

EY Tax Alert

Calcutta HC upholds validity of GST adjudication order digitally signed within limitation, despite subsequent portal upload

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Executive summary

This Tax Alert summarizes a recent ruling of the Calcutta High Court (HC)¹ on whether an adjudication order under Section 73 of the Central Goods and Services Tax Act, 2017 (CGST Act), which was digitally signed within the prescribed limitation period but uploaded on the common portal thereafter, can be treated as validly issued order, enforceable in law.

The key observations of the HC are:

- An order under Section 73 of the CGST Act involves three distinct stages viz., making, issuance and communication of the order; each serving a separate legal function.
- While issuance of an order marks completion of the adjudicatory function within the prescribed limitation period, service relates to communication of the order in the manner prescribed under Section 169.
- The CGST Act consciously uses the expression "issue" in sub-sections (2), (9) and (10) of Section 73, whereas the word "service" is used in relation to service of show cause notice (SCN) under sub-section (1). Accordingly, issuance and service cannot be treated as interchangeable for the purpose of limitation.
- Since the CGST Act does not prescribe any limitation period for service of an adjudication order, an order issued within the prescribed limitation period cannot be held invalid merely because it was served or uploaded thereafter.

Accordingly, HC held that an order digitally signed within the prescribed limitation period cannot be treated as time barred merely because the same was uploaded on the common portal thereafter.

¹ TS-504-HC(CAL)-2026-GST

Background

- The petitioner was issued a show cause notice (SCN) under Section 73(1) of the Central Goods and Services Tax Act, 2017 (CGST Act) for FY 2018-19.
- Section 73(9) empowers the proper officer, after considering the taxpayer's representation, to determine the tax, interest and penalty payable and issue an adjudication order.

Section 73(10) prescribes that such order is required to be issued within three years from the due date of furnishing the annual return for the relevant FY.
- Separately, Section 169 lists down the modes for service of notices and orders. One of the modes includes making the same available on the common portal.
- Rule 142(5) of the Central Goods and Services Tax Rules, 2017 (CGST Rules) further requires the proper officer to upload a summary of the order electronically in Form GST DRC-07, which is treated as a notice for recovery.
- For FY 2018-19, the time limit for issuance of orders under Section 73(10) was extended up to 30 April 2024 by notifications² issued under Section 168A.
- In the present case, the adjudication order was digitally signed by the proper officer on 30 April 2024, whereas the summary of the order in Form GST DRC-07 was uploaded on the common portal on 1 May 2024.
- The petitioner challenged the order before the Calcutta High Court (HC), contending that the order was barred by limitation as it was uploaded after the extended due date of 30 April 2024.

Petitioner's contention

- An adjudication order cannot be regarded as validly issued merely because it is digitally signed within the prescribed time limit, unless it is also set in motion for service upon the taxpayer within such period.
- The proper officer does not have any authority to pass or give effect to an order beyond the time limit prescribed under Section 73(10), including the extended time limit notified under Section 168A.
- Supreme Court (SC) in *Banarsi Debi & Anr*³ observed that the expressions "issued" and "served" have been used interchangeably in legislative practice and are intended to convey the same meaning.

Accordingly, an order is deemed to be issued only when service is completed, and such service cannot be completed without uploading Form GST DRC-07 on the portal.
- Reliance can also be placed on the principles under the Income Tax Act, 1961, where issuance of notices for income escaping assessment is governed by Section

148.

In the case of Assistant Commissioner of Income Tax, Circle 13(1), Kolkata v. Radhakrishna Bimalkumar Pvt. Ltd.⁴ it was held that a notice under Section 148 was barred by limitation where it was not communicated within the prescribed limitation period.

Accordingly, communication of the order is essential for the order to be treated as validly issued.

- Reliance can also be placed on the Allahabad HC judgement in the case of *Daujee Abhushan Bhandar Pvt. Ltd.*⁵, wherein the Allahabad HC, while considering the scope of the Information Technology Act, 2000, observed that mere digital signing of a notice under Section 148 of the Income Tax Act cannot amount to issuance unless such notice is sent.
- Since the adjudication order was not served within the prescribed time limit, the digitally signed order remained incomplete and could not be enforced.
- Consequently, the petitioner submitted that the entire proceedings stood vitiated.

Revenue's contention

- Section 169 merely deals with the manner of service of orders or notices and does not deal with the scope and effect of passing an order under the said Act.
- Further, the judgment relied on by the petitioners in the case of *Daujee Abhushan Bhandar Pvt. Ltd.* (*supra*) is based on borrowing the definition of the word "issue" from the Chambers Dictionary.

While interpreting the provisions of a taxing statute, a Court is required to interpret the provisions by reading the same with no additions and no subtractions. Ordinarily, no foreign interpretation is permitted to be incorporated while interpreting a taxing Statute.⁶

- Furthermore, SC in *R.K. Upadhyay v. Shanabhai P. Patel*⁷ has held that the "service" is not a condition precedent to conferment of jurisdiction on the Income Tax Officer (ITO) for Section 148 notices.

Issuance of the notice by the ITO within the period of limitation is sufficient to vest the ITO with the power to make an order of assessment.

- Accordingly, since the adjudication order was digitally signed within the extended limitation period, its subsequent upload on the common portal on the following day would not render the order invalid or time barred.

HC's Ruling

- An order passed under Section 73 of the CGST Act has three distinct stages, *i.e.*, making, issuance and communication of the order.

² Notification No. 9/2023 - Central Tax dated 31 March 2023 and Notification No. 56/2023 - Central Tax dated 28 December 2023

³ AIR 1964 SC 1742

⁴ AOPT 231 of 2023

⁵ (2022) 444 ITR 41

⁶ 1993 Supp (3) SCC 530

⁷ (1987) 3 SCC

- All three stages serve different legal functions, which are:
 - The making of an order requires exercise of jurisdiction by the proper officer.
 - Issuance of the order requires gives effect to the same by way of publication.
 - Once the order is communicated, the same may give rise to consequences, including recovery proceeding(s).
- Basis above, to analyze the scheme of the CGST Act under Section 73, it is necessary to consider:
 - Whether an order issued within limitation but uploaded on the common portal after expiry of the limitation period remains enforceable.
 - Whether the limitation period applies only to the decision-making process or also to communication of the decision.
 - Whether issuance of an order is complete upon signing or requires the order to be set in motion for service upon the taxpayer.
- Section 73 employs the expression “issue” in sub-sections (2), (9) and (10), whereas the word “service” is used in relation to service of show cause notice (SCN) under sub-section (1).
- Ordinarily, “issue” means to formally make it out of the authority’s hands by signing, dating and sending the documents for dispatch and completion of secretarial practice.

Whereas the term “service” includes not only issuance of an order but also the effective means taken to deliver or communicate the same to the person intended by legally prescribed modes.

- None of the provisions of Section 73 provide the way an order is required to be served, the same is completely segregated from the stage of issuance of the order.
- Proceedings under erstwhile regimes were used to be initiated by way of service of prescribed document. For instance:
 - Section 73 of the Finance Act, 1994, proceedings for value of taxable services escaping assessment were initiated by serving a notice on the assessee within the period of limitation prescribed therein.
 - Section 37C of the Central Excise Act, 1944 also uses the expression “service” of decisions, orders, summons and notices.
- In contrast, the legislature under the GST framework has departed from the previous position of usage of “service” to “issue”.
- The mode and manner of service of an order or notice have been shelved separately under Section 169.
- Further, Rule 26(3) of the CGST Rules prescribes that all notices, certificates and orders shall be issued electronically with digital signature certificate or through e-signature as specified under the provisions

of the Information Technology Act, 2000 (IT Act)

- The GST law doesn’t borrow the IT Act for determining service of order, rather the only reference is with regard to the authentication of an order, as required under aforesaid Rule.
- The statutory scheme of the CGST Act appears to distinguish between the act of issuing the orders under Section 73 and the act of serving the order, as provided in Section 169.

While the former conforms to the completion of adjudicatory function within the prescribed period of limitation, the latter concerns the manner in which the order is required to be communicated.

- The period of limitation is attached to the issuance of the SCN and the order under Section 73, without providing any corresponding limitation for service of such order.
- In absence of any statutory mandate for service of an order within the period of limitation, the same cannot be treated to be a mandate, especially when the legislature repealed provision under erstwhile regime and chose to make a distinction between the words, “issue” and “service”.
- Accordingly, the HC held that the adjudication order, having been issued within the prescribed limitation period, could not be treated as void or time barred merely because it was uploaded on the common portal on the following day.

Comments

- This ruling is significant as it draws a distinction between issuance and service of an adjudication order under GST. It may have a wider impact in cases where adjudication orders are digitally signed close to the limitation deadline but are uploaded or communicated to taxpayers thereafter.
- While the HC has held that actual service or communication need not occur within the limitation period where the statute requires only issuance, it remains debatable whether mere digital signing is sufficient for fulfilling the criteria of issuance.
- It is also relevant to note that the limitation period for filing an appeal under Section 107 of the CGST Act is reckoned from the date of communication of the order, and not from the date of issuance of such order.

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