



DOES THE SYSTEM OF ISSUING AMENDMENT NOTIFICATIONS UNDER TAX LAWS ITSELF NEEDS ‘AMENDMENT’?

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As we know, the authority of any government in our country to levy some tax or duty and make laws there for emanates from the Constitution of India under which the concerned legislative body (Parliament in case of Union Government and the Legislature of the State in case of a State) makes the Act which usually empowers the concerned government to notify provisions under relevant sections of the Act and frame rules to carry out the purposes of the Act. Using such powers, the concerned government issues notifications, making necessary provisions and framing rules, from time to time.

Subsequently, whenever there is need to change some provision contained in the Act, Amendment Act is to be passed by the concerned legislative body empowered to do so. However, since rules are framed under authority given in the provisions of the Act, these can be amended by way of issuing notifications.

Notifications are also frequently amended and the language used in the text while amending these is like, “in clause number so and so of notification number so and so or of sub rule number so and so of rule number so and so, as the case may be, the word/s so and so be replaced by the word/s such and such or the word/s so and so used before the word so and so be deleted or such and such word/s be added after so and so word”.

Problems arising out of the above system

Since the language used in the amendment Notifications as mentioned above, indicates only about the changes brought out in the original notification without repeating the whole text, intended to be made applicable from the given date, one has to gather the correct legal position on a given issue at a given point of time with utmost care. Though in case of acts and rules, such changes are incorporated in the body of the text at a later stage, giving reference to the date from which the amendments have been made effective, but in case of notifications, the modified text is not available in complete form but is there separately in the shape of original text (as contained in the original notification) and with the description of changes made later giving dates of applicability thereof (as described in the text of the amendment notification/s which may itself be in multiple numbers, issued one after the other). Hence, one has to read all these notifications putting together, taking care of multiple amendments, replacing/adding/deleting words or sentences with effect from the specified dates.

In this way, if we refer one notification on any subject to assess the legal position of some issue on a given date, we have to make sure whether that notification was amended later and the date with effect from which it has been made effective which is a very cumbersome process.

Not only this, sometimes different provisions of one notification are made applicable from different dates creating more confusion. Sometimes, Notifications are made applicable from an odd date falling in the midst of a month, making its compliance and verification thereof by the taxation authorities a difficult task.

Suggestions to remove these difficulties

Under the circumstances mentioned above, not only the assesses, even the tax experts and some time the senior government authorities themselves find it difficult to ascertain the correct legal position. Hence certain suggestions are being submitted before the distinguished readers of the Tax Bulletin to bring some ease in the functioning of the system –

1. Though amendment Notification may continue to be issued in the present manner, the original notification may be re-issued simultaneously giving cross reference of the subsequent amendment notification/s with date

of applicability thereof so that the person referring any notification at any point of time is aware that what he is referring is the final version of the same.

2. In case the amendments seems to be too many, then instead of making the amended notification too complicated, the applicability of original notification may be notified till a specified date and from the subsequent date, the new notification may be made applicable.
3. All the provisions of one notification should be made applicable from a single date only. In case, due to some compelling reasons, it is necessary to make different provisions applicable from different given dates, separate notifications may be issued to remove possibility of confusion.
4. To the extent possible, notifications should not be made applicable from an odd date falling in the midst of a month. Rather these should be made applicable from the 1st of a month to ensure ease in compliance and verification thereof by the taxation authorities.

The above measures may seem small in the overall process of introducing tax reforms but will have far reaching effect in the interest of all the stake holders by way of removing difficulties in ascertainment of correct legal position in respect of a given issue at a given point of time.