



CST/ K-VAT- LIMITATION PERIOD

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The indirect tax law is where the tax is collected from the next stage i.e. buyer. In business the possible period within which the buyer would allow for amendments would not be beyond the end of year. At times till the accounts are finalised they may allow for changes. The buyer would not pay additional taxes if he cannot avail the Input Tax credit (ITC) for any reason.

Under Central Excise the period of limitation for a bona fide act was 6 months. Over a period this was increased to 1 year. However where there exists suppression, fraud, misrepresentation etc then the period of limitation for demand was/ is 5 years from the relevant date. Date of filing return (normal or belated) or due date of filing return.

Under Service tax the period for bona fide act is 18 months and 5 years for cases of suppression, fraud etc.

In both these laws, the possibility of recovery from the customer exists to full or some extent. However where the extended period of limitation is invoked, reimbursement from the customers maybe a challenge.

Under the Limitation Act 1963 the normal period is 3 years. The period of dispute before the courts is not considered to calculate the period of limitation which is true for all central as well as State tax laws.

CST/ KVAT Act.

In the CST Law it provides that the assessment, reassessment, collection etc are to be as per the State laws. (Sec 9 (2))

Under KVAT law (sec 40) which would apply to CST in Karnataka the limitation period is 7 years from end of assessment period. Therefore a demand for the month of March 2009 can be made by end of March 2015. After that it cannot be done.

Further for rectification of assessment or reassessment (Sec 41 (1)) , the period of limitation is within 3 years of the date of such order. If rectification due to decision of court then rectification to be within 5 years of the order.

The excessive time provided in the law causes a lot of hardship as the documents may not be available. The re assessment which is a revenue exercise when delayed for years together can lead to demands in which the interest would be double the tax!! This also for the negligence of the revenue. It may also be applicable for bona fide errors, where there is no fault for the dealer. At times it is an advice of the revenue officer which has been followed, which would have been oral!!

Is this fair? Should tax compliant be harassed for year for bona fide interpretations of law, for changes in the law as perceived by the Judiciary, going beyond the Limitation Act itself?

Reknowned advocates have observed that the re assessment are a fundamental violation of the fundamental right.

The revenue needs to concentrate on those out of the net rather than those within. Therefore tax payers need to suggest to the Karnataka Government directly and through the chambers of Commerce to adopt best practice and amend this draconian law which is being used to collect money not to proceed. Of course some part also goes to the State coffers.