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Friday Tax Alert

Bombay High Court mandates minimum 3-month gap between SCN and final GST order

The Bombay High Court has held that a minimum three-month period between issuance of a Show Cause Notice (SCN) under Section 73(2) of the CGST Act and the passing of the adjudication order is mandatory. Any order passed before expiry of this period violates principles of natural justice and is liable to be quashed.

FACTS OF THE CASE:

- The Revenue Department issued an SCN to the petitioner on 18 November 2024 under Section 73(2) of the CGST Act.
- The final adjudication order was passed on 31 January 2025, i.e., within approximately 2.5 months from the date of the SCN.
- The petitioner challenged the order on the ground that it was passed prematurely, without granting the statutorily prescribed minimum time to respond and seek hearings.

LEGAL ISSUE:

Whether the requirement under Section 73(2) of issuing an SCN “at least three months prior” to the limitation period under Section 73(10) should be interpreted as:

- a mandatory minimum period available to the taxpayer before passing the order, or
- merely a procedural deadline for issuance of the SCN by the tax authorities.

CONTENTIONS OF THE PARTIES:

Petitioner's arguments

- Section 73(2) guarantees a minimum three-month period to respond to the SCN.
- This period is necessary to exercise statutory rights such as filing replies, seeking adjournments, and availing personal hearings.
- Passing an order before expiry of this period violates principles of natural justice.

Revenue's arguments

- The three-month reference in Section 73(2) is only to ensure timely issuance of SCN before the outer limitation of three years under Section 73(10).
- There is no statutory bar on passing an adjudication order within three months of issuing the SCN.

HIGH COURT'S OBSERVATIONS:

The Bombay High Court rejected the Revenue's interpretation and held as follows:

- **Mandatory nature of Section 73(2):**
The provision prescribes a minimum mandatory period between issuance of SCN and passing of the order.

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➤ **Principles of natural justice:**

A taxpayer is entitled to a meaningful and effective opportunity of being heard, which cannot be curtailed by premature adjudication.

➤ **Statutory right to adjournments:**

Section 75 of the CGST Act allows up to three adjournments for personal hearings. Passing an order within 90 days would render this right ineffective.

➤ **Harmonious interpretation:**

Sections 73(2) and 73(10) must be read together to ensure both limitation compliance and procedural fairness.

CONCLUSION:

➤ **The Decision:** The Bombay High Court quashed the adjudication order dated January 31, 2025.

➤ **The Impact:** The order was held to be legally unsustainable because it violated the mandatory timeframe prescribed under the CGST Act. The matter was essentially set aside due to procedural impropriety.

A. M. Marketplaces (P.) Ltd. vs. Union of India [2026] 182 taxmann.com 665 (Bombay)[17-01-2026]

Key GST Developments – January 2026

➤ **GSTR-1A introduced for correction of outward supplies**

- Data furnished in GSTR-1 auto-populates into GSTR-3B and cannot be edited.
- Errors in GSTR-1 must now be corrected before filing GSTR-3B through GSTR-1A.
- Failure to do so may result in incorrect tax liability and downstream disputes.

➤ **Invoice Management System (IMS) for ITC monitoring**

- A new dashboard enables taxpayers to accept, reject, or keep invoices pending appearing in GSTR-2B.
- While currently advisory, this mechanism is expected to become mandatory.
- Ensures alignment of ITC claims with supplier-reported data.

➤ **Enhanced e-invoicing and e-way bill enforcement**

- Real-time generation of e-invoices and e-way bills mandated for eligible taxpayers.
- Increased road-level verification by GST enforcement squads.
- Discrepancies may lead to detention of goods and penalties.

➤ **Intensified GST audits and anti-evasion measures**

- Greater scrutiny of GSTR-1, GSTR-3B, GSTR-9 and books of account.
- Mismatches in turnover, ITC, or tax payments may trigger notices and penal action.

➤ **ITC restrictions for supplier non-payment (Section 16(2)(c))**

- ITC is not admissible where the supplier has failed to discharge GST liability.
- Taxpayers may face notices for ITC claimed on such invoices.
- Emphasizes the need for vendor compliance monitoring.

➤ **GST overhaul for ‘Sin Goods’ – MRP-based valuation and rate restructuring**

- GST framework for notified sin goods (pan masala, gutkha, chewing tobacco, cigarettes, etc.) has been restructured w.e.f. 1 February 2026.
- GST to be levied on MRP/RSP basis (deemed inclusive of tax) instead of transaction value.
- A uniform GST rate of 40% prescribed; compensation cess withdrawn.

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