub-section (1) of section 39 of the said Act, for the months of **July, 2019 to September, 2019** shall be subsequently notified in the Official Gazette.”*

Notification no. 45 & 46/2019 – CT, Dt. 09.10.2019, reads as under:

*“2. The time limit for furnishing the details or return, as the case may be, under sub-section (2) of section 38 of the said Act, for the months of **October, 2019 to March, 2020** shall be subsequently notified in the Official Gazette.”*

Notification no. 27 & 28/2020 – CT, Dt. 13.03.2020, reads as under:

*“The time limit for furnishing the details or return, as the case may be, under sub-section (2) of section 38 of the said Act, for the months of **April, 2020 to September, 2020** shall be subsequently notified in the Official Gazette.”*

Notification no. 74 & 75/2020 – CT, Dt. 15.10.2020, reads as under:

*“The time limit for furnishing the details or return, as the case may be, under sub-section (2) of section 38 of the said Act, for the months of **October, 2020 to March, 2021** shall be subsequently notified in the Official Gazette.”*

Versus

Union Of India

-----Respondent



For Petitioner(s) : Mr. Jatin Harjai
For Respondent(s) :

**HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE PRAKASH GUPTA**

Order

05/08/2020

The petitioner herein has sought to challenge the notification dated 09.10.2019 under Annexure-4, issued by the Ministry of Finance, Government of India introducing sub-rule (4) to Rule 36.

Learned counsel for the petitioner submits that introduction of sub-rule (4) to Rule 36 is *ultra vires* to Sections 38(1) and 42(3) of the CGST and RGST Act.

Issue notice to the respondents, returnable within six weeks.

List on 16.09.2020.

Input Tax Credit (FB 2021)

100. New Clause in Sec. 16(2):

“(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37;”

Memorandum: A new clause (aa) to sub-section (2) of the section 16 of the CGST Act is being inserted to provide that input tax credit on invoice or debit note may be availed only when the details of such invoice or debit note have been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note.

Effective – From date yet to be notified.

Impact – Entitlement of ITC itself shall be subject matter of compliances by supplier.

Food for Thought:

- Whether Rule 36(4) gets authenticated from it ?
- What will happen to prior notices/ demands on the basis of mis-match ?

Bonafide purchases Vs. Sec. 16(2)(c)

**Arise India Limited Vs. Comm. of Trade Tax' WP 2106/2015 Del. HC
(SLP No. 36750/2017 – Dismissed on 10.01.2018)**

53. In light of the above legal position, the Court hereby holds that the expression dealer or class of dealers occurring in Section 9 (2) (g) of the DVAT Act should be interpreted as not including a purchasing dealer who has bona fide entered into purchase transactions with validly registered selling dealers who have issued tax invoices in accordance with Section 50 of the Act where there is no mismatch of the transactions in Annexures 2A and 2B. Unless the expression dealer or class of dealers in Section 9 (2) (g) is read down in the above manner, the entire provision would have to be held to be violative of Article 14 of the Constitution.

54. The result of such reading down would be that the Department is precluded from invoking Section 9 (2) (g) of the DVAT to deny ITC to a purchasing dealer who has bona fide entered into a purchase transaction with a registered selling dealer who has issued a tax invoice reflecting the TIN number. In the event that the selling dealer has failed to deposit the tax collected by him from the purchasing dealer, the remedy for the Department would be to proceed against the defaulting selling dealer to recover such tax and not deny the purchasing dealer the ITC. Where, however, the Department is able to come across material to show that the purchasing dealer and the selling dealer acted in collusion then the Department can proceed under Section 40A of the DVAT Act.



A close-up photograph showing a hand holding a yellow pencil with a red eraser. The eraser is in the process of erasing the word "MISTAKE" which is written in black, bold, serif capital letters on a white surface. Red eraser shavings are visible around the pencil's eraser tip. The background is a soft, out-of-focus white.

MISTAKE

From Statute

Sec. 39: Furnishing of Returns

(9) Subject to the provisions of sections 37 and 38, if any registered person after furnishing a return under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (4) or sub-section (5) discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall **rectify** such omission or incorrect particulars in the return to be furnished for the month or quarter during which such omission or incorrect particulars are noticed, subject to payment of interest under this Act:

Jurisprudence

- **P. P. Automotive Pvt. Ltd. Vs. UOI & Anr.**
 - I. Order Dt. 06.11.2019, CWP/24600/2019, P&H HC

- **Bharti Airtel Ltd. Vs. UOI & Ors.**
 - Order Dt. 05.05.2020, WP 6345/202018, Del HC

- **Sun Dye Chem Vs. AC ST & Ors.**
 - Order Dt. 06.10.2020, WP 29676/2019, Mad HC

- **Deepak Print Vs. UOI**
 - Order Dt. 09.03.2021, 18157/2019, Guj. HC

Jurisprudence – Feeding altogether Wrong Data

P. P. Automotive Pvt. Ltd. Vs. UOI & Anr.

[I. Order Dt. 06.11.2019, CWP/24600/2019, P&H HC]

... counsel for the petitioner, has very ably demonstrated before us, the inadvertent figures entered by their Accountant in the columns of output tax as well as input tax credit as also taxable supply filled up in GSTR-3B. It is claimed that keeping in view the provisions of Section 39 sub Section 9 of CGST Act 2017, the respondent-authorities are obligated to permit the corrections as projected in the e-mail dated 21.04.2019 (Annexure P-10) in the corresponding clauses of GSTR-1 & GSTR-3B so as to facilitate the correct filing of the annual returns in GSTR-9.

Before any direction is issued for reprograming GST Portal, we would like to have the official response of the respondents. However, in the meanwhile, Assistant Commissioner, CCO, GST Zone, Panchkula/respondent No.5 is directed to verify the corrected claims as projected in the **manual annual returns** placed at Annexure P-21 read with E-mail (Annexure P-10) in juxtaposition with the inadvertent mistake already made in the GSTR-1 and GSTR-3B for the months concerned in the assessment year 2017-18. After a thorough evaluation, self speaking and reasoned report be submitted on or before the next date in the shape of an affidavit.

Jurisprudence – Missed Claiming ITC

Bharti Airtel Ltd. Vs. UOI

[Order Dt. 05.05.2020, 6345/2018, Del. HC]

Facts:

- Many mis/ wrong reporting in newly introduced form GSTR 3B
- One of the major mis were, leaving claim of ITC on certain invoices
- In Oct-2018, found that excess payment of Tax has been made in Cash

Observations of Court:

Para 12: The controversy in the present case actually lies in a narrow compass ...

Discussed:

- Scheme of Return
- Rectification
- Scheme of Refund

Para 18. While arriving at this conclusion we also have to take into account that the Respondents have absolutely failed in operationalizing the forms that were originally envisaged under the Act.

Jurisprudence – Wrong Reporting causing harm to Buyer

Sun Dye Chem Vs. AC ST & Ors.

[Order Dt. 06.10.2020, WP 29676/2019, Mad HC]

Facts:

- Period Aug – Dec 2017
- Intra State supplies reported as Inter State Supplies in GSTR-1
- Error came to notice in August 2019

Observations of Court:

Para 9.

The aforesaid details are also to be communicated to the recipient in the manner prescribed. Section 37(2) states that every registered person (recipient) who has been communicated the details (in terms of Section 38(3), relating to any modification, deletion or inclusion by the recipient of the forms or details pertaining to inward supplies of input service distributor under Section 38(4)), shall either accept or reject the details so communicated within a stipulated period and if accepts the same, the details furnished under Section 37(1) shall stand amended accordingly.

Jurisprudence (Cont...)

Sun Dye Chem Vs. AC ST & Ors.

[Order Dt. 06.10.2020, WP 29676/2019, Mad HC]

Para 15.

Section 38(3) provides that the details of supplies modified, deleted or included by the recipient and furnished under Section 38(2) shall be communicated to the supplier in the prescribed manner. Section 38(5) deals with the mismatch of particulars provided in terms of Section 38(2) and those mentioned in Sections 42 and 43 and states that upon discovery of any error or omission the registered person shall rectify the same. The proviso states that no rectification shall be permitted after the expiry of the time beyond the financial year to which the details pertain or before the last date for furnishing of the annual return, which is earlier.

Para 18.

Undoubtedly, the petitioner in this case has committed an error in filing of the details relating to credit. What should have figured in the CGST/SGST column has inadvertently been reflected in the ISGT column. It is nobody's case that the error was deliberate and intended to gain any benefit, and in fact, by reason of the error, the customers of the petitioner will be denied credit which they claim to be legitimately entitled to, owing to the fact that the credits stands reflected in the wrong column. It is for this purpose, to ensure that the suppliers do not lose the benefit of the credit, that the present writ petition has been filed.

Jurisprudence (Cont...)

Sun Dye Chem Vs. AC ST & Ors.

[Order Dt. 06.10.2020, WP 29676/2019, Mad HC]

Para 19.

Admittedly, the 31st of March 2019 was the last date by which rectification of Form – GSTR 1 may be sought. However, and also admittedly, the Forms, by filing of which the petitioner might have noticed the error and sought amendment, viz. GSTR-2A and GSTR-1A are yet to be notified. Had the requisite Forms been notified, the mismatch between the details of credit in the petitioner's and the supplier's returns might well have been noticed and appropriate and timely action taken. The error was noticed only later when the petitioners' customers brought the same to the attention of the petitioner.

Para 20.

In the absence of an enabling mechanism, I am of the view that assessee should not be prejudiced from availing credit that they are otherwise legitimately entitled to. The error committed by the petitioner is an inadvertent human error and the petitioner should be in a position to rectify the same, particularly in the absence of an effective, enabling mechanism under statute.

Jurisprudence – Wrongly feeding data of others

Deepak Print Vs. UOI [Order Dt. 09.03.2021, 18157/2019, Guj. HC]

Facts:

- Applicant wrongly uploaded data of ‘Deepak Processors’ in its GSTR-3B for May 2019
- No Filing thereafter due to restrictions of portal

Question before Court:

Whether taxpayer is entitled to seek rectification of Form GSTR-3B for the month of May 2019.

Order:

- Rectification allowed in time bound manner
- No Late Fee to be charged





Zero Rated Supplies (FB 2021)

114. Amendment of section 16 of IGST Act

(1) “Zero Rated Supply” means any of the following supplies of goods or services or both, namely:

- (a) export of goods or services or both; or
- (b) supply of goods or services or both **for authorised operations** to a Special Economic Zone developer or a Special Economic Zone unit.

Refund – Rule 89

Provided further that in respect of supplies to a **Special Economic Zone** unit or a Special Economic Zone developer, the application for refund shall be filed by the:

- (a) supplier of goods after such goods have been admitted in full in the Special Economic Zone **for authorised operations**, as endorsed by the specified officer of the Zone;
- (b) supplier of services along with such evidence regarding receipt of services **for authorised operations** as endorsed by the specified officer of the Zone:



Ultra Vires ?

Zero Rated Supplies (FB 2021)

114. Amendment of section 16 of IGST Act

(3) A registered person making zero rated supply shall be eligible to claim refund of unutilised input tax credit on supply of goods or services or both, **without payment of integrated tax**, under bond or Letter of Undertaking, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made there under, subject to such conditions, safeguards and procedure as may be prescribed:

Provided that the registered person making zero rated supply of goods shall, in case of **non-realisation of sale proceeds**, be liable to deposit the refund so received under this sub-section along with the applicable interest under section 50 of the Central Goods and Services Tax Act within thirty days after the expiry of the time limit prescribed under the Foreign Exchange Management Act, 1999 for receipt of foreign exchange remittances, in such manner as may be prescribed.

Zero Rated Supplies (FB 2021)

114. Amendment of section 16 of IGST Act

(4) The Government may, on the recommendation of the Council, and subject to such conditions, safeguards and procedures, by notification, specify—

- (i) a **class of persons** who may make zero rated supply on payment of integrated tax and claim refund of the tax so paid;
- (ii) a **class of goods or services** which may be exported on payment of integrated tax and the supplier of such goods or services may claim the refund of tax so paid.”.

Effective – From date yet to be notified.

Impact:

- SEZ supplies shall be zero rated only for authorised operations
- Refund of ITC on supply of goods linked to receipt of export remittance
- Zero rated supplies on payment of IGST: For notified class of persons/ goods/ services





tax recovery

Statutory Provisions – Recovery

Sec. 79. Recovery of Tax

(1) Where any amount payable by a person to the Government under any of the provisions of this Act or the rules made thereunder is not paid, the proper officer shall proceed to recover the amount by one or more of the following modes, namely:.....

Statutory Provisions – Determination

Sec. 74 Determination of Tax

(9) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an **order**.

Sec. 78 Initiation of recovery proceedings.

Any amount payable by a taxable person in pursuance of an order passed under this Act shall be paid by such person within a period of **three months** from the date of service of such order **failing which recovery proceedings shall be initiated:**

Statutory Provisions – NI Act

138. Dishonour of cheque for insufficiency, etc., of funds in the account.

Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for 8[a term which may be extended to two years'], or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless—

- (a) ... Presentation of cheque within six months/ period of validity ...
- (b) ... holder of cheques demand said amount by giving a notice within 30 days ...
- (c) ... the drawer fails to make the payment of the said amount of money in 15 days ...

Explanation—For the purposes of this section, “debt of other liability” means a legally enforceable debt or other liability.

Atul Motors Pvt. Ltd. And Anr. Vs. State of Gujrat (Guj. HC)

... the practice of collecting post-dated cheques under coercion during raid is not permissible means of collection of revenue particularly, when no tax demand has been confirmed or crystallized...

if the assessee voluntarily gives such cheques in order to avoid harsher measures of provisional attachment of premises, stock or bank accounts, the action of the authorities must fail in such a case also

Bhumi Associates Vs. Union of India (Guj. HC)

R/SCA/ 3196/2021 Dt. 16.02.2021

Directions to CBIC/ CC CT/ CCST to guidelines by suitable Circular/ Instructions:

- (1) No Recovery by any mode during proceeding u/s 67 under any circumstances
- (2) Voluntary Payments – Next Day after conclusion of proceedings
- (3) Facility of filing complaint/ grievance after the end of search proceedings
- (4) Strict disciplinary action against violating officer

Demand & Recovery (FB 2021)

Incorporated

Kabeer Reality Pvt. Ltd. Vs. UOI [WP No. 15645/2019, Dt. 21.11.2019, MP HC]

105. Clarification in Sec. 75(12)

*75(12) Notwithstanding anything contained in section 73 or section 74, where any amount of **self-assessed tax** in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 79.*

Explanation by FB 2021 — For the purposes of this sub-section, the expression "self-assessed tax" shall include the tax payable in respect of details of outward supplies furnished under section 37, but not included in the return furnished under section 39.

- Effective** - From date yet to be notified.
Food for Thought - Impact in E-Invoicing Environment





From Statute

Sec. 75(5) General provisions relating to determination of tax.

The proper officer shall, if sufficient cause is shown by the person chargeable with tax, grant time to the said person and adjourn the hearing for reasons to be recorded in writing:

Provided that no such adjournment shall be granted for more than three times to a person during the proceedings.

Sue Moto WP (Civil) No. 3/2020 – Dt. 23.03.2020

... difficulties may be faced by litigants across the country in filing their petitions/ applications/ suits/ appeals/ all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and/or State), it said.

It is hereby **ordered** that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether **condonable or not** shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings

We are exercising this power under Article 142 read with Article 141 of the Constitution of India and declare that this order is a binding order within the meaning of Article 141 on **all Courts/Tribunals and authorities.**

Whether order in SM WP(C) 3/2020 Applicable on Tax Authorities?

Walchandnagar Industries Ltd. Vs. CTO (AP-HC)

[WP No. 8425/2020, Dt. 13.05.2020]

- ❖ Petitioner was asked to appear before CTO (multiple time)
- ❖ Petitioner sought time for want of access to all documents due to COVID
- ❖ Respondent passed order levying Tax and Penalty, stating SC order is not applicable on him (i.e. quasi judicial authorities)

Hon'ble AP HC observed as under:

This Court does not wish to go further into the matter but would not like to remind the 1st respondent that the order passed by Hon'ble Supreme Court of India is binding on all the citizens/Tribunals/Courts of this country, including those exercising Quasi Judicial functions. It appears that 1st respondent's understanding of the law as declared by the Hon'ble Supreme Court of India is clearly misconceived.

Whether order in SM WP(C) 3/2020 effective till now?

S. S. Group Pvt. Ltd. Vs. Aaaditiya J. Garg & Anr. (SC)

[CA No. 4085/2020, Dt. 17.12.2020]

❖ Delayed submission of written statement before National Forum (beyond extendable period)

The above order is still operative and by subsequent orders, the scope has been enlarged so that the said order applies in other proceedings also.

In the present matter, it is an admitted fact that the period of limitation of 30 days to file the written statement had expired on 12.08.2020 and the extended period of 15 days expired on 27.08.2020. This period expired when the order dated 23.03.2020 passed by this Court in SMW(C) No.3 of 2020 was continuing.

In view of the aforesaid, in our opinion, the limitation for filing the written statement in the present proceedings before the National Commission would be deemed to have been extended as it is clear from the order dated 23.03.2020 that the extended period of limitation was applicable to all petitions/ applications/suits/appeals and all other proceedings. ...

Sue Moto WP (Civil) No. 3/2020 – Dt. 08.03.2020

- Period ends on 14.03.2021
- Exclusion from Limitation
 - Period from 15.03.2020 to 14.03.2021 shall be excluded
- Limitation expired during above period,
 - Fresh 90 days from 15.03.2021



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**Thank
You!!!**

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