

# Voice of MTTB

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## Our Articles

GST

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குறள் 621:

இடுக்கண் வருங்கால் நுகு அதனை  
அடுத்தார்வது அஃதொப்ப தில்.

Laugh at misfortune. There is nothing so able  
To triumph over it.



Ramanasthirdaye  
B. RAJAMANI KUMAR PHOTOGRAPHY

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## Articles

### Legality of Notifications issued under Section 168A for extension of time during COVID 19 Pandemic



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#### **1. Introduction:**

The COVID-19 pandemic in 2020 created serious difficulties for businesses and for the administration of GST law. Many statutory timelines such as issuing notices, completing adjudication, filing appeals and other compliances could not be followed due to the restrictions and disruption caused by the pandemic.

To deal with this, two separate steps were taken. First, the Hon'ble Supreme Court, passed a series of suo-moto Orders commencing with Order dated 23.03.2020 and culminating in Order dated 10.01.2022 whereby the the period from 15.3.2020 till 28.02.2022 is excluded in computing limitation period in respect of all Judicial or Quasi- Judicial proceedings.

Second, the Legislature brought in the *Taxation and Other Laws (Relaxation of Certain Provisions) Act, 2020*, by which Section 168A was inserted into the CGST/SGST Act, 2017 whereby the Government was conferred power under special circumstances to extend time limit in respect of actions which cannot be completed or complied with due to force majeure.

Based on this, the Government issued several Notifications under Section 168A extending the time limits for GST proceedings. However, the validity of these Notifications, especially when compared with the Supreme Court's *suo-moto* orders and the requirement that such extensions must be recommended by the GST Council, has been questioned before various High Courts. The Courts have taken different views, which has made this issue highly debated.

#### **2. Issuance of Notifications:**

The term 'force majeure' is defined to mean events mentioned in the Explanation to Section 168A of the Act which includes epidemic. In exercise of the powers conferred in the said provision, the following Notifications were issued by the Central Government to combat the delays caused by the Covid-19 pandemic and to

grant extensions of time limits various purposes including passing Orders under Section 73 of the CGST Act, 2017:

- i) Notification No. 35/2020 - Central Tax dated 03.04.2020
- ii) Notification No. 14/2021 - Central Tax dated 01.05.2021
- iii) Notification No. 13/2022 - Central Tax dated 05.07.2022
- iv) Notification No. 09/2023 – Central Tax dated 31.03.2023
- v) Notification No. 56/2023 – Central Tax dated 28.12.2023

It is found that the Notification Nos. 35/2020 - Central Tax dated 03.04.2020, 14/2021 - Central Tax dated 01.05.2021, 13/2022 - Central Tax dated 05.07.2022 and 09/2023 – Central Tax dated 31.03.2023 have been issued on sufficient compliance of the conditions put forth under Section 168A of the CGST Act, 2017.

However, with regard to Notification No. 56/2023 – Central Tax dated 28.12.2023, it is observed that this Notification has been issued without fulfilling the condition precedent u/S. 168A of the Act i.e recommendation of the GST Council and it has been issued on the recommendation of the GST Implementation Committee and subsequently ratified by the GST Council in the 53rd GST Council Meeting dated 22.06.2024.

### **3. Legality of the Notifications – In the Eyes of various High Courts:**

The legality of the said notifications has been challenged in various High Courts. However, this issue has attracted divergent judgments from different High Courts which are briefly discussed below:

The High Court of Kerala, in the case *Faizal Traders Pvt. Ltd. vs. Deputy Commissioner and Others* (**2024 (5) TMI 1183 - KERALA HIGH COURT**), upheld the validity of the impugned notifications primarily on the ground that the Government is conferred with the power to extend time limits in accordance with Section 168A of the Act if there is force majeure and the extent of the extension of time was a matter of discretion of the Executive.

The High Court of Allahabad, in the case *Graziano Transmission vs. Goods and Service Tax Council and Others* (**2024 (2) TMI 480 - ALLAHABAD HIGH COURT**), found that in the absence of any other fact having been proved to have existed owing to which action cannot be completed or complied within the time limit specified or prescribed or notified under Act, notification issued under Section 168A of the Act would be valid.

The High Court of Patna, in the case of *Barhonia Enigcon Pvt. Ltd. vs. State of Bihar* (**2024 (12) TMI 440 - PATNA HIGH COURT**), observed that the limitation stand extended to the extent of the periods exempted by the Hon'ble Supreme Court. However, since notifications are issued by the respective Governments extending the period of limitation, necessarily the limitation for the three subject years would stand extended only to the extent notified. Also the Court observes that recommendation of the GST Council is a condition precedent for exercise of power under Section 168A.

However, due to pandemic, a subsequent ratification would satisfy the mandate of recommendation by the GST Council under the said provision.

The High Court of Telangana, in the case *Brunda Infra Pvt. Ltd., vs. Additional Commissioner, Central Tax* (**2025 (1) TMI 299 - TELANGANA HIGH COURT**), is of the opinion that when the Supreme Court or the High Court declares the law on the question arising for consideration, the circular should not be given effect to. In light of the above findings, the Hon'ble HC held that Suo moto Orders hold good in computing limitation under GST and in such a scenario, the arguments and discussion on the validity of notifications issued under Section 168A have become academic and irrelevant.

The Hon'ble Madras High Court in the case *Ms Tata Play Limited & Others Versus Union of India & Others* (**2025 (7) TMI 772 - MADRAS HIGH COURT**) observed that the period that would be available on applying the exclusion of the period from 15.03.2020 to 28.02.2022 in terms of the order of the Hon'ble Supreme Court dated 10.01.2022 and extension of time in terms of the notifications issued under Section 168A of the Act would be as under:

Sl. No.	Financial Year	Actual or Original due date for filing annual return u/s. 44(1)	Due date extended in exercise of power u/s 44 through Notifications	Period of limitation u/s 73(10)	Extended time limit for issuance of order u/s. 73(10) in exercise of power u/s. 168A of CGST Act (upto)	Limitation u/s 73(10) if Hon'ble SC's suo moto exclusion of period 15.03.2020 to 28.02.2022 is applied
1	2017-18	31.12.2018	05.02.2020 (Notification 06/2020)	05.02.2023	31.12.2023	13.12.2024
2	2018-19	31.12.2019	31.12.2020 (Notification 80/2020)	31.12.2023	30.04.2024 (Notification 56/2023)	28.02.2025
3	2019-20	31.12.2020	31.03.2021 (Notification 04/2021)	31.03.2024	31.08.2024 (Notification 56/2023)	28.02.2025

From the above table, it is observed that the limitation available for making Orders under Section 73(10) of the Act is larger when the exclusion of the period from 15.03.2020 to 28.02.2022, as per the suo-moto Order of the Hon'ble Apex Court dated 10.01.2022 is applied than the extension granted by way of the said notifications issued under Section 168A Act. Therefore, the Court held that the said notifications are unsustainable as the same have been issued based on an erroneous assumption and misconception as to the scope and effect of the order of Hon'ble Supreme Court under Article 142 of Constitution.

#### **4. Legislative Intent behind the insertion of Section 168A and non-applicability of Suo moto Orders of the Hon'ble Supreme Court:**

**4.1. Conscious step of the Department vide Circular No. 157/13/2021-GST dated 20.07.2021:** The question whether GST proceedings fall under the ambit of the Hon'ble SC suo moto Orders is clarified in Circular No. 157/13/2021-GST dated 20.07.2021 which has been issued based on the legal opinion of Additional Solicitor



General. According to the Circular, the extension of timelines granted by Hon'ble Supreme Court vide its Order dated 27.04.2021 is applicable in respect of any appeal which is required to be filed before Joint/ Additional Commissioner/ Commissioner (Appeals), Appellate Authority for Advance Ruling, Tribunal and various courts against any quasi-judicial order or where proceeding for revision or rectification of any order is required to be undertaken, and is not applicable to any other proceedings under GST Laws.

Also, by specifically excluding certain provisions from the scope of the said Notifications, it is opined that the Government has worked out the Notifications consciously and unambiguously. Based on the above observations, it is found that the computation of limitation based on the Hon'ble SC suo-moto Orders vitiate the legislative intent behind the Ordinance, 2020, the consequential amendment and issuance of relevant notifications.

**4.2. Extension under Section 74 of the Act – A serious threat to taxpayers:** If exclusion of the period from 15.03.2020 to 28.02.2022, as per the suo-moto Order of the Hon'ble Apex Court dated 10.01.2022 is applied as observed by the Hon'ble Madras Court in the case *Ms Tata Play Limited & Others Versus Union of India & Others* ([2025 \(7\) TMI 772 - MADRAS HIGH COURT](#)), the limitation available for making Orders under Section 74(10) of the Act would be as under:

Sl. No.	Financial Year	Actual or Original due date for filing annual return u/s. 44(1)	Due date extended in exercise of power u/s 44 through Notifications	Period of limitation u/s 74(10)	Limitation u/s 74(10) if Hon'ble SC's suo moto exclusion of period 15.03.2020 to 28.02.2022 is applied
1	2017-18	31.12.2018	05.02.2020 (Notification 06/2020)	05.02.2025	13.12.2026
2	2018-19	31.12.2019	31.12.2020 (Notification 80/2020)	31.12.2025	28.02.2027
3	2019-20	31.12.2020	31.03.2021 (Notification 04/2021)	31.03.2026	28.02.2027

From the above table, it can be seen that if suo-moto extension granted by the Hon'ble Supreme Court is held to be applicable for GST matters, it shall pave way for undue extension of time limits for passing orders under Section 74 which shall cause adverse impact on the taxpayers and pose a serious threat to the very essence of law of limitation i.e. to ensure certainty and finality.

## 5. Conclusion:

In light of the above discussion, it is opined that Notification Nos. 35/2020 - Central Tax dated 03.04.2020, 14/2021 - Central Tax dated 01.05.2021, 13/2022 - Central Tax dated 05.07.2022 and 09/2023 – Central Tax dated 31.03.2023 have been issued in compliance with the conditions laid down in Section 168A of the Act and therefore it is proposed that the said Notifications are sustainable and legally valid.

It is concluded that the Notification No. 56/2023 dated 28.12.2023 has been issued without fulfilling the statutory mandate and usurpation of power by GST implementation Committee (GIC) thereby rendering the said Notification illegal and invalid. Therefore, for reasons stated above, Notification No. 56/2023 dated 28.12.2023 is found to be not sustainable.

At this juncture, it is pertinent to note that an SLP has been filed before the Hon'ble Supreme Court against the judgment of the High Court of Telangana dated 02-01-2025 in the case M/s. HCC-SEW-MEIL-AAG JV Versus Assistant Commissioner of State Tax & Ors. (WP No. 32883/2024). In the said SLP, the Hon'ble Apex Court has taken into consideration the question of legality of Notifications issued under Section 168A which extend time limits for passing Orders under Section 73 of the Act. The decision of the Hon'ble Supreme Court is looked forward for putting an end to the contrasting views and findings and to grant justice to all litigants and stakeholders.



Madras Tax Bar

*fraternitas in lege tributum*