

## ~~~~~ **Interpreting Taxing Statutes # 62 - Overriding provision (Non-obstante clause)**

**Where one provision is inconsistent with another provision in the same Act or some other Act, then to make clear that which provision is to prevail an explicit reference using the formula ‘notwithstanding’ is made.**

### SYNOPSIS

Notwithstanding means ‘despite’. The clause beginning with ‘notwithstanding’ is called as non obstante clause. Non obstante clause is superordinating or overriding one and prevails over the subjected provisions.

Scope of superordination may be defined by the words following ‘notwithstanding’ such as:

‘Notwithstanding **anything contained in** section 12 or section 13, the time of supply, where there is a change in the rate of tax in respect of goods or services or both, shall be determined in the following manner ...’<sup>1</sup> (Here CGST Sec 14 overrides the provisions contained in Sec 12 and 13. So, in case of change of rate of tax the manner for determination of time of supply shall be Sec 14 despite the manner specified in Sec 12 and 13.)

“Notwithstanding **anything to the contrary contained in any law** for the time being in force, save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, any amount payable by a taxable person or any other person on account of tax, interest or penalty which he is liable to pay to the Government shall be a first charge on the property of such taxable person or such person.”<sup>2</sup>

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<sup>1</sup> CGST Sec 14

<sup>2</sup> CGST Sec 82

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A wider non obstante such as ‘Notwithstanding anything to the contrary contained in any law,...’ is used sparingly for it may have nasty side effects such as:

- i. Wider application than intended,
- ii. Inconsistencies between two similar non obstante.