

Gauhati HC quashes notification extending adjudication timeline for FY 18-19 and FY 19-20

24 September 2024

Summary

The Gauhati High Court (HC) has struck down *Notification No. 56/2023-CT dated 28 December 2023*, which extended the time limit for issuing the demand order for FY 2018-19 and FY 2019-20. The HC observed that the extension was invalid, as it did not meet the essential conditions under Section 168A, namely the existence of a 'force majeure' situation and a valid recommendation from the GST Council. Consequently, the HC set aside the orders passed beyond the statutory time limits, deeming them to be issued without jurisdiction.

Facts of the case

- In a batch of writ petitions, including Barkataki Print and Media Services, the petitioners challenged the orders passed under Section 73(9) of the CGST Act because these orders were issued after the period prescribed in Section 73(10) of the Acts.
- Section 73(10) of the Central Goods and Services Tax Act (CGST Act) prescribes a time limit of three years from the due date of filing the annual return for the issuance of demand orders under Section 73(9). Vide *Notification No. 56/2023-CT dated 28 December 2023* (impugned notification), the government extended the time limit for issuing demand orders for FY 2018-19 and FY 2019-20, invoking Section 168A of the CGST Act.
- The petitioners argued that the time extension granted by the impugned notification, which allowed for demand orders for the fiscal years 2018-19 and 2019-20, were *ultra vires* and without a legal basis.
- Further, it was contended that the notification lacked the required conditions, such as *force majeure* and a GST Council recommendation; hence making the orders void.

Issues raised before the HC

- Is the impugned notification extending the timeline for issuing demand orders *ultra vires* the provisions of Section 168 of the CGST Act?

Petitioner's contention:

- The petitioners contended that there was no valid 'force majeure' condition when issuing the notifications, which is a necessary prerequisite for invoking Section 168A to extend time limits.
- Additionally, the petitioners asserted that there was no valid recommendation from the GST Council, as required under the same section.
- They argued that the order-in-original passed under the notification was beyond the prescribed time limits and was, therefore, without jurisdiction.

Gauhati High Court's observations and judgement [WP(C)/3585/2024 dated 19 September 2024]

- **GST Council's recommendation is *sine qua non* for issuing notification:** The HC notes that Section 168A mandates a recommendation from the GST Council as a prerequisite before extending the deadlines. However, the HC noted that no such recommendation was made available in this instance. The absence of this critical procedural step rendered the notifications unsustainable under the law. The court emphasised the significance of adhering to procedural safeguards, primarily when such extensions affect the rights and obligations of taxpayers.
- **Power to issue notifications under the act constitutes as delegated legislation:** The HC, relying upon the judgement in the case of *Mohit Minerals Pvt. Ltd.*, observed that Section 168A is part of primary legislation and gives the government delegated power, i.e., the authority to issue notifications (also called secondary legislation or delegated legislation) to extend statutory time limits during situations like pandemics. The exercise of this delegated power is subject to certain conditions, including that it must be done based on recommendations from the GST Council, which is a constitutional body set up under Article 279A of the Constitution of India to ensure uniformity in the application of GST across states.
- **Force majeure under Section 168A was not fulfilled:** The HC observed that Section 168A could only be invoked under specific conditions in the existence of *force majeure* and with recommendations from the GST Council. Referring to the 49th GST Council discussions, the HC noted that it had specifically highlighted there will not be any further extension beyond three months in the interest of taxpayers. Accordingly, the impugned notification is without the *force majeure* conditions.
- **Ultra vires nature of the notifications:** Given the absence of both the conditions, i.e., *force majeure* and a GST Council recommendation, the HC held that Notification No.56/2023-CT was *ultra vires* the CGST Act.
- **Consequential quashing of demand orders:** Since the HC declared the impugned notification as *ultra vires*, the orders issued under the notifications were also rendered void. The HC ruled that the demand orders had been issued without jurisdiction, as they were passed beyond the time limits prescribed under Section 73(10) of the CGST Act. The court reaffirmed that any orders passed after this deadline, as prescribed under Section 73(10), without a valid extension, are time-barred and unenforceable.

Our comments

The validity of notifications extending the limitation period for the adjudication of proceedings has been a contentious issue since the introduction of Section 168A, which addresses *force majeure* scenarios. Initially, Notification No. 9/2023-CT dated 31 March 2023 extended the deadlines for issuing orders for FY 2018-19 and 2019-20 to 31 March 2024 and 30 June 2024, respectively. However, these timelines were extended to 30 April 2024 and 31 August 2024 through Notification No. 56/2023-CT dated 28 December 2023.

While the Allahabad HC, in the case of *M/s. Graziano Trasmissioni*, and the Kerala HC, in the case of *Faizal Traders*, affirmed the validity of Notification No. 9/2023-CT, which extended the limitation period for FY 2017-18, the validity of the subsequent extension under Notification No. 56/2023-CT has been subject to legal challenge, with cases still pending before various courts.

The recent ruling by the Gauhati HC, which quashed the extension of limitation periods for FY 2018-19 and FY 2019-20, now opens the door for taxpayers whose cases have been adjudicated beyond the prescribed deadlines to challenge the validity of those orders. This decision carries significant implications, and the matter is likely to be taken up before higher judicial forums for further deliberation.

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