

Navigating the GST Regime: Transformation and Its Challenges



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December 2023 has marked a significant juncture in the GST law, as the time limit for issuance of orders for the first year of GST i.e., FY 2017-18 for tax not paid or short paid or input tax credit wrongly availed or utilized or erroneous refund under normal cases (i.e., without any fraud, collusion or wilful misstatement) has come to an end. This juncture has arrived after 69 months of end of the relevant financial year.

The next six months of this year were again challenging for the assessee, tax consultants, and officials as the time limit for issuance of orders after the recent extension was 30th Apr' 24 for FY 2018-19 and 31st Aug' 24 for FY 2019-20 and SCN (Show Cause Notice) in both the cases is to be issued three months prior to the issuance of the order. Hence, the remaining part of this calendar year is going to be exciting for everyone in the IDT ecosystem, including the IT team of the taxpayers and tax collectors.

Time limit

According to Finance Act, 1994 (Service tax law), the prescribed time limit for the issuance of Show Cause Notices (SCNs) in normal cases was 30 months (extended from 18 months) from the "relevant date." This date was determined as the date of filing the tax return, and in situations where the return was not filed, it was based on the due date for filing the return.

However, under the Goods and Services Tax (GST) law, there is no time limit for issuance of SCN. The time limit is prescribed only for the issuance of an order which must be done within three years from the due date for furnishing the annual return under normal cases (i.e., without any fraud, collusion, or wilful misstatement). Additionally, show cause notice is to be issued at

least three months prior to passing the order.

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The time limit under GST law is determined from the annual return which is due after 9 months from the end of the financial year and monthly tax returns are not relevant for the determination of time limit, whereas in Finance Act, 1994, the time limit was computed from periodical return and also, there was no requirement of any separate annual return.

Time limit helps in bringing certainty to the taxpayers upon expiry of the period. A reduced

time limit is also helpful in quick collation and furnishing the details before the authority.

Finance Act 2024 has introduced common section 74A for both the cases i.e. normal cases (i.e., without any fraud, collusion, or wilful misstatement) as well as cases with fraud, collusion, etc. wherein the time limit of issuance of notice has been prescribed as 42 months from the due date of filing annual return or erroneous refund. The newly inserted section is applicable from FY 2024-25 onwards and section 73 & Section 74 would be applicable for proceeding related to FY 2017-18 to FY 2023-24.

The introduction of the common section to avoid disputes about the involvement of fraud, collusion, and wilful misstatement is a welcome change and also brings clarity to the business, however, still the time limit of 42 months for issuance of notice from the due date of filing the return and extended period of issuance of orders is significantly high and should be further rationalised.

The extended "Due date of filing annual return"

GST was introduced in the Second quarter of FY 2017-18, and both taxpayers and tax administrators faced challenges in adapting to the newly introduced GST law. The format for the annual return and reconciliation statement was first notified in September 2018 through notifications 39/2018-CT and 49/2018-CT, even though the GSTN portal was not yet fully prepared.

This posed a significant challenge for the majority of taxpayers and tax professionals, as understanding the requirements and providing the necessary details became difficult. The complexity was further compounded by the unpreparedness of the IT systems for submitting the details required in the annual return, which became known to the assessee only with the notification of the forms. Forms notified were replaced by the revised forms notified by Notification No. 74/2018-CT dated 31.12.2018 hence, effectively the forms were actually notified on the original due date of filing the annual return.

CGST (Removal of Difficulties) Order No. 01/2018-CT dated 11.12.2018 extended the due date to 31st March 2019 due to the non-readiness of the system which was likely to be made operational by 31st January 2019.

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Further Order no. 3/2018 again extended the due date from 31st March 2019 to 30th June 2019 due to the non-readiness of the system. Order No. 6/2019-CT dated 28.06.2019 extended the revised due date of 30th June 2019 by two months to 31st August 2019 due to certain technical problems being faced by the taxpayers. Subsequently, vide Order No. 07/2019-CT dated 26.08.2019, the due date was further revised to 30th Nov 2019 hence, the Annual Return which was scheduled to be filed by Dec'18 was extended by 11 months due to the non-readiness of the system and technical glitches.

These repeated extensions brought much-needed relief to the clueless taxpayers and tax professionals however, the extended "due date of filing annual return" also extended the time limitation for issuance of orders for non-payment or short payment of taxes which was unintentional but brought large ramifications in the tax administration.

Filing of GSTR-9 and GSTR-9C

The forms were filed in the background of the limitation of the ERP system to provide the requisite information as the system was not maintained in such a way and major ERP service providers in the country were also not ready with the compatible development. The forms (GSTR-9/9C) were also not available with the taxpayers for initial year and they were also not aware of the information to be captured for reporting in GSTR-9/9C.

Backup of the details auto populated in the forms was not made available in many places and had to be interpreted as per own understanding of the concerned person.

Extended due date of issuance of Show Cause Notice

The due date for the issuance of orders for the fiscal year 2017-18 in normal cases/non-fraud cases (i.e., in the absence of any fraud, collusion, or wilful misrepresentation), was stipulated to be three years from the extended due date of 30th Nov 2019 thereby concluding on November 30, 2022. Subsequently, two extensions were granted for FY 2017-18.

The first extension was provided by Notification No. 13/2022 dated 5th Jul' 2022 wherein the due date for issuance of the order was extended till 30th Sep 2023. Subsequently, the due date was further extended to

31st Dec 2023 for FY 17-18, 31st Mar 2024 for FY 2018-19 & 30th June 2024 for FY 2019-20 vide Notification No. 09/2023 dated 31st March 2023.

Further, recently another extension has been granted vide Notification No 56/2023 dated 28th Dec, 23 and the due date for issuance of orders for FY 2018-19 and FY 2019-20 has been extended to 30th Apr 2024 and 31st Aug 2024 respectively.

Hence, the transaction entered in Jul'17 could be questioned by the tax authority in normal cases (without fraud, collusion, misstatement, etc.) up to 30th Sep, 23 i.e., 75 months (6 years' appx). Also, this should be noted that this was the first year of GST, and everyone was struggling with frequent changes in law and the non-readiness of the GST portal hence, it was quite difficult to explain the details before the tax officers for the initial year of GST in the absence of availability of detail and clarity on transactions.

The petitions have been filed before several High courts wherein the notification extending the due dates have been challenged on the validity of grounds of such extension. Hon'ble HC of Gauhati in the case of **M/S Indus Towers Limited vs the Union of India (WP(C)/529/2024)** following the judgment of Hon'ble HC of Allahabad, Gujarat, Punjab & Haryana, and Madras has granted interim stay on passing of the order by the department.

Hon'ble Kerala HC in the case of **Pappachan Chakkiath Vs. Asst. Commissioner & Ors** held that when the time limit for issuance order u/s 73(10) of CGST/SGST Acts, for F.Y. 2017-18 has been extended up to 30th Sep 2023, then SCN can also be issued with reference to such date.

Appeal against the order

A person aggrieved with the order passed by the adjudicating authority for FY2017-18, 2018-19, 2019-20 will be appealed before the first appellate authority. The order passed by the first appellate authority can be appealed only before the appellate tribunal, hence in the coming days, there would be a lot of issues and very high pendency before the tribunal. It will take a significant amount of time in the listing of matters before the Tribunal.

Constitution of tribunal and stay of demand

Principal Bench of GST Appellate Tribunal have been set up and its State Benches have been notified. The

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Government has also initiated the process of filling vacancies and have invited application for posts of judicial and technical members in GSTAT however, they are still to be made functional and in the absence of functioning of GST Tribunals, the demand confirmed by the first appellate authority can't be appealed. The assessee is left with no option other than

approaching Hon'ble HC under writ Jurisdiction and there are several petitions filed before respective High court. The court in most of the cases directed the assessee to pay 20% of the amount and the balance amount was stayed and in few cases stay has been granted even without payment of 20%.

The State of Maharashtra issued a trade circular dated 26th May 2020 wherein assessee was given an option of submitting a declaration within 15 days of the order before jurisdictional authority wherever he proposes to file an appeal and demand in such case is stayed however, there is no clarity and divergent practice is being followed in different states of the country.

In most states, tax authorities are asking to pay a minimum of 20% even if the tribunal is not functional and, in few cases, even 100% tax is demanded. The tax authorities in many cases have initiated the recovery proceedings including the attachment of bank account immediately after the passing of the order by the first appellate authority without even providing an opportunity to approach Hon'ble HC under writ jurisdiction. There is no uniformity or clarification provided in this regard and a large number of petitions are being filed before Hon'ble HCs even on several meagre tax issues involving questions of facts.

Recently, the Patna HC while deciding the case of Sita Pandey vs. the State of Bihar (**C.W.J.C. No. 5407/2023-HC- PATNA**), wherein the entire amount was recovered u/s 78 immediately on the next day of the decision of the first appeal, held that such recovery is against the principle of natural justice and the department could have at most recovered 20% of the demand confirmed by the appellate authority. A cost of Rs.5000 was also levied on the officer concerned. Further, in another case of National Insurance Co. Ltd. Vs State of Bihar (**C.W.J.C. No. 777/ 2023- HC- PATNA**), recovery of the balance amount was made even when 20% payment was already made by the taxpayer in addition to 10% paid while filing an appeal before the first appellate authority, Hon'ble HC following the aforementioned judgment in case of Sita Pandey, held such recoveries to be illegal and directed the department to refund the

amount recovered and imposed a cost of Rs. 5000 on the concerned officer.

In a recent circular 224/18/2024 - GST [CBIC-20001/4/2024-GST] – Dated 11th July 2024, it has been clarified that upon payment of amount equivalent to 20% of the disputed tax amount and filing of an undertaking with the jurisdictional proper officer stating their intention to file an appeal before the GSTAT, recovery for balance amount will be stayed, however the circular provides that in case the taxpayer does not make payment of 20% or doesn't provide the undertaking before the proper officer, then it will be presumed that the taxpayer is not willing to file an appeal.

This clarification with regard to stay of demand post-decision of the first appellate authority till the time the Tribunal becomes operational will be beneficial and was much needed for the tax administration of the country considering that a huge number of litigations is expected to take place for FY 2017-18, FY 2018-19 and FY 2019-20 against the several thousands of notices issued to taxpayers. This clarification will also help in avoiding uncertainty before the taxpayers and also unburden the Hon'ble HC.

Furthermore, a recovery proposed by the circular in the absence of payment of 20% or even only the declaration after making the payment seems to be an unjust burden on the taxpayers as the payment of 20% before even the constitution of the Tribunal will block the funds of the assessee for a longer period and impact working capital, particularly considering historically lower success rate of the tax department.



A swift functioning of the Tribunal is imperative considering the substantial backlog and upcoming huge matters of FY 2018-19 and FY 2019-20 post-completion of the time limit for issuance of orders in this year.

Pre-deposit Amount

The Finance Act, 2024 upon recommendation of the GST council has reduced the pre-deposit amount to 10% subject to the maximum of 40 Crores (CGST and SGST both) while filing an appeal before the first appellate authority and an additional 10% of the remaining amount subject to the maximum of 40 Crores (CGST and SGST both) while filing the appeal before the Appellate Tribunal and once the amount is paid, the recovery proceeding for the balance outstanding amount is deemed to be stayed.

Such reduction in the pre-deposit limit from 20% to 10% at the tribunal and reducing the maximum amount from 50 Crores to 40 Crores is a welcome change, however the amount of 20% of the tax in dispute and maximum amount of pre-deposit while filing the appeal before the Appellate Tribunal is still very significantly high particularly in the background of very lower success rate of the department in the Tribunal in the pre-GST regime. The Economic survey of FY 2017-18 provided that the success rate of the Department at all three levels of appeal—Appellate Tribunals, High Courts, and Supreme Court—and for both direct and indirect tax litigation is under 30%. In some cases, it is as low as 12%. It further provided that the success rate of the Department before CESTAT as the proportion of cases in which the respective court or tribunal rules totally or partially in favour of the Department is merely 12%.

Rationalisation in pre-deposit amount will help the growth of business and the economy of the country as such reduction will help the businesses in better working capital management.

Conclusion

The certainty in tax laws helps the business to plan themselves and contribute towards the growth of the nation. Any uncertainty impacts the ease of doing business and hence, it is imperative that there should be absolute clarity with respect to tax laws, reporting, and appellate process. A more proactive step from the government would be helpful in making this tax a "Goods & Simple Tax" in a real manner.



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