

Government is empowered to extend limitation period in case of a *force majeure* – Kerala HC

29 May 2024



Summary

The Kerala High Court (HC) has upheld the validity of GST notifications extending the time limit for passing an order under Section 73 of the Central Goods and Services Tax Act (CGST), 2017, in the event of a *force majeure*. Emphasising that the COVID-19 pandemic was a *force majeure* event, which caused large-scale human suffering and paralysed economic activities globally, the HC held that the limitation period was consciously extended in accordance with the recommendations of the GST Council, based on the SC's *suo motu* order. However, the HC set aside the assessment order confirming the demand for tax, interest, and penalty and directed the department to extend the benefit of Circular 183/15/2022-GST, which prescribed a procedure to deal with the mismatch issue. Accordingly, the matter was remanded for fresh consideration.

Facts of the case

- Faizal Traders Private Limited (the petitioner) undertakes Southern Railway's IHK service and supplies top-up and recharge coupons for BSNL as a franchisee.
- The petitioner had omitted to report the details of inward and outward supplies for July to September 2017 (impugned period). The details were reported directly in the annual return (GSTR 9) for 2017-18 as total 'input credit' and output tax.
- A show cause notice (SCN) was issued to the petitioner, seeking payment of GST on the outward supplies for the impugned period, along with interest and penalty.
- In response, it was highlighted that the output tax liability for the impugned period was set off against the input tax credit (ITC) for the impugned period, which was omitted to be reported in GSTR 3B but was reported in its annual returns.
- However, another SCN was issued, seeking tax, interest, and penalty for the impugned period. The petitioner refuted the demand and maintained its response.
- The demand was confirmed against the petitioner vide an order in original (OIO) dated 21 June 2023.

- The petitioner assailed the OIO in writ proceedings on the grounds of limitation.

Petitioner's contentions

- It was stated that Section 73(10) of the CGST Act mandates the completion of any proceeding with regard to the determination of tax, interest, and penalty within three years from the last date of filing the annual return for the relevant financial year (FY).
- Since the last date of filing the FY 2017-18 annual return was 7 February 2020, the proceedings should have been completed within three years, i.e., by 7 February 2023. Accordingly, the OIO dated 21 June 2023 and the demand order (DRC 07) dated 14 July 2023 would be barred by limitation.
- The petitioner also challenged Notification No. 13/2022-CT dated 5 July 2022 and Notification No. 09/2023-CT dated 31 March 2023, which had extended the time limit for issuance of the order to 30 September 2023 and 31 December 2023, respectively. It was contended that the impugned notifications are beyond the powers conferred on the department.

- It was argued that the extension of time limit for completing the proceedings can only be notified where such actions could not be completed due to *force majeure*.
- Since there was no *force majeure* event at the time of extending the time limit for completion of proceedings, the impugned notifications are *ultra vires* the provisions of the CGST Act, and the impugned order is barred by limitation.

Kerela HC's observations and judgement [WP (C) No. 24810/2023, Order dated 7 February 2024]

- **The government is empowered to extend the limitation period in case of a *force majeure*:** The HC highlighted that Section 168A of the CGST Act empowers the government to extend the limitation period for completion of proceedings that could not be completed or complied with due to a *force majeure*. It emphasised that the COVID-19 pandemic was a *force majeure* event that caused a large-scale human tragedy and suffering worldwide and paralysed economic activities.
- **Extension of the limitation period was a conscious policy decision:** The impugned notifications extending the limitation period were issued on the recommendations of the GST Council based on the SC's *suo moto* order considering the pandemic. The HC emphasised that the central and state governments operated with reduced staff during the pandemic and, as a conscious policy decision, refrained from taking enforcement actions in the initial period of the GST implementation. Accordingly, the enforcement actions and proceedings

could not be completed within the prescribed time owing to the *force majeure* event, which extended the limitation period. On this premise, the HC dismissed the challenge to the impugned notifications.

- **Benefit of circular prescribing procedure in case of mismatch cannot be denied:** Circular No. 183/15/2022-GST detailed the procedure to be followed to deal with the difference in the ITC availed in GSTR 3B as against reflecting in GSTR 2A. Setting aside the OIO, the HC held that the benefit of the circular shall be extended to the petitioner and remanded the matter back to the assessing authority.

Our comments

The HC's decision to uphold the validity of notifications, extending the time limit for completion of proceedings under GST, will have significant impact on the aggrieved taxpayers.

However, the validity of the original and subsequent extension notifications has been challenged in various HCs, wherein interim relief has been granted to the taxpayers.

It will be interesting to see whether this ruling will set a precedent in all similar cases or whether the courts will take a contrary view, considering that the COVID-19 restrictions were lifted in 2022, and the GST authorities have had sufficient time to complete the proceedings.

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