



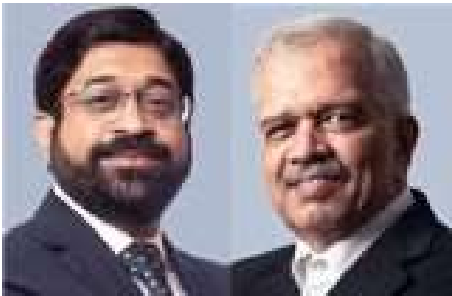
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Appalling discrimination by the *force majeure* notification

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THE Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 was issued for granting relaxation and reliefs, in view of COVID-19 pandemic situation. This Ordinance inserted Section 168A in the CGST [Act, 2017](#) empowering the Government to extend time limit for compliance due to *force majeure*.

The Board, issued following Notifications extending time limit, inter alia, for filing Refund Applications, the last date was falling during the period specified in the said Notifications:

Notification No. & Date	Period	Last Date
35/2020-CT dated 03.04.2020	15.03.2020 to 29.06.2020	30.06.2020
55/2020-CT dated 27.06.2020	15.03.2020 to 29.08.2020	30.08.2020
65/2020-CT dated 01.09.2020	15.03.2020 to 29.11.2020	30.11.2020
91/2020-CT dated 14.12.2020	15.03.2020 to 30.03.2021	31.03.2021
	01.04.2021 to 14.04.2021 No Notification	
14/2021-CT dated 01.05.2021	15.04.2021 to 30.05.2021	31.05.2021
24/2021-CT dated 01.06.2021	15.04.2021 to 29.06.2021	30.06.2021

Now, on recommendations of 47th Meeting of the GST Council, the Board by Notification No. [13/2022-CT](#) dated 05.07.2022, has *inter alia*, provided that period from 01.03.2020 to 28.02.2022 is to be excluded while computing TWO years' period to file Refund Application under Section 54.

Generosity personified!!!

The last date of the period which is to be excluded in terms of the Notification dated 05.07.2022, appears to have been taken from Order of the Hon'ble Supreme Court dated 10.01.2022, in Suo Moto Writ Petition No. 3 of 2020, (Please See [2022-TIOL-04-SC-MISC-LB](#)) by (A) the GST Council while recommending and (B) by the Board while issuing this Notification.

The Hon'ble Supreme Court excluded period upto 28.02.2022, by Order dated 10.01.2022. Thus, the Hon'ble Supreme Court has granted some more time beyond the date of Order, for the litigants to take the benefit of such exclusion from period of limitation, and thereby accorded complete justice to everyone, as on 10.01.2022. This point appears to have been inadvertently missed by the GST Council and the Board.

Let us consider an example where relevant date for filing Refund Claim is the date of payment of tax:

- A. Tax that has become refundable was paid on 01.07.2018,
- B. Therefore, last date for filing Refund claim would be 01.07.2020 (i.e. two years from relevant date, in terms of Section 54 of CGST Act),
- C. As of 01.03.2020 (i.e. the first day of the period to be excluded), a period of 122 days was remaining,
- D. These 122 days have NOW been made available from 01.03.2022, by this Notification dated 05.07.2022,
- E. Therefore, the last date for filing Refund Claim will be 01.07.2022,
- F. On 05.07.2022 when the Notification was issued, this period of 122 days was already over.

An assessee, who in view of the pandemic situation could not take benefit of extension of time limit, as was done by the above tabulated Notifications, believed that his claim of refund is time barred.

However, out of the blue, comes this Notification 13/2022-CT dated 05.07.2022, mandating exclusion of the period from 01.03.2020 to 28.02.2022 for computation of time limit to file Refund Claim. But this

relaxation is of no avail to the assessee, as evident in the above cited example. Suffice to say that on 05.07.2022, the refund claim was still time barred even after excluding the "exclusion period" of 122 days!

Even if the Notification is deemed to have come into force with effect from 01.03.2020, it does not resolve the issue in the above cited example, as on 05.07.2022. Because, Refund Claim can only be filed on or after 05.07.2022, on which date even after applying the exclusion of time period as granted by the Notification, the Refund Claim would be time barred.

Now,therefore, there are two types of Assesseees:

First Type - Those who had 126 or less days [period from 01.03.2022 to 05.07.2022] remaining as on 01.03.2022 to file the Refund Claim;

AND

Second Type - Those who have more than 126 days remaining as on 01.03.2022 to file the Refund Claim.

The imminent questions, therefore, are - Why the Assesseees of First Type have been deprived of this benefit, which was the sole intent of the Ordinance and Section 168A? Why are the Assesseees of First Type treated differently from the Assesseees of Second Type? What, if any, is the intelligible differentia between the Assesseees of First Type and the Assesseees of Second Type?

This,ex facie,it appears, is in gross violation of Article 14 which mandates that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

In terms of the intent of the Ordinance, if certain period was to be excluded then it should be, at least 15 days,from the date of issue of such Notification, so as to make it meaningful, fair and just for everyone. Just like what the Apex Court did!

[The views expressed are strictly personal.]

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