



GST – A BUNCH OF “ISSUES”

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Introduction:

When the word ‘Tax’ is spelled, the word which follows in most of the cases is ‘issue’. To clarify, the phrase ‘issues’, as stated, does not by any means imply the ‘concerns’ which we understand in common parlance pertaining to legal, compliances, accounting or likewise. Herein ‘issues’ mean various publications made by the Government of India from time to time in respect of the various enactments either for administration purposes or for ease of business etc. In this article, I will discuss various ‘issues’ published by the Government of India, limiting my discussion to indirect taxation under the Goods and Services Tax Law.

Under ‘The Goods and Services Tax Law’ (Hereinafter referred to as ‘GST Law’) we find that the Government of India has issued –Notifications, Circulars etc - from time to time, however they can only do so if the law provides for the same. Till date, in GST regime, we have seen publication of various ‘Notifications’, ‘Circulars’, ‘Orders’, issued for different reasons. An average of 8 notifications and 6 circulars, per month, have been issued for amendment of law, procedural details etc.

The different publications with their respective statutory provisions are stated below:

Sl. No	Issue	GST Law
i	Notifications	<i>No Specific Provision</i>
ii	Orders	<i>Sec 168</i>
	Circulars	
	Instructions	

I. Notifications:

As we go through the GST Law, we often come across the words **“as may be prescribed”**. Few instances being Section 146, where it provides that the Government of India may, on the recommendation of the Council notify, Common Goods and Services Tax Electronic Portal for facilitation of registration, payment of tax, furnishing of returns, computation and settlement of integrated tax, electronic way bill and for carrying out such other functions and for such purposes **as may be prescribed**. This is done by way of -issuance of **‘Notification’** by the Government of India under the Ministry of Finance – Department of Revenue.

Notifications are binding in nature both for the taxpayer - and for the Department. Even if the notification is pro-revenue, the same cannot be an excuse for the evasion of tax and to bring out any irregularity of compliances. The question that commonly arises is - **Can a notification become a Law?**

The Apex Court of India has answered the above question in the case of **CCE vs. Parle Exports P. Ltd** reported in **1998 (38) ELT 741** holding that **“Notification is to be treated as a part of enactment itself”**. The interpretation of the ‘Notification’ is to be given weight at the time of enactment or issue as held by Apex Court in the case of **CCE vs. Parle Exports P. Ltd (Supra)**.

It is pertinent to note that when any notification is issued, its effective date of enforcement is mentioned. Taking a hypothetical scenario, say, 'Notification' issued on 01st January, 2019 states that "This notification shall come into force from 01st April, 2019." then its effective date shall be 01st April, 2019. It can be **both retrospective and prospective date**. However- if no effective date is mentioned, then the date of -issuance of notification is to be treated as its effective date.

Further - section 166 of The Central Goods and Services Tax Act, 2017 provides that every notification issued by the Government shall be laid down before each houses of the Parliament for any modification or annulment of the same. However, If any modification is done to the notification or the effect of annulment is passed then it shall not hamper the validity of any previously acts done under that rule or regulation or notification, as the case may be.

II. Orders / Circulars / Instructions

- Sub-section (1) of section 168 of the Central Goods and Services Tax Act, 2017 to read as follows -

*"The Board may, if it considers it necessary or expedient so to do for the purpose of uniformity in the implementation of this Act, issue such **orders, instructions** or directions **to the central tax officers** as it may deem fit and thereupon all such officers and all other persons employed in the implementation of this Act **shall observe and follow** such orders, instructions or directions."*

Central Board of Indirect Tax and Customs (referred to as the 'Board') constituted under the **Central Boards of Revenue Act, 1963** has been conferred upon with the powers for issue of publications like circulars, orders, instructions. Such power is a form of a delegated Legislation by the Government. These are issued to bring about uniformity in the enactment.

Circulars issued are **clarificatory in nature** and is **binding only** on the departmental officers and they cannot take a different view that the circular is contrary to the statute. [*Zenith Rubber Ltd v. CCE* reported in 2007 (220) E.L.T 973 (CESTAT)]. If the taxpayer - is of the opinion that any circular is against the -interest of the taxpayer, then he may opt not to comply with the circular issued and may take a different view. **However such option is not available with the Department.**

The Apex Court in the case of **Ratan Melting & Wire Industries v. CCE** reported in **2008 (231) E.L.T 22** held that "*Circulars issued by the Central Board of Excise and Customs, which are contrary to judgments of the Supreme Court and the High Court are not binding on the authorities under their respective statute.*" It is pertinent to note that the Circular shall still be binding on the Revenue although different interpretation appears of the Supreme Court.

The Board in its Circular No. 1006/13/2015-CX dated 21.09.2015 has clearly instructed its officers not to follow the Board Circular which are contrary to the decisions of the Courts. The Board cannot issue circulars which are contrary to the decisions of the Hon'ble Tribunal, instead - can go for an appeal-.

The Hon'ble High Court of Rajasthan in the case of Laxmi Narayan Sharma Vs. Superintendent reported in 1996 (87) E.L.T 345 ruled as follows:-

*"where an order, instruction or direction is **issued by a superior authority** to its **subordinate officers** in exercise of the powers conferred by the statute and such order, instruction and guidelines are beneficials to the interest of the subject, **they have a binding force** and should be complied with. It is particularly so in matters relating to levy of tax, cess or duty on the subject. Such orders, instructions or circulars are, no doubt, **not binding upon the courts** but since, they are issued by a superior authority to its subordinate authorities employed in the execution of the statute they carry a binding force insofar as the subordinate authorities are concerned."*

- From the judgement of Laxmi Narayan Sharma (supra), it can be construed that time and again, it is a **decided principle that 'Circulars' issued by the superior authority are binding on the sub-ordinate officers.**

However, in the case of Laxmi Narayan Sharma(supra), it has been further set forth that any prosecution in violation of the circulars of the Board amounts to abuse of the process of the court.

*“The continuation of the **prosecution in violation of the binding circulars** of the Board, in my opinion **amounts to abuse of the process of the court** and therefore, the proceedings pending against the petitioners in the lower court are required to be quashed to prevent such abuse.”*

Another Question that arises from the above discussion is, **“Can Circulars create a liability?”** The Hon’ble High Court of Madhya Pradesh in the case of Mahakaushal Builders Welfare Association Vs. Supt. of Cus. & C. EX., JABALPUR reported in 2006 (3) S.T.R 721 has duly held as follows

*“if the petitioners are not liable to pay tax, under the law relating to service tax, the impugned **circular cannot create liability** for payment of service tax.”*

Therefore, in view of the above judgement, a circular cannot create a liability. It is confined to the four corners of the Law.

It may be argued that in the GST regime, an impugned -circular (**Circular No. 56/30/2018-GST dated 24.08.2018**) issued by CBIC -relating to -lapse of input tax credit (ITC) - of the registered person on account of -inverted duty structure is in force. It will probably not out of place that -in the -land mark judgement of *Dai-Ichi Karkaria and Eicher Motors Ltd*, it is a decided principle that input tax was as good as tax paid. Hence, when the taxes are paid, the same become available to the taxpayer and it can be rightly construed on co-joint reading that the lapsing of such credit is beyond the powers of the Board by a mere issue of a circular.

Conclusion:

In view of the above discussions and settled principles, it is imperative that all the publications of the Revenue -are to be read strictly and followed in a righteous manner as we all know that ignorance of law is not an excuse. Thus, a taxpayer needs to - keep regular update of -frequently published ‘Notifications’ and ‘Circulars’. With the advent of the CGST Amendment Act, 2018 even the already issued circulars are being amended by issuance of another bunch of circulars. For Instance **Circular No. 88/07/2019-GST dated 01.02.2019** was issued which amended **Circular No.8/8/2017 dated 04.10.2017**, **Circular No, 38/12/2018 dated 26.03.2018**, **Circular No. 41/15/2018 dated 13.04.2018**, **Circular No. 58/32/2018 dated 04.09.2018**, **Circular No. 69/43/2018 dated 26.10.2018**, It is these publications which would come to our rescue when the -Pandora box of -litigations will open up, when the Revenue shall take a point of departure from the set principles or already issued instructions.

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