Service of notices/ orders under GST – a new dimension

"We can't supply the material" – an absolute shock to the managing director of a leading pharmaceutical company supplying lifesaving drugs to all big hospitals in the country. The reason – GST registration was cancelled, and e-way bills cannot be generated. The company has no clue, nor received any notice of any default or department intention to cancel the registration. The business so critical to healthcare services in the country has suddenly came to a grinding halt!!! The question is what suddenly happened?

The company later found out a notice for cancellation of registration was posted at the GST portal maintained by the GSTN but was never served on the company. So, who is at fault?

Service of a notice or an order is an extremely critical event in tax litigation and has been a matter of dispute over past many years. Introduction of technology based GST has just added another dimension to it.

Until now, taxpayers have, in many cases, argued non receipt of a notice or an order as a bonafide ground of delay in responding to the notice or filing of appeal. In a few cases, such arguments were made even to cover the lapse on part of the taxpayer in responding to the notice or filing the appeal within the stipulated time. The revenue authorities were generally not able to establish service of notice/ order and that too to the authorized person and hence, the said arguments were generally accepted, more in line with the principal of natural justice as against the hard evidence.

Similar to several loopholes sought to be plugged by revenue while implementing GST, the Central Goods and Services Tax Act, 2017 (CGST Act) and Rules made thereunder have specified various modes of service of notices/ orders or other communications. The section 169 of the CGST provides the following modes of service

of any decision, order, summons, notice or other communication under the CGST Act or rules made thereunder: -

(a) *by giving to a messenger including a courier to the addressee or the taxable person or to his manager or authorised representative or an advocate or a tax practitioner holding authority to appear in the proceedings on behalf of the taxable person or to a person regularly employed by him in connection with the business, or to any adult member of family residing with the taxable person; or*

(b) *by registered post or speed post or courier with acknowledgement due, to the person for whom it is intended or his authorised representative, if any, at his last known place of business or residence; or*

(c) *by sending a communication to his e-mail address provided at the time of registration or as amended from time to time; or*

(d) *by making it available on the common portal; or*

(e) *by publication in a newspaper circulating in the locality in which the taxable person or the person to whom it is issued is last known to have resided, carried on business or personally worked for gain; or*

(f) *if none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence and if such mode is not practicable for any reason, then by affixing a copy thereof on the notice board of the office of the concerned officer or authority who or which passed such decision or order or issued such summons or notice.*

The said decision, order, summons, notice or any other communication shall be deemed to have been served on the date on which is it tendered or published or affixed in the manner provided above.

Also, when such decision, order, summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved.

Evidently, these provisions shift the burden entirely on the taxpayer as now it would be his responsibility to establish beyond doubt that the service of notice or order was not as per the modes specified above. Given the level of awareness in the country, this is going to be an uphill task for the taxpayer. It would be, in my personal humble submission, responsibility of the tax consultant to ensure that the portal is regularly visited and such communications are appropriately responded to well within the stipulated time.

Further, the Rule 142 of the CGST Rules provides the mode of service of summary of the notice or the amount payable along with a notice electronically in the form DRC-01, DRC-01A or DRC-02, as the case may be.

It is interesting to note that while section 169 of the CGST Act provides various modes of service of a notice/order or any other communication, the rule 142 only talks about serving a summary of the notice or the amount payable electronically in the specified form. The other modes of service of notice/ order specified in the section 169 are completely absent in the rule 142. The rules are meant to implement the law. While the implementing machinery only specifies one mode of service of notice whereas the law provides for several others, can it be held that in the absence of machinery provisions, a notice served by a mode of service provided in the Act but not in rules would not be valid. Perhaps one would have to wait for a decision by an appropriate judicial forum for a better clarify in this regard.

The manner of service of notice or an order has also reached the doorsteps of high courts. The Kerala High Court and the Madhya Pradesh High Court have examined this issue. The Kerala High Court has, in the case of Pee Bee Enterprises and Softouch Health Care Private Limited, upheld service of assessment order by uploading on the web portal. However, in the case of Softouch Health Care Private Limited, the court has held that it is only the common portal maintained by GSTN which would be considered as a valid service. Uploading of notice on the portal maintained by the State authorities was held to be invalid service.

The Madhya Pradesh high court has held that uploading of a notice or an order on the common portal maintained by GSTN is not only valid buy the only mode permissible under the law. The court has invalidated service of notice by an 'e-mail' stating it to be not a prescribed mode of service as per rule 142. It is interesting to note that 'e-mail' is a valid mode of service as per section 169. However, the said section was not even referred to in the said decision.

If this legal position is upheld, the argument of non-receipt of a notice/ order simply goes out of the discussion. Now, if a taxpayer defaults in responding to a notice or delays in filing of an appeal within the prescribed statutory timelines, the legal consequences would follow. If delay is beyond the maximum period allowed to be condoned under the GST law, the taxpayer would have no choice but to approach the jurisdictional high court. Given the approach of the judiciary towards non-compliant taxpayers, the relief may not be forthcoming.

It is, therefore, imperative for any GST registered assessee to regularly visit the common portal maintained by the GSTN in order to retrieve any communication from the GST authorities and respond thereto within the stipulated timelines. Any lapse in appropriately responding to a notice/ order could result in unpleasant and avoidable complexities which could even result in bringing his business to a complete halt.