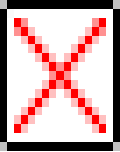


Amendment to Rule 142(1A) is anti-taxpayer

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IN a development that is likely to increase litigation, the CBIC has without much fanfare issued Notification No. **79/2020-Central Tax** dated 15th October 2020, amending Rule 142(1A) of the CGST **Rules, 2020**.

The amended Rule reads -

142(1) The proper officer shall serve, along with the

(a) notice issued under section 52 or section 73 or section 74 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130, a summary thereof electronically in **FORM GST DRC-01**,

(b) statement under sub-section (3) of section 73 or sub-section (3) of section 74, a summary thereof electronically in **FORM GST DRC-02**, specifying therein the details of the amount payable.

1A) The proper officer **may** ('shall' before amendment

) before service of notice to the person chargeable with tax, interest and penalty, under sub-section (1) of Section 73 or sub-section (1) of Section 74, as the case may be, **communicate** ('shall communicate' before amendment

) the details of any tax, interest and penalty as ascertained by the said officer, in **Part A** of **FORM GST DRC-01A**.

By quietly replacing the word 'shall' with 'may', the CBIC would seem to have given a go by to the current procedure whereby, the proper officer is duty bound to inform the taxable person of the details of the tax payable by him, before the issuance of a formal SCN. Rule 142(1A), as it stood before the amendment, required the proper officer to mandatorily issue the Intimation in GST DRC-01A, asking the taxable person to pay the tax and other dues including the mandatory 15% penalty applicable to cases involving Section 74, as mentioned in the Intimation, failing which, the SCN under either of Section 73(1) or 74(1) would be issued. This procedure would have been very practical and useful in respect of genuine cases involving non-payment or under-payment of tax, which could have been pointed out to the taxable person, in the course of service tax audit or scrutiny or assessment or during enquiry proceedings. Moreover, in many instances, there could be factual mistakes regarding the tax liability, which could be pointed out by the taxpayer to the Department on receipt of the Intimation, obviating the need for the issuance of a formal SCN and its adjudication which would be lengthy process.

As we know, we did not have a similar procedure under the erstwhile central and state indirect tax laws. For many of us, the unamended Rule 142(1A) promised to be a welcome breather indicating the willingness of the Department to allow the taxable person to voluntarily pay up the tax and close the issues, without burdening the taxable person with the issuance of a show cause notice.

For many of the small and medium sized taxpayers, the mere receipt of a show cause notice could create nightmares, given the intimidating language that is normally used by the highly erudite officers while issuing these notices. To this extent, this amendment is rather unfortunate and is anti-taxpayer.

Though post amendment, it is now optional for the proper officer to issue the intimation in DRC-01A, one can expect this procedure not to be followed, by and large, by the GST officers.

One is not able to understand the rationale behind this amendment. Strange indeed are the ways of the babudom.

Before concludingâ€¦

Is this amendment, prospective or retrospective?

Being a procedural change brought about by an amendment to a Rule, my view is that, this amendment can be applied only on a prospective basis and consequently, issuance of DRC-01A would be **"necessary"** for tax demands for the period prior to the date of the present amendment viz. October 15, 2020.

[The views expressed are strictly personal.]

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