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October 5, 2023

To,

Smt. Nirmala Sitharaman,
The Hon'ble Finance Minister,
Government of India,
North Block, Delhi – 110 001

Respected Madam,

Sub: Representation for Introduction of Amnesty Scheme for belated filing of Appeal with Appellate Authority under Section 107 of CGST Act.

About C.V.O. Chartered & Cost Accountants' Association

C.V.O. Chartered and Cost Accountants' Association (CVO CA) is a non-profit professional organization established in 1973, based out of Mumbai. With over 2000+ members, it focuses on disseminating knowledge in Taxation, Accounting, Finance, and Allied laws, while also organizing public awareness programs, including a flagship Union Budget program in Gujarati. The association publishes a monthly newsletter, 'CVO CA News & Views,' and supports needy students pursuing CA, CS, and CWA through financial assistance. CVO CA acts as a bridge between professional members and regulatory bodies, addressing genuine grievances for the taxpaying community.

This representation pertains to the challenges faced by taxpayers in receiving various notices and orders passed under GST Acts and to file appeal within stipulated time under Section 107 of the CGST Act.

Background

Under the GST Act, proper officer is empowered to issue show cause notice and order for recovery of tax which is short paid / not paid along with interest and penalty. **As a matter of practice, the GST Department uploads all the notices and orders issued under Section 73 / 74 on the GST portal under the tab of "Notices and Orders" or "Additional Notices and Orders". Sometimes taxpayers have received e-mail / SMS regarding such notices and orders, however the same is not consistent and in the initial period, lot of such communication has not reached the right person due to lack of awareness.**

Under Section 169 of CGST Act, service of notice, orders and other communication can be done through different modes like, e-mail, SMS, common portal, etc. Section 169 further states that the common portal for service of notice shall be notified by the Government.

Issue

The above mode of service of notices and orders have created a major issue for taxpayers. The notices and orders issued and uploaded directly on the Portal are not visible or notified when one logs into the portal, but require the taxpayer to specifically and regularly check both these tabs frequently in order to check whether any notice or order has been issued against them.

In the initial stages when such notices and orders have been issued to the taxpayers, the awareness level of such notices and orders being uploaded directly on portal was very low. This has led to lot of taxpayers failing to submit any reply to the show cause notices and has also led to failure in filing of appeal against such order with the Appellate Authorities under Section 107 of CGST Act.

Impact

In a lot of cases, orders being passed against them has come to the knowledge of taxpayers, only when recovery proceedings have been initiated against them after the completion of the period within which an appeal can be preferred under Section 107.

We would like to bring to your kind notice that due to this, a lot of bona fide taxpayers, have failed to file an appeal within the stipulated time period and have had their appeals dismissed on account of such delays and at the same time have faced recovery proceedings from the Departmental Authorities which include but are not limited to recovery by / from attachment of bank accounts, debtors, properties etc. causing them needless hardship and being left with no judicial remedy despite having duly paid all their statutory dues on time.

These hardships are being faced by them because of lack of awareness and lack of effective communication between the Departmental Authorities and the Taxpayers in respect of issuance of notices and orders. MSME taxpayers are already caught up in numerous compliances and business requirements with limited bandwidth of manpower and resources. As a result, they are often unable to keep up with the legal nitty-gritty of taxation. This has left them vulnerable to recovery proceedings and other adverse consequences, even though they have paid all their taxes properly and in time.

Madam, even the judiciaries have also observed the problems faced by the MSME taxpayers. In the case of **M/s BBCL Infrastructure - 2022 (12) TMI 958**, the Hon'ble Allahabad High Court while condoning the delay in filing of appeal under Section 107 has observed that ***"the small traders/businessman are not very well educated, and well versed with the technicalities of law and procedure. They have to take help of legal world and sometime it is not possible for them to get best of legal services and there are certain lapses in compliance of formalities at their end."***

Recommendations / Suggestions

In order to alleviate the aforesaid hardships faced by the bona fide taxpayers, we would like to humbly make the following recommendations / suggestions for your kind consideration and evaluation:

- *Displaying of notices and orders conspicuously on the GST portal immediately on logging into the GST portal would help the taxpayers to know whether any notices or orders have been issued to them.*
- *Doing away with two different tabs for uploading of Notices and Orders in the form of "Notices and Orders" and "Additional Notices and Orders" as they serve no distinct purpose and only leads to added burden for the Departmental Authorities as well as confusion for the Taxpayers.*

Alternatively, guidelines maybe issued to the Taxpayers and the Departmental Authorities on the purpose and usage of both the different tabs so as to bring uniformity and consistency in their usage and bring more clarity on their purpose.

*In this regard, we would also like to draw your kind attention towards the judgement of Hon'ble Madras High Court in the case of **M/s Sabari Infra Pvt. Ltd. – 2023 (9) TMI 501** wherein the Hon'ble High Court has condoned the delay in filing of appeal has observed that **"The problem has arisen on account of the complex architecture of the web portal. It has been designed to facilitate easy access of information. It has however resulted in the petitioner failing to notice the notice that was issued to the petitioner prior to the impugned order as the same was hosted under the tab of "Additional Notices and Orders" instead of the tab of "Notices and Orders"***

- *One time amnesty scheme may be rolled out for the taxpayers who have failed to file an appeal under Section 107 of CGST Act within the stipulated time*

period to allow them to take corrective actions and alleviate the current hardships being faced by them.

- *This amnesty scheme may also be extended to those taxpayers whose belated appeals have already been dismissed by Appellate Authorities for want of limitation of period.*
- *The Department must issue elaborate guidelines on communication between the taxpayers and Departmental Authorities, especially regarding the issuance of notices and orders. This is an important issue because notices and orders have the potential to adversely affect the rights of bona fide taxpayers. Such guidelines would go a long way in reducing the number of cases / litigations where bona fide taxpayers suffer due to lack of awareness or communication.*

Awaiting constructive outcome of our above recommendation to resolve the undue burden on Revenue.

For C.V.O. Chartered & Cost Accountants Association

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