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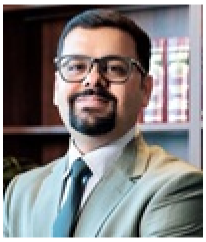
Correction, Not Reconstruction - The Settled Limits on Corrigenda in Tax Adjudication



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1. Introduction

Think you have attended the hearing, filed the reply, argued every point with care, and are now simply waiting for a favourable order on your rather good case? Think again. The tax department has, tucked away in its drawer, a modest little document called a "corrigendum" and with one stroke of it, the entire case can change, and you can find yourself back at ground zero, defending allegations that did not even exist when you last walked out of the hearing room.

The fundamental law is that every show cause notice served upon an assessee is, in the eyes of the law, a complete universe. It must contain within itself every allegation the assessee is called upon to answer, every ground on which liability is sought to be fastened, and every piece of evidence marshalled in support. Tax administrations, however, have periodically been tempted to treat this universe as elastic, using the innocuous device of a "corrigendum" to slip in, at a late and often inconvenient stage, material that was never part of the original case. The Gujarat High Court's recent decision in *Vidres India Ceramics Pvt. Ltd. v. Union of India* (2026-TIOL-784-HC-AHM-CUS) is a timely and forceful reminder that a corrigendum is not a second show cause notice wearing a modest disguise. The ruling is worth examining closely, both for what it tells us about the discipline of customs adjudication under Section 28 of the Customs Act, 1962, and for the lessons it carries for GST practitioners confronting the very same tactic under Sections 73, 74 and 74A of the CGST Act.

2. The Doctrinal Foundation: Correction, Not Reconstruction

It is well settled in tax jurisprudence that a corrigendum, whether appended to a show cause notice or to an adjudication order, is a creature of narrow and confined purpose. It exists to rectify a clerical, arithmetical, or typographical slip apparent on the face of the record, and nothing beyond. The very etymology and juristic character of a corrigendum presupposes an error that is self-evident, inadvertent, and incapable of altering the substance of what was originally alleged or held; it is, in essence, an exercise in correction, not in reconstruction. Where the original notice or order is silent on a ground, an allegation, or a piece of evidence, the authority cannot, under the guise of issuing a corrigendum, smuggle in that which was never articulated in the first instance. To permit such a course would be to confuse the power to correct with the power to supplement, the two jurisdictions that are conceptually and legally distinct, and which the law has never treated as interchangeable.

The reason this distinction is jealously guarded is rooted in the foundational principle that a notice or order must be a self-contained statement of the case the noticee is called upon to meet, so that he may respond to it in its entirety and without ambush. The Hon'ble Supreme Court in *Commissioner Of C. Ex., Bangalore Versus Brindavan Beverages (P) Ltd* [2007 (213) E.L.T. 487 (S.C.)] has authoritatively held that show cause notice is the foundation on which the department has to build up its case. If allegations in SCN are not specific and on the contrary vague, lack details and/or unintelligible, the demand is not sustainable.

A corrigendum that introduces fresh evidence, a new ground of demand, or an additional basis for liability is, in substance, not a corrigendum at all but a fresh cause of action masquerading as a correction, and one issued, invariably, without affording the noticee the procedural safeguards that would attend a proper notice, including the opportunity to show cause against the newly introduced material. Such a course strikes at the root of natural justice, for it denies the party the very opportunity that the statutory scheme of show cause and adjudication is designed to guarantee, apart from being in teeth of the above decision.

The test, therefore, for the validity of any corrigendum is not whether the authority has labelled it as such, but whether, tested on substance, it merely cures a formal or inadvertent defect or whether it travels beyond the four corners of the original notice or order to rope in new evidence, new grounds, or an enlarged case. Looking at things from another angle, it can be argued that the officer issuing the show cause notice or order, once such notice or order is issued, becomes ***functus officio*** in respect of the allegations, grounds, and evidence contained therein as his jurisdiction is spent and exhausted the moment the notice or order leaves his hands. He cannot thereafter reopen the very foundation of the case and shift the goalposts at a belated stage.

3. The Judicial Test in Practice: Vidres India Ceramics

The above proposition finds emphatic vindication in ***Vidres India Ceramics*** wherein a Corrigendum issued at a distinctly belated stage i.e., after the personal hearing stood concluded and the matter posted for final orders was struck down in its entirety.

Brief Facts

On 10.04.2014, the DRI authorities issued a SCN to the petitioner company proposing to reclassify the goods it had imported over the years as "Printing Ink" rather than "Pigments", so as to attract customs duty at a higher rate, relying on test reports. The petitioner filed its reply and attended the final personal hearing post which the adjudicating authority reserved the matter for final orders. Subsequently, after a month of this hearing the petitioner was served a Corrigendum introducing an entirely new paragraph 5.1 into the show cause notice, alleging for the first time that the goods imported by the petitioner and those imported by an unrelated entity were one and the same.

Rival Contentions

For the petitioner, it was argued that once the adjudication proceedings stood concluded and the matter posted only for final orders, the Corrigendum could not be looked into at all. Reliance was placed on the scheme of Section 28 of the Customs Act, 1962, in particular sub-sections (4), (8), and (9), to contend that no provision of the Act or the Regulations framed thereunder permitted the issuance of a corrigendum after the adjudication process itself had come to a close.

The Department, resisting the petition, invoked sub-section (7A) of Section 28 inserted by the Finance Act, 2018 and the Customs (Supplementary Notice) Regulations, 2019, particularly Regulation 4(d), which permits a supplementary notice where additional evidence having a significant bearing on the outcome comes to light.

Findings of the High Court

The Hon'ble High Court rejected both limbs of the Department's defence and quashed the Corrigendum in its entirety, resting its conclusion on four distinct strands of reasoning.

Adjudication Had Already Concluded

The Court's starting point was purely factual, and on this the record left no room for dispute: the petitioner's averment that the final hearing had concluded on 11.07.2016, with the adjudicating authority reserving the matter for final orders. The adjudication of the show cause notice was, in the Court's own reckoning, complete on that date. The Corrigendum came more than a month later which was well after the adjudicatory process had run its course. On the petitioner's own submission, accepted by the Court, a corrigendum could only rectify an error in the nature of typing or printing; it could not be pressed into service to introduce new evidence and fresh allegations at a stage when the matter stood reserved for orders.

The Reservation Clause Could Not Rescue the Corrigendum

The Department had sought shelter in paragraph 19 of the original show cause notice, which reserved its right to "amend, modify or supplement" the notice on the basis of further evidence. The Court found this reliance misplaced, holding that the clause was, by its own terms, confined to material introduced "prior to the adjudication of the case" and adjudication, in ordinary legal parlance, is the process that culminates in a decision declaring the rights and liabilities of the parties. Since the adjudicatory process in this matter had already drawn to a close on 11.07.2016, with only the final order remaining to be passed, any supplementation contemplated by paragraph 19 ought to have preceded that stage.

Section 28(7A) and the 2019 Regulations Held Inapplicable

The Department's more ambitious argument that sub-section (7A) of Section 28, together with Regulation 4(d) independently empowered it to issue a supplementary notice on fresh evidence fared no better. The Court held that these provisions could not be pressed into aid to validate what was, in substance, a Corrigendum dressed up as a supplementary notice. A document that introduces fresh allegations and evidence under the label of a Corrigendum does not, merely by invoking a statutory provision after the fact, transform into the supplementary notice contemplated by the 2019 Regulations; the two are creatures of distinct procedural pedigree, and one cannot borrow the legitimacy of the other.

The Corrigendum Also Fell Foul of the Limitation Under Section 28(9)

Finally, the Court found an independent and equally fatal infirmity in the timeline itself. Sub-section (9) of Section 28, as it stood at the relevant time, required the Proper Officer to determine the duty or interest within one year of the notice, subject to the qualification "where it is possible to do so". Nothing on record explained why the final order could not have been passed within that window or why the Department allowed nearly two years to elapse before issuing the Corrigendum. In the absence of any explanation for this delay, the Court held that the Corrigendum was liable to be ignored on this ground as well.

4. Applicability to the GST Regime

Though rendered on the customs statute, the ratio travels with equal, if not greater, force into the GST regime. Sections 73, 74 and 74A of the CGST Act contain no provision express or implied analogous to Section 28(7A) of the Customs Act permitting a "supplementary" notice. A corrigendum issued to a GST show cause notice or to an order-in-original, therefore, stands on an even weaker statutory footing than the one the High Court found impermissible on the facts before it. Where the proper officer under GST seeks, after the noticee has filed a reply or after a personal hearing has concluded, to introduce a fresh allegation, a new computation, or additional material whether by way of a corrigendum, an addendum, or an unlabelled "clarification" the principle that the officer stands ***functus officio*** the moment notice is issued or adjudication concludes applies with full rigour, and any such belated introduction is liable to be struck down as void and unenforceable. GST practitioners defending such notices would do well to test every corrigendum against a single question: does it correct an error on the face of the record, or does it rewrite the case the assessee was originally called upon to meet? If it is the latter, it cannot survive judicial scrutiny.

5. Conclusion

The power to correct is not the power to reconsider, and a corrigendum that forgets this distinction ceases to be a corrigendum at all. ***Vidres India Ceramics*** restores an old and salutary discipline to adjudicatory practice: that the case an assessee must answer stands fixed the moment the notice is issued. For an assessee, the guarantee is a simple one that he will not be made to answer a moving target. For the administration, the lesson is equally simple that rigour in investigation must precede the notice, not follow it in through the back door of a corrigendum.

A closing word of practical wisdom for fellow tax professionals: the next time you attend a hearing after filing a reply, perhaps hold off on billing the client just yet; a corrigendum might still be on its way.

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