

Rectification of GST orders

On the lines of section 154 of Income tax Act for rectification of Mistakes apparent from record, GST law also contains provisions of rectification of any decision or order or notice or certificate.

1. What Are RECTIFIABLE ORDERS

As per section 161 of the act ANY

- (a) Decision
 - (b) Order
 - (c) Notice
 - (d) Certificate or
 - (e) any other documents
- issued or passed by any authority can be rectified. Such as

- (a) Assessment order issued to registered person for non-filing of returns u/s 62.
- (b) Assessment order issued to unregistered person for non-filing of returns u/s 63.
- (c) Assessment order in certain special cases u/s 64
- (d) Notice or assessment order issued u/s 73 or u/s 74.
- (e) Notice issued to the person who collected tax but not deposited to government u/s 76.
- (f) Penalty order issued u/s 122, u/s 123, u/s 125, u/s 127.
- (g) Order of detention or seizure on the person transporting the goods u/s 129.
- (h) Order of confiscation u/s 130.
- (i) Refund order u/s 54
- (j) Errors in particulars registration certificate issued by department.
- (k) Provisional assessment order passed u/s 60.

A rectification is done when there is an error which is apparent on the face of record in such decision or order or notice or certificate or any other document. Thus, errors which involves question of law cannot be rectified. However Mistake which can be established by a long-drawn process of reasoning on a decision on a debatable point of law is not a mistake apparent from the record - T.S. Balaram, ITO v. Volkart Bros. [1971] 82 ITR 50 (SC).

2. Who Is RECTIFIABLE AUTHORITY

As per section 161 of the act rectification can be done by

- (a) Officers (who passed original order) appointed under this Act, or (i.e., Sui moto)
- (b) On application for rectification by officer appointed under the SGST Act or under UTGST Act, or
- (c) On application for rectification by person who has been affected by such decision, order, notice etc.

Thus , authority who passes order / notice etc. can only rectify it.

Authority mentioned u/s 161 not defined in the act however as its only adjudicating authority who can issue/pass any order and notices under this act section 2(4) of the act defines "adjudicating authority" as any authority, appointed or authorised to pass any order or decision under this Act, but does not include the Central Board of Indirect Taxes and Customs, the Revisional Authority, the Authority for Advance Ruling, the Appellate Authority for Advance Ruling, the Appellate Authority, the Appellate Tribunal and the Authority referred to in sub-section (2) of section 171.

As per section 102 of the act any order of AAR or AAAR may also be rectified.

3. Which Are NON RECTIFIABLE ORDERS

Orders notice etc. of following authorities cannot be rectified:

- (a) Central Board of Indirect Taxes and Customs,
- (b) the Revisional Authority appointed or authorised for revision of decision or orders as referred to in section 108.
- (c) the Appellate Tribunal and the Authority

Further orders passed by an officer appointed order passed by officers appointed under CGST act cannot be rectified by officers appointed under SGST Act or UTCGST Act.

4. What Is The TIMELINE

There is a time limit within which application for rectification should be made and rectification order should be passed. As per section 161 (1) of the act application for rectification shall be made with a period of three months from the date of issue/pass of such decision or order or notices or certificate or any other documents.

Rectification should be done with in six months from the date of issue of such decision or order or notice or certificate or any other document. thus, rectification order should be passed with six months of original order passed. Thus, if original order passed on January 01, 2021 than application for rectification must be made on or before March 31,2021 and rectification should be done within six months of original order i.e., June 30,2021 or before.

However as per second proviso to section 161 of the act time limit of six month will not apply in case of cases where the rectification is purely in the nature of correction of a clerical or arithmetical error, arising from any accidental slip or omission. Thus, in these cases rectification can be done anytime, and time limit of six months will not apply here.

As per rule 142 (8) of CGST Rules, 2017 Where a rectification of the order has been passed in accordance with the provisions of section 161 or where an order uploaded on the system has been withdrawn, a summary of the rectification order or of the withdrawal order shall be uploaded electronically by the proper officer in FORM GST DRC-08 It is imperative to note that there is no standardized form of application in which request can be made for rectification.

Section 161 imposes a duty upon the authority to make an order on an application for rectification within six months from the date of the receipt of the application. It, thus, enjoins a duty upon the authority; at the same time, it does not provide for consequences, in case the authority fails to perform his duty as envisaged by section 161. This provision enjoins upon the authority to act within the specified time (six months from date of receipt of application) and is directory. It cannot be construed to be a mandatory provision to defeat or frustrate the remedy available to a person on account of failure of the tax authority to perform his duty within the specified time.

As per third proviso of section 161 of the Act where such rectification adversely affects any person, the principles of natural justice shall be followed by the authority carrying out such rectification. Therefore, if rectification order passed by authority adversely affecting to the concerned person (such increase in output liability, disallowance of ITC, cancellation of registration, etc) than authority must follow principles of natural justice.

5. Rectification Vis a vis Revision by revisional Authority

As per section 108 Revisional authority (RA) has power to revise the order or decisions passed by adjudicating authority. Its is important to note that RA revise orders passed by adjudicating authority only and only if is order passed is so far as it is prejudicial to the interest of revenue and is illegal or improper or has not considered certain material facts, whether available at the time of issuance of the said order or not or in consequence of an observation by the Comptroller and Auditor General of India. However, on the other hand rectification of an order, notices etc. can be done even when it is in favor of taxpayers.

6. Rectification Vis a vis Appeal

Any person aggrieved by any decision or order passed by an adjudicating authority may appeal to such Appellate Authority within three months from the date said decision or order is communicated to such person. When issue is not error which is apparent on the face of record and involve question of law then remedy of rectification u/s 161 is not available and person will have to adopt appeal route to correct the impugned order. Here it also important to note that appeal can be made against order passed whereas under rectification not only order but other matters such as decision, notice, certificate issued, or any other documents issued can also be rectified.

7. IMPORTANT SC ORDER

It is important to note that in the case of Hind Wire Industries Ltd. v. CIT [1995] 212 ITR 639/80 Taxman 79 (SC) supreme court held "'Order' includes amended rectified order also", thus application can be made for rectified order as well. Therefore, once an order is amended to give

effect to original order, period of limitation under section 161 would commence from amended order and not from original order.