Portal upload alone is no service under GST – Delhi HC disposes 48 writ petitions on Section 168A Notifications and preserves Luxmi Traders remedies for Assessees

The Hon'ble Delhi High Court in ***Gorki Contractors and Engineers v. Union of India & Ors. [W.P.(C) 4118/2026 dated August 11, 2026]*** disposed of a batch of 48 writ petitions challenging *Notification No. 09/2023-Central Tax dated March 31, 2023 and Notification No. 56/2023-Central Tax dated December 28, 2023* issued under Section 168A of the Central Goods and Services Tax Act, 2017 (**"the CGST Act"**), recording that the validity of the said Notifications is presently pending consideration before the Hon'ble Supreme Court and that the parties shall remain bound by its ultimate verdict. Further, taking note of the Punjab and Haryana High Court ruling in ***Luxmi Traders v. Union Territory of Chandigarh & Ors. [(2026) 44 Centax 371 (P&H)]***, which held that service of Show Cause Notices (**"SCN"**) and orders merely by uploading them on the GST Common Portal is insufficient, the Court granted liberty to the Assessees to avail the remedies set out in paragraph 60 thereof, including restoration of proceedings to the SCN stage and revival of appeals dismissed as time-barred.

Facts:

Gorki Contractors and Engineers (**"the Petitioner"**), along with 47 other Assessees, filed writ petitions before the Hon'ble Delhi High Court challenging two Notifications issued under Section 168A of the CGST Act, namely, *Notification No. 09/2023-Central Tax dated March 31, 2023 [corresponding Delhi GST Notification dated June 22, 2023]* and *Notification No. 56/2023-Central Tax dated December 28, 2023 [corresponding Delhi GST Notification dated July 11, 2024]* (**"the Impugned Notifications"**), whereby the time limit for passing orders under Section 73(10) of the CGST Act for the Financial Years 2017-18 to 2019-20 was extended.

The Learned Counsel representing the parties fairly admitted that the validity/correctness of the Impugned Notifications is pending consideration before the Hon'ble Supreme Court and that the parties shall remain bound by the ultimate judgment to be rendered therein.

In several of the connected matters, the SCNs and the consequential orders were served upon the Assessees only by uploading them on the GST Common Portal, whereupon ex parte adjudication orders came to be passed for want of reply, and in certain cases, appeals filed belatedly were dismissed on the ground of limitation. In this regard, reliance was placed on the decision of the Division Bench of the Punjab and Haryana High Court in ***Luxmi Traders v. Union Territory of Chandigarh & Ors. [(2026) 44 Centax 371 (P&H)]*** (**"Luxmi Traders"**), which held such portal-only service to be insufficient and issued comprehensive remedial directions in paragraph 60 of the judgment.

The Learned Counsel for the Revenue made a sincere attempt to distinguish the judgment in ***Luxmi Traders***, however, was unable to do so.

Issues:

- Whether the writ petitions challenging the validity of the Notifications issued under Section 168A of the CGST Act ought to be kept pending when the said issue is seized of before the Hon'ble Supreme Court?
- Whether service of SCNs and orders merely by uploading them on the GST Common Portal constitutes sufficient service and what remedies would enure to Assessees visited with ex parte orders or dismissal of appeals on limitation owing to such deficient service?

Held:

The Hon'ble Delhi High Court in ***W.P.(C) 4118/2026*** held as under:

- **Observed that,** the validity/correctness of *Notification No. 09/2023-Central Tax and Notification No. 56/2023-Central Tax* is pending consideration before the Hon'ble Supreme Court and the parties shall remain bound by the ultimate judgment to be rendered by the Hon'ble Supreme Court.

- **Noted that,** the Division Bench of the Punjab and Haryana High Court in ***Luxmi Traders*** (supra), while examining the practice of uploading Notices and Orders on the web portal for effecting service, has held the said practice to be insufficient and, in paragraph 60 thereof, directed that: (i) service of SCN cannot be deemed sufficient merely on account of its uploading on the Common Portal, unless its receipt is acknowledged or a reply is filed; (ii) where an SCN was served only through portal-upload and an ex parte order followed for want of reply, the proceedings would stand restored to the stage of the SCN with liberty to file reply within four weeks, whereafter the Department shall proceed after affording due opportunity of hearing; (iii) where the order-in-original was served only through portal-upload, the period of limitation for filing an appeal would not be triggered and the Assessee would be entitled to file an appeal within four weeks; (iv) where an appeal was dismissed as time-barred despite such deficient service, the appellate order shall be set aside and the appeal restored for decision on merits; and (v) where both the ex parte adjudication order and the consequential appellate order arose from portal-only service, both shall be set aside and the proceedings restored to the SCN stage.

- **Noted that,** the Learned Counsel for the Revenue was unable to distinguish the judgment in ***Luxmi Traders*** (supra).

- **Held that,** in view of the aforesaid position and with the consent of the Learned Counsel representing the parties, the batch of 48 writ petitions, along with the pending applications, is disposed of with liberty to the Petitioners to avail such remedy as may be available to them in terms of paragraph 60 of the judgment in ***Luxmi Traders*** (supra).

- **Directed that,** a photocopy of the order be kept in all the connected matters.

<u>Our Comments:</u>

Section 168A of the CGST Act empowers the Government, on the recommendations of the GST Council, to extend the time limits prescribed under the Act in respect of actions which could not be completed due to *force majeure*, which expression covers war, epidemic, flood and other calamities. Invoking this provision, *Notification No. 09/2023-Central Tax dated March 31, 2023 and Notification No. 56/2023-Central Tax dated December 28, 2023* extended the time limit under Section 73(10) of the CGST Act for passing orders for the Financial Years 2017-18 to 2019-20. The Impugned Notifications, particularly Notification No. 56/2023-Central Tax, have been assailed across the country primarily on the grounds that the same was issued without the prior recommendation of the GST Council (the recommendation being ratified only subsequently) and that the *force majeure* occasioned by the COVID-19 pandemic had long ceased to operate.

Divergent views have been expressed by various High Courts on this issue. The Hon'ble Allahabad High Court in ***Graziano Trasmissioni India Pvt. Ltd. v. State of U.P. and the Hon'ble Patna High Court in Barhonia Engicon Pvt. Ltd. v. State of Bihar*** upheld the validity of the Notifications, whereas the Hon'ble Gauhati High Court in ***Barkataki Print and Publication Co. v. Union of India*** struck down Notification No. 56/2023-Central Tax as ultra vires Section 168A, and the Hon'ble Telangana High Court in ***Brunda Infra Pvt. Ltd. v. Additional Commissioner of Central Tax*** recorded adverse observations on its validity. In view of this cleavage of judicial opinion, the Hon'ble Supreme Court in ***M/s HCC-SEW-MEIL-AAG JV v. Assistant Commissioner of State Tax & Ors. [SLP (C) No. 4240 of 2025]*** has issued notice and the question of the validity of the extension Notifications issued under Section 168A is presently seized of before the Apex Court. The present ruling, therefore, rightly directs the parties to abide by the outcome of the Supreme Court proceedings instead of independently adjudicating the vires of the Notifications.

On the second facet, Section 169 of the CGST Act prescribes the modes of service of any decision, order, summons, notice or other communication, which inter alia include tendering directly, service by registered post or speed post, communication to the e-mail address, and making it available on the Common Portal [Section 169(1)(d)]. While portal-upload is undoubtedly one of the statutorily recognised modes, a consistent body of jurisprudence has evolved holding that mechanical uploading, particularly under the 'Additional Notices and Orders' tab, without any effective communication to the taxpayer, defeats the principles of natural justice. The Hon'ble Allahabad High Court in *Ola Fleet Technologies Pvt. Ltd. v. State of U.P.*, the Hon'ble Delhi High Court in ***Kamla Vohra v. Sales Tax Officer*** and the Hon'ble Madras High Court in ***East Coast Constructions and Industries Ltd. v. Assistant Commissioner (ST)*** **and** ***Sabari Infra Pvt. Ltd. v. Assistant Commissioner (ST)*** have granted relief where the Assessee remained unaware of SCNs merely uploaded on the portal and ex parte orders followed. Per contra, a contrary line of authority, including the view taken by the Hon'ble Madras High Court in *Poomika Infra Developers v. State Tax Officer*, holds that uploading on the Common Portal is a valid and sufficient mode of service under Section 169(1)(d) and that a registered person is duty-bound to monitor the portal regularly. The Punjab and Haryana High Court in ***Luxmi Traders*** (supra) has now authoritatively tilted the balance in favour of the Assessees by holding that portal-only service, without acknowledgment of receipt or filing of reply, cannot be deemed sufficient, and by moulding time-bound remedies for every permutation of prejudice caused by such deficient service.

The present ruling of the Hon'ble Delhi High Court is a significant relief for taxpayers, as it extends the benefit of the remedial architecture of paragraph 60 of ***Luxmi Traders*** (supra) to Assessees within Delhi. Taxpayers who have suffered ex parte adjudication orders, or whose appeals have been dismissed on the ground of limitation solely on account of SCNs/orders having been served only through portal-upload, may now seek restoration of proceedings to the SCN stage, file replies within four weeks, or institute appeals within four weeks, as the case may be. Businesses would nevertheless be well-advised to regularly monitor both the 'Notices and Orders' and 'Additional Notices and Orders' tabs on the GST Common Portal and to keep their registered e-mail and contact particulars updated, so as to obviate any adverse ex parte proceedings.

<u>Relevant Provisions:</u>

Section 168A of the CGST Act:

"168A. Power of Government to extend time limit in special circumstances.—(1) Notwithstanding anything contained in this Act, the Government may, on the recommendations of the Council, by notification, extend the time limit specified in, or prescribed or notified under, this Act in respect of actions which cannot be completed or complied with due to force majeure.

(2) The power to issue notification under sub-section (1) shall include the power to give retrospective effect to such notification from a date not earlier than the date of commencement of this Act.

Explanation.—For the purposes of this section, the expression "force majeure" means a case of war, epidemic, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature or otherwise affecting the implementation of any of the provisions of this Act."

Section 169(1)(d) of the CGST Act:

"169. Service of notice in certain circumstances.—(1) Any decision, order, summons, notice or other communication under this Act or the rules made thereunder shall be served by any one of the following methods, namely:—

(d) by making it available on the common portal; …"

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