

Rescinding a dead notification

OCTOBER 05, 2022

By Vijay Kumar

CAN a rescinded notification be again rescinded?

On 28.09.2022, the CBIC issued a notification No. [20/2022-Central Tax](#), which reads as

In exercise of the powers conferred by section 148 of the Central Goods and Services Tax [Act, 2017](#)

(12 of 2017), the Central Government, being satisfied that it is necessary in the public interest so to do, on the recommendations on the Council, hereby rescinds the notification of the Government of India, Ministry of Finance (Department of Revenue), No. [20/2018-Central Tax](#), dated the 28th March, 2018, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-Section (i), vide number G.S.R. 309 (E), dated the 28th March, 2018, except as respects things done or omitted to be done before such rescission.

By this notification, Notification No.20/2018-Central Tax, dated the 28th March, 2018, was rescinded. This should be effective from 28.09.2022, the date of the notification.

What is the effective date of a notification?

As per Section 2(81) of the CGST Act,

(81) **"notification"** means a notification published in the Official Gazette and the expressions **"notify"** and **"notified"** shall be construed accordingly.

In ***Union of India Versus M/s Ganesh Das Bhojraj - 2002-TIOL-233-SC-CUS-LB,***

the Supreme Court has held that the effective date of a notification is the date of the publication in the official gazette.

However, it should be noted that the provisions and the judgement of the Apex Court is with respect to a Notification, in which the effective date has not been specifically mentioned. Where the date on which notification is to take effect is mentioned in the body of the notification itself, the effective date shall be such date.

The issue has a long history:

The Supreme Court in ***Harla vs The State Of Rajasthan*** on 24 September, 1951 noted,

"The principle underlying this question has been judicially considered in England. For example, on a somewhat lower plane, it was held in Johnson v. Sargant that an Order of the Food Controller under the Beans, Peas and Pulse (Requisition) Order, 1917 does not become operative until it is made known to the public, and the difference between an Order of that kind and an Act of the British Parliament is stressed. The difference is obvious. Acts of the British Parliament are publicly enacted. The debates are open to the public and the Acts are passed by the accredited representatives of the people who in theory can be trusted to see that their constituents know what has been done. They also receive wide publicity in papers and, now, over the wireless. Not so Royal Proclamations and Orders of a Food Controller and so forth. There must therefore be promulgation and publication in their cases. The mode of publication can vary; what is a good method in our country may not necessarily be the best in another. But reasonable publication of some sort there must be."

And the above decision was approvingly cited in **Union of India Vs Param Industries Ltd** - [2015-TIOL-140-SC-CUS](#).

In **Pankaj Jain Agencies Vs. Union of India** - [2002-TIOL-419-SC-CUS](#)

it was held that mere publication in the gazette was enough and no further making available the notification to the public was required.

In **Collector of Central Excise Vs. New Tobacco Company**

[1998 (97) E.L.T. 388 (SC)] the Supreme Court held that if the publication of notification was through a gazette, the mere printing of it in the gazette would not be enough. Unless the gazette containing the notification is made available to the public, the notification cannot be said to have been duly published.

In **Garware Nylons Ltd Vs. Collector** [1998 (100) E.L.T. 321 (SC)], the Supreme Court relied on the **New Tobacco** case and held that notification can be said to have been duly published when it is made known to the public.

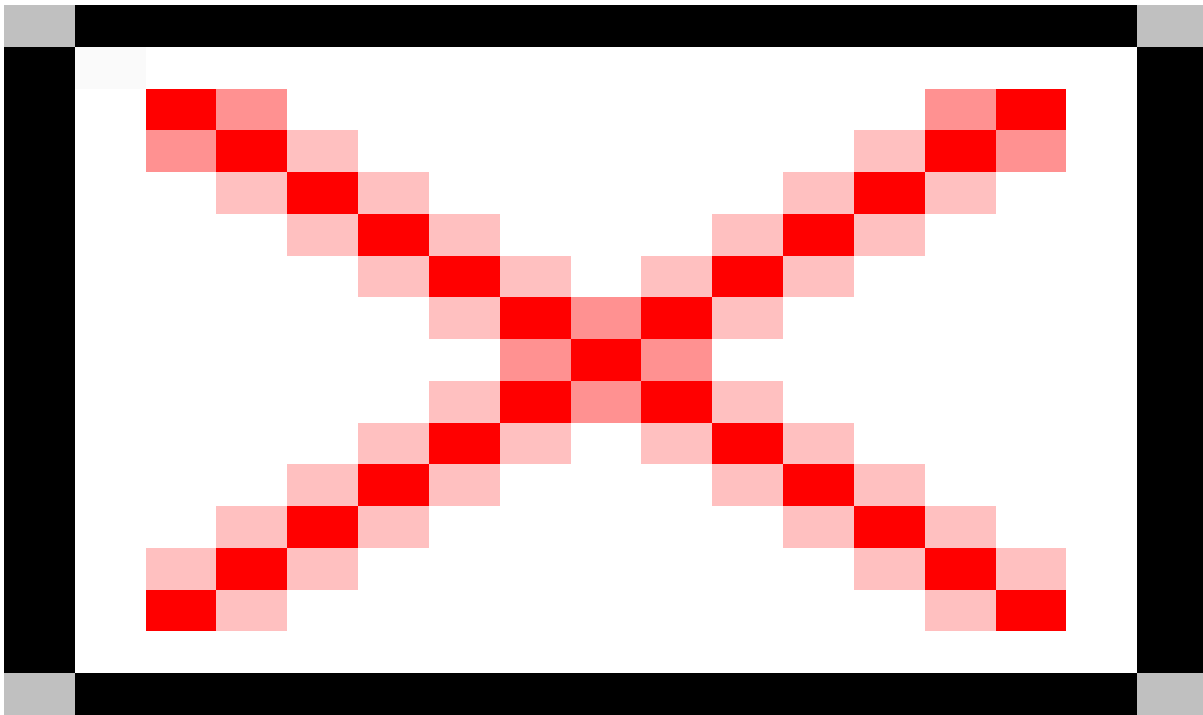
As there were conflicting judgements of the Supreme Court, the issue was referred to a larger Bench. The Larger Bench in **Union of India Vs. Ganesh Das Bhojraj** - [2002-TIOL-233-SC-CUS](#)

held that a notification would come into operation as soon as it is published in the official gazette and no further publication is required. So the decision in **Pankaj Jain Agencies** was held to be the correct law while the **New Tobacco Company** case was held to be not the correct law.

Back to the beginning :

So, the Notification No. 20/2022-Central Tax should be taken to have come into existence on 28.09.2022 as it is dated 28.09.2022 and published on 28.09.2022. Thus, on 28.09.2022, the government rescinded the Notification No.20/2018-Central Tax, dated the 28th March, 2018. So far so good. If you look at Notification No. [20/2022-Central Tax](#), dated 28.09.2022, it does not mention from which date the Notification No.20/2018-Central Tax, dated the 28th March, 2018, is rescinded. Therefore, it has to be taken as rescinded from the date of the notification that is 28.09.2022.

But on 29.09.2022, the Government came out with a corrigendum, which reads as:



So, what they want us to do is ***"at page 5, in line 33, for the figure "2018", read "2018, with effect from the 1st day of October, 2022".***

Now, how will anyone know where this page 5 line 33 is? For that you have to read the notification in the gazette and that is not as easy as GST.

You want to know how I did it?

I went to the website of our national gazette - <https://egazette.nic.in/>

and searched for notifications issued by the Finance Ministry and CBIC. There I searched for Notification No. 20/2022, dated 28.09.2022 and could not find it. This is included in Notification No. 19/2022, which is a five page notification, at the end of which on page 5, you find Notification No. 20/2022!. Now how to get to 'page 5, line 33'. I downloaded the notification No. 19/2022, which also contains the Notification No. 20/2022. The download is in pdf. I copy page 5 of this pdf and paste it to a blank 'word' document. Then I select the whole document and add line numbers to the left. Lo and behold!, I get line Number 33 and the figure 2018 is there in that line!. So, after '2018', I add the words, ***"with effect from the 1 st day of October, 2022"***

and understand that the Notification No. 20/2018 was rescinded with effect from 1st October 2022.

But then by Notification No. 20/2022, dated 28.09.2022, this was already rescinded with effect from 28.09.2022. Can you rescind again with effect from 1 st October 2022 what was already rescinded on 28.09.2022?

Somebody in the notification manufacturing unit forgot to include 'with effect from 1st October 2022' in the notification 20/2022 and so had to issue a corrigendum after the death of the original notification. This is because in the notifications manufactory, there is no quality control check.

There is another QC problem. See the notification:

In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, being satisfied that it is necessary in the public interest so to do, on the recommendations **on** the Council,â€â€.

Now, what is **recommendations on the Council** ? Of course, you know what they meant was **recommendations of** the Council and as they say, it is a simple **typo**

error. But should you be so careless when drafting the law? Can't we try to introduce some old fashioned system called proof reading?

You know how difficult it is to run a tax administration and you can't expect them to be worried about spellings and language.

After all, it is a simple tax!

Until Next week