

पत्र संख्या-न्याय-5(1)रिट-2/इलाहाबाद/2024-25/

1008

/राज्य कर

प्रेषक,

आयुक्त, राज्य कर,
उत्तर प्रदेश, लखनऊ।

सेवा में,

समस्त संयुक्त आयुक्त (कार्य /वि०अनु०शा०/कार्पो०सेल)
राज्य कर, उत्तर प्रदेश, लखनऊ।

(वाद-अनुभाग)

लखनऊ::दिनांक::०६ सितम्बर, 2024

महोदय,

कृपया संयुक्त आयुक्त (जी०एस०टी०) राज्य कर, मुख्यालय, लखनऊ के पत्र संख्या-405 दिनांक-27/08/2024 का सन्दर्भ ग्रहण करने का कष्ट करें, जिसके द्वारा Sri. Mohan Lal, Superintendent, GST Council secretariat द्वारा प्रेषित ई-मेल दिनांक-20-08-2023 के साथ संलग्न F.No. CBIC- 20/10/07/2021-GST दिनांक-13-05-2024 जो Standard comments on legality of Notification No. 09/2023-CT dated-31-03-2023 and Notification No. 56/2023-CT dated-28-12-2023 issued by GST Policy Wing विषयक हैं।

उक्त पत्र के माध्यम से अधिसूचना संख्या-09/2023-CT dated-31-03-2023 एवं Notification No. 56/2023-CT dated-28-12-2023 के संबंध में विभिन्न उच्च न्यायालयों में योजित की गयी रिट याचिकाओं के संबंध में विभागीय पक्ष दाखिल किये जाते समय उल्लेख किये जाने योग्य तथ्यों को स्पष्ट किया गया है।

अतः संयुक्त आयुक्त (जी०एस०टी०) राज्य कर, मुख्यालय, लखनऊ के पत्र संख्या-405 दिनांक-27/08/2024 कि छायाप्रति प्रेषित करते हुए अनुरोध है कि आप अपने अधीनस्थ अधिकारियों को निर्देशित करने का कष्ट करें कि यदि रिट याचिका में उपरोक्त अधिसूचनाओं को चुनौती दी गयी हो तो मुख्यालय पर अनुमोदन हेतु भेजे जाने वाले नैरेटिव व प्रस्तरवार आख्या में उपरोक्त को सम्मिलित किया जाए।

संलग्नक: उपरोक्तानुसार।

भवदीय,

(अखिलेश कुमार सिंह)

संयुक्त आयुक्त (वाद), राज्य कर
मुख्यालय, लखनऊ।

पृ०प०सं० व दिनांक उक्त।

प्रतिलिपि-1- अपर आयुक्त ग्रेड-1, (उच्च न्याय कार्य) राज्य कर, प्रयागराज को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित

2- अपर आयुक्त ग्रेड-2, (उच्च न्याय कार्य) राज्य कर, लखनऊ को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित।

3-संयुक्त आयुक्त (आई०टी०) राज्य कर, मुख्यालय लखनऊ को इस निर्देश के साथ की उक्त को विभागीय वेबसाइट पर समस्त अधिकारियों के सूचनार्थ प्रकाशित करने का कष्ट करें।

26.09.14

संयुक्त आयुक्त (वाद), राज्य कर
मुख्यालय, लखनऊ।

पत्र संख्या- जी०एस०टी०/2024-25/सामान्य 488 (Vol-12)/

405

/राज्य कर

प्रेषक,

संयुक्त आयुक्त (जी०एस०टी०),

राज्य कर मुख्यालय, लखनऊ।

सेवा में,

संयुक्त आयुक्त (वाद),

राज्य कर मुख्यालय, लखनऊ।

(जी०एस०टी०अनुभाग)

लखनऊ: दिनांक-27 अगस्त, 2024

महोदय,

कृपया इस पत्र के साथ संलग्न Sri. Mohan Lal, Superintendent, GST Council secretarial द्वारा प्रेषित ई-मेल दिनांक-20-08-2023 के साथ संलग्न F.No. CBIC-20/10/07/2021-GST दिनांक-13-05-2024 का सन्दर्भ ग्रहण करने का कष्ट करें, जो Standard comments on legality of Notification No. 09/2023-CT dated-31-03-2023 and Notification No. 56/2023-CT dated-28-12-2023 issued by GST Policy Wing विषयक है।

उक्त पत्र के माध्यम से अधिसूचना संख्या-09/2023-CT dated-31-03-2023 एवं Notification No. 56/2023-CT dated-28-12-2023 के संबंध में विभिन्न उच्च न्यायालयों में योजित की गयी रिट याचिकाओं के संबंध में विभागीय पक्ष दाखिल किये जाते समय उल्लेख किये जाने योग्य तथ्यों को स्पष्ट किया गया है। चूंकि मा० उच्च न्यायालय में योजित की गयी याचिकाओं से संबंधित प्रकरणों में आवश्यक कार्यवाही आपके अनुभाग से की जाती है, अतः पत्र की मूल प्रति इस पत्र के साथ संलग्न कर इस आशय से प्रेषित है कि कृपया संदर्भित प्रकरण की अपने स्तर से नियमानुसार आवश्यक कार्यवाही करने का कष्ट करें।
संलग्नक-उपरोक्तानुसार।

श्री श्री श्री / श्री श्री श्री

23

उपरोक्त

भवदीय,

(हरिलाल प्रजापति)

संयुक्त आयुक्त (जी०एस०टी०),

राज्य कर मुख्यालय, लखनऊ।

2524
27/08/2024

Fwd: Standard comments on legality of Notification No. 09/2023-CT dated 31.03.2023 and Notification No. 56/2023-CT dated 28.12.2023 issued by GST Policy Wing-reg.

Commissioner, Commercial Tax, UP <cctcomhqlu-up@nic.in>
To: upctres2@gmail.com, Hari Lal Prajapati <hari.2371976@gov.in>

20 August 2024 at 12:09

From: "GST Council Secretariat" <gstc.secretariat@gov.in>
 To: "Commissioner of Taxes Assam" <col.assam@gov.in>, "PALLAV GOPAL JHA IAS" <pallavg.jha@ias.nic.in>, "M Girija Sankar" <ap_cct@apcl.gov.in>, Itozong@yahoo.com, "CCT CCT" <ccl@bihar.gov.in>, "Commissioner Commercial Taxes" <comn-clax Goa@nic.in>, etc@haryanatax.gov.in, "Sh. Yunus" <elo-hp@nic.in>, "P.K Bhat" <cclik@jkcomtax.gov.in>, ccl@harkhandcomtax.gov.in, "SHIKHA C" <shikha.c@ias.nic.in>, "Commissioner SGST" <cst.sgst@kerala.gov.in>, "AJIT PATIL" <ajit.p@ias.nic.in>, "Commissioner HO" <commissioner.ho@mptax.mp.gov.in>, "Department of Taxes Manipur" <tax-mn@nic.in>, nverchinapannici@gmail.com, ccl@mahagst.gov.in, "ASHEESH SHARMA" <cst-mh@gov.in>, "Commissioner Of Taxes Meghalay" <comtax-meg@gov.in>, "Commissioner of State Tax Mizoram" <comtax-azl-mv@nic.in>, raftezosiamliana@gmail.com, "Commissioner Taxes" <Commr.tax-ngl@nic.in>, "Shri Sanjay Kumar Singh IAS" <ccl@odishalax.gov.in>, "Varun Roopam, IAS" <elcpt@punjab.gov.in>, "L. MOHAMED MANSOOR" <ccltax@py.gov.in>, comm-ctd@rajasthan.gov.in, "Manoj Rai" <manojrai.ctd@sikkim.gov.in>, "Commissioner of Taxes" <ccltax-tr@gov.in>, "cct ctd" <ccl.ctd@in.gov.in>, ctsec@in.gov.in, "S.A.M. Rizvi IAS" <cal@tgct.gov.in>, "Commissioner, Commercial Tax, UP" <cctcomhqlu-up@nic.in>, "Commissioner Tax" <commr-ct-uk@nic.in>, "commtax uk" <commtax.uk@gmail.com>, "Commissioner West Bengal" <ccl.ctax@nic.in>, "Commissioner Tax Excise Arunachal Pradesh" <tax-com-am@nic.in>, commi-stax@gujarat.gov.in, "Commissioner GST" <ccl.delhi@nic.in>, "Commissioner State GST CG" <ccltd.cg@gov.in>, "prlsecy revenue ctax" <prlsecy_revenue_ctax@telangana.gov.in>, "Commissioner State GST CG" <ccltd.cg@gov.in>, "Commissioner GST" <ccl.delhi@nic.in>, "L. MOHAMED MANSOOR" <ccltax@py.gov.in>, gstc-nodalofficers@ismgr.nic.in
 Cc: "Pankaj Kumar Singh" <pankajksingh@nic.in>, "Sumidaa Devi B" <sumidaadevi.b@gov.in>, "Shaifali" <shaifali.singh@gov.in>, "Anil Kumar" <anil.531975@nic.in>, "RESHMA R KURUP" <rr.kurup@gov.in>, "Reshmi PR" <reshmi.pr@gov.in>, "Sridhar Das" <sridhar.das1982@gov.in>
 Sent: Tuesday, August 20, 2024 12:05:52 PM
 Subject: Standard comments on legality of Notification No. 09/2023-CT dated 31.03.2023 and Notification No. 56/2023-CT dated 28.12.2023 issued by GST Policy Wing-reg.

Sir/Madam,

Please find attached herewith standard comments on legality of Notification No. 09/2023-CT dated 31.03.2023 and Notification No. 56/2023-CT dated 28.12.2023 issued by GST Policy Wing vide letter CBIC-20/10/07/2021-GST dated 13.05.2024 and 24.07.2024. This is for information and necessary action at your end.

Regards

Mohan Lal
Superintendent

1195
20/08/2024
D.C. (GST)

Nicki AE

21/8/24

21/8/24
21/8/24

GST Council Secretariat

5th Floor, Tower II, Jeevan Bharti Building
Janpath Road, Connaught Place, New Delhi-110 001
Email: gstc[dot]secretariat[at]gov[dot]in

Telephone No. : 011-23762656


2023

50/2023-CT

8/16/24, 12:13 PM

Gmail - Fwd: Standard comments on legality of Notification No. 09/2023-CT dated 31.03.2023 and Notification No. 56/2023-CT da...

पेड़ बचाओ ... कृपया इस ई-मेल को तब तक प्रिंट न करें जब तक आपको आवश्यकता न हो।
Save a tree...Please don't print this e-mail unless you really need to.

 GST Policy Wing Comments dated 13.05.2024 & 24.07.2024.pdf
3391K

1516
14.05.24

F.No. CHC-20/10037/2021-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

New Delhi, the 13th May, 2024

To,

All Principal Chief Commissioners/Chief Commissioners of Central Tax and Customs
Director Generals of DGRI and DGGI

Madam/ Sir,

Subject: Issue of standard comments on legality of Notification No. 09/2023- CT dated 31.03.2023 & Notification no. 56/2023-Central Tax dated 28.12.2023 – reg.

It has been observed that a number of writ petitions are being filed in various High Courts across the country, challenging the legality, constitutionality and vires of provisions of Notification No. 09/2023- CT dated 31.03.2023 & Notification No. 56/2023-Central Tax dated 28.12.2023. It is observed that such Writ Petitions have been filed, challenging before the Hon'ble High Courts, inter alia, that:

Notification No. 09/2023- CT dated 31.03.2023 & Notification No. 56/2023-Central Tax dated 28.12.2023 are lacking statutory backing as no force majeure event was prevalent warranting invocation of Section 168A of the CGST Act, 2017.

Therefore, it has been decided to circulate the standard comments on the issues raised in such Writ Petitions.

2. Accordingly, the standard policy comments from the GST Policy Wing on the same are as follows:

2.1. The Notification No. 09/2023- CT dated 31.03.2023 has been issued consequent to 49th Meeting of the GST Council held on 18th February, 2023. It was discussed in the said meeting [(Agenda item 4 (vii))] that difficulties were faced by government department during the COVID period due to reduced staff, staggered timings and exemption to certain categories of

employees from attending offices during COVID period. This led to delay in process of scrutiny and audit, which could be started properly only after COVID restrictions were uplifted. Accordingly, it was proposed by the Law Committee that due to restrictions and difficulties faced in COVID-19 period, there may be a need to provide additional time of three months under section 73(10) of CGST Act for issuance of demand notices and orders for financial years 2017-18, 2018-19 and 2019-20. The GST Council agreed with the recommendation of the Law Committee made in agenda item 4(vii), along with the proposed notification.

2.2 Accordingly, in exercise of the powers conferred by section 168A of the CGST Act, 2017, Notification no. 09/2023- CT dated 31.03.2023 was issued, extending the time limit specified under section 73(10) for issuance of order under sub-section (9) of Section 73 of the said Act, for recovery of tax not paid or short paid or of input tax credit wrongly availed or utilized, in respect of a tax period for the financial years 2017-18, 2018-19 and 2019-20, upto the period 31.12.2023, 31.03.2024 & 30.06.2024 respectively.

2.3. It is worthwhile to mention that it was felt that there may be a need to provide additional time to the officers to issue notices and pass orders for FY 2017-18, 2018-19 and 2019-20 considering the delay in scrutiny, assessment and audit work due to COVID-19 restrictions. Due to Covid-19 restrictions, maximum offices were closed and officers were also got affected badly. Besides, business premises were also closed and many of them were working from home. Due to all these reasons, it was difficult to get requisite data / information to carry out scrutiny, assessment or audit within the time prescribed by law.

2.4. From the above, it is evident that the said extension of time to issue notices and pass orders for FY 2017-18, 2018-19 and 2019-20 was issued vide Notification No. 09/2023- CT dated 31.03.2023, considering the delay in scrutiny, assessment and audit work due to COVID-19 restrictions.

2.5. The Notification No. 09/2023- CT dated 31.03.2023 has been issued in exercise of the powers conferred by section 168A of the Central Goods and Services Tax Act, 2017. The provisions of Section 168A of the CGST Act, 2017 read as under:

Section 168A : Power of Government to extend time limit in special circumstances.-

(1) Notwithstanding anything contained in this Act, the Government may, on the recommendations of the Council, by notification, extend the time limit specified in,

or prescribed or notified under, this Act in respect of actions which cannot be completed or complied with due to force majeure.

(2) The power to issue notification under sub-section (1) shall include the power to give retrospective effect to such notification from a date not earlier than the date of commencement of this Act.

Explanation - For the purposes of this section, the expression "force majeure" means a case of war, pandemic, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature or otherwise affecting the implementation of any of the provisions of this Act.

2.6. As per the explanation to Section 168A of CGST Act, 'Force majeure' includes an 'pandemic' and COVID-19 was a pandemic affecting the implementation of the provisions of the CGST Act, 2017 for scrutiny, assessment and audit work. Therefore, extension of statutory time lines through issuance of notification 09/2023-CT dated 31.03.2023 under the powers of Section 168A of CGST Act is proper and legal as condition of 'force majeure' was existing during the relevant time period.

2.7. Based on above, it is evident that the extension of time limit to issue notices and pass orders for FY 2017-18, 2018-19 and 2019-20 vide Notification No. 09/2023- CT dated 31.03.2023 was done legally and properly as per Section 168A of the CGST Act, 2017, since the same has been issued considering the delay in scrutiny, assessment and audit work due to restrictions in COVID-19 pandemic.

2.8. The Notification No. 09/2023- CT dated 31.03.2023 has been amended vide Notification no. 56/2023- CT dated 28.12.2023. The grounds in respect of issuance of Notification no. 56/2023- CT dated 28.12.2023 are as under:

2.8.1. The issue of further extension of timelines was deliberated in the 2nd National Coordination Meeting of Central and State Tax authorities on 14.12.2023. In the said meeting, various states raised the issue that due to restrictions in COVID-19 pandemic, assessment, scrutiny and audit could not be taken up by the tax administrations in time, which has led to bunching/ clubbing of such assessments/ scrutiny/ audit for FY 2017-18, FY 2018-19 and FY 2019-20. Besides, due to various amnesty schemes provided by the Government in form of waiver of late fee for delayed filing of returns, allowing filing applications for revocation of

cancellation of the registration, etc. (the last date of such amnesty schemes was upto 31st August 2023), a number of returns have been filed during the period of amnesty, followed by assessment and scrutiny of such returns, which may require issuance of demand notices and subsequent adjudication orders. It was requested by tax administrations in the said Meeting that in view of the above reasons, there is an imminent requirement of extension of the time limit specified under sub-section (10) of section 73 of CGST Act, 2017 for issuance of order under sub-section (9) of section 73 of the said Act, for recovery of tax not paid or short paid or of input tax credit wrongly availed or utilised, for Financial Years 2017-18, 2018-19 and 2019-20 by some more time. Besides, requests had also been received from trade and industry that more time be given to them for filing replies to demand notices, due to bunching of notices for FY 2017-18, FY 2018-19 and FY 2019-20. The issue was deliberated by the Law Committee of GST Council. After considering all the reasons, Law Committee recommended that limitation under section 73 of CGST Act for issuance of order may be extended under section 73 of CGST Act till 30th April, 2024 (from 31st March, 2023) for FY 2018-19 and till 31st August, 2024 (from 30th June, 2024) for FY 2019-20 under the powers available under section 168A of CGST Act. The time limit for issuance of demand notices under section 73 of the CGST Act for the FY 2018-19 was going to expire on 31.12.2023 as per the present timelines and since no meeting of GST Council was scheduled to be held during that period, owing to the urgency of the issue, the matter was deliberated by the GST Implementation Committee and agenda was approved on 26.12.2023 and accordingly Notification No. 56/2023-CT dated 28.12.2023 was issued after following due process of law. The same will be placed before the GST Council for ratification in its next meeting.

2.9. In view of the above, it is evident that the Notification No. 09/2023-CT dated 31.03.2023 and Notification no. 56/2023-Central Tax dated 28.12.2023 have been issued lawfully due to difficulty in implementation of provisions of CGST Act in respect of scrutiny, assessment and audit work due to COVID-19 pandemic and subsequent issuance of demand notices and orders. The said notifications have been issued under statutory powers governed under section 168A of CGST Act on account of "force majeure", which includes pandemic. It is again highlighted that as per the explanation to Section 168A of CGST Act, 'Force majeure' includes an 'pandemic' and COVID-19 was a pandemic affecting the implementation of the provisions of the CGST Act, 2017 for scrutiny, assessment and audit work.

2.10. Further, it is pertinent to highlight that previously time lines have been extended for trade also on multiple occasions, when statutory compliances could not be done by the taxpayers within the specified time limit due to restrictions in COVID-19 pandemic. Even time limit for filing of refund applications has been substantially extended on multiple occasions, when taxpayers were not able to file the refund applications within the prescribed time limit due to restrictions in COVID-19 pandemic.

2.11. In addition, it is submitted that all policy decisions with respect to GST Act are taken only with the recommendations of the GST Council, a Constitutional body established under Article 279A of the Constitution of India which is entrusted to make recommendations to the Union of India and the States on all matters related to GST.

3. This issues with the approval of Member, GST.

Yours faithfully,



(Raushan Kumar)
Deputy Commissioner (GST)

F.No. CBIC-201007/2021-GST/467
24/07/2024

Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

Room No. 244-D, North Block
New Delhi, the 24th July, 2024

To,
All Principal Chief Commissioners/Chief Commissioners of Central Tax and Customs
Director Generals of DGH and DCGI

Madam/ Sir,

Subject: Standard comments on legality of Notification No. 09/2023-CT dated
31.03.2023 & Notification no. 56/2023-Central Tax dated 28.12.2023 - reg.

Please refer to the Standard comments circulated by the GST Policy Wing, CBIC vide letter
F.No. CBIC-201007/2021-GST dated 14.05.2024 on legality of Notification No. 09/2023-CT
dated 31.03.2023 & Notification No. 56/2023-Central Tax dated 28.12.2023,

2. In this regard, it is informed that:

2.1. In para 2.8.1 of the said standard comments, it was mentioned, inter alia, that the
Notification No. 56/2023-CT dated 28.12.2023 will be placed before the GST Council for
ratification in its next meeting. In this regard, it is hereby informed that the said Notification
No. 56/2023-Central Tax dated 28.12.2023 has been ratified in the 53rd meeting of the GST
Council, held on 22.06.2024.

2.2. Further, in Para 2.5 of the said standard comments, while reproducing the Section 168A
of the CGST Act, 2017, the word "pandemic" has been typed in place of word "epidemic",
inadvertently.

2.3. Besides, following favourable High Court judgements may also be referred, while
defending the department's case before the Hon'ble High Courts in respect of such Writ
Petitions:

i. Hon'ble High Court of Kerala Order dated 07.02.2024 - case of - M/s Faizal Traders
Pvt. Ltd. Vs. Others - (2024-TI01-736-HC-KERALA-GST).

ii. Hon'ble High Court of Allahabad Order dated 31.05.2024 -case of - M/s
GRAZIANO TRASMISSIONI and others Vs. UOI. - [(2024) 19 Centax 82 (All.) /
2024 (86) C.S.T.L. - 4 (All.)].

3. This issues with approval of the competent authority.

Yours faithfully,


(Raushan Kumar)

Deputy Commissioner (GST)