

Kerala HC prima facie excuses late fees for GST late filers

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In order to accelerate the filing of GSTR-9 returns among the non-abiding taxpayers the government of India had come out with an amnesty scheme to provide relief to tax payers who had not filed GSTR-returns within the respective due date.

As per Section 47(2) of the CGST Act, 2017, any registered person who fails to furnish the Annual Return u/s 44 by the due date shall be liable to pay a late fee of Rs.200/- (CGST & SGST) for every day during which such failure continues, subject to a maximum of an amount of 0.25% of his turnover.

Therefore taxpayers who had filed their returns post



the due date were being subject to pay late fees. Understanding the gravity of the issue and in order to encourage speedy recovery of GSTR-9 returns the Government vide Notification No. 07/2023-Central Tax dated 31st March, 2023, had granted relief to the non-filers of the Annual return in form GSTR-9, as on the date of issuance of the Notification.

The Notification provided for the waiver of late fee which is in excess of CGST Rs. 10,000/- and SGST Rs. 10,000/- for delayed filing of the Annual Return, for the Financial Years 2017-18, 2018-19, 2019-20, 2020-21, 2021-22 if the same is filed **within the Period from 1st April, 2023 to 31st August 2023.**

Albeit attractive this notification created an upheaval for the taxpayers who had prior to this notification voluntary filed the annual GST Return in GSTR-9 & agreed to pay late fees for not having filed their returns within the stipulated time frame.

These taxpayers are now for obvious reasons

demanding that they too be governed by the same notification issued by the government and not be subject to higher late fees. The GST department however is issuing notices demanding Late Fees to those Taxpayers, who had already filed (belatedly) the Annual return, before the issuance of the said notification.

Many taxpayers opine that the GST department is punishing the taxpayers who had voluntarily agreed to comply with the law, before the grant of amnesty relief, while providing benefits to the non-compliers of law with the concessional notification. Therefore many are of the view, that

the Government should provide the same concessional relief to those who filed their returns before 31st March, 2023. Interestingly the Kerala High Court recently issued a prima facie view that any person who has filed GSTR 9/9C in respect of the financial years 2017-18, 2018-19, 2019-20, 2020-21, 2021-22 up to 31st March, 2023 should be eligible for the Concessional late fee as mentioned in the Notification No. 7/2023 dated March 31, 2023 "otherwise it Would amount to violation of Article 14 of the Constitution of India inasmuch as no intelligible differentia Is coming out

from the Scheme to differentiate an assessee/ dealer who had filed GSTR-9/9C before 1st April, 2023 and an assessee/dealer who has filed GSTR-9/9C in between 1st April, 2023 to 31st August, 2023".

Thus in view of the above ruling Taxpayers can contest their cases for waiver of Late Fee which in excess of Rs. 20,000/- for delayed filing of the GSTR- 9 Returns for the Financial Years 2017-18 to 2021-22, as the Taxpayers who are more vigilant in complying the law, they shall also get the maximum benefit along with the non-filers who filed their return in amnesty scheme.

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