

EVEN A TWO-DAY DELAY IN ISSUING THE SCN UNDER SECTION 73 RENDERS IT INVALID : HON'BLE AP HIGH COURT

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In a significant ruling¹, the Hon'ble Andhra Pradesh High Court has held that even a minor delay in issuing a Show Cause Notice (SCN) under Section 73 of the CGST Act, 2017 renders it invalid. The dispute pertains to an SCN issued on 30.11.2024 proposing demands for FY 2020-21.

Key Issue:

The issue primarily revolved around determining the due date for issuing the SCN for FY 2020-21. As per Section 73(10) of the CGST Act, 2017, the Adjudication Order is required to be passed *within three years* from the *due date of furnishing the annual return* for the relevant financial year. Further, the SCN should be issued *at least three months prior* to the time limit specified for issuing the Adjudication Order.

The due date for furnishing the annual return for the FY 2020-21 under Rule 80(1A) of the CGST Rules, 2017 was 28.02.2022. Accordingly, the last date for passing the Adjudication Order is 28.02.2025, i.e., three years from 28.02.2022.

Now the important question before the High Court is whether the deadline for issuing the SCN for FY 2020-21 would be 28.11.2024 or 30.11.2024?

Court's Observation and Ruling:

The Hon'ble High Court has referred to the Judgement of the Hon'ble Supreme Court in the case of *State of H.P. v. Himachal Techno Engineers, (2010) 12 SCC 210* which laid down the principle that, *when a period, available for a certain action, is defined in terms of months, the cutoff date would be the corresponding date of the corresponding month.*

It was held that the three months period from 28.02.2025 would lapse on 28.11.2024 and accordingly the SCN issued on 30.11.2024 was time-barred.

The Hon'ble Court emphasized that the time limits provided in the Statue serve as safeguards to the taxpayers and cannot be diluted. It also observed that Section 75, which grants up to three adjournments for personal hearing would be rendered otiose if the notice is issued without a minimum waiting period.

Conclusion:

Reaffirming the mandatory nature of limitation period specified in Section 73(2), the Hon'ble High Court quashed the SCN, holding that any violation of the prescribed timeline is fatal and cannot be condoned.

Notable, in a similar case, the Hon'ble High Court has granted the stay² against the SCN issued to one of the taxpayers in Visakhapatnam.

¹ Cotton Corporation of India vs Assistant Commissioner (ST) – WP No. 1463 of 2025

² M/s. Waltair Club vs Deputy Commissioner (ST) – WP No. 4348 of 2025