

Treading the GST Path – XIII

Tyrant time limit

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1.0 Section 51 of the model GST deals with raising of demands by way of issue of show cause notice and confirmation such demands by a process of adjudication. As in the existing legislation a lesser time limit for demands not involving fraud, wilful misstatement or suppression of facts and a longer time limit for demands involving fraud, wilful misstatement or suppression of facts have been prescribed. The relevant provisions read as under.

A. 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

(7) The proper officer shall issue the order under sub-section (6) within three years from the due date or the actual date, whichever is earlier, for filing of annual return for the year to which the tax not paid or short paid or input tax credit wrongly availed or utilized relates or, as the case may be, within three years from the date of erroneous refund.

B. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any willful-misstatement or suppression of facts

(7) The proper officer shall issue the order under sub-section (6) within a period of five years from the due date or the actual date, whichever is earlier, for filing of annual return for the year to which the tax not paid or short paid or input tax credit wrongly availed or utilized relates or, as the case may be, within five years from the date of erroneous refund.

C. General provisions relating to demand of tax.

(9) The adjudication proceedings shall be deemed to be concluded if the order is not issued within three years as provided for in sub-section A (7) or within five years as provided for in sub-section B (7).

20 As against the existing provisions where the time limit has been prescribed only for issue of show cause notice, without prescribing any specified time limit within which the orders have to be passed, the model GST law envisages that the order for determination of the tax demand has to be passed within three years / five years from the due date or the actual date, whichever is earlier, for filing of annual return for the year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates or within three years / five years from the date of erroneous refund.

3.0 One potential danger of absence of any time limit for issue of show cause notice is that just before the expiry of the time limit for issue of orders, demand notices may be issued by the department, without affording sufficient time for the assessee to defend themselves effectively. The fear is not unfounded. When the law mandated that the request for adjournment of personal hearings on sufficient grounds is asked for the same shall be allowed upto a maximum of three times, the department officers have come out with an ingenuous method of granting 4 personal hearings on successive dates through a single communication. So the possibility of issue of show cause notices just few months / or even few days before the expiry of time limit, hasty confirmation of such demands and remand by appellate authorities for not affording sufficient opportunity to defend the allegations, is not ruled out.

4.0 Let us see the implication of the three years / five years time limit prescribed for normal cases and suppression cases respectively.

4.1 Let us assume that there has been a short payment of tax in the month of April 2017. As per section 30, the annual return for a financial year has to be filed on or before 31st December of the succeeding financial year, i.e. for the year 2017-18 the annual return has to be filed on or before 31.12.2018. Let us assume that an assessee has filed his annual return for 2017-18 on 31.12.2018. The normal time limit for raising the demand for the month of April 2017 would be on or before 31.12.2021. That is, a whopping period of 4 years and 9 months is available for the department to confirm the demand pertaining to April 2017, which means the notice could be issued at any time before 31.12.2021. If the demand involves suppression, etc. the time limit would be 31.12.2023, i.e. a period 6 years and 9 months. Even for raising any demand for the month of March 2018 (the last month of the financial year 2017-18), the time limit applicable would be 31.12.2021 / 31.12.2023, i.e. 3 years 9 months and 5 years 9 months respectively.

5.0 Doctrine of limitation is based on the principle of certainty of legal proceedings. Especially in the context of indirect taxes, where the tax burden could be passed on to the successive levels, if the uncertainty is going to pervade for a long period of 4 years and 9 months, it is nothing but draconian. How will the tax payer be able to pass on such additional tax burden to the recipients of his supplies over the past 4 years and 9 months? In many cases, the profit margin earned may not even be near the rates of taxes and what will the poor assessee do if tax demands are confirmed for the past nearly 5 years, along with interest, on an interpretive issue where he has guided by a bonafide belief? While the longer period permitted for demands involving suppression, fraud, etc. could somehow be justified, prescription of such a long period for raising demands in normal cases is tyrant. Once the starting point of limitation is considered as 31st December of the next financial year, by which time the financial accounts of the previous financial year would have been finalised, prescription of any period more than one year from such date is against the basic canons of good taxation policy.

6.0 Hence, it is earnestly prayed that the normal period of demand should be reduced to one year from the due date / actual date of filing of annual return for a financial year to which the demand relates.

7.0 Another peculiar provision has also been made in Section 51 C (10). As time limit has been fixed for passing of orders of confirmation of demands, if there are binding judicial verdicts, which are in favour of the assessee, the officer would not be able to confirm the demand (If at all he knows the doctrine of binding nature judicial precedent) and has to drop the demand based on such judicial precedent. But if such decision has been appealed against by the department the time limit from the date of passage of the order in favour of the assessee and the date on which such order is reversed by the higher appellate forum could be excluded in computing the time limit for adjudication.

7.1 Let us consider an example. An officer has to pass an order on or before 31.12.2021. But on 31.10.2021, in a similar case, the Tribunal has held that similar demands are not sustainable. So, when the officer has to pass order on 31.12.2021 in this case, he may not be able to confirm the demand in view of the contrary decision of the Tribunal. (But the officers have highly ingenious means to distinguish such judgements unfavourable to them). If the department has filed an appeal against the order of the Tribunal, before the High Court and the High Court reverses the Tribunal order on, say 30.06.2023. The time period between 31.10.2021 to 30.06.2023 would not be counted. The officer can pass order in such case on or before 31.08.2023. The time clock will stop running from 31.10.2021 and start again only after 30.06.2023.

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