



ALL GUJARAT FEDERATION OF TAX CONSULTANTS
303, B wing, Pratyaksh Kar Bhavan,
Nr. Panjrapole, Ambawadi, Ahmedabad - 380015
Ph.: +91 98252 71171
e-mail: sec.agftc@gmail.com
website: www.agftc.in



INCOME TAX BAR ASSOCIATION
Room No. 402, Nature View Building,
Ashram Road, Ahmedabad - 380009
Ph: +91 93132 82949, +91 79 4801 1947
e-mail: itbarassociation@gmail.com
website: www.incometaxbar.org

Date: 19th June 2024

To,
Hon'ble Smt. Nirmala Sitharamanji,
Union Minister of Finance & Chairperson, Goods and Service Tax Council,
Ministry of Finance
134, North Block,
New Delhi - 110001
E-mail: fmo@nic.in; gstc.secretariat@gov.in

Respected Madam,

**Representation to Amend the penalty provision under section 73(9)
of the CGST Act, 2017**

Respected Madam,

1. About AGFTC / ITBA:

All Gujarat Federation of Tax Consultants (AGFTC), founded in 1992, is the apex Regional Body of Advocates, Chartered Accountants & Tax Practitioners of Gujarat, having membership strength of more than 2000 professionals and institutional membership across Gujarat.

Income Tax Bar Association, Ahmedabad (ITBA) is one of the first professional associations founded in 1947 comprising of Tax Professionals, Tax Advocates and Chartered Accountants based at Ahmedabad and having current strength of more than 1100 members.

The prime objective of these associations is not only to work for the cause of their professionals but also educate the public at large and to act as a catalyst between Citizens & Government Authorities. Both the associations regularly organize seminars, lectures on tax advocacy and legal awareness.

2. Representation to reduce higher amount of penalty under section 73(9) of the CGST Act, 2017

Section 73 of the CGST Act, 2017 is regarding Determination of tax paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized **for any reason other than fraud or any willful misstatement or suppression of facts.**

Sub section 9 of section 73 states that- The proper officer shall, after considering the representation, if any, made by a person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to ten percent of tax or ten thousand rupees, whichever is higher due from such person and issue an order.

Madam, as the section 73 is for tax paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for any reason other than fraud or any willful misstatement or suppression of facts, the penalty provision for any genuine mistake is very harsh.

In the case where tax amount is more than ten lacs rupees, Penalty of ten percent of tax is also very high. The penalty provision of ten percent of tax for any genuine mistake is very harsh.

Section 125 provides for General penalty, which states that- Any person, who contravenes any of the provisions of this Act or any rules made thereunder for which no penalty is separately provided for in this Act, shall be liable to a penalty which may extend to twenty-five thousand rupees.

So for the genuine mistake of any registered dealer, the penalty under section 73(9) should not be more than twenty-five thousand.

To understand the draconian provision of penalty, let us take some examples as under;

Tax Determined	10% of Tax	Minimum Penalty	10% of tax or 10,000/- whichever is higher	Total Demand
Rs. 100/-	Rs. 10/-	Rs. 10,000/-	Rs. 10,000/-	Rs. 10,010/-
Rs. 15,000/-	Rs. 1,500/-	Rs. 10,000/-	Rs. 10,000/-	Rs. 11,500/-

We humbly request your goodness to reduce the minimum tax amount to Rs.1,000/- (one thousand). The section 73(9) should be amended as under;

“The proper officer shall, after considering the representation, if any, made by a person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to ten percent of tax or one thousand rupees, whichever is higher due from such person and issue an order.”

3. Representation to change amount of minimum penalty under section 73(9) of the CGST Act, 2017

Alternatively, we suggest amending section 73(9) of the Act which provides a penalty equivalent to ten percent of tax or twenty-five thousand rupees, whichever is less.

Madam, In the case where tax amount is more than ten lacs rupees, Penalty of ten percent of tax is also very high. The penalty provision of ten percent of tax for any genuine mistake is very harsh.

Section 125 provides for General penalty, which states that- Any person, who contravenes any of the provisions of this Act or any rules made thereunder for which no penalty is separately provided for in this Act, shall be liable to a penalty which may extend to twenty-five thousand rupees.

So for the genuine mistake of any registered dealer, the penalty under section 73(9) should not be more than twenty-five thousand.

To understand the draconian provision of penalty, let us take some examples as under;

Tax determined	10% of Tax	Minimum Penalty	10% of tax or 10,000/- whichever is higher	Total Demand
Rs. 11,00,000/-	Rs. 11,000/-	Rs.10,000/-	Rs. 11,000/-	Rs.22,000/-
Rs. 25,00,000/-	Rs. 25,000/-	Rs.10,000/-	Rs. 25,000/-	Rs.50,000/-

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The section 73(9) should be amended as under

“The proper officer shall, after considering the representation, if any, made by a person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to ten percent of tax or twenty-five thousand rupees, whichever is less due from such person and issue an order.”

4. Request

We humbly request you to consider the representation made by AGFTC & ITBA and oblige.

We sincerely hope that the Government under the dynamic leadership of Hon’ble PM Shri Narendra Modi and Hon’ble FM Smt. Nirmala Sitharaman would provide the requisite reliefs to the trade and industry.

Yours sincerely,

For and behalf of

ALL GUJARAT FEDERATION OF TAX CONSULTANTS



CA Ravi Shah
President



CA (Dr.) Vishves Shah
Sr. Vice President



Adv. Bharat L. Sheth
Chairman:
Indirect Tax Committee



Adv. Dhires T. Shah
Chairman:
Representation Committee

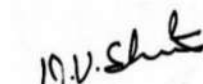
INCOME TAX BAR ASSOCIATION



CA Shridhar Shah
President



CA Kenan Satyawadi
Hon. Secretary



Adv. (Dr.) Dhruven Shah
Chairman:
Representation Committee

CC to

1. Hon’ble Chairman,
Central Board of Indirect Taxes and Customs,
New Delhi. 110001
chmn-cbic@gov.in