

GOVERNMENT OF TAMIL NADU
COMMERCIAL TAXES DEPARTMENT
OFFICE OF THE COMMISSIONER OF COMMERCIAL TAXES
EZHILAGAM, CHENNAI- 600 005

PRESENT: Dr. D.JAGANNATHAN, I.A.S.,
COMMISSIONER OF STATE TAX

Circular No.4/2025
(A1/240/2025/
Ease of Business Cell)

Dated: 16.05.2025

Sub: TNGST Act, 2017 - Instructions regarding rectification by Proper Officers under section 161 of TNGST Act, 2017 - regarding

The rectification of error in decision or order or notice or certificate or any other document issued by the Proper Officer is a legal remedy provided under the GST Acts.

2) The relevant provisions of the TNGST Act, 2017 and Rules therein are extracted below:

Section 160: Assessment proceedings, etc., not to be invalid on certain grounds

(1) No assessment, re-assessment, adjudication, review, revision, appeal, rectification, notice, summons or other proceedings done, accepted, made, issued, initiated, or purported to have been done, accepted, made, issued, initiated in pursuance of any of the provisions of this Act shall be invalid or deemed to be invalid merely by reason of any mistake, defect or omission therein, if such assessment, re-assessment, adjudication, review, revision, appeal, rectification, notice, summons or other proceedings are in substance and effect in conformity with or according to the intents, purposes and requirements of this Act or any existing law.

(2) The service of any notice, order or communication shall not be called in question, if the notice, order or communication, as the case may be, has already been acted upon by the person to whom it is issued or where such service has not been called in question at or in the earlier proceedings commenced, continued or finalised pursuant to such notice, order or communication.

Section 161. Rectification of errors apparent on the face of record

Without prejudice to the provisions of Section 160, and notwithstanding anything contained in any other provisions of this Act, any authority, who has passed or issued any decision or order or notice or certificate or any other document, may rectify any error which is apparent on the face of record in such decision or order or notice or certificate or any other document, either on its own motion or where such error is brought to its notice by any officer appointed under this Act or an officer appointed under the Central Goods and Services Tax Act or by the affected person within a period of three months from the date of issue of such decision or order or notice or certificate or any other document, as the case may be.

Provided that 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.

Provided further that the said period of six months 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.

Provided also that where such rectification adversely affects any person, the principles of natural justice shall be followed by the authority carrying out such rectification.

Rule 142. Notice and order for demand of amounts payable under the Act

(7) Where a rectification of the order has been passed in accordance with the provisions of section 161 or where an order uploaded on the system has been withdrawn, a summary of the rectification order or of the withdrawal order shall be uploaded electronically by the proper officer in FORM GST DRC-08.

3. A careful reading of the above provisions of the TNGST Act, 2017 and Rules therein relating to rectification of error apparent on the face of Record, reveals the following aspects:

(i) Rectification under Section 161 of the TNGST Act, 2017 can arise in the following three distinct ways:

- a) **Suo Moto**: The Proper Officer can take initiative to rectify an error on the face of record, noticed on his own, without any external prompting.
- b) **Upon request by taxpayer**: If a taxpayer notices an error in a document, he/she can request rectification by applying to the Proper Officer.
- c) **GST Official's Notice**: GST officials from the Centre and State jurisdiction can bring to the notice of the Proper Officer for initiating rectification, when they come across an error apparent on the face of record.

(ii) Time-limit for filing Rectification application:

An application for Rectification can be filed by the tax payer within a period of three months from the date of issue of decision or order or notice or certificate or any other document, as the case may be.

(iii) Time-limit for passing Rectification Order:

The Rectification order should be passed by the Proper Officer within six months from the date of issue of the decision or order or notice or certificate or any other document, as the case may be.

However, this time-limit is not applicable to the cases where the rectification is purely in the nature of correction of a clerical or arithmetical error, arising from any accidental slip or omission.

(iv) Principles of Natural Justice to be followed:

Where the rectification adversely affects any person, by way of enhanced demand, the Principles of Natural Justice shall be followed by the Proper Officer, who carries out such rectification. The taxpayer shall be given an opportunity of being heard, his objections in writing shall be obtained and considered on merits, before passing final orders.

4. Further, it is important to understand that the most important phrase in the aforesaid provisions of the TNGST Act, 2017 is '**error which is apparent on the face of record**'. As per Section 161 of the TNGST Act, 2017, the word 'Record' is relatable to such decision or order or notice or certificate or any other document passed or issued by any authority. The crucial element in this process is to decide whether the error pointed out is an error apparent on the face of the record or not.

5. In the case of M/s Vishaka Exports Vs. Assistant Commissioner (ST) (FAC) Tiruppur North – I Circle / Tiruppur Bazar, in Writ Petition in W.P.No.34471 of 2022 and W.M.P.No.33919 of 2022 in W.P.No.34471 of 2022, the Hon'ble High Court of Madras in its Order dated 23.12.2022, has held in Para (9) as to what constitutes an error apparent on the face of record, as follows:

"To be noted, the expression 'errors apparent on the face of record' has been repeatedly explained by this Court to be errors which are so obvious and so palpable (tangible if one may say so) that no inferential process is required or no inferential process need to be applied to detect the error."

6. In the light of the above Judgement and provisions of the GST Acts and Rules, it is now pertinent to understand what constitutes an error apparent on the face of record:

- i) No error can be said to be apparent on the face of record, if it is not manifest on the record and requires an examination or argument to establish it.

- ii) The error must be self-evident. It should not be discoverable by a long process of reasoning involving points on which there may be conceivably different opinions.
- iii) An error apparent on the face of record is not one that involves, (a) a conclusion that cannot be reached without taking new facts on record during rectification proceedings (b) a conclusion requiring application of mind to an existing fact or interpretation already adopted in reaching the conclusion.
- iv) Only those errors that are apparent, obvious and discernible from the document itself are considered errors evident on the face of record
- v) The main aspect is that the powers of rectification cannot be exercised to amend the substantive part of document concerned.
- vi) Further, the taxpayer, on literal interpretation of the phrase 'rectification of error apparent on the face of record' cannot bring any document or evidence, which is not already on record, to substantiate his claim for rectification.
- vii) When the Proper Officer has taken a conscious decision with natural understanding of the issues involved, at the time of passing the original order, in the due exercise of his quasi-judicial powers of decision making, rectification cannot be initiated.
- viii) The rectification can be made if the mistake is *ex-facie* and the matter does not involve presentations of further arguments or replies or submissions in the rectification process.

7. Hence, Section 161 of the TNGST Act, 2017 permits correction of mistakes which are obvious, glaring and self-evident, not requiring any detailed investigation into facts or arguments on law. The errors that involve questionable or arguable element and which require supporting evidence do not fall within the scope of apparent errors. Any other mistake, not so rectifiable, is to be taken up in appeal and any dispute which goes to the very root of the jurisdiction of the authority or question of law, can be challenged in a writ petition.

8. The following type of errors apparent on the face of record are generally noticed, which may be considered for the limited purposes of rectification under section 161:

- i) Where amount of demand in question has already been fully deposited / reversed vide DRC-03 and adequately informed to the Proper Officer in the reply filed by the taxpayer but the same has not been taken into consideration at the time of issuance of demand order.
- ii) Where there is arithmetical error i.e. calculation error / Tax Head error i.e. IGST, CGST and SGST in the demand order issued by the Proper Officer.
- iii) Where the Place of Supply is wrongly mentioned as 'other than Tamil Nadu' in the Demand Order in DRC-07 in respect of defects relating to Inter-State inward supply (Purchase) such as availment of

excess / ineligible Input tax credit, availment of blocked credit, non-payment of dues on Reverse charge mechanism basis etc.

9. The following are some of the instances, where a Rectification under Section 161 of the TNGST Act, 2017 is not possible:

- i) New facts, new evidence or declarations submitted to the Adjudicating Authority after the issue of the impugned order, cannot be basis for rectification. These ought to be produced before the Appellate authority showing sufficient cause for not producing them before the Adjudicating Authority.
- ii) Where certain facts are necessary for determining a question of law, the omission to place those facts before the decision on that question was rendered by the Authority, will not amount to rectifiable error.
- iii) In certain scenarios, the Authority may not have considered the arguments submitted by the taxpayer. Such omissions will not amount to rectifiable error.
- iv) A mere change of opinion on facts, even if new facts come to notice, cannot form basis for rectification.
- v) An erroneous decision on a point of law, such as levy of discretionary penalty, bar of limitation, condonation of delay, etc., will not amount to rectifiable errors under this Section.
- vi) The setting aside of the assessments for earlier years cannot give rise to a claim for rectification of the assessments for the subsequent years, which had become final, due to non-filing of appeals.
- vii) The rectification cannot be done where an appeal is preferred by the taxpayer to the Appellate forums.
- viii) Subsequent decisions of the Courts cannot be the basis for initiating rectification under this Section.
- ix) In respect of implementation of Honourable Court/ GST Appellate Tribunal (GSTAT) orders, the Deputy Commissioner (Legal) in the Office of the Territorial Joint Commissioner and the Deputy Commissioner (Inspection)/(Intelligence) in the Office of the Intelligence Joint Commissioner have been assigned the role of 'Legal Officer' to update such orders in the 'Appeal to Higher Authorities' back office module. The Proper Officer shall give effect to Honourable Court/ GSTAT orders through this procedure and should not resort to rectification under Section 161 of the TNGST Act.

10. In view of the above, the Proper officers are instructed as follows:

- i) The Rectification orders should be passed strictly within the scope of Section 161 of TNGST Act, 2017, with proper understanding of the term "error apparent on face of records" as detailed above.
- ii) If any Rectification orders are passed beyond the scope of Section 161, it will be viewed seriously against the concerned Proper officer who passed the order adversely affecting the revenue.
- iii) The reasons for initiating *Suo-moto* rectification should be recorded in writing before such proceedings are initiated.
- iv) *Suo moto* rectification orders can be passed by the Proper Officers for those cases where enhancement of revenue is involved, due to error apparent on the face of the record. The Proper Officer while implementing *Suo Moto* rectification procedure for enhancement of revenue should follow the **Principles of Natural Justice** before issuing any order under Section 161 of TNGST Act.

11. The Deputy Commissioners, both Territorial and Intelligence are instructed as follows:

- i) They shall ensure that the jurisdictional Proper Officers act with caution, while administering Section 161 of the TNGST Act, 2017, so as to avoid exceeding the authority and thereby causing loss of revenue.
- ii) They shall review the Rectification orders already passed for adherence to the scope of Section 161 and correctness of dropping the demand entirely/ partially.
- iii) If any rectification order has been passed erroneously, it should be taken up for filing of Departmental Appeal under Section 107 of the TNGST Act, 2017 and the appeal shall be filed, immediately.
- iv) They shall ensure that all the rectification tasks are disposed off within the time limits prescribed under Section 161 of the TNGST Act and act expeditiously to safeguard revenue.

12. The Additional Commissioner (LTU) and the Territorial and Intelligence Joint Commissioners are instructed as follows:

- i) They shall ensure that the above instructions regarding rectification of errors apparent on the face of records are complied by the officers under their jurisdiction.
- ii) In respect of the Rectification orders already passed beyond the scope of Section 161 of the TNGST Act and no appeal has been filed or could not be filed as the time to file appeal has lapsed, then such cases shall be taken up for revision by the Joint Commissioner under Section 108 of the TNGST Act, 2017.

13. The Additional Commissioner (Systems) is instructed to take necessary steps for development of suitable MIS reports for reviewing the pendency of rectification tasks, issue of rectification orders and revenue involved therein to effectively monitor the Rectification process.

14. The Additional Commissioner (LTU), Territorial and Intelligence Joint Commissioners, Territorial and Intelligence Deputy Commissioners and Proper Officers are instructed to ensure that the above instructions are strictly adhered while invoking the powers of the rectification provided under Section 161 of the TNGST Act, 2017.

Sd/- D. Jagannathan,
Commissioner of State Tax

To
The Additional Commissioner (Large Taxpayers Unit) and
All the Joint Commissioners (Territorial) and (Intelligence) in the State.

Copy to:

1. All the Additional Commissioners, Office of the Commissioner of Commercial Taxes, Chennai-5.
2. Director/Additional Commissioner, Commercial Taxes Staff Training Institute, Chennai -35. (for conducting training to all Officers on the Circular instructions)
3. Appellate Joint Commissioner (GST), Chennai - 35
4. Appellate Deputy Commissioners (GST), Chennai - 35
4. All the Deputy Commissioners in the State (Territorial, Intelligence and LTU)
5. The Joint Commissioner (CS), Chennai 35, to upload the same in the Intranet website.
6. Copy to all Head of assessment circles in the State.
7. Stock file / Spare -2.

// True Copy //

V. Radha

Director / Additional Commissioner (ST),
Commercial Taxes Staff Training Institute