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### **Amnesty April 2023 – A brief Discussion**

During the last 5 years we have witnessed that due to ignorance or technical glitches or non-availability of funds many genuine taxpayers have not filed some of their returns on time. As the present regime is a marked shift from the earlier regimes, in terms of late fees on different non-compliances some tax payers have not filed the returns due to the huge late fees being payable by them. Trade and Industry bodies have many a times represented that once the late fees for the different returns are waived, it will allow many tax payers to return to the mainstream by being compliant. Therefore, as per the decisions taken in the 49<sup>th</sup> GST council meeting appropriate reliefs have been given by waiver of late fees for filing of GSTR 4 (Return by Composition dealers), GSTR 9 (Annual Return) and GSTR 10 (Final Return).

The above waivers will mainly be of beneficial interest to the MSME's as the late fees was huge and would be a reason for a financial over burden. Moreover, in case of the annual return where the same was not filed either for interpretations issues or ignorance or because of non-availability of data as books of accounts were not available due to hardware issues or software getting corrupted or because of some search and seizure operation, the huge late fees which was dependent on the turnover was a major road block for non-filing of the same. This was creating not only a major non-compliance but was also posing a problem at the time of Scrutiny, inspections, search or audits by department. Therefore, this will be an opportunity which should be seized by the tax payers who are yet to file the same. However, once 30<sup>th</sup> June is gone, this waiver will not be available, hence the tax payers need to be made aware of the same.

Similarly, after the cancellation of registration many tax payers have not filed their final return (GSTR 10) on their own as per the timeline given in Section 45. Moreover when notice is sent U/s 46 that is also overlooked by them which lead to Best judgment assessment by the Proper officer. Even if the tax payer would like to file the GSTR 10, due to the late fees generated due to time lapses prevents the small tax payers from filing the same, which again leads to litigation. Therefore, the late fees has been waived to a huge extent, if the final return is filed between April 1, 2023 to June 30<sup>th</sup> 2023.

Apart from above revocation applications can also be filed even if the same is time barred as per section 30. Though this is a welcome step for tax payers who would like to revive their registrations, the disallowance of ITC u/s 16(4) would be a barrier in complying with the conditions of filing all previous returns till the effective date of cancellation. Therefore, an appropriate relief for such class of tax payers for whom the extension has been granted, would surely help in encouraging tax payers in applying for revocation. However, be that as it may, we still feel that this opportunity should not be missed by the tax payers specially where the credentials of the business are a major source of acquiring clients. Another question that is being raised by the tax payers is whether any relief will be available for the late fees and interest that needs to be paid while filing returns for the period post effective date of cancellation as that would also be a sufficient cash outflow. Moreover, in the matters where the registrations were not restored even after filing of return for past period

just because of time barring, the tax payers feel that appropriate relief should be granted in such situations.

While addressing many public forums we were told that even though the valid returns were filed as per the order issued u/s 62 of the CGST Act, 2017, the order was not withdrawn just because the returns were filed after the 30 day deadline. This led to many litigations before the appellate authorities and/or High Courts. Based on representations from the trade bodies, a huge relief has been given for the Deemed withdrawal of the assessment order issued u/s 62(1) of CGST Act 2017, if the conditions laid down have been fulfilled.

Please find appended below the notification wise discussion where in we have tried to share the impact as well as the conditions that need to be taken care of for availing the Amnesty given through the notification.

### **Waiver of late fees for composition dealers**

#### **Notification No. 02/2023–Central Tax Dated: 31st March, 2023**

“Provided also that the amount of late fee payable under section 47 of the said Act shall stand waived which is in excess of two hundred and fifty rupees and shall stand fully waived where the total amount of central tax payable in the said return is nil, for the registered persons who fail to furnish the return in FORM GSTR-4 for the quarters from July, 2017 to March 2019 or for the Financial years from 2019-20 to 2021-22 by the due date but furnish the said return between the period from the 1st day of April, 2023 to the 30th day of June, 2023.”

#### **GSTR4 is the Return for registered person who has opted for composition levy or availing benefit of notification No. 02/2019- Central Tax (Rate)**

##### **IMPACT**

Periods – Quarterly Returns for July 17 to March 2019 and Returns for FY 2019 -20 to 2021 - 22

Turnover – Nil , Late Fees – Nil

Turnover > 0 , Maximum Late Fees – 500 ( 250 CGST and 250 SGST) per Return

For July 17 to March 2019, quarterly returns will need to be filed

For FY 2019-20 TO 2021-22 one return will need to be filed for the entire FY.

Condition for Waiver – All Returns have to be filed between April 1 to June 30<sup>th</sup> 2023.

##### **Author’s Note**

The composition dealers were not aware about the filling of the returns and so huge late fees were getting accumulated which acted as a disincentive for filing of the returns. Towards making return filing easier it was shifted from quarterly to annual. However still many returns are pending. Hence now all composition dealers can avail this benefit and file the pending returns.

## **Extension in filing of Revocation application for cancellation of registration**

### **Notification No. 03/2023 – Central Tax dated 31.03.2023.**

Registered person, whose **registration has been cancelled** under clause (b) or clause (c) of sub-section (2) of section 29 of the said Act **on or before the 31st day of December, 2022,**

and

**who has failed to apply for revocation** of cancellation of such registration **within the time period specified in section 30 of the said Act** as the class of registered persons who shall follow the following special procedure in respect of revocation of cancellation of such registration, namely:–

(a) the registered person may **apply for revocation of cancellation of such registration upto the 30th day of June, 2023;**

(b) the application for revocation shall be filed only **after furnishing the returns due upto the effective date of cancellation of registration and after payment of any amount due as tax,** in terms of such returns, **along with any amount payable towards interest, penalty and late fee** in respect of the such returns;

(c) no further extension of time period for filing application for revocation of cancellation of registration shall be available in such

Explanation: For the purposes of this notification, the person **who has failed** to apply for revocation of cancellation of registration within the time period specified in section 30 of the said Act includes a person whose appeal against the order of cancellation of registration or the order rejecting application for revocation of cancellation of registration under section 107 of the said Act has been rejected on the ground of failure to adhere to the time limit specified under sub-section (1) of section 30 of the said Act.

### **Section 29. Cancellation <sup>1</sup>[or suspension] of registration.-**

(2) The proper officer may cancel the registration of a person from such date, including any retrospective date, as he may deem fit, where,-

(a) xxxxxxxx

(b) a person paying tax under section 10 has not furnished <sup>3</sup>[the return for a financial year beyond three months from the due date of furnishing the said return]; or

(c) any registered person, other than a person specified in clause (b), has not furnished returns for a <sup>4</sup>[such continuous tax period as may be prescribed]; or

### **Section 30. Revocation of cancellation of registration.-**

**\*\***(1) Subject to such conditions as may be prescribed, any registered person, whose registration is cancelled by the proper officer on his own motion, may apply to such officer for revocation of cancellation of the registration in the prescribed manner within thirty days from the date of service of the cancellation order.

<sup>1</sup>[**Provided** that such period may, on sufficient cause being shown, and for reasons to be recorded in writing, be extended,-

(a) by the Additional Commissioner or the Joint Commissioner, as the case may be, for a period not exceeding thirty days;

(b) by the Commissioner, for a further period not exceeding thirty days, beyond the period specified in clause (a).]

## IMPACT

### CLASS OF TAX PAYERS COVERED ( **ONLY WHO FULFILL THESE CONDITIONS**)

1. Registered Persons ( RTP) whose registration is cancelled for not filling of returns
2. That the registration was cancelled on or before 31<sup>st</sup> December 2022
3. RTP has failed to apply for revocation within the time limit as per Section 30
4. In case an appeal filed against the order for Cancellation or Order rejecting application for revocation of cancellation of registration, the appeal was rejected only **on the ground of non compliance of Section 30(1)**

### Conditions to be fulfilled for Revocation application

1. Application for Revocation of Cancellation of Registration has to be made between 1<sup>st</sup> April 23 to 30<sup>th</sup> June 23
2. All Pending returns upto the date of effective cancellation of Registration have to be filed before filling the application for Revocation
3. All taxes, Interest, *penalty* and late fees which are due for the returns to be filed till the date of effective cancellation have to be paid along with the returns.

### Authors Note

This is a wonderful opportunity for all taxpayers whose registration was cancelled specially during the pandemic simply for not filing of returns and in many cases where the tax payers alleged that they had not received any notice and so they could not reply to the SCNs. Also by the time they realised that the revocation applications had to be filed the time was over even after considering the approvals for extension to be given by the Additional Commissioner or the Joint Commissioner OR the Commissioner.

However we need to appreciate that this is a specific relief and so taxpayers whose registrations are cancelled for any other reason will not be able to avail this benefit. And also take into account that this would be the last and final opportunity as no further extensions would be granted as per the notification.

Also another aspect that needs to be pondered is that if the appeal was rejected for delay in filing of the appeal, can the taxpayer avail this benefit.

## **Relief in best judgement assessment**

### **Notification No. 06/2023–Central Tax Dated: 31st March, 2023**

The registered persons who failed to furnish a valid return within a period of thirty days from the service of the assessment order issued on or before the 28th day of February, 2023 under sub-section (1) of section 62 of the said Act, as the classes of registered persons, in respect of whom said assessment order shall be deemed to have been withdrawn, if such registered persons follow the special procedures as specified below, namely,- (i) the registered persons shall furnish the said return on or before the 30th day of June 2023; (ii) the return shall be accompanied by payment of interest due under sub-section (1) of section 50 of the said Act and the late fee payable under section 47 of the said Act, irrespective of whether or not an appeal had been filed against such assessment order under section 107 of the said Act or whether or not the appeal, if any, filed against the said assessment order has been decided

### **Section 62. Assessment of non-filers of returns.-**

(1) Notwithstanding anything to the contrary contained in section 73 or section 74, where a registered person fails to furnish the return under section 39 or section 45, even after the service of a notice under section 46, the proper officer may proceed to assess the tax liability of the said person to the best of his judgement taking into account all the relevant material which is available or which he has gathered and issue an assessment order within a period of five years from the date specified under section 44 for furnishing of the annual return for the financial year to which the tax not paid relates.

(2) Where the registered person furnishes **a valid return within thirty days** of the service of the assessment order under sub-section (1), the said assessment order **shall be deemed to have been withdrawn** but the liability for payment of interest under sub-section (1) of section 50 or for payment of late fee under section 47 shall continue.

### **Conditions for availing the Benefit**

1. Assessment order issued on or before the 28th day of February, 2023 under sub-section (1) of section 62 of the said Act.
2. The registered persons who failed to furnish a valid return within a period of thirty days from the service of the assessment order.

Assessment Order be **deemed to be withdrawn** if

- (i) the registered persons shall furnish the said return on or **before the 30th day of June 2023;**
- (ii) the return shall be accompanied by **payment of interest** due under sub-section (1) of section 50 of the said Act and the late fee payable under section 47 of the said Act

The assessment order will be deemed to be withdrawn irrespective of whether or not an appeal had been filed against such assessment order under section 107 of the said Act or whether or not the appeal, if any, filed against the said assessment order has been decided

## **Author's Note**

There were numerous matters (*two such judgments are given below*) where the returns were filed after the statutory period of 30 days along with all taxes, interest and late fees. However the AO couldn't withdraw the Assessment order as the 30 days window had expired. This was leading to filing of number of appeals by the taxpayers which was an unnecessary and was also enhancing the burden on revenue as well as the tax payers.

Along with this there were some taxpayers for whom some high pitched assessments were carried out as no information was available with the Proper Officer, hence the taxpayers in this case had filed their returns as per the liability payable by them. However as the Assessment order was for a higher tax payable, they also had to file appeals or move the High Courts where they felt that they were not given an opportunity of being heard which is a fundamental for the principle of natural justice.

Hence this is a welcome relief which needs to be availed by taxpayers who in many cases couldn't file appeals or have filed appeal against the orders or have filed Writs for relief. So it is suggested that the taxpayers should now file all pending returns if they have not filed yet within 30<sup>th</sup> June 2023 after payment of all taxes, interest and late fees. And for all tax payers who have filed returns maybe for a lower value than what was assessed under section 62 after 30 days timeline will also get this relief if the assessment order was passed on or before 28<sup>th</sup> February 23.

**[2021] 126 taxmann.com 203 (Kerala)**

### **HIGH COURT OF KERALA**

#### **Wild Tree Resorts v. State Tax Officer**

- 1. The petitioner has approached this Court aggrieved by Ext.P2 series of assessment orders that have been passed under section 62 of the GST Act. While various contentions have been raised in the writ petition, it is evident from the averments in the writ petition that the petitioner had received the assessment orders under section 62 of the GST Act, on 4-10-2019, and the returns that had to be filed within 30 days after receipt of the order for getting the benefit of setting aside the orders in terms of section 62 of the GST Act were filed only on 21-11-2019. Inasmuch as, admittedly, **the said returns were filed more than 30 days after the receipt of the orders by the petitioner, the petitioner cannot be heard to contend that Ext.P2 series of orders ought to be set aside in terms of section 62 of the GST Act.***

[2019] 112 taxmann.com 177 (Kerala)

HIGH COURT OF KERALA

Bridge Hygiene Services (P.) Ltd. v. State Tax Officer

[Para 4]

There does not exist any special circumstances warranting interference of the Court to hold that the impugned assessment is *per se* illegal or unsustainable. As observed by the Single Judge, the assessee herein had committed default continuously in filing the returns, in responding to the notices requiring it to file the returns, in responding to the notice proposing best judgment assessment, etc. **Even after receipt of the impugned order of assessment, it failed to avail the remedy provided under sub-section (2) of section 62. Under such circumstances, one cannot entertain the challenges raised against the best judgment assessment finalized.** Even though the details of the materials available before the Assessing Officer are not explained in the order, it can only be presumed that the best judgment assessment was completed on the basis of the materials available with the Assessing Officer. Against the impugned order, the assessee has got an effective remedy by way of statutory appeal. There exists no circumstances to quash the impugned order in exercise of the jurisdiction vested under article 226 of the Constitution of India by permitting the assessee to bypass such effective remedy available.

## **Reduction in late fees for annual returns for small tax payers from 2022-23 onwards.**

**Notification No. 07/2023–Central Tax Dated: 31st March, 2023**

### **FOR FY 22-23 AND ONWARDS**

—In exercise of the powers conferred by section 128 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred to as the said Act), the Central Government, on the recommendations of the Council, hereby waives the amount of late fee referred to in section 47 of the said Act in respect of the return to be furnished under section 44 of the said Act for the financial year 2022-23 onwards, which is in excess of amount as specified in Column (3) of the Table below, for the classes of registered persons mentioned in the corresponding entry in Column (2) of the Table below, who fails to furnish the return by the due date, namely:—

Sl no	Class of registered persons	Amount
1	Registered persons having an aggregate turnover of up to five crore rupees in the relevant financial year.	Twenty-five rupees per day, subject to a maximum amount calculated at 0.02 per cent. of turnover in a State or Union territory.
2	Registered persons having an aggregate turnover of more than five crores rupees and up to twenty crore rupees in the relevant financial year.	Fifty rupees per day, subject to a maximum amount calculated at 0.02 per cent. of turnover in a State or Union territory.

#### Author's Note

In line with the vision of Atmanirbhar Bharat, there were several requests to rationalise the high late fees that was payable for the delay in filing of Annual Return. In line with it the same is now rationalised for the FY 22-23 onwards. So all taxpayers having turnover upto 5 crores will have to pay 50 Rupees per day ( 25 CGST and 25 SGST ) subject to a maximum of 0.02% of Turnover in a State or Union Territory. Similarly for taxpayers having turnover between 5 crores to 20 crores will have to pay 100 Rupees per day ( 50 CGST 50 SGST) subject to a maximum of 0.02% of Turnover in a State or Union Territory.

However for taxpayers with turnover above 20 Crores, there is no reduction in late fees.

## **Waiver of late fees for annual return for all tax payers for 2017 -18 TO 2021-22**

*Provided that for the registered persons who fail to furnish the return under section 44 of the said Act by the due date for any of the financial years 2017-18, 2018-19, 2019-20, 2020-21 or 2021-22, but furnish the said return between the period from the 1st day of April, 2023 to the 30th day of June, 2023, the total amount of late fee under section 47 of the said Act payable in respect of the said return, shall stand waived which is in excess of ten thousand rupees*

### **Author's Note**

A large number of taxpayers who faced different technical issues or maybe whose financial statements couldn't be finalised did not file the Annual return due to the huge late fees payable and hence there were several requests for waiver of the same. Hence this relief will now enable all the taxpayers who are yet to file their Annual Returns to file it with lower late fees.

For all taxpayers who had to file the annual return considering their turnover during any of the FY 2017-18 to 2021-22, **but have not furnished the same till 31<sup>st</sup> March 23**, can now avail the benefit of lower late fees 20000 Rupees (10000 CGST and 10000 SGST) only if they can file the Annual return between 1<sup>st</sup> April 23 to 30<sup>th</sup> June 23. Therefore, tax payers who miss this deadline will have to bear the late fees as was applicable.

The above benefit is also available to all Registered persons irrespective of their turnover.

### **Waiver of late fees for final return**

#### **Notification No. 08/2023–Central Tax Dated: 31st March, 2023**

In exercise of the powers conferred by section 128 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby waives the amount of late fee referred to in section 47 of the Act, which is in excess of five hundred rupees for the registered persons who fail to furnish the final return in FORM GSTR-10 by the due date but furnish the said return between the period from the 1st day of April, 2023 to the 30th day of June, 2023.

**Section 45. Final return.** - Every registered person who is required to furnish a return under sub-section (1) of section 39 and whose registration has been cancelled shall furnish a final return within three months of the date of cancellation or date of order of cancellation, whichever is later, in such form and manner as may be prescribed.

### **Author's Note**

Many taxpayers are unaware that a final return needs to be filed after the cancellation of Registration. And therefore in many cases they have filed the Final Return only after receiving notice from the Proper Officer about non filing of the same, which has led to late fees being due for the same. Hence this relief is not being given so that all pending final GSTR 10 ( Final Returns) can be filed with total late fees of 1000 Rupees ( 500 CGST and 500 SGST) only if the same is filed from 1<sup>st</sup> April 23 to 30<sup>th</sup> June 23.

Disclaimer : Views expressed are personal and only for sharing of knowledge. Please do get them validated for legal validity.