



Bombay Chartered Accountants' Society

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Date: 13-01-2023

To,
Smt. Nirmala Sitharaman,
Hon'ble Finance Minister,
Government of India

To
Shri. Devendra Fadnavis
Hon'ble Deputy Chief Minister & Finance Minister
Government of Maharashtra

To
Goods & Services Tax Council

To
Shri. Rajeev Kumar Mittal
Commissioner
Maharashtra Goods & Services Tax

Subject: - Representation u/s. 107 of the CGST/SCGT Act.

Hon'ble Madam, Sirs and The Council,

The Bombay Chartered Accountants Society (BCAS) is the oldest voluntary association of Chartered Accountants, established six days after the establishment of ICAI. BCAS was established with the objective of knowledge sharing and enhancing the skills of CA members to supplement the objective of ICAI. Presently it has more than 9,000 members from all over the country.

BCAS is a principle-centred and learning-oriented organisation that promotes quality service and excellence in the profession of Chartered Accountancy. The organisation is a catalyst to bring out better and more effective Government policies & laws to have clean & efficient administration and governance.

It has been brought to our notice that many assesseees have faced hurdles with respect to the timelines provided u/s. 107 of the CGST/SGST Act, 2017, to prefer an appeal against orders issued to them during the pandemic and to date. We request your honours to consider the attached Representation.



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The Representation has been drafted by field experts considering to provide relief to the "Common Man".

We would be happy to personally explain the suggestions if we are presented with an opportunity to do so.

For Bombay Chartered Accountants' Society

CA Mihir Sheth
President

CA Sunil Gabhawalla
Chairman – Indirect Taxation Committee



Request to issue special one-time relaxation for cases where the time limit for filing of appeal u/s 107 of the CGST/SGST Act is expired and no appeal has been filed and to increase the period of condonation of a delay from one month to one year.

It's observed that many Order-in-Originals are issued by the State Officers/ Central Officers during the covid period (20-03-2020 to 28-02-2022) and the period thereafter (01-03-2022 to till date) on the GST portal against which many assesseees could not prefer the appeal before the appropriate authorities within the statutory time of 3 months provided under section 107(1) of the CGST/ MGST Act or also within the condonable period of additional one month suggested in Section 107(4) of the CGST/SGST Act. Such orders include the orders passed under section 73 or 74 of the CGST Act, orders passed canceling the GST registration, orders passed rejecting the application for revocation of registration, orders passed under section 30 for confiscation of goods and levy of penalty etc.

In many cases, the main reason for the non-filing of the appeal was non-awareness regarding the service of the order in the electronic portal. There could be various reasons for the same such as

- (i) the order-in-original in physical form was not served upon the assessee and the assessee and
- (ii) the assessee did not receive the intimation of uploading of order on the portal by email due to portal glitches, or
- (iii) the said email was overlooked from the assessee's end not realizing the importance thereof (since the said email is system generated and does not have a copy of the order enclosed therein).
- (iv) where the intimation emails are considered by the recipient's email service provider as spam emails or
- (v) the emails were sent on the email ids of the employees provided at the relevant time in the certification of registration, but which are no longer in service and remained to be modified.

There were also cases where

- (i) the orders were not uploaded on the GST portal or
- (ii) were uploaded much later after the period of limitation was over or leaving a very short time for the assessee for filing the appeal.

There were cases where the orders-in-original uploaded on the portal were defective. For eg:

- (i) In some cases, only summary orders were uploaded and the detailed order-in-original was not uploaded on the portal,
- (ii) In some other cases, the orders uploaded were not digitally signed and the assessee received a certified copy of the order either (a) after the period of limitation was over or (b) after a period of seven working days specified in Rule 108(3). In some cases, the assessing officer also did not issue certified copies of the order, stating that the same is not required.



Bombay Chartered Accountants' Society

It is also important to note that in some cases, the order in original is still not uploaded online and the assessee has filed manual appeals. In such cases, since there was no clarity as to how to make the payment of pre-deposit and how to file an appeal, the manual appeals are filed in a delayed manner or are not accompanied by a proper pre-deposit challan.

In the aforesaid background, we humbly make the following suggestions:

1. One-time relaxation in respect of condonation for the delay in filing fo appeal may be provided in all such cases, where the orders are passed between the period 01-07-2017 till date under the provisions of the Goods and Services Tax Law and where the appeals remained to be filed by the assessee within the statutory period of 3 months or as the case may be 4 months (including one month condonation period) from the date of service of the order. Such cases may be dealt with as under:
 - a. If the appeal is not filed within 3 months, but within a condonable period of 4 months, then delay in filing of the appeal may be condoned (whether or not the appeal is accompanied by the condonation letter) and the appeal may kindly be admitted.
 - b. If the appeal is filed beyond a period of 4 months, then delay in filing of the appeal may be condoned (whether or not the appeal is accompanied by the condonation letter) and the appeal may kindly be admitted.
 - c. If the appeal is not filed beyond a period of 4 months, then the assessee may be allowed to file the appeal within 3 months from the date of publication of the said relaxation order
 - d. If no appeal is filed in respect of orders issued prior to 26-12-2022 (i.e. period prior to the amendment in Rule 108 by Central Goods and Services Tax (Fifth Amendment) Rules, 2022, for want of certified copies of the order, or summary orders, the period of limitation may kindly be considered only upon the date of receipt of a certified copy from the proper officer. (ref: Ramani Suchit Malushte vs UOI and Ors WP 9331 of 2022 (BOM HC) [21-09-2022], Dauji Ispat (P.) Ltd vs State of UP. [2022] 142 taxmann.com 470 (Allahabad) [10-11-2021]
 - e. The field officers may be directed to serve the physical copies of the order to the assessee and ensure the receipt thereof even if the orders are uploaded online and the period of limitation may commence from the date of service of the physical order or date of uploading of electronic order, whichever is later. [Ref: PushpamReality vs State Tax Officer [2022] 136 taxmann.com 195 (Madras).]
2. The Appellate Authorities may be given the power to condone delays in filing of appeal beyond a period of 4 months having regard to the facts and merits of every case. Alternatively, the power to condone the delay may be increased after the statutory period of filing an appeal is over, from the existing one month up to one-year having regard to the facts and merits of every case.
3. The relaxation may be given under section 148 of the CGST Act treating the same as a special procedure to be followed for filing of appeal u/s 107 of the CGST Act/SGST Act.