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## **Court cannot condone the delay for rectification of GSTR-1 beyond the specified period in the statute**

The Hon'ble Calcutta High Court in ***Abdul Mannan Khan v. the GST Council & Ors. [WPA 236 of 2020 dated January 04, 2021]*** declined to interfere in a matter and dismissed the petition of the assessee seeking rectification of the Form GSTR-1 for the period of January 2018 to March 2018, on the ground that the statute has provided a period of limitation for seeking rectification and held that the Court cannot condone the limitation period provided for rectification of GSTR-1 Form as per Section 37 of the under Central Goods and Services Tax Act, 2017 ("**the CGST Act**") and condoning such delay would make the provision otiose and open the floodgates for similar cases.

### **Facts:**

Abdul Mannan Khan ("**the Petitioner**") has inadvertently uploaded a particular sale made to M/s Bharat Electronics ("**the Purchaser**") as unregistered sale even though the Purchaser was a registered company. Subsequently, after one and half years of the purchase transaction (in September 2019), the Purchaser informed the Petitioner that they were not able to avail Input Tax Credit ("**ITC**") due to inadvertent mistake of the Petitioner.

The Petitioner made an application seeking rectification of the Form GSTR-1 for the period of January 2018 to March 2018 that was rejected on the ground that the period for making such an application expired at the end of September 2018 as per Section 37 of the CGST Act.

Being aggrieved, this writ petition has been filed by the Petitioner.

### **Issue:**

- Whether the Writ court has jurisdiction to condone the delay beyond the period specified in the statute for rectification of Form GSTR-1 ?

### **Held:**

The Hon'ble Calcutta High Court in ***WPA 236 of 2020 dated January 04, 2021*** held as under:

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- Analysed Section 37(3) of the CGST Act, and noted that the CGST Act does not provide any provision for appeal. Furthermore, there is no provision for condonation of delay beyond the period specified for rectification of Form GSTR-1 .
- Observed that, under Section 37(3) of the CGST Act the time limit for seeking rectification has been specifically provided.
- Held that, the Court cannot condone such a limitation period. Condoning such delay would make the provision of the CGST Act otiose and open the floodgates for similar cases.

## Our Comments:

Recently, the Hon'ble Madras High Court in ***Pentacle Plant Machinerics Pvt. Ltd. v. Office of the GST Council and ors. [W.P. No. 1022 of 2020, decided on February 23, 2021]*** has allowed the assessee to correct a "human error" while filing Form GSTR-1 return, wherein the assessee mentioned the GST number of the purchaser in Uttar Pradesh instead of the GST number of the purchaser in Andhra Pradesh and realized only when the recipient notified it of the rejection of credit. The Court relied on its earlier decision in ***Sun Dye Chem v. The Assistant Commissioner [W.P. No. 29676 of 2019, decided on October 6, 2020]*** wherein it was held that the assessee should not be mulcted with any liability on account of the bonafide, human error and must be permitted to correct the same. The Court directed the Revenue Department to enable amendment to Form GSTR-1 for the assessee with all consequences thereto, within a period of 8 weeks.

In, ***Sun Dye Chem (supra)*** it was further held that, in the absence of an enabling mechanism, assessee should not be prejudiced from availing credit that they are otherwise legitimately entitled to and observed that, the error committed by the assessee is an inadvertent human error and the assessee should be in a position to rectify the same, particularly in the absence of an effective, enabling mechanism under statute. The Court permitted the assessee to re-submit the annexures to Form GSTR-3B with the correct distribution of credit between IGST, SGST and CGST and directed the Revenue Department to enable the auto-population of the correct details in the GST portal.

In our view, the CGST Act for a 2-stage rectification procedure by which the errors or omissions can be rectified by a registered person, but the statutory scheme envisaging the filing of returns in Forms GSTR-2 and GSTR-3 could not be put into operation or

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implemented by the Government and has been indefinitely deferred. The Government introduced filing of monthly return in Form GSTR-3B which is only a summary return. Therefore, the design and scheme of the CGST Act as envisioned has not been entirely put into operation as yet. In absence of unimplemented provisions in true sense under the CGST Act, such rectification of GSTR-1 should have been allowed to the assessee.

## **Relevant Provisions:**

### **Section 37(3) of the CGST Act:**

*“Furnishing details of outward supplies-*

*(3) Any registered person, who has furnished the details under sub-section (1) for any tax period and which have remained unmatched under section 42 or section 43, shall, upon discovery of any error or omission therein, rectify such error or omission in such manner as may be prescribed, and shall pay the tax and interest, if any, in case there is a short payment of tax on account of such error or omission, in the return to be furnished for such tax period:*

*Provided that no rectification of error or omission in respect of the details furnished under sub-section (1) shall be allowed after furnishing of the return under section 39 for the month of September following the end of the financial year to which such details pertain, or furnishing of the relevant annual return, whichever is earlier.*

*Provided further that the rectification of error or omission in respect of the details furnished under sub-section (1) shall be allowed after furnishing of the return under section 39 for the month of September, 2018 till the due date for furnishing the details under sub-section (1) for the month of March, 2019 or for the quarter January, 2019 to March, 2019.”*

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