



Lawgics

By Nidhi, Advocate



Serial No.: 159
Dt.: 07-09-2023



<https://chat.whatsapp.com/Ie4VxuhvToe76Us7e5>

CLICK TO JOIN
WHATSAPP GROUP

Section 161 of CGST Act, 2017

161. Rectification of errors apparent on the face of record.

Without prejudice to the provisions of section 160, and notwithstanding anything contained in any other provisions of this Act, any authority, who has passed or issued any decision or order or notice or certificate or any other document, may rectify any error which is apparent on the face of record in such decision or order or notice or certificate or any other document, either on its own motion or where such error is brought to its notice by any officer appointed under this Act or an officer appointed under the State Goods and Services Tax Act or an officer appointed under the Union Territory Goods and Services Tax Act or by the affected person within a period of three months from the date of issue of such decision or order or notice or certificate or any other document, as the case may be:

Provided that no such rectification shall be done after a period of six months from the date of issue of such decision or order or notice or certificate or any other document:

Provided further that the said period of six months shall not apply in such cases where the rectification is purely in the nature of correction of a clerical or arithmetical error, arising from any accidental slip or omission:

Provided also that where such rectification adversely affects any person, the principles of natural justice shall be followed by the authority carrying out such rectification.

Rule 142(7):

(7) Where a rectification of the order has been passed in accordance with the provisions of section 161 or where an order uploaded on the system has been withdrawn, a summary of the rectification order or of the withdrawal order shall be uploaded electronically by the proper officer in FORM GST DRC-08.

Our Interpretation

Section 161

This Section provides for **rectification of error or mistake apparent** by the authority who has issued the document or on being brought to attention by another CGST / SGST /UTGST officer or the affected person. No person is entitled to take advantage of such errors or mistakes.

The action permitted to be taken is to rectify an error or mistake apparent. Errors or mistakes apparent can cause difficulty in executing the directions contained in the document. This may require seeking the authority's intervention to rectify.

The power/jurisdiction to rectify is for any error or mistake which is apparent from record. The error must be self-evident and should not be discoverable by a long process of reasoning, where there is a possibility on points on which there may conceivably be two opinions. But the limiting aspect is that the power cannot be exercised to amend substantive part of the document concerned.

The error may be:

- factual, or
- legal, or
- clerical

All of them are rectifiable once it is shown that they are apparent on face of the record and not within the natural understanding of the authority at the time of issuance of the original document but which has crept in due to inadvertence or by reason other than exercise of judgment.

The assessee cannot bring any document or evidence, not already available on record, to substantiate his claim for rectification. However, it is important to note that 'apparent on face of record' is not one that involves:

- (i) a conclusion that cannot be reached without taking new facts on record during rectification proceedings, or
- (ii) requiring application of mind to existing facts or interpretation already adopted in reaching the conclusion already reached.

The time limit of 3 months is allowed for the affected person to bring to attention any such error or mistake. This time limit does not apply to a CGST / SGST / UTGST officer from bringing it to the attention to the issuing authority or for making voluntarily rectification. However, no such rectification is permitted after 6 months from the date of its issuance.

If any such rectification adversely affects any person, it is required that principles of natural justice be followed in these proceedings also. Once an application for rectification has been made, it must conclude in an order. This original order will be substituted by the rectified order.

If the application for rectification is rejected, then the original order stands. Any time limit for preferring an appeal will be counted from the date of the original or rectified order, as the case may be. Time lost in process of rectification can impair the remedy of appeal. Rejection of application for rectification is also an appealable order but this itself does not vacate the original order. But once the rectification is ordered and a rectification order is passed, then the rectified order will replace the original order. All further appeals on matters arising from the rectified order will be counted from the date of such rectified order.

Rule 142(7) provides that rectification of the order shall be in form GST DRC-08.

We expressly disclaim liability to any person in respect of anything done in reliance of the contents of this publication.