Rectification of Errors: Under the GST law

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Normally the process of rectification will be initiated only after the assessment order or any other adjudication order or decision is passed by the Authority. If appeal is filed against the assessment order, then application for rectification of order against that respective order cannot be filed. The word “assess” means to judge or decide the amount, value or importance of something. In a taxing statute it often means the computation of the turnover of the assessee, the determination of the tax payable by him, and the procedure for collecting or recovering the tax.

The courts have interpreted the same by looking to the object, scope and importance of the statutes. It basically includes all proceedings, starting with the filing of the return or issue of notice and ending with the determination of tax payable by the assessee. The word “assessment” in its widest connotation starting with issuing notice to produce books of account, verification of books of accounts, application of provisions, analysis of the judgements, obeying the instructions issued from the higher authorities, determining, quantifying, judging allowing rebates, credits, deductions, creating demand etc.

As per section 2(11) of CGST Act, the **assessment** means determination of tax liability under this Act and includes self-assessment, re-assessment, provisional assessment, summary assessment and best judgment assessment. It is stated in section 160 of CGST Act 2017, that no assessment or rectification shall be invalid merely by reasons of any mistake if such assessment or rectifications are in substance and effect in conformity with or according to the requirements of the Act.

Section 161 of GST Act 2017 deals with the provisions of ***‘Rectification of errors apparent on the face of record’.***It states that the prescribed Authority can rectify the errors in order or decision or notice or certificate or any other document on its own motion or when brought to its notice by any officer appointed under this act or by the affected person **within a period ofthree months** from the date it is passed / issued. No such rectification shall be done **after a period of six months** from the date of issue of such decision or order or notice or certificate or any other document.

The maximum time limit ofsix months for rectification shall not apply in such cases where the rectification is purely in the nature of correction of a clerical or arithmetical error, arising from any accidental slip or omission.

The law contemplates for rectification of mistakes and provides that any amendment which has the effect of enhancing an assessment or otherwise in accordance with law of the person concerned shall not be made unless the prescribed authorityhas given notice

to the person concerned of its intention to do so and has allowed the person concerned the opportunity of showing cause, in writing, against such amendment. Therefore, if rectification of order adversely affects the person then the principles of natural justice should be followed by proper officer by issuing notice for personal hearing.

The rectification order can be passed by Assessing officer within six months from the date of original order except the orders that require rectification of clerical/arithmetical mistakes. The mistakes can happen due to calculation or a mistake in writing or typing or due to careless mistake or omission unintentionally made. In cases of clerical/arithmetical mistake in orders, rectification order may be issued even after six months.

Records are not defined under the GST law. It can include the documents and information's as produced by the parties during the hearing of the case and were available with the departmental authority at the time of passing the order. The Hon'ble Bombay High Court in the case of Maharashtra State, **Bombay Vs Motwane Pvt Ltd reported in [1992] 84 STC 377W** held that, "the word 'record' cannot be construed as meaning not only the assessment record but also the books of accounts, various registered maintained and the sale invoices which the assessee might have brought to the Sales Tax Officer at the time of assessment.

The rectification means making or setting right or correcting what is wrong. It can also be envisaged that rectification may not result into change in the decisions in respect of matter which is already decided in the assessment order or notices or decisions. Various courts have held that the rectification of on an order' does not mean obliteration of the order originally passed and its substitution by a new order.

The power of rectification in the order is confined only to mistakes apparent on the face of record. The application for rectification can be made if the mistake is ex facie and it is not capable of further arguments. If the issues in order is involving legal interpretation, then it cannot be rectified under section 161.It is held by ***Hon'ble Supreme Court in Master construction Co (P) Limited Vs State of Orissa and Another 1966 AIR 1047***that an error shall be apparent on the face of the record, that is to say, it is not an error which depends for its discovery, on elaborate arguments on questions of fact or law. In simple terms, a decision on the debatable point of law or undisputed questions of fact is not a mistake apparent from the record.

Even in certain scenarios the Authority may not have considered the arguments as submitted by the appellant then such missed submissions may also not be considered as mistake apparent on recordlike deductions not allowed, supporting documents not considered, etc. Therefore, if there are interpretation points on facts of the case or from the law perspective, then it cannot be processed through rectification procedure.

As asserted in section 69 oferstwhile KVAT law, if any order has been passed which includes any mistake which is apparent from record, then the said order can be rectified by the prescribed authority at any time within five years from the **date of an order** passed by it.In GST law the provisions to rectify the error is within six months from the date of **issue of order or notice or decision, certificate or any other document** as the case may be. Therefore, under the GST law the time limit for notifying the error by the assessee to the Authority is three months and the Authority can pass the rectification order within six months within specified date.

If we read the provisions of both the laws, the erstwhile law has used the terminology as **rectification of mistake** and whereas in the GST law,it states as **rectification of error**. So, we have to understand the difference between the error and mistake. Whether they can be used interchangeably which may be right for certain situations, but some would deem a particular word as more appropriate than the other. In many instances, is the rectification provisionbeing only for arithmetical error and clerical error then the time limit of six months is not applicable for arithmetical or clerical errors? In the erstwhile law the rectification provisions can be made only for order passed by the Authorities whereas in the GST law the rectification can be made for order or notice or decision or certificate or any other documents.In simple terms, the rectification provisions under the GST law areapplicable not only to orders but also to notice, certificate or any other documents.Therefore, the rectification provisions have been broadened as compared to erstwhile law with different time restrictions depending upon the type of errors which may create misperceptions for rectification procedures under the GST law.