

SCNs for FY 17-18 and 18-19 are still not time barred...All SCNs can be issued u/s 74

By: Team Tax Connect

Ordinarily, SCNs may be challenged at High Courts on account of –

- A. SCN issued without jurisdiction.
- B. Even if one proceeds on the basis that statements in the SCN are correct, no case is made out for the threatened action.
- C. There is a gross violation of natural justice or a right of the taxpayer.

The question is whether a case can be said to be made out by merely alleging "fraud / suppression / misrepresentation" without mentioning the reasons of the allegation. Is a non-speaking order w.r.t. invocation of larger period of limitation, not a violation of the right of the taxpayer.

In a very brief order in the case of M/s ABT LIMITED Vs THE ADDITIONAL COMMISSIONER OF GST & CENTRAL EXCISE, O/o. THE COMMISSIONER OF GST & CENTRAL EXCISE (AUDIT), COIMBATORE, The Hon'ble Madras High Court has ruled that there is nothing in the language of Section 65 to indicate that the audit report should contain such findings which prove fraud / suppression / misrepresentation. The proper officer has the "option" to mere allege the taxpayer with "fraud / suppression / misrepresentation" initiates action under Section 74.

"Section 65(7) reads as under –

65(7) Where the audit conducted under sub-section (1) results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the proper officer may initiate action under Section 73 or Section 74."

This means that the SCNs w.r.t. FY 17-18 and 18-19 are still not time barred as all SCNs can be issued u/s 74 given the wide meaning given to the word 'suppression' in explanation 2 to Section 74 of the CGST Act 2017.

Explanation 2 to Section 74 states as follows --For the purposes of this Act, the expression "suppression" shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the Proper Officer.

Hence, the following would mean suppression –

- 1. A mere non-declaration, an exempt supply in the return which may result in short payment of tax.*
- 2. A mere non-compliance of Circular 170 of 2022 read with Notification 14/2022 w.r.t. declaration of "permanent or temporary reversals or reclaimed amounts of ITC" which may result in taking ineligible ITC*
- 3. An error in the invoice as against Rule 46 of CGST Rules which may result in the invoice being alleged as a defective invoice.*
- 4. Non-furnishing of even one document required by the audit officer where the officer may do a best judgement.*

We have already seen widespread use of Section 74 of The erstwhile Finance Act 1994 in the Service Tax regime. Now, equipped with this definition as well as this judgement of The Hon'ble Madras High Court, time will tell whether the SCNs w.r.t. FY 17-18 and 18-19 are yet time barred or not.

To the rescue of the taxpayers, the decision in the case of Uniworth Textiles Limited v. Commissioner of Central Excise [(2013) 9 SCC 753 - 2013-VIL-09-SC-CU] may require consideration where the Hon'ble Apex Court held that the show cause notice must fulfill the requirement of the proviso to Section 28 of the Customs Act, 1962 (as was in that case) which finds application only when specific and explicit averments challenging the fides of the conduct of the assessee are made in the show-cause notice, which requirement in that the show-cause notice in that case failed to meet.

LET'S DISCUSS FURTHER!

OUR OFFICES:

MUMBAI

Unit No. 312, Omega Business Park, Near Kaamgar Hospital, Road No. 33, Wagle Industrial Estate, Thane West, Maharashtra- 400604

Contact Person: Priyanka Vishwakarma

Email: priyanka.vishwakarma@taxconnect.co.in

BENGALURU

951, 24th Main Road, J P Nagar, Bengaluru, Karnataka – 560078.

Contact Person: Anil Pal

Email: anil.pal@taxconnectdelhi.co.in

DELHI (NCR)

B-139, 2nd Floor, Transport Nagar, Noida-201301 (U.P)

Contact Person: Poonam Khemka

Email: poonam.khemka@taxconnect.co.in

KOLKATA

6, Netaji Subhas Road, 3rd Floor, Royal Exchange Building, Kolkata - 700001

Contact Person: Tithly Roy

Email: tithly.roy@taxconnect.co.in

KOLKATA

R No 119; 1st Floor; Diamond Arcade; 1/72, Cal Jessore Road, Kolkata – 700055

Contact Person: Uttam Kumar Singh

Email: uttam.singh@taxconnect.co.in

DUBAI

Azizi Feirouz, 803, 8th Floor, AL Furjan, Opposite Discovery Pavillion, Dubai, UAE

Contact Person: Rohit Sharma

Email: rohit.sharma@taxconnect.co.in

Disclaimer:

This publication is for private circulation only. Views expressed herein are of the Tax Connect team and are based on the information, explanation, and documents available on Government portal platforms. Tax Connect or any of its employees do not accept any liability whatsoever direct or indirect that may arise from the use of the information contained herein. No matter contained herein may be reproduced without prior consent of Tax Connect. While this e-article has been prepared based on published/other publicly available information considered reliable, we do not accept any liability for the accuracy of its contents.

Tax Connect 2024. All rights reserved.