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Waiver of late fee for delay in filing Form GSTR-4 for FY 2021-22 for the period 1st May, 2022 to 30th June, 2022

The late fee payable for delay in furnishing of Form GSTR-4 (Annual Return for registered persons opting for Composition Scheme) for the Financial Year 2021-22 under section 47 of the CGST Act, 2017 has been waived for the period starting from 01.05.2022 till 30.06.2022.

[Notification No. 07/2022 -Central Tax dt. 26.05.2022](#)

Clarification on the legal position of voluntary payment of taxes during the course of inspection, search or investigation

Under CGST Act, 2017, the taxpayers have an option to make voluntary payment of tax through Form DRC-03. Such voluntary payment of tax before issuance of show cause notice is permitted under section 73(5) and section 74(5) of the CGST Act, 2017. This helps the taxpayers in discharging their admitted liability, self-ascertained or as ascertained by the tax officer, without having to bear the burden of interest under section 50 of CGST Act, 2017 for delayed payment of tax and may also save him from higher penalty imposable on him subsequent to issuance of show cause notice under section 73 or section 74, as the case may be.

Recovery of taxes not paid or short paid, can be made under the provisions of section 79 of CGST Act, 2017 only after following due legal process of issuance of notice and subsequent confirmation of demand by issuance of adjudication order. Therefore, there may not arise any situation where “recovery” of the tax dues has to be made by the tax officer from the taxpayer during the course of search, inspection or investigation, on account of any issue detected during such proceedings. However, the law does not bar the taxpayer from voluntarily making payment of any tax liability ascertained by him or the tax officer in respect of such issues, either before or during the course of such proceedings or subsequently. The tax officer should however, inform the taxpayers regarding the provisions of voluntary tax payments through DRC-03.

The Pr. Chief Commissioners/ Chief Commissioners, CGST Zones and Pr. Director General, DGGI are advised that in case, any complaint is received from a taxpayer regarding use of force or coercion by any of their officers for getting the amount deposited during search or inspection or investigation, the same may be enquired at the earliest and in case of any wrongdoing on the part of any tax officer, strict disciplinary action as per law may be taken against the defaulting officers.

[Instruction No. 01/2022-23 \[GST-Investigation\] dt. 25.05.2022](#)

GST Notices and possible Solutions

Introduction:

In the past 2 years there has been a spike in the number of GST notices. This is on account of completion of audit within time lines, data analytics being performed by the department, the recent slew of fake invoicing/fake ITC claim cases, and many more. Likely to increase due to the poor quality of AAR, Tribunals still to be set up. Going to Court not always possible or cost effective. Understanding why, what and some best practices to avoid/ mitigate would support the clients.

Various Types of Notices:

In the recent past some common types of notices being received by taxpayers are:

1. GSTR 2A Vs GSTR 3B - ITC mismatch
2. GSTR 1 Vs GSTR 3B - Output mismatch
3. GSTR 9 Vs GSTR 9C - mismatch
4. Payment of interest

Common notices and possible solutions:

- GSTR 1 Vs GSTR 3B - Output mismatch - Possibility that taxes were paid in another month or through DRC-03 or while filing GSTR 9/9C. Ensure time limits are adhered to. (section 37 & 39)
- GSTR 2A Vs GSTR 3B - ITC mismatch - Genuine credit - available of tax invoice, full payment to vendor, receipt of goods/services should be eligible. (section 16) Period up

to October 2019 – not applicable, no provision of law October 2019 to December 2021 – Rule did not have authorizing power through the Act January 2022 onwards – Section 16(2)(aa) implemented, GSTR 2B matching required.

- GSTR 9 Vs GSTR 9C – mismatch - Variance in tax payable and paid could have logical reasons and need not be liable. Not all unreconciled values need to be taxable in nature Certain tables in GSTR 9 & 9C were optional and were not filled. (Notification 56/2019-CT)
- E-way bill related notices - Movement must not be hampered for genuine transactions. Various case laws available to support EWB related issues. Reference material: Handbook on EWB under GST – ICAI April 2020 edition Practical guide to EWB under GST by CA Narendra Nimmala & CA Raghunandan
- Payment of interest - Recently made clear in the law that interest is applicable only when ITC balance is claimed and utilised. Where interest is demanded otherwise not payable. Various High Court rulings in favour.

* Providing supporting case laws, legal maxims, reference to Constitution and intention of law would work in the favour while replying to notices.

Process in accepting and replying to Notices

1. How to manage roving enquiries?
Reply immediately that the notice is vague and is not clear. Request for clarity and detailed requirement. Disclose that you are ready to share information as requested once clarity is provided.
2. Time limit to respond + Reasonable extension
Time limit to revert to a notice must be adhered to. Where not possible, ask for a reasonable extension to reply. Ensure all such correspondences through online response and/or registered post acknowledgement due (RPAD/ speed post). [Do not visit the dept.]
3. Follow-up – Where information is provided although department is silent on further steps. Initial correspondence been kept open, without closing the issue. There could be many reasons for their silence such as transfer of officer, work pressure in handling cases, loss of documents by dept. or cases kept pending in call book.

Procedure when departmental contention is not valid

1. Information which is already available with department can be informed as available with them and need not be provided.
2. Obtain expert written opinion. Disclose clearly but respectfully that departmental contention is not acceptable by giving reference to GST provisions, case laws, etc.
3. Usage of AAR/AAAR decisions, circulars not in line with the law can be disputed as not being applicable to the assessee to render inconsequential.
4. Validity of notice must be verified, and where it is not from the appropriate authority or is time barred, contention of the department can be said to be invalid.

Practical Difficulties in Litigation process

1. Inherent limitation to get relief is that tribunal is yet to be formed under GST. Taxpayer left in the doldrums due to mismanagement and lack of implementation. Advertisement
2. DIN no. not being mentioned by State departments as Circular not issued to State - not acceptable.
3. Payments under coercion - Taxpayer is suggested to mention that he would pay under protest by mentioning officers name and his designation. If succeeded could mention again and claim with interest. This may help protect the assessee.
4. Handling dept. hassling & when bribes are asked for - Document minutes of discussion and send a letter to the officer requesting to follow the rule of law. Escalation to higher levels (Commissioner) if there is no change in the approach. Can also approach Anti-corruption bureau, raise issue on Public Grievance portal to obtain relief.

Department Harassment Solutions

- 2013-TIOL-13-SC-CUS M/s UNIWORTH TEXTILES LTD - The conclusion that mere non-payment of duties is equivalent to collusion or willful misstatement or suppression of facts is, untenable. Therefore, accepting notices under Section 74 is questionable.
- Century Plyboard (India) Ltd TS-229-HC-2022(GAUH)-CUST - No records that assessee is not cooperating or any specific reason why the MD is required. Such summons must be used only as a 'last resort'. Relied upon CBEC Circular 208/122/89 CX-6 dated 13-10-1989 - instructed dept not to summon MD for enquiry. Similarly held in - FSM Education Pvt. Ltd v. UOI 2022-TIOL-61-HC-MUM-GST
- Instruction 01/2022-23-GST - Clarifies 'recovery' during search/seizure/inspection/investigation under coercion must be not be made. Although voluntary payment is allowed. Strict disciplinary action will be taken against the officer if he forces or coerces the taxpayer to make the payment.

Best practices

The following best practices (along with those mentioned under GST Audit Notice) would help reduce the departmental interventions and prove oneself as a bona-fide assessee. Being proactive is the best step forward. Practices which may yield positive results (which include no further action or only phone calls) are:

- File an 'Initial disclosure letter' voluntarily (explain tax positions and GST applicability w.r.t entity. Submit through RPAD) This is recommended for every big taxpayer to prove bona fide. State that you are willing to come and explain if needed.
- Maintaining requisite information (Section 35 r/w Rule 56)
- Ensure transactions are performed through registered vendors to the extent possible. Categorize vendors based on their compliance and return filing track record
- Own GSTR 1 & 3B to be matched periodically (in turn requires books of accounts to be closed in time without back dated entries). Any information missed out can either be disclosed in the next month or paid through DRC-03 voluntarily.

- Automate internal process to help generate information for GST returns in time and with reduced/NIL errors.
- Pre-departmental audit by competent professional would go a long way in identifying and taking action before departmental audits is started.

GST Audit Notice

The department has started conducting the GST audits up to FY 2020-21. Under Section 65 of CGST Act. They are generally performing the same for 2/3 years together. The information that is requested for the audit sometimes can be overwhelming. Although, there can be certain information that either is already available to the department or is not required to be maintained as per law and therefore, need not be provided.

Best practices during audit:

Verify time limit to conduct audit whether explicit. If not ask them how many days it would take. [there are internal dept time limits]

Request for additional time to prepare data where required

Security register for visits can be maintained Request for valid identification.

Officially put on record on day 1 thru the portal. Time period for audit can be enforced Working during business hours can be enforced Do not sign any documents if not agreeable All document copies provided to be similarly intimated thru the portal. [will avoid further copies of unnecessary documents] Reply to audit note immediately & document. In that ask for confirmation that all orders to be in writing. Have clarity of SCN demands and litigate where necessary.

The usage of a checklist and an indirect tax SOP for internal staff to follow would have a positive effect in tax compliance and reduce errors and issues from arising in the future. Note-2: Stay of Notice If the service of notice or issuance of order is stayed by an order of Court or Appellate Tribunal, the period of stay will be excluded in computing the period 3 years or 5 years under section 73/74 of CGST Act respectively.

Judicial Precedents

1. Swati Menthol And Allied Chemicals Ltd [2021-TIOL-1171-HC-P&H-CX] -SCN unadjudicated for more than 10 years are not sustainable in law. Principle of nature justice as they demand.
2. Manickan Ravichandran [2021-TIOL-1141-HC-KERALA-IT] -SCN & consequent assessment orders are unsustainable, where assessee is given insufficient time of 4 days to file reply to SCN & where assessee's reply seeking more time, is not considered Advertisement
3. Hindustan Poles Corp. [2006 (196) ELT 400 (SC)] -Before issuance of SCN, Revenue must carefully take into consideration, the settled law which has been crystalised by a series of judgements.
4. Radha Krishan Industries [Civil appeal no.1155/2021 (SC)] -Provisional attachment to be in exceptional cases when there is threat to revenue
5. Agarwal Foundries Pvt Ltd Vs Uoi [2020-TIOL-1898-HC-TELANGANA-GST] -The authorities under the CGST Act, 2017 who are not to be treated as police officials, they cannot

claim any immunity if they indulge in acts of physical violence against persons they suspect of being guilty of tax evasion.

6. Ganapathi Mega Builders Pvt Ltd [CESTAT Allahabad 2022 (58) GSTL 324 (Tri.-All)] & Quest Engineering & Consultants Pvt Ltd [CESTAT Allahabad 2022 (58) GSTL 345 (Tri.-All) - Form 26AS is not a prescribed document for ascertaining gross turnover of assessee.

7. J. P Iscon Pvt Ltd [CESTAT Ahmadabad Service Tax Appeal No. 10599 of 2021-DB]- Service Tax Demand cannot be raised merely based on investigation conducted by Income Tax Authorities. The department was unable to support with evidence that disclosed income is liable to service tax. It is settled principal of law that the burden of proving a fact is on the person who alleges the same.

8. Simplex Infrastructures Ltd [2021-TIOL-1273-HC-KAR-CX] -Where assessee could not file appeal before first appellate authority under the Act, it is not entitled to approach writ court u/a 226 to admit the appeal. Writ petition not admitted Conclusion There have been many instances where the judiciary is not pleased with the notices issued by department and have chastised the dept officers. Law favors the vigilant.

Post GST Registration Compliance

Unorganised business entities will not do on time compliances. Such non Compliance will always be a time bomb. So few simple compliances are listed below for easy reference.

1. Display GST number in name board of your business.
2. Display GST registration certificate at your business place visible to your customers .
3. Display GST number visible at your business place.
4. Provide your supplier your GST number. Insist him to upload the Invoice in his GSTR1. If your supplier fails to upload the invoice into to GSTR-1, you will lose the input tax credit.
5. Choose proper invoice copy for your outward supply.
6. Maintain Debit Note, Credit note, Receipt and Payment Vouchers including all Outward Supply details in duplicate. You have to maintain the stock register too.
7. Do not miss any purchase bills, asset purchase bills and expense bills. Because you will lose input tax credit that you have paid during inward supply.
8. Identify proper HSN code or SAC and collect output tax and deposit it to the government.
9. Identify the proper place of supply for charging CGST/SGST or IGST.
10. Generating E-way bill, if your consignment value is more than Rs 50,000.

11. Know whether your inward supplies liable for reverse charge mechanism.
12. File GST returns within the due dates. (Check link at reference section below to know about due dates)
13. Educate your employees about the compliance. Educate them about the workplace ethics.
14. Check GSTR-2A regularly to keep track of your supplier uploading your invoice to GST site.
15. Respond to departmental notices without delay. Advertisement
16. Make necessary amendments in your GST registration if the situation warrants.
17. Keep in touch with your consultant.
18. After financial year-end, you have to file GSTR Annual return and get your GST records audited if applicable.
19. Raise E Invoice, if your turnover cross specified limit.