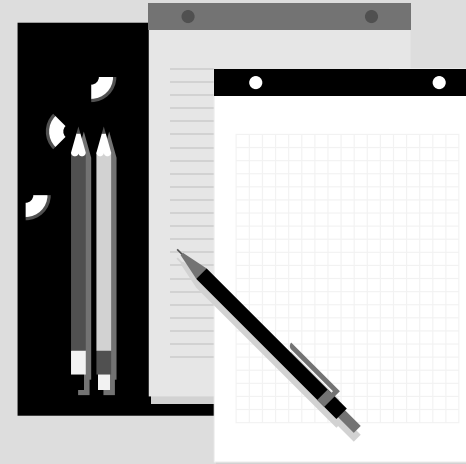
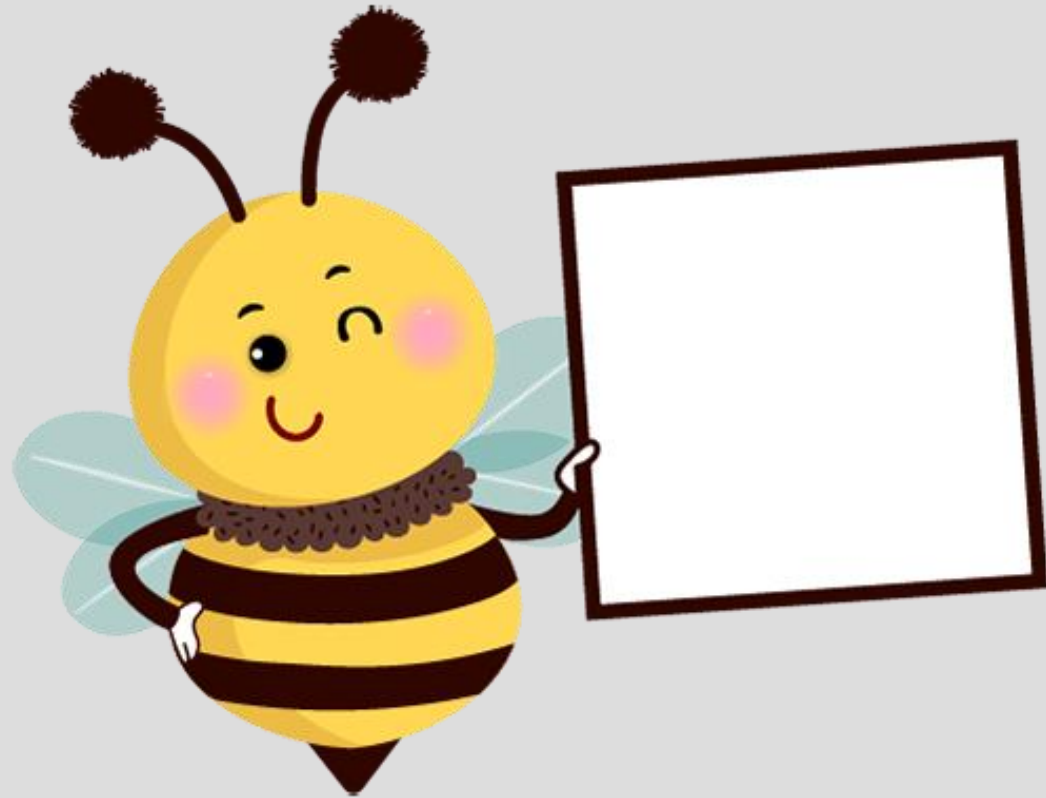


Practically How to handle GST Show Cause Notice & Draft Reply

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National Litigation Policy

Pending cases
are very high

SC – 70k+

HC – 40L+

Dist. &
Subordinate
Court – 2.75Cr+

For Information purpose not to be considered as
Professional Advice from us.

National Litigation Policy

Govt. biggest contributor

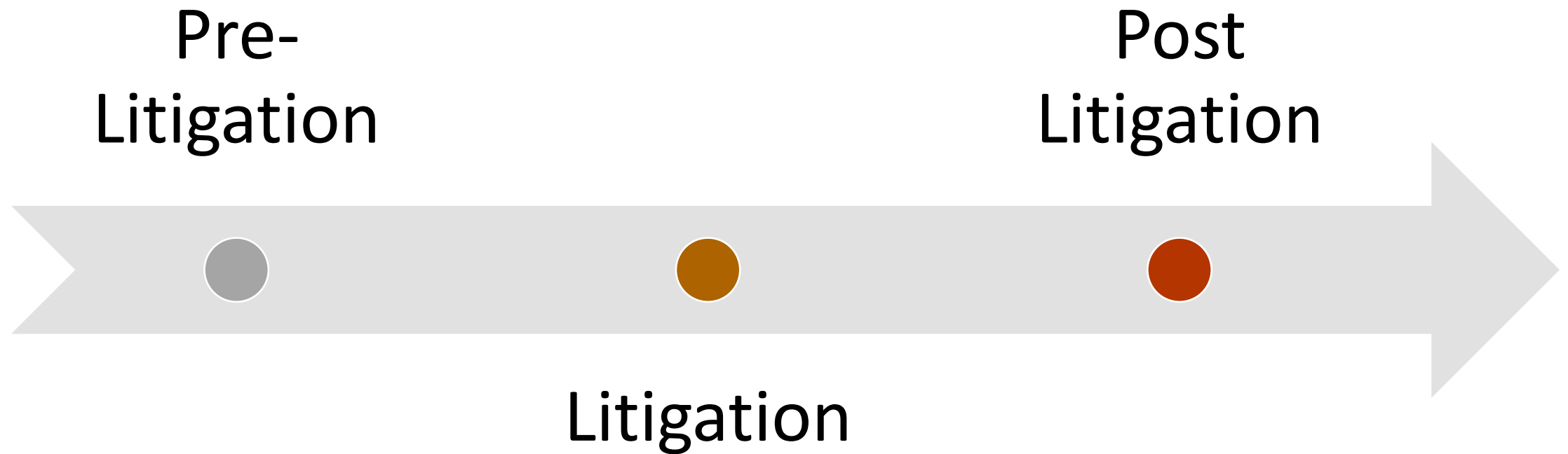
46%+ cases are linked to Govt.

Revised NLP??

State Litigation Policies

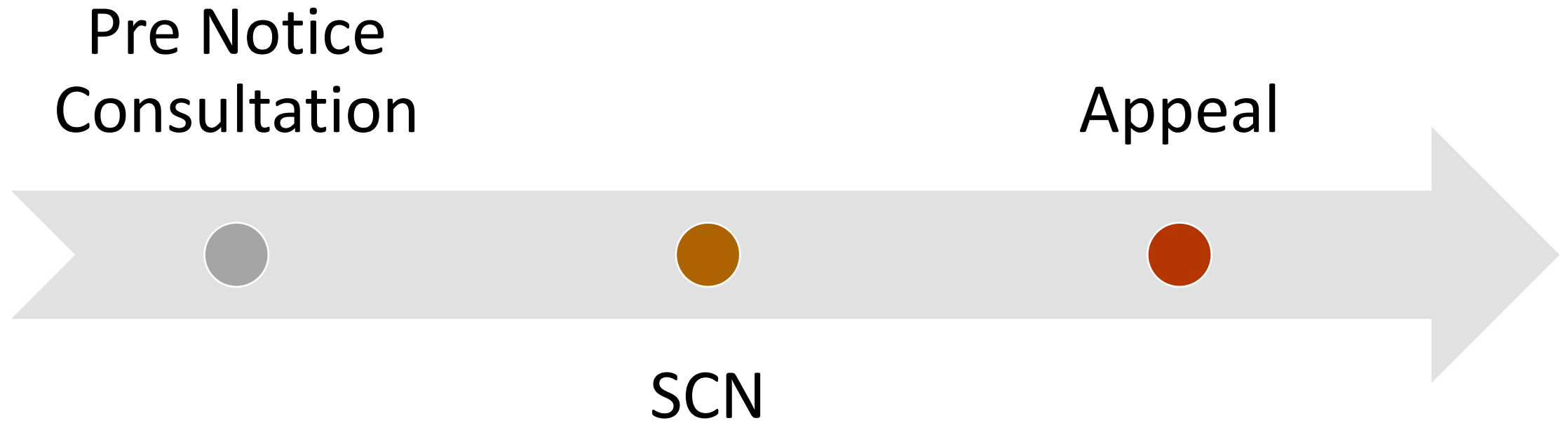
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National Litigation Policy – Stages of Litigation



Emphasis on exploring alternative means of dispute resolution

Stages of Litigation - IDT



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Best Practices of CBIC as per NLP

- Threshold Limit Defined for Filing of Appeals (exception a challenge made on the constitutional validity of any legislative provision or against any circular/notification of the Department)
- Pre SCN (Show Cause Notice) Consultation
- Authority of Advanced Ruling: Anyone an approach the authority for seeking ruling in their dispute/cases. Such rulings are applicable to concerned party and commissioner of appeal.
- A limit of 70 cases has to be decided by the Department for disposal by the commissioner of appeal per month.

Circular No. 1079/03/2021-CX dated November 11, 2021

- Pre-Show Cause Notice Consultation not Mandatory for Recovery of Duties
 - short levied or
 - short paid or
 - erroneously refunded,
- by reason of
 - fraud or
 - collusion or
 - wilful mis-statement or
 - suppression of facts or
 - contravention of any of the provision
- clarifies CBIC

Defense - Validity of SCN issued under sec 73/74

- Pre-SCN notice should be issued before issuance of SCN
- SCN Should be in proper format
- SCN Should not be vague and incomplete
- SCN Should be issued within the specified time limit
- Justifiable Reason to invoke sec-74 – Extended period
- SCN Should specify the grounds, reasons and amount in default

Defense - Validity of SCN issued under sec 73/74

- Reasonable and sufficient opportunity to furnish submissions
- SCN with pre – determined notion –should not give conclusion
- SCN Should be issued by the competent officer, who should not lack jurisdiction
- Reopening of assessment
- Whether Rule 142(1)(a) is ultra – virus
- Issue of SCN when other proceedings are pending – NO defence
- Writ Petition against the SCN

Pre-SCN notice should be issued before issuance of SCN

- Purpose of pre-consultation or Pre-SCN Notice is to reduce unnecessary litigation, not only at the level of the Adjudicating Authority, but also with the Higher Courts. Even if it is not mandatory, yet is obligatory for the proper officer to allow pre-consultation to the taxpayer, and if the same has not been allowed, it would be a good ground to contest the validity of the SCN. Rule 142(1A), the proper officer may, before service of notice to the Purpose person chargeable with tax, interest and penalty under sec 73(1)/74(1), As per communicate the details of any tax, interest and penalty as ascertained by the sand officer in Part A of Form GST DRC-01A. The word "shall" has been substituted with "may" vide N. No. 79/2020-CT, dated 15 Oct. 2020.

Jagdish vs Union of India

Calcutta High Court

(3) TMI 351 Dated 23-02-2022

The Calcutta High Court held that though the pre-show-cause notice consultation to the Noticee is not mandatory but it does not wholly exclude issuance of notice of pre-show-cause notice consultation, which means at least it is directory and discretionary, which shall be exercised by the authority in a judicious and reasonable manner, and not in an arbitrary manner or without giving any reason for not exercising his power of discretion.

Mal Munna Lal vs. State of UP

Allahabad High Court

(3) TMI 795 Dated 23-02-2022

- "Prima facie, perusal of Form GST DRC-01A under rule 142(LA) of the Rules indicates that it is a pre-show cause notice intimation with reference to Section 73(1)/(5) or Section 74(1)/(5) to an assessee so that either he deposit the amount of tax and interest or he may disagree to the ascertainment resulting in show cause notice under Section 73(1) or Section 74(1), as the case may be. Likewise, such an intimation in Form GST DRC-01A provides an opportunity to the dealer to resolve the dispute by depositing or in case of disagreement to face the adjudication proceedings under the Act. Thus, prima facie, it appears that Section 74(1) read with Rule 142(1A) intends to afford an opportunity to the dealer/ assessee on a pre-show cause notice stage which shall ultimately benefit both, i.e., the assessee and the department, and shall also reduce litigation. This also indicates to follow the principles of natural justice at a pre-show cause notice stage.

Nanhey Mal Munna Lal vs. State of Gujarat

Gujarat High Court

(4) TMI 823 Dated 02.01.2023

- "There is a vast difference between Rule 142(1)(a) and Rule 142(1A) of the Rules. Therefore, from now onwards, if the department deems fit to issue any intimation of tax ascertained as being payable under sub-section (5) of Section 74 in accordance with the Rule 142(1A) of the Rules, it shall issue notice in the Form GST DRC-01A. In such a notice of intimation, the proper officer shall not threaten the dealer that if he would fail to comply with the intimation, the department shall proceed to recover the tax. The proper officer should inform the dealer that if he would pay the tax, well and good, otherwise the department shall proceed to issue a show cause notice under sub-section (1) of Section 74 in accordance with Rule 142(1)(a) of the Rules, 2017 in Form GST DRC-01 and carry out regular assessment proceedings."

Skyline Automation Industries vs. State of U.P.

Allahabad High Court

(1) TMI 379 Dated 02.01.2023

- Initiation of proceedings without issuance of GST DRC-01A - Validity of subsequent proceedings:
- In the case of Skyline Automation Industries vs. State of U.P.2, the High Court observed that for initiation of proceedings against the petitioner, a notice as provided for under Rule 142(1A) in Part A of GST DRC-01A was not issued. It was held that any subsequent reminder will not cure inherent defect in proceedings initiated against the petitioner.

Penalty under Demand & Recovery

	Show cause notice	Order	
Section 73 Bonafied	Within 2 year & 9 months of services from due date annual return filing.	Within 3 years from due date of annual GST return	Section 73 Bonafied
Section 74 Malafied	Within 4 years & 6 months from the due date of annual GST Return	Within 5 years from due date of annual GST return	Section 74 Malafied
Any amount of tax collected but not paid	No Time Limit	Within 1 year from date of issue of notice	Any amount of tax collected but not paid

Time limit of show cause notice & order

S.No.	Action by Tax Payer	Section 73 Bonafied Case	Section 74 Malafied case
1	Tax & interest paid before show cause notice	No penalty	15% of tax
2	Tax & interest within 30 days of show cause notice	No penalty	25% of tax
3	Tax & interest paid within 30 days of order	Higher of 10% of tax "or" Rs. 10,000	50% of tax
4	Tax & interest paid after 30 days of order	Higher of 10% of tax "or" Rs. 10,000	100%

General Points in GST Notices

ITC mismatch (GSTR-2A vs GSTR-3B) | Cir. 183/2022

GSTR-1 vs GSTR-3B Difference | Genuine reasons

Difference with GSTR-9 | GSTR-9 was not mandatory

General Points in GST Notices

Motor Vehicle ITC reversal | Dealer or Supplier

Cement, Steel, Sand, Granite etc ITC reversal | CapEx vs Revenue

ITC from Non-Genuine Dealer | Case Laws

Checklist of Notice

Notictee	Notice (allegations)		
Demand Raised	Fact	Opinion	Evidence
Issue A	YES\NO	NO/YES	YES/NO
Issue B	YES\NO	NO/YES	YES/NO
Interest	YES\NO	NO/YES	YES/NO
Penalty 1	YES\NO	NO/YES	YES/NO
Penalty 2	YES\NO	NO/YES	YES/NO

Checklist of notice

Notice	Notice (Allegations)		
Demand raised	Accepted	Rejected	
		On facts	On law
Issue A	YES/NO	YES/NO	YES/NO
Issue B	YES/NO	YES/NO	YES/NO
Interest	YES/NO	YES/NO	YES/NO
Penalty 1	YES/NO	YES/NO	YES/NO
Penalty 2	YES/NO	YES/NO	YES/NO

Action taken on 101st report of the committee on Demands for grants (2020-21) - Rajya Sabha (11.09.2020)

The Committee observes that there is a 260% approx. increase in payment of fees to the legal counsels/advisers by the Ministry in the last 11 years and around 4,32,000 cases relating to government are pending.

Further, the National Litigation Policy is yet to be finalised by the Government and there is no concrete roadmap from the Department to check pendency of cases and increasing expenditure.

The National Litigation Policy was drafted in 2010 and the Department during the Demand for Grants (2018-19) had submitted that it is under active consideration of the Government.

The Committee, accordingly recommends the Department to expedite the formulation of National Litigation Policy.

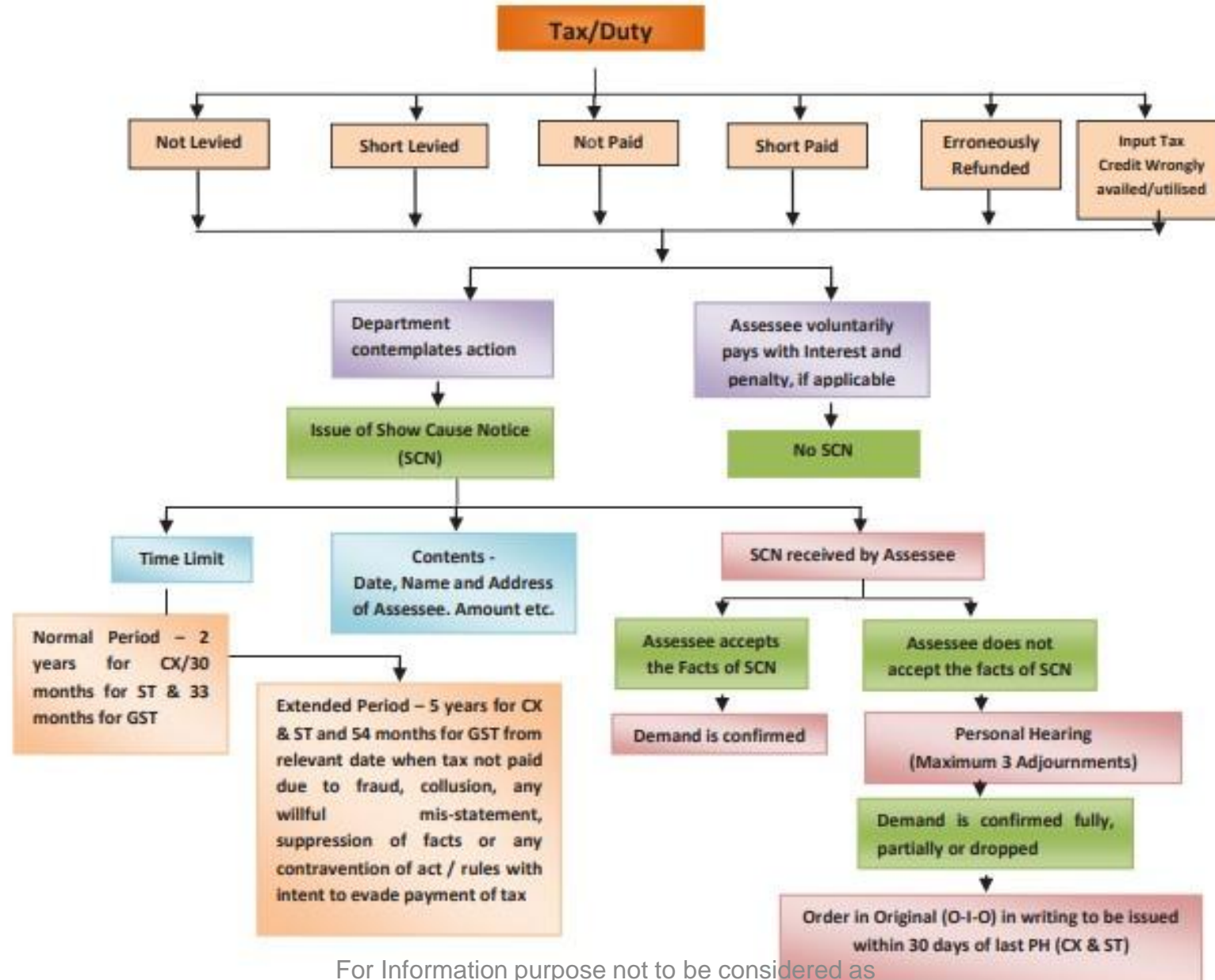
Few States Litigation Policy

Bihar State Litigation Policy'2011

Punjab State Litigation Policy, 2011

Karnataka State Dispute Resolution Policy, 2021

Puducherry Litigation Policy, 2021



For Information purpose not to be considered as Professional Advice from us.

Chart 5.2 Organizational Structure for SCN & Adjudication Process



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Chart 5.3 Monetary limit for Adjudication of SCNs

Commissioner	•Cases exceeding rupees two crore
Additional/ Joint Commissioner	•Above fifty lakh but not exceeding rupees two crore
Deputy/ Assistant Commissioner	•Above ten lakh but not exceeding rupees fifty lakh
Superintendent	•Not exceeding rupees ten lakh

Chart 5.4 – Age-wise pendency of SCNs



Table No.5.4: Sample of files selected for detailed audit and deviations noticed

(₹ In crore)

Sl. No.	Area	Period	Audit Sample		No. of deficiencies noticed	Deficiencies as % of sample
			No.	Amount		
1.	SCN pending for adjudication	As on 31 March 2019	4,457	29,672.96	1,407	31.57
2.	SCNs adjudicated	FY17 to FY19	3,335	17,208.40	968	29.03
3.	SCNs pending in Call Books	As on 31 March 2019	2,191	13,308.02	1,006	45.92
4.	Remand back cases	FY17 to FY19	622	3,358.21	65	10.45
5.	Waiver of SCNs	FY17 to FY19	1,020	1,155.69	32	3.14
6.	Draft SCNs (DSCNs) pending for issuance	As on 31 March 2019	203	1,282.80	2	0.99
7.	CERA audit objections	FY17 to FY19	373	912.15	3	0.80
8.	SCNs & DSCNs transferred due to GST restructuring	July 2017 to March 2019	500	523.26	5	1.00

Table No. 5.5: Deficiencies noticed in SCNs pending for adjudication

Sl. No.	Type of Deficiency	No. of Deficiencies	Money value (in ₹ crore)	Deficiencies in % of sample (No.)
1.	Incorrect computation of demand in SCN resulting in Short demand raised	161	36.63	3.61
2.	Late issuance of SCNs which may result in demand getting time-barred in adjudication	71	30.17	1.59
3.	Delay in Adjudication	373	4,310.17	8.37
4.	Non-intimation regarding settlement commission	768	7,658.32	17.23
5.	Incorrect invocation of extended period	2	3.19	0.04
6.	Abnormal delay in Preparation of SCNs	23	94	0.52
7.	Short raising of demand due to delay in finalization of investigation	6	30.05	0.13
8.	Incorrect issue of SCN	3		0.07
	Total Deficiencies noticed	1,407	12,162.53	31.57
	Total Cases examined by Audit	4,457	29,672.96	
	Total Cases pending for adjudication in selected units	11,723		

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Table No.5.7: Breakup of SCNs pending in Call Book

(₹ In crore)

Category	No. of cases (CX)	Amount	No. of cases (ST)	Amount
Cases in which department has gone in appeal to the appropriate authority	20,687	64,530.92	14,516	54,677.94
Cases where injunction has been issued by SC/HC/Tribunal etc.	1,289	5,492.68	1,555	6,513.14
Cases where CERA Audit objections are contested	704	2,263.04	401	938.59
Cases where Board has specifically ordered the case to be kept in Call Book/Others	288	2,081.04	546	3,348.92
Cases Where parties had filed applications in Settlement Commission, which are pending	43	68.49	84	411.26
TOTAL	23,011	74,436.17	17,102	65,889.84

GST was introduced to reduced Litigations!!

Vague and poorly drafted tax legislations

Arbitrary interpretation by the Revenue Officers

Tax avoidance (if not, tax evasion) tendency of the taxpayer - 2A/2B

Pressure of 'Revenue targets'

Frequent / Retrospective amendments

Confusing clarifications &/or judicial pronouncements

Why disputes are rising in GST?

Poor drafted Law

Excessive delegation

Wide scope for
arbitrary
interpretation

State GST authorities'
unfamiliarity with the
finer nuances of
litigation

Wide scale 'Tax
Frauds' leading to
stringent action

Ill-conceived design
and structure

“Tax Litigation Process” under GST

Assessment

Show Cause
Notice

Adjudication
& Revision

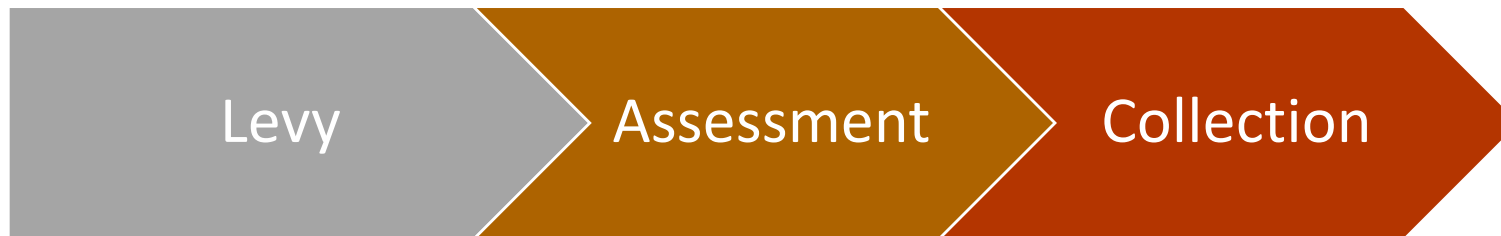
Prosecution

Appeals

Compounding
of offences

Stages of Enforcing taxation statutes

- A Little difference in facts or additional facts may make a lot of difference in the precedential value of the decision. (2003 2 SCC 111)



- Collection of tax without assessment and assessment of tax without levy are illegal.

Components of Tax

Taxable Event
attracting the Levy

Clear Indication on
Whom Levy
imposed & who is
obliged to pay

Rate of Tax

Measure or Value
to which rate will
be applied

Assessment Issues

Return not filed

Return is Incorrect or Incomplete

Detail Scrutiny is required

Fundamental Right vs Procedural Benefits

- ITC is a Fundamental Right and any deviation should be strictly interpreted.
- Issues with ITC are:
 - Inverted Duty Structure – VKC Footwear
 - GSTR-2A issue – Bharti Airtel Ltd.

VKC Footwear - SC

- The Observations in Para 104 to 111 are few anomalies noted by the Honourable Supreme Court and has observed that GST Council shall consider them in accordance with the law.
- The formula creates a distinction between suppliers having a higher component of input goods than those having a higher component of input services, and must be read down accordingly, must be rejected. The formula is not perfect. matter would be considered by the GST Council and anomalies as pointed out by the Supreme Court would be removed.

Bharti Airtel Ltd - SC

- The law permits rectification of errors and omissions only at the initial stages of Forms GSTR1 and GSTR3, but in the specified manner.
- Airtel had contended that, due to non-operability of Form GSTR2A at the relevant time (July to September 2017), it had been denied of access to the Credit Ledger.
- SC held that...despite an express mechanism provided by Section 39(9) read with Rule 61, it was not open to the HC to proceed on the assumption that the only remedy that can enable the assessee to enjoy the benefit of the seamless utilisation of the input tax credit was by way of rectification of its return submitted in Form GSTR3B for the relevant period in which the error had occurred.

Varun Beverages Ltd. – P&H HC

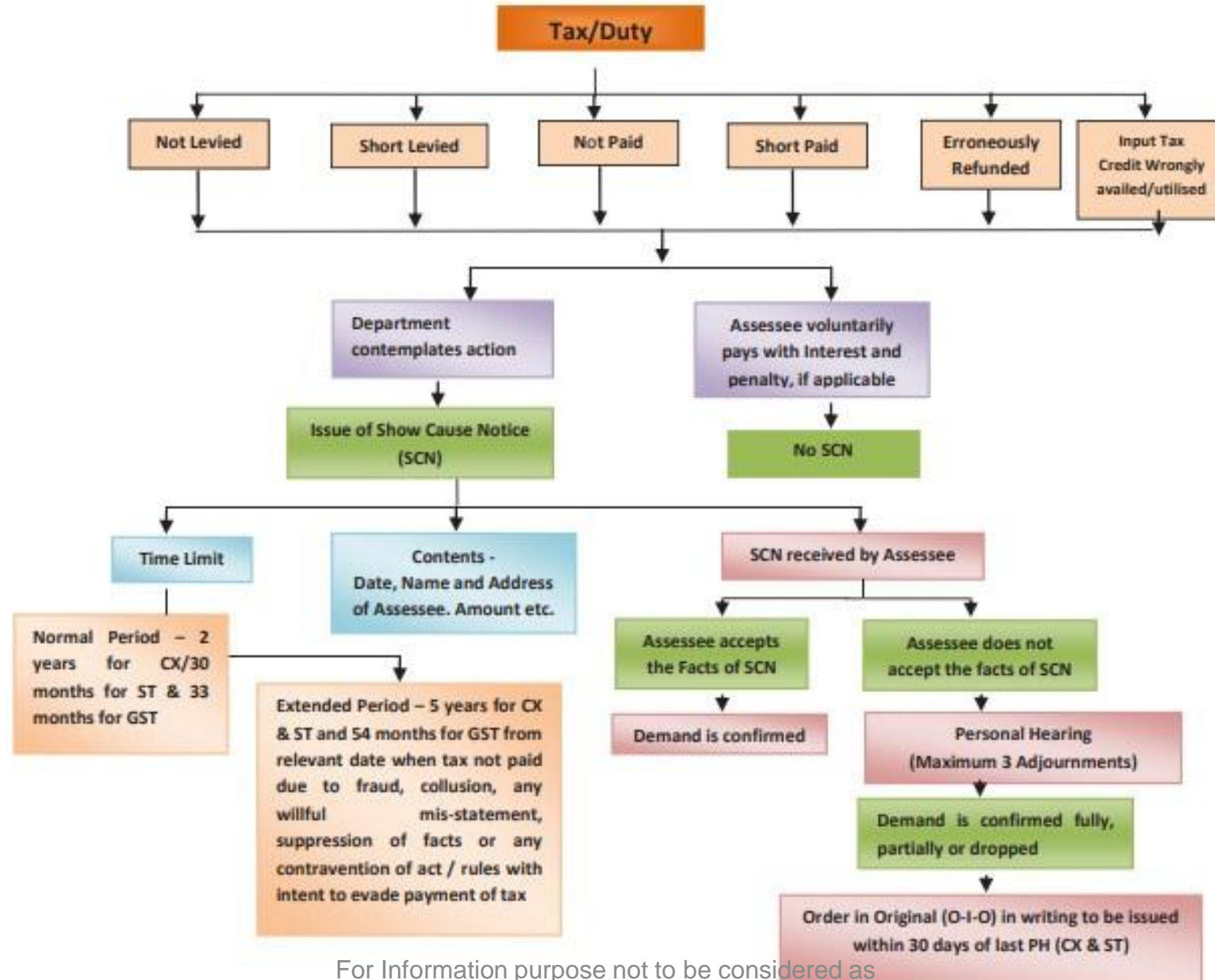
- Promissory Estoppel on not allowing Credit on Inputs relating to Goods transferred outside state as Stock Transfer
- Framework suggested as per White Paper not acceptable
- 4-May2018, 27th GST Council Meeting

Para (iv) of Press Release of 27th GST Council Meeting, dated 4th May'2018

- **No automatic reversal of credit:** There shall not be any automatic reversal of input tax credit from buyer on non-payment of tax by the seller. In case of default in payment of tax by the seller, recovery shall be made from the seller however reversal of credit from buyer shall also be an option available with the revenue authorities to address exceptional situations like missing dealer, closure of business by supplier or supplier not having adequate assets etc.

GSTR-3B is a Return – AAP & Co.

- Initial Glitches in filing Returns.
- Therefore, in order to ease the burden of the taxpayer for some time, it was decided in the 18th GST Council meeting to allow filing of a shorter return in Form GSTR-3B for initial period.
- It was not introduced as a return in lieu of return required to be filed in Form GSTR-3.
- The return in Form GSTR-3B is only a temporary stop gap arrangement till due date of filing the return in Form GSTR-3 is notified. – HC
- SC stayed it in Dec'19 and CBIC brought retrospective amendments



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Chart 5.2 Organizational Structure for SCN & Adjudication Process



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Chart 5.3

Monetary limit for Adjudication of SCNs

Commissioner	•Cases exceeding rupees two crore
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Deputy/ Assistant Commissioner	•Above ten lakh but not exceeding rupees fifty lakh
Superintendent	•Not exceeding rupees ten lakh

Chart 5.4 – Age-wise pendency of SCNs



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(₹ In crore)

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	Total Cases examined by Audit	4,457	29,672.96	
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Cases Where parties had filed applications in Settlement Commission, which are pending	43	68.49	84	411.26
TOTAL	23,011	74,436.17	17,102	65,889.84



Show Cause Notice

Point to remember while addressing them

Reasons for issuance of SCN's

Shortfall Detections by Tax Authorities

- Procedural Lapse
- Contravention of law is deducted

Audit Objection

- Now Notice is drafted by Audit Team
- Executed by Executive Officer
- In case of Multiple Officer – Highest or Principal

Preventive / Anti-Evasion

- Here Litigation arises as Assessee doesn't agree to be evader
- Normally Matter is closed with Tax, Interest & Penalty

CAG Para

- Even if Executive Officer doesn't agree with demand, he will raise SCN
- Try to convince CAG that demand is not justified

Cross Empowerment

- CBIC Letter DOF No. CBEC/20/43/01/2017-GST(FT) dated 5-Oct-2018
- Both Central & State tax administrations shall have power to take intelligence based enforcement action in respect of entire value chain.
- Thus for intelligence based inputs both are cross empowered.

CBIC have prescribed the monetary limits within for issuance of Show Cause Notices as per Circular No. 31/05/2018-GST, dated 09-Feb-2018 which is as follows

Particulars	Superintendent	AC/DC	ADC/JC
Amount of CGST (including Cess) involved in a case	Demand \leq Rs. 10 Lakhs	Rs. 10 Lakhs $<$ Demand \leq Rs. 1 Crore	Demand $>$ Rs. 1 Crore
Amount of ICGST (including Cess) involved in a case	Demand \leq Rs. 20 Lakhs	Rs. 20 Lakhs $<$ Demand \leq Rs. 2 Crore	Demand $>$ Rs. 2 Crore
Amount of ICGST and CGST (including Cess) involved in a case	Demand \leq Rs. 20 Lakhs	Rs. 20 Lakhs $<$ Demand \leq Rs. 2 Crore	Demand $>$ Rs. 2 Crore

Sr. No.	Particulars	2017-18	2018-19	2019-20	2020-21	2021-22
1	Due Date for GST Annual Return	31.12.2018	31.12.2019	31.12.2020	31.12.2021	31.12.2022
2	Extended Due Date	05.02.2020	31.12.2020	31.03.2021	28.02.2022	-
Times lines for Bonafide / Genuine Cases						
3	Last date to issue Notice under Section 73(2) (33 Months)	05.11.2022 30.06.2023	30.09.2023	31.12.2023	28.11.2024	30.09.2025
4	Last date to issue Order under Section 73(10) (36 Months)	05.02.2023 30.09.2023 N/N 13/2022 5 th July'2022	31.12.2023	31.03.2024	28.02.2025	31.12.2025
Timelines for Malafide / Fraud Cases						
5	Last date to issue Notice under Section 74(2) (54 Months)	05.08.2024	30.06.2025	30.09.2025	28.08.2026	30.06.2027
6	Last date to issue Order under Section 74(10) (60 Months)	05.02.2025	31.12.2025	31.03.2026	28.02.2027	31.12.2027

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4	Last date to issue Order under Section 73(10) (36 Months)	05.02.2023 30.09.2023 N/N 13/2022 5 th July'2022 31.12.2023 N/N 09/2023 31 st March'2023	31.12.2023 31.03.2024 N/N 09/2023 31 st March'2023 30.04.2024 N/N 56/2023 28 th Dec'2023	31.03.2024 30.06.2024 N/N 09/2023 31 st March'2023 31.08.2024 N/N 56/2023 28 th Dec'2023	28.02.2025	31.12.2025
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Sec 75(4)- Opportunity of being heard

An opportunity of being heard shall be granted

- where a request is received in writing from the person chargeable with tax or penalty ,or
- where any adverse decision is contemplated against such person

Sec 75(6) - Speaking Order

- The proper officer, in this order, shall set out the relevant facts and the basis of his decisions.

Sec 75(13)- One penalty for one default

- Where any penalty is imposed under section 73 or section 74, no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act.

Sec 75(7)- Notice and order should be on same lines

- The amount of tax , interest and penalty demanded in the order shall not be in excess of the amount specified in the notice and no demand shall be confirmed on the grounds other than grounds specified in the notice.

No Penalty is imposable in case of Retrospective amendment

- In one of its historic judgments rendered in the case of **J.K. Spinning and Weaving Mills Ltd. vs. UOI – 1987 (32) ELT 234 (SC)**, the Supreme Court held that it would be against all principles of legal jurisprudence to impose a penalty on a person or to confiscate his goods for an act or omission which was lawful at the time when such act was performed or omission made, but subsequently made unlawful by virtue of any provision of law

Penalty is not imposable when issue relates to the statutory interpretation

- In the case of **Uniflex Cables Ltd. vs. CCE – 2011 (271) ELT 161 (SC)**, the Supreme Court dealt with the issue with regard to the imposition of penalty where the issue involved was of interpretational nature. Taking note of the fact that the Commissioner himself had found that it was only a case of interpretational nature, the Supreme Court quashed the order of the Commissioner imposing the penalty as also the order of the Tribunal so far as it confirmed the imposition of penalty on the Appellant.

DIN

- CBIC vide its **Circular No 128/47/2019-GST** has mandated that in all the communications (except in exceptional circumstances) with the assessee (including on e-mails), Documents Identification No is required to be mentioned.
- DIN can be confirmed by the assessee online at **Cbic.gov.in**
- All the communication with the assessee which does not contain DIN shall be treated Invalid and shall be considered as never been issued.

Monetary limits for SCN – 31/2018 (Circular)

Designation of Officer	Monetary limit of the amount of CGST (including cess) for issuance of show cause notices & orders u/s 73 & 74 of CGST	Monetary limit of the amount of IGST (including cess) for issuance of show cause notices & orders u/s 73 & 74 of CGST Act made applicable to IGST	Monetary limit of the amount of CGST and IGST (including cess) for issuance of show cause notices & orders u/s 73 & 74 of CGST Act made applicable to IGST
Superintendent	Up to Rs. 10 lakhs	Up to Rs. 20 lakhs	Up to Rs. 20 lakhs
Deputy or Assistant Commissioner	Above Rs. 10 lakhs up to Rs. 1 crore	Above Rs. 20 lakhs up to Rs. 2 crore	Above Rs. 20 lakhs up to Rs. 2 crore
Additional or Joint Commissioner	Above Rs. 1 Crore	Above Rs. 2 Crore	Above Rs. 2 Crore

Notice and order should be on same lines(Order beyond SCN)

- The adjudicating authority has to pass his order within the parameter of the allegations levelled in the show cause notice
- In the case of Commissioner of customs, **Mumbai v. Toyo Engineering India Ltd. [(2006) 7 SCC 592]** , the apex court while delivering judgement under para 16 held that, the department cannot travel beyond the scope of the show cause notice

Power of Limitation

- Order cannot be issued beyond the time limit mentioned U/s 73(10) and 74(10)
- In view of section 74(2), SCN is required to be issued at least **6 months prior** to the time limit of issuing order which is 5 years from “DUE DATE” for furnishing annual return of relevant F.Y. or date of erroneous refund {i.e. within 4 years 6 months from due date of annual return}
- Annual return F.Y. 17-18: 31.01.2020, order can be passed upto 30.01.2025. Order passed after this date is invalid.
- SCN issued after 31.07.2024 will be time- barred

CROSS EMPOWERMENT

- **Show cause notice**

Authority empowered to issue show cause notice

- ❖ 'Proper officer'

- ❖ Sec- 2(91)

- ❖ Circular No. 3/3/2017 –GST dt. 05-07-2017

Section – 2(91) , Central Goods And Services Tax Act, 2017

- "**proper officer**" in relation to any function to be performed under this Act, means the Commissioner or the officer of the central tax who is assigned that function by the Commissioner in the Board;

Section - 6, Central Goods And Services Tax Act, 2017

(1) Without prejudice to the provisions of this Act, the officers appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act are authorised to be the proper officers for the purposes of this Act, subject to such conditions as the Government shall, on the recommendations of the Council, by notification³³, specify.

(2) Subject to the conditions specified in the notification issued under sub-section (1),—

(a) where any proper officer issues an order under this Act, he shall also issue an order under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as authorised by the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, under intimation to the jurisdictional officer of State tax or Union territory tax;

(b) where a proper officer under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under this Act on the same subject matter.

Cement, Steel, Sand, Granite etc's ITC's Reversal Notice is based on HSN

ITC
ineligible

- Construction of Immovable Property
- Capitalized as Immovable Property

ITC eligible

- Repair & Maintenance + W/o in Profit & Loss
- Foundation of Plant and Machinery

Motor Vehicle's ITC's Reversal Notice is based on HSN

ITC
ineligible

- Personal Car bought and used by Directors or Partners

ITC
eligible

- Goods Transport Vehicle like Truck, Trailer, Dumper etc
- Passenger Transport Vehicle purchased for leasing or renting

Outward taxable supplies (GSTR 1 vs GSTR 3B)

Details to be checked

- Tax liability on outward taxable supplies including zero-rated supply furnished in Form GSTR-3B to be verified with the details furnished in Form GSTR-1

Conclusion by Department

- If details furnished in Form GSTR-1 exceed the details furnished in Form GSTR-3B, it may indicate short payment of tax.

2. Tax liability on account of “Inward supplies (liable to reverse charge)” as declared in Table 3.1(d) of GSTR-3B may be verified with the following:.

- **2(i) ITC availed in Table 4(A)(2) and Table 4(A)(3) of FORM GSTR-3B.**

Availment of ITC in excess of liability of RCM supplies may indicate Short payment of Tax liability of RCM supplies or excess availment of ITC in respect of RCM supplies.

Reverse charge liability with corresponding ITC

Details to be checked

- Tax liability of RCM supplies furnished in Form GSTR-3B to be verified with ITC claimed on RCM supplies in Form GSTR-3B.

Conclusion by Department

- Where concerned ITC availed exceeds the RCM liability discharged, it may indicate either short payment of tax liability on account of RCM supplies or excess availment of ITC in respect of RCM supplies.
- **RCM claimed next month?**

2.(ii) ITC in respect of inward supplies attracting reverse charge as available in **Table 3 And 5** (along with the net effect of amendments thereof in **Table 4 and 6** respectively) of **GSTR-2A**.

- Inward supplies attracting reverse charge from registered person, the details of invoices and Dr/Cr note are communicate in Table 3 and 5 of **GSTR-2A** and amendment of that supplies in their **GSTR-1** the detail of such amendment are communicate in table 4 and 5 respectively.
- Detail of such inward supplies from unregistered persons are not communicate in GSTR-2A. Moreover, detail of ITC on account of Import of services also are not communicate in **GSTR-2A**
- Reverse charge services declared in table 3.1(d) of **GSTR-3B** cannot be less than inward supplies attracting reverse charge of **GSTR-2A**

Reverse charge liability from registered persons (GSTR-3B with GSTR-2A)

Details to be checked

- Tax liability of RCM supplies furnished in Form GSTR-3B to be verified with the details of corresponding invoices and debit note/credit notes communicated in Form GSTR-2A.

Conclusion by Department

- Where details furnished in Form GSTR-3B is **less than** the details auto-populated in Form GSTR-2A, it may indicate short payment of tax liability on account of RCM supplies.
- Time of supply of services: Date of payment; or 60 days - supplier's invoice
- Year End transactions in Next FY

- RCM supplies in table 3.1(d) of GSTR -3B are less than inward supplies attracting reverse charge in GSTR-2A it may indicate short payment of tax on account of RCM supplies.
- It may be noted that the said tables in FORM GSTR-2A contain details of supplies attracting forward as well as reverse charge.

2.(iii) Tax/Cess paid in cash as per column 8 of Table 6.1 of GSTR-3B.

- In respect of inward supplies liable to reverse charge, tax/cess is to be paid in cash.
- tax liability off-set in cash should not be less than the liability arising on account of reverse charge as per table 3.1(d) of FORM GSTR-3B.
- Where the tax liability off-set in cash is less than the liability arising on account of reverse charge, it may indicate short payment of tax.

Reverse charge liability compare with the amount paid in cash

Details to be checked

- Tax paid in cash during the relevant month should not be less than the tax liability reported as supplies liable under RCM.

Conclusion by Department

- Where the tax liability offset in **cash is less than the liability** arising on account of reverse charge, **it may indicate short payment of tax.**

3. ITC availed in respect of “Inward supplies from ISD” in Table 4(A)(4) of GSTR-3B may be verified with Table 7 (along with the net effect of amendments thereof in Table 8) of GSTR2A.

ISD Credit (GSTR 3B vs GSTR 2A)

Details to be checked

- The details of ITC availed on 'Inward supplies from ISD' in Form GSTR-3B is to be verified with the ISD credit received in Form GSTR-2A.

Conclusion by Department

- In normal case of excess Credit pass on recovery from?
 - ISD
 - Recipient of ITC

4. ITC availed in respect of “All other ITC” in Table 4(A) (5) of GSTR-3B may be verified with Table 3 and Table 5 (along with the net effect of amendments thereof in Table 4 and Table 6 respectively) of GSTR-2A.

- It may be noted that the said tables in FORM GSTR-2A contain details of supplies attracting forward as well as reverse charge. Therefore, only the supplies against which there is NO or N in column 14 of table 3, column 16 of Table 4, column 15 of Table 5 and column 18 of Table 6 may be considered.

Other ITC (GSTR 3B vs GSTR 2A)

Details to be checked

- The details of ITC availed in respect of inward supplies under the forward charge in Form GSTR-3B13 would be verified with the details auto-populated in Form GSTR-2A.

Conclusion by Department

- A transaction not appearing in Form GSTR 2A may be because of the reason that the recipient has not procured the goods or services and, hence ITC may not be allowed.

Cases for difference of ITC GSTR-2A vs 3B

1. Supplier has reported B2B supplies as B2C supplies in GSTR-1 and they could not amend it till expiry of time limit. So, these transactions have not appeared in GSTR-2A of actual recipient to whom notices served.
2. Few supplies have reported B2B supplies against GSTIN of some other taxpayer instead of actual recipient.
3. Supplier had missed reporting of B2B transactions in his GSTR-1
4. Supplier had reported B2B transactions taxable under forward charge in Table 4B of his GSTR-1 instead of Table 4A.

Cases for difference of ITC GSTR-2A vs 3B

5. B2B transaction in GSTR-1 mistakenly reported as transaction liable to RCM by the supplier.
6. In some of the case replies are received that the ineligible ITC , which has been pointed out in ASMT-10 was already reversed by taxpayer in return of subsequent period, however the format in GSTR-3B is not so exclusive and no separate column is provided for such reversal hence the amount of ITC reversed for previous period is not eligible from the return form itself.

ITC as per Form 2A

During FY 2017-18 and FY 2018-19, there was no restriction under the law for claiming the ITC the invoices should appear in Form GSTR 2A.

If the ITC conditions are satisfied, then the authorities should not disallow the credit to the recipients merely because the transaction is not appearing in GSTR 2A.

The ITC could be availed based on the tax invoices issued by the supplier.

Press Release, Dated October 18, 2018 can be considered in this matter.

Hon'ble Gujarat High Court in the case of New Nalbandh Traders is also there.

New Nalbandh Traders vs State of Gujarat R/SPECIAL CIVIL APPLICATION NO. 17202 of 2021 Judgement Dated: 23-Feb-2022

- ITC was blocked , under Rule 86A, on the basis of missing trader.
- Taxpayer challenged the same through Writ contending that:
- It received the goods from the said supplier, it also received tax invoices, weighment slips, e-way bills etc. which are the documents prescribed for the purchase under the provisions of the CGST Act, 2017.
- Rule 86A use the words, “Reasons to Believe.” The satisfaction must be reached on the basis of some objective material available before the authority. It cannot be made on the flights of one’s fancies or whims or imagination.

New Nalbandh Traders vs State of Gujarat R/SPECIAL CIVIL APPLICATION NO. 17202 of 2021 Judgement Dated: 23-Feb-2022

- Rule 86A may subject a bona fide assessee to undue hardship **by the blockage of his credit ledger due to the default of his supplier. This may tantamount to** equating the default of the recipient with that of the supplier.
- **ITC needs to be checked with Conditions as prescribed in GST Laws.**

Mahalaxmi Infra Contract Ltd vs State of Jharkhand - Jharkhand High Court

(W.P.(T) No. 2478 of 2021 dated 18-Oct-2022

Jharkhand High Court allows revision of GSTR-1 to pass on Input Tax Credit ITC to the correct recipient

Para 13 (a) of Press Release of 48th GST Council Meeting (17-Dec-2022)

- 13. Issuance of the following circulars in order to remove ambiguity and legal disputes on various issues, thus benefiting taxpayers at large:
 - a. Procedure for verification of input tax credit in cases involving difference in input tax credit availed in FORM GSTR-3B vis a vis that available as per FORM GSTR-2A during FY 2017-18 and 2018-19.

Our view on Para 13 (a) of Press Release of 48th GST Council Meeting (17-Dec-2022)

- Maharashtra State GST has already issued a circular where these differences could be ironed out by declaration from the supplier or a Practicing Chartered Accountant that the tax has been paid to the Government.
- In case this circular would be replicated in some form, it would be a big relief for the taxpayers reeling under similar notices.

Brief about Maharashtra CA Certificate

a) Mismatch of ITC claim of GSTR-3B and GSTR-2A the proper officer may in case **where difference in ITC claim (CGST+SGST or IGST) per supplier is 2.5 lakh or more**, ask the claimant to obtain certification from Chartered accountant of the said supplier certifying the output transaction and tax paid thereon so as to comply with the provision of section 16 and where difference in ITC is 2.5 lakh or less ,ask the claimant to obtain ledger confirmation of the concerned supplier along with his/her certification.

Brief about Maharashtra CA Certificate

b) For RCM liability issue the proper officer upon receipt of reply from taxpayer under scrutiny may verify whether supplier has paid the due tax on such transactions which have been wrongly reported in Table 4B of GSTR-1.

Brief about Maharashtra CA Certificate

c) In relation to ineligible ITC where taxpayer replies with reference to specific return period, then calculation of reversal in table 4(B) (2) of that specified return period along with transaction list should be obtained from the tax payers and verified with ITC claim, reversal, other reversal, etc. Alternatively, it can be verified from DRC-03 filed by the tax payer, if any.

Circular No. 183/15/2022-GST

Clarification to deal with difference in Input Tax Credit (ITC) availed in FORM GSTR-3B as compared to that detailed in FORM GSTR-2A for FY 2017-18 and 2018-19 – reg.

Summary of Circular No. 183/15/2022

Difference in GSTR-3B and GSTR-2A for FY 2017-18 and 2018-19 due to following reasons;

1. GSTR-1 not filed
2. Invoice not declared in GSTR-1
3. Reported B2B supply as B2C
4. Mentioned wrong GSTIN of the recipient in GSTR-1
 - Difference upto 5 lacs –Supplier’s certificate for compliance of section 16(2)(c)
 - Difference exceeds 5 lacs – CA/CMA’s certificate for compliance of section 16(2)(c)

*Additionally, the proper officer of the actual recipient shall intimate jurisdictional tax authority of the registered person, whose GSTIN has been mentioned wrongly, to ensure that ITC on those transactions shall be disallowed to such other person.

- Section 16 of the Central Goods and Services Tax Act, 2017 provides for eligibility and conditions for availing Input Tax Credit.
- During the initial period of implementation of GST, during the **financial years 2017-18 and 2018-19**, in many cases, the suppliers have failed to furnish the correct details of outward supplies in their FORM GSTR-1, which has led to certain deficiencies or discrepancies in FORM GSTR-2A of their recipients.
- The discrepancies between the amount of ITC availed by the registered persons in their returns in FORM GSTR-3B and the amount as available in their FORM GSTR-2A are being noticed by the tax officers during proceedings such as scrutiny/ audit/ investigation etc. due to such credit not flowing to FORM GSTR-2A of the said registered persons

- It is mentioned that FORM GSTR-2A could not be made available to the taxpayers on the common portal during the initial stages of implementation of GST. Further, restrictions regarding availment of ITC by the registered persons upto certain specified limit beyond the ITC available as per **FORM GSTR-2A** were provided under rule 36(4) of **Central Goods and Services Tax Rules, 2017** only with effect from **9th October 2019**. However, the availability of ITC was subjected to restrictions and conditions specified in **Section 16 of CGST Act** from 1st July, 2017 itself.

In order to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under **section 168(1)** of the CGST Act, hereby clarifies as follows:

S. No.	Scenario	Clarification
a.	Where the supplier has failed to file FORM GSTR-1 for a tax period but has filed the return in FORM GSTR-3B for said tax period, due to which the supplies made in the said tax period do not get reflected in FORM GSTR-2A of the recipients.	In such cases, the difference in ITC claimed by the registered person in his return in FORM GSTR-3B and that available in FORM GSTR-2A may be handled by following the procedure provided in para 4 below.

b.	Where the supplier has filed FORM GSTR-1 as well as return in FORM GSTR-3B for a tax period, but has failed to report a particular supply in FORM GSTR-1 , due to which the said supply does not get reflected in FORM GSTR-2A of the recipient.	In such cases, the difference in ITC claimed by the registered person in his return in FORM GSTR-3B and that available in FORM GSTR-2A may be handled by following the procedure provided in para 4 below
c.	Where supplies were made to a registered person and invoice is issued as per Rule 46 of CGST Rules containing GSTIN of the recipient, but supplier has wrongly reported the said supply as B2C supply, instead of B2B supply, in his FORM GSTR-1 , due to which the said supply does not get reflected in FORM GSTR-2A of the said registered person.	In such cases, the difference in ITC claimed by the registered person in his return in FORM GSTR-3B and that available in FORM GSTR-2A may be handled by following the procedure provided in para 4 below.

<p>d.</p>	<p>Where the supplier has filed FORM GSTR-1 as well as return in FORM GSTR-3B for a tax period, but he has declared the supply with wrong GSTIN of the recipient in FORM GSTR-1.</p>	<p>In such cases, the difference in ITC claimed by the registered person in his return in FORM GSTR-3B and that available in FORM GSTR-2A may be handled by following the procedure provided in para 4 below.</p> <p>In addition, the proper officer of the actual recipient shall intimate the concerned jurisdictional tax authority of the registered person, whose GSTIN has been mentioned wrongly, that ITC on those transactions is required to be disallowed, if claimed by such recipients in their FORM GSTR-3B. However, allowance of ITC to the actual recipient shall not depend on the completion of the action by the tax authority of such registered person, whose GSTIN has been mentioned wrongly, and such action will be pursued as an independent action.</p>
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He shall then ascertain fulfillment of the following conditions of **Section 16** of CGST Act in respect of the input tax credit availed on such invoices by the said registered person:

- 1) that he is in possession of a tax invoice or debit note issued by the supplier or such other tax paying documents;
- 2) that he has received the goods or services or both;
- 3) that he has made payment for the amount towards the value of supply, along with tax payable thereon, to the supplier.

Besides, the proper officer shall also check whether any reversal of input tax credit is required to be made in accordance with section 17 or section 18 of CGST Act and also whether the said input tax credit has been availed within the time period specified under sub-section (4) of section 16 of CGST Act.

In order to verify the condition of clause (c) of sub-section (2) of Section 16 of CGST Act the following action may be taken by the proper officer:

Where difference between the ITC claimed in FORM GSTR-3B and that available in FORM GSTR 2A of the registered person in respect of a supplier for the said financial year exceeds Rs 5 lakh, the proper officer shall ask the registered person to produce a certificate for the concerned supplier from the Chartered Accountant (CA) or the Cost Accountant (CMA), certifying that supplies in respect of the said invoices of supplier have actually been made by the supplier to the said registered person and the tax on such supplies has been paid by the Certificate issued by CA or CMA shall contain UDIN. UDIN of the certificate issued by CAs can be verified from ICAI said supplier in his return in FORM GSTR 3B.

In cases, where difference between the ITC claimed in FORM GSTR-3B and that available in FORM GSTR 2A of the registered person in respect of a supplier for the said financial year is upto Rs 5 lakh, the proper officer shall ask the claimant to produce a certificate from the concerned supplier to the effect that said supplies have actually been made by him to the said registered person and the tax on said supplies has been paid by the said supplier in his return in FORM GSTR 3B.

For the period **FY 2017-18**, as per proviso to section 16(4) of CGST Act, the aforesaid relaxations shall not be applicable to the claim of ITC made in the **FORM GSTR-3B** return filed after the due date of furnishing return for the month of September, 2018 till the due date of furnishing return for March, 2019.

These instructions will apply only to the ongoing proceedings in scrutiny/audit/ investigation, etc. for **FY 2017-18 and 2018-19** and not to the completed proceedings. However, these instructions will apply in those cases for **FY 2017-18 and 2018-19** where any adjudication or appeal proceedings are still pending.

M/s WIPRO LIMITED INDIA Vs THE ASSISTANT COMMISSIONER OF CENTRAL TAXES, BENGALURU 2023-VIL-22-KAR

- GST – Bonafide mistakes in furnishing of correct details of outward supplies - Rectification of Form GSTR-1 – Application of Circular No.183/15/2022-GST dated 27.12.2022 to year 2019-20 when the said Circular refers only to the years 2017-18 and 2018-19 - Petitioner seeking direction to Revenue to allow rectification of Form GSTR-1 uploaded between FY 2017-18 and 2018-19 with respect to certain invoices issued to the recipient so as to enable the recipient to claim input tax credit notwithstanding the time limit prescribed in Section 16(4) of the CGST Act - Revenue submits that the Circular No.183/15/2022-GST dated 27.12.2022 relied upon by the petitioner is not applicable to present case –
- HELD – perusal of the invoices indicates that while supplies are made by the petitioner to the M/s. ABB Global Industries and Services Private Limited, the GSTIN Number mentioned in the invoices has been incorrectly shown as that of ABB India Limited, which is a completely different and independent juristic and legal entity - the language employed in the Circular No.183/15/2022-GST contemplates rectification of the bonafide and inadvertent mistakes committed by the persons at the time of filing of Forms and submitting Returns - the error committed by the petitioner in showing the wrong GSTIN number in the invoices is clearly a bonafide error which has occurred due to bonafide reasons, unavoidable circumstances, sufficient cause and consequently, the aforesaid Circular would be directly and squarely applicable to the facts of the instant case - The recipient has also filed statement of objections setting out the facts admitting, accepting and re-enforcing the claim of the petitioner with regard to the mismatch in mentioning of the GSTIN Number - Revenue is directed to follow the procedure prescribed in the Circular and apply the said Circular to the facts of the instant case of the petitioner - though the Circular refers only to the years 2017-18 and 2018-19, since there are identical errors committed by the petitioner not only in respect of the years 2017-18 and 2018-19 but also in relation to the assessment year 2019-20, by adopting a justice oriented approach, the petitioner would be entitled to the benefit of the Circular for the year 2019-20 also - Petition is disposed of directing the respondents to take necessary steps in relation to the petitioner and fifth respondent for the assessment years 2017-18, 2018-19 and 2019-20 in terms of the Circular No. bearing No.183/15/2022-GST dated 27.12.2022 – the writ petition is allowed

TRAVANCORE MATS AND MATTINGS PVT LTD Vs THE ASSISTANT
COMMISSIONER
2022-VIL-379-MAD

- GST – Change in composition of the company – Claim of ITC - petitioner has accepted the demand made by the respondent to pay differential tax demand of 7% out of 12% of the tax, as the 5% have already been paid – petitioner seeking direction to allow claim of ITC despite change in composition of the firm – HELD - the petitioner is ready and willing to pay the tax at the rate of 12% by making the payment of the remaining 7% for the given tax period - Insofar as the claim of ITC is concerned, if the petitioner is eligible to claim the said ITC, the petitioner can very well claim that ITC from the concerned jurisdictional State GST Authority, where the petitioner Head Office is located - change in composition of the petitioner from Partnership Firm to Pvt Ltd Company and consequent change of GST registration number, shall not stand in the way in claiming the ITC by the petitioner if he is eligible to claim under the provisions of the GST Act – writ petition is disposed of

5. It may be verified that the taxable value declared on account of “Outward taxable supplies (other than zero rated, nil rated and exempted)” in Table 3.1(a) of GSTR-3B is not less than the net amount liable for TCS and TDS credit as per Column 6 of Table 9 of GSTR-2A.

- The details of such TDS and TCS are furnished by the corresponding deductors and operators in their GSTR-7 and GSTR-8 respectively and communicated to the registered person in table 9 of GSTR-2A.
- Besides such supplies, the registered person may have other supplies also.
- A discrepancy on the aforementioned count may indicate short payment of tax.

Value of outward taxable supply with the value auto-populated for TDS/TCS purposes (GSTR 3B vs GSTR 2A)

Details to be checked

- The value of taxable value declared on account of 'outward taxable supplies (other than zero-rated, nil rated and exempted)' in Form GSTR-3B to be compared with the values of TDS and TCS furnished by the corresponding deductors or E-Commerce Operators in their Form GSTR-7 & Form GSTR-8 respectively and communicated to the registered person in Form GSTR-2A.

Conclusion by Department

- Where the value declared in Form GSTR-3B is less than the net amount liable for TDS/TCS as auto-populated in Form GSTR-2A, it would indicate less reporting of the value and hence the short payment of tax.
- GST Liability is on Accrual vs TDS liability is linked with payment

6. Liability on account of outward supplies in Table 3.1(a) and 3.1(b) of GSTR-3B should be verified with the Tax liability as declared in e-way bills.
- Rule 138 of the CGST Rules mandates generation of e-way bill before commencement of movement of goods of consignment value exceeding Rs.50,000.
 - Accordingly, liability declared in table 3.1 (a) and (b) of FORM GSTR-3B should not be less than tax liability as declared in the e-way bills.

GSTR 3B with e-Way bill details

Details to be checked

- The details of outward taxable supplies (both zero-rated and other than zero-rated) as furnished in Form GSTR-3B would be verified with the tax liability declared in e-way bills.

Conclusion by Department

- Where the value declared in Form GSTR-3B is less than the amount of tax liability declared in e-way bills, it would indicate short payment of tax.
- What about value reported for delivery challan, etc?

7. Claim of ITC in respect of supplies from taxpayers whose registrations have been cancelled retrospectively.

- In case of retrospective cancellation of registration of a supplier, the recipient is not entitled to claim ITC in respect of invoices or debit notes issued after the effective date of cancellation of the registration.
- It may be verified whether the registered person has availed ITC in respect of such invoices or debit notes issued by the suppliers after the effective date of cancellation of their registrations.

ITC claim where vendor's registration cancelled retrospectively

Details to be checked

- Where the registration of a supplier is cancelled retrospectively, **the recipient would not be entitled to claim ITC** in respect of the invoices or debit notes issued after such date of cancellation of registration.

Conclusion by Department

- The proper officer would verify whether there is any claim of ITC in respect of supplies made by the cancelled GSTINs.
- The effective date of the cancellation of registrations can be viewed from Form GSTR-2A.

Cases of Vendor Registration Cancelled Retrospectively



Sanchita Kundu vs The Assistant Commissioner of State Tax, Bureau of Investigation, South Bengal

W.P.A. 7231 of 2022 and W.P.A. 7232 of 2022
dated 05.05.2022 (Calcutta High Court)

- The Input Tax Credit (ITC) was **denied** of the Petitioner on purchase of the goods in question from the suppliers and asking the petitioners to pay the penalty and interest under the relevant provisions of GST Act, on the ground that **the registration of the suppliers in question has already been cancelled with retrospective effect covering the transaction period in question.**
- The Petitioners - due diligence - verified the genuineness and identity of the suppliers - the names of those suppliers as registered taxable person were available at the Government portal showing their registrations as valid and existing at the time of transactions - petitioners - limitation -ascertaining the validity and genuineness of the suppliers - done whatever possible - were already available with the Government record.

Sanchita Kundu vs The Assistant Commissioner of State Tax, Bureau of Investigation, South Bengal

W.P.A. 7231 of 2022 and W.P.A. 7232 of 2022
dated 05.05.2022 (Calcutta High Court)

- Petitioners further submit that they have **paid the amount** of purchases in question as well as **tax** on the same not in cash and all transactions were **through banks** and **petitioners are helpless** if at some point of time after the transactions were over, if the respondents concerned finds on enquiries that the aforesaid suppliers (RTP) were fake and bogus and on this basis petitioners could not be penalised unless the department/respondents establish with concrete materials that the transactions in question **were the outcome of any collusion between the petitioners/purchasers** and the suppliers in question.
- Petitioners further submit that all the purchasers in question invoices-wise **were available on the GST portal in form GSTR-2A which are matters of record.**

Sanchita Kundu vs The Assistant Commissioner of State Tax, Bureau of
Investigation, South Bengal

W.P.A. 7231 of 2022 and W.P.A. 7232 of 2022
dated 05.05.2022 (Calcutta High Court)

- The Calcutta High Court bench of Justice Md. Nizamuddin has held that ***the Input Tax Credit (ITC) cannot be denied on genuine transactions with suppliers whose GST registration was cancelled after the transaction.***

LGW Industries Limited vs Union of India
WPA No.23512 of 2019
dated 13.12.2021 (Calcutta High Court)

- Notices issued by the respondents concerned for not allowing the petitioners, who are the purchasers of the goods in question and refusing to grant the benefit of input tax credit (ITC) on purchase from the non-existent suppliers and also asking the petitioners to pay penalty and interest under relevant provisions of GST Act.
- Disallowance of input tax credit on the ground that the purchases made by petitioners are from **non-existing suppliers** and the **bank accounts** opened by those suppliers are **on the basis of fake documents** and that the petitioners have **not verified the genuineness and identity of the suppliers** before entering into transaction with those suppliers.

LGW Industries Limited vs Union of India
WPA No.23512 of 2019
dated 13.12.2021 (Calcutta High Court)

- Further grounds of denying the input tax credit benefit to the petitioners are that the registration of suppliers in question have been cancelled with retrospective effect covering the transactions period in question.
- Case remanded to the Authority concerned with direction if it is found that all purchases and transactions in question are genuine and supported by valid documents and transaction in question were made before the cancellation of Registration of those suppliers, the assessee shall be given the benefit of ITC in the question.

Gargo Traders vs Joint Commissioner of Commercial Taxes

Calcutta High Court | WPA No.1009 of 2022 | 12-Jun-2023

- Denial of ITC on the allegations of ITC Fraud wrt Fake and non-existing supplier.
- ITC was denied on ground that supplier were fake and non-existing; that bank accounts were opened by supplier on basis of fake document and, therefore, ITC claim of petitioner was not supported by any relevant document.
- Department sad that there was failure by petitioner to verify genuineness and identity of supplier whether they were registered taxable person (RTP) before entering into any transaction with supplier and that registration of supplier in question was already cancelled with retrospective effect covering transaction period of petitioner.

Gargo Traders vs Joint Commissioner of Commercial Taxes Calcutta High Court | WPA No.1009 of 2022 | 12-Jun-2023

- At time of transaction, supplier's name as registered taxable person was already available on Government record and petitioner paid amount on purchased articles as well as tax on same through bank and not in cash.
- It was not a case of Department that there was a collusion between petitioner and supplier with regard to transaction.
- Without proper verification, it cannot be said that there was any failure on petitioner's part in compliance of any obligation required under statute before entering into transactions in question.

Gargo Traders vs Joint Commissioner of Commercial Taxes Calcutta High Court | WPA No.1009 of 2022 | 12-Jun-2023

- Claim was rejected taking into consideration cancellation of registration of supplier with retrospective effect without considering documents relied on by petitioner.
- ITC claim was rejected on ground of cancellation of registration of supplier with retrospective effect without considering whether documents relied on by petitioner was proper or not; Authority should consider petitioner's grievance afresh.

Daesung Electric India Pvt Ltd vs Commercial Tax officer, Tiruttani
W.P.Nos.1814 to 1820 of 2017 and WMP Nos.1801 to 1807 of 2017
dated 13.02.2017 (Madras High Court)

- Petitioner challenged the reversal of ITC which was reversed because of cancellation of registration certificate of seller.
- A perusal of details shows that in some cases, the effective date of cancellation of registration certificate, precedes the date of the invoice, while in other cases, the effective date follows the date of the invoice.

Daesung Electric India Pvt Ltd vs Commercial Tax officer, Tiruttani
W.P.Nos.1814 to 1820 of 2017 and WMP Nos.1801 to 1807 of 2017
dated 13.02.2017 (Madras High Court)

- Quite clearly, if, the effective date of cancellation of registration certificate follows the date of invoice, then, the fact the registration certificate was valid on the date, when, the transaction took place, is an aspect, which attains criticality.
- The petitioner's transaction cannot be impacted by subsequent cancellation of registration.
- In such like cases, therefore, logically, the petitioner should be able to claim ITC, on such transactions.



D.Y. Beathel Enterprises vs State Tax Officer (Data Cell), Tirunelveli

HIGH COURT OF MADRAS

W.P.(MD)NOS. 2127, 2117, 2121, 2152, 2159, 2160, 2168, 2177,
2500, 2530, 2532, 2534, 2538, 2539, 2540, 2503 & 2504 OF 2021

W.M.P. (MD) NOS. 1781 & 1791 OF 2021 & OTHER

24-FEBRUARY-2021

Facts of the Case

- Recovery of input tax credit for non-payment of GST by seller.
- Validity of recovery from petitioner-buyer in the absence of similar recovery action against the seller.
- Challenge to automatic reversal of input tax credit from the buyer on non-payment of tax by the seller.

Madras High Court Held:

- The respondent does not appear to have taken any recovery action against the seller on the present transactions.
- When the seller has collected tax from the purchasing dealers, the omission on the part of the seller to remit the tax in question must have been viewed seriously and strict action ought to have been initiated against the seller - in enquiry in question, the seller ought to have been examined and this is all the more necessary, because the respondent has alleged that the petitioners have not even received the goods and had availed input tax credits on the strength of generated invoices.

Madras High Court Held:

- the impugned orders suffers from fundamental flaws of non-examination of seller in the enquiry and non-initiation of recovery action against seller in the first place.
- The impugned orders are quashed and the matters are remitted back to the file of the respondent.

Surana Industries Ltd vs State of Karnataka - Karnataka
Appellate Tribunal, Bangalore

Sales Tax Appeal No. 2680 to 2687 of 2012 Dated: 27-Sep-2017

The onus to prove genuineness of the transaction lies on the Person claiming ITC. If the claim is not substantiated with any document or if any document is found missing then Department has the right to disallow ITC.

In my View:

As the Department is rejecting ITC claims due to Bogus or Fake ITC, it is recommended to keep all necessary documentary evidence ready while availing ITC. There should be monthly reconciliation of ITC with documents so that if something is missing that can be collected timely.

8. Ineligible ITC availed in respect of invoices / debit notes issued by the suppliers who have not filed their GSTR-3B returns for the relevant tax period.
- FORM GSTR-2A of the registered person contains the details of “GSTR-3B filing status” of the supplier in respect of each invoice / debit note received by the registered person.
 - Where the said status is “No”, it indicates the supplier has furnished invoice details in his FORM GSTR-1, but has not furnished the return in FORM GSTR-3B for the corresponding tax period.

ITC claim where the supplier has not furnished Form GSTR-3B

Details to be checked

- Form GSTR-2A provides the GSTR-3B filing status of the supplier in respect of each invoice/debit note received by the registered person.
- The 'No' status indicates the supplier has furnished invoice details in his Form GSTR-1 but has not furnished Form GSTR-3B for the corresponding tax period.

Conclusion by Department

- The availment of ITC in respect of such invoices/debit notes may be checked as it is not allowed.
- On the basis of case discussed earlier the matter could be litigated.

Cases of ITC not paid by Supplier



Quest Merchandising India Pvt. Ltd. vs Govt. of NCT of Delhi
W.P. (C) 6093 of 2017
dated 26.10.2017 (Delhi High Court)

- The concerned provision (DVAT) to not include a buyer who has bona fide entered into the purchase transactions with validly registered dealers who have issued the tax invoices against the transaction.

Arise India Limited vs Govt. of NCT of Delhi
W.P. (C) 2016 of 2015
dated 26.10.2017 (Delhi High Court)

- In the event that the selling dealer has failed to deposit the tax collected by him from the purchasing dealer, the remedy for the Department would be to proceed against the defaulting selling dealer to recover such tax and not deny the purchasing dealer the ITC.
- Where, however, the Department is able to come across material to show that the purchasing dealer and the selling dealer acted in collusion then the Department can proceed under Section 40A of the DVAT Act.

Sri Vinayaga Agencies v. Assistant Commissioner,
W.P. Nos. 2036 to 2038 of 2013,
dated 29.01.2013 (Madras High Court)

- Law does not empower the tax authorities to reverse the ITC availed, on a plea that the selling dealer has not deposited the tax. It can revoke the input credit only if it relates to the incorrect, incomplete or improper claim of such credit.

Gheru Lal Bal Chand v. State of Haryana
Civil Writ Petition No.6573 of 2007
dated 23.09.2011 (P&H High Court)

- The law need to distinguish between honest and dishonest dealers.
- Law cannot put such onerous responsibility on the assessee otherwise, it would be difficult to hold the law to be valid on the touchstone of Articles 14 and 19 of the Constitution of India.
- In the absence of any malafide intention, connivance or wrongful association of the assessee with the selling dealer or any dealer earlier thereto, no liability can be imposed on the principle of vicarious liability.
- Taxpayer cannot be forced to substantiate its truthfulness by running from pillar to post to collect the material for its authenticity.

Sri Ranganathar Valves P L vs Assistant Commissioner, Coimbatore
Writ Petition No. 4126 to 4129 of 2016
dated 04.09.2020 (Madras High Court)

- Disallowance of ITC on the ground that selling dealer from whom the petitioner had purchased the goods had not paid tax to the Government.
- Input Tax Credit cannot be disallowed on the ground that the seller has not paid tax to the Government, when the purchaser is able to prove that the seller has collected tax and issued invoices to the purchaser.

9. Whether GSTR-3B of a tax period is filed after the last date of availment of ITC in respect of any invoice / debit note as per section 16(4). In such cases, no ITC shall be availed in the return.
- It may also be noted that vide proviso to sub-section (4) of section 16, for FY 2017-18, availment of ITC was allowed beyond the due date of furnishing of return for the month of September, 2018 till the due date of furnishing of the return in FORM GSTR-3B for the month of March, 2019 subject to the condition that the details of the said invoices / debit notes should have been furnished by the suppliers in their FORM GSTR-1 till the due date of furnishing of FORM GSTR-1 for the month of March, 2019.

ITC availed beyond time limit prescribed under Section 16(4)

Details to be checked

- ITC claimed after the statutory time limit shall be disallowed and therefore to be disallowed.

Conclusion by Department

- In respect of FY 2017-18, the due date of claiming ITC was extended up to the due date of furnishing return for the March 2019.

10. ITC availed in respect of “Import of goods” in Table 4(A)(1) of FORM GSTR-3B may be verified with corresponding details in Table 10 and Table 11 of FORM GSTR-2A

- Wherever required, the details of such imports may also be cross-verified from ICEGATE portal.

ITC on import of goods (GSTR 3B with GSTR 2A)

Details to be checked

- The details of ITC availed in respect of 'import of goods' as furnished in Form GSTR- 3B would be verified with details in Form GSTR-2A

Conclusion by Department

11. Whether the registered person has made reversals of ITC in accordance with provisions of rule 42 and rule 43 of the CGST Rules.

- Rule 42 of the CGST Rules provides for manner of determination of input tax credit in respect of inputs or input services and reversal thereof.
- Rule 43 provides for manner of determination of input tax credit in respect of capital goods and reversal thereof in certain cases. The registered person avails ITC in table 4(A) of FORM GSTR-3B and reverses in Table 4(B). It may be verified whether requisite reversals have actually been made by the said registered person.

Reversal of ITC under Rule 42 and Rule 43

Details to be checked

- The proper officer would verify whether requisite ITC reversals have actually been made in Form GSTR-3

Conclusion by Department

- Rule 42 of the CGST Rules provides the manner of determining the reversal of ITC in respect of inputs or input services and Rule 43 provides for the manner of determination of ITC reversal in respect of capital goods.

12. Whether the registered person has paid interest liability in terms of section 50

- As per section 50 of the CGST Act a registered person is required to pay interest on delayed payment of tax. It may be verified whether interest payable as per the provisions of section 50 of the CGST Act has actually been paid by the registered person.

13. Whether the registered person has paid late fee in terms of section 47 in respect of returns/ statements.

- As per section 47 of the CGST Act a registered person is required to pay late fee for delayed filing of returns / statements under the Act. It may be verified whether late fee payable as per the provisions of section 47 of the CGST Act has actually been paid by the registered person.

Interest and Late Fee

Details to be checked

- The proper officer would verify that the registered person has paid the interest liability on late payment of tax, on excess claim of ITC, etc. as per Section 50 of the CGST Act.
- The payment in respect of late fee for late filing of the returns would also be verified by the proper officer.

Conclusion by Department

- Retrospective amendment for Interest on Net Tax Liability not Gross Tax Liability.

What Department wants?

- The SOP issued by the CBIC suggests that the tax authorities would primarily check the differences arising out of the details furnished by the registered persons with those furnished by the other stakeholders such as its suppliers, TDS/TCS deductor, etc.

Claim of ITC on account of IGST paid on import of goods vis-a-vis actual IGST paid while import of goods

Details to be checked

- Those import transactions may be made by air under air way bills, import of goods from SEZ or import by ocean mode of transport as the case may be.

Conclusion by Department

- In initial phase of the GST system many importers have not reported their GSTIN in bill of entries, therefor information of IGST paid on such import might had not been transmitted to GSTN.

Claim of ITC on account of IGST paid on import of goods vis-a-vis actual IGST paid while import of goods

Details to be checked

- Those import transactions may be made by air under air way bills, import of goods from SEZ or import by ocean mode of transport as the case may be.

Action by Taxpayer

- Submit the list of all bill of entries of which ITC on import of goods was claimed in GSTR-3B.
- Match it with details of bill of entries appearing in Part D of GSTR-2A / 2B of the corresponding period.
- For mismatch verify those bill of entries on ICEGATE portal.

Mis-match of ITC claim on account of IGST paid on import of goods pertains to import by courier

Details to be checked

- Some courier companies are allowed as an authorized importer specially in Air mode.
- The duty, where leviable is paid by the courier company on behalf of importers before taking delivery of the parcels.

Conclusion by Department

- IGST paid on import of goods pertains to import by courier of which data is not available on ICEGATE portal.

Mis-match of ITC claim on account of IGST paid on import of goods pertains to import by courier

Details to be checked

- Some courier companies are allowed as an authorized importer specially in Air mode.
- The duty, where leviable is paid by the courier company on behalf of importers before taking delivery of the parcels.

Action by Taxpayer

- Submit the details namely, airway bill or any other document stating details of transport by air, courier bill of entry evidencing payment of IGST, assessment note containing the details of imported goods, courier note, certificate of authorized courier importer, etc. may be accepted if found proper.

Interest Monthly or Annually?

Issue

- As a policy of financial year based return scrutiny what will be the date from which interest is to be calculated?

Remark

- The interest under GST is required to be calculated according to return period taking into consideration the due date for making payment under GSTR- 3B of the concerned return period.
- The liability on account of mismatches of the transaction covered in the particular return period shall be considered as the liability of that return period for this purpose.

In some cases, the ITC claim of GSTR-3B vis a vis GSTR-2A the ITC claims appears to be in excess of available.

Issue

- Whereas, while filing of GSTR-9 (annual return) taxpayer had reconciled the differences in Table-8 of GSTR-9.

Remark

- “Any other ITC availed but not specified above” as well as ITC claimed in subsequent financial year in Column 8C of GSTR-9 should also be considered for reconciliation.

Current Reconciliation Statements

GSTR 3B vs GSTR 2A for ITC purposes

GSTR 3B vs GSTR 1 for matching the outward supply details

Recommended Reconciliation Statements

Reverse Charge from registered persons

- Transactions of RCM appearing in GSTR 2A should be mapped with the RCM tax liability paid through GSTR 3B

ITC on Reverse charge Transactions

- Liability paid under reverse charge is to be mapped with the ITC claimed on reverse charge

Taxable value appearing in GSTR 2A for TDS purposes

- Value of taxable supply in GSTR 3B would be required to be reconciled with taxable value in GSTR 2A

Value of tax liability declared in e-way bills

- GSTR 3B to be reconciled with details reported for e-way bill purposes

CBIC have prescribed the monetary limits within for issuance of Show Cause Notices as per Circular No. 31/05/2018-GST, dated 09-Feb-2018 which is as follows

Particulars	Superintendent	AC/DC	ADC/JC
Amount of CGST (including Cess) involved in a case	Demand \leq Rs. 10 Lakhs	Rs. 10 Lakhs $<$ Demand \leq Rs. 1 Crore	Demand $>$ Rs. 1 Crore
Amount of ICGST (including Cess) involved in a case	Demand \leq Rs. 20 Lakhs	Rs. 20 Lakhs $<$ Demand \leq Rs. 2 Crore	Demand $>$ Rs. 2 Crore
Amount of ICGST and CGST (including Cess) involved in a case	Demand \leq Rs. 20 Lakhs	Rs. 20 Lakhs $<$ Demand \leq Rs. 2 Crore	Demand $>$ Rs. 2 Crore

GENERAL DISCIPLINES RELATING TO DETERMINATION OF TAX

1. Opportunity of personal hearing shall be given to the taxpayer.
2. Adjournment maximum 3 times to each party.
3. Amount demanded in order must not exceed the amount mentioned in SCN
4. Interest is payable whether or not determined in the Order.
5. Officer issuing Order must be different from him who issued Audit Report.

GENERAL DISCIPLINES RELATING TO DETERMINATION OF TAX

6. Adjudication proceedings deemed to be concluded if not decided within stipulated time period.
7. Where the service of notice is stayed by an order of a Court or Appellate Tribunal, the period of such stay shall be excluded.
8. Order passed by the Proper Officer shall be a Speaking Order.
9. The Interest shall create automatic charge whether or not specified in the order determining the tax liability.
10. Direct recovery proceedings U/s 79 shall be initiated for any pending self-assessed tax liability along with interest in accordance with the returns furnished either GSTR-1 or GSTR-3B.

Comparison between Old & New Scrutiny Norms

Feature	Old Scrutiny Norms	New Scrutiny Norms
Instruction Number and Date	Instruction No. 02/2022-GST 22-Mar-2022	Instruction No. 02/2023-GST 26-May-2023
Scope	Applies to returns filed for the financial years 2017-18 and 2018-19	Applies to returns filed for the financial year 2019-20 onwards
Selection of returns for scrutiny	Returns are selected for scrutiny based on risk factors, such as: -> high input tax credit claims, -> high turnover, and -> non-filing of returns	Returns are selected for scrutiny using a risk-based approach , which takes into account factors such as: -> the registered person's industry, -> turnover, and -> compliance history
Scrutiny process	The proper officer will scrutinize the return and may issue a notice to the registered person if any discrepancy is found	The proper officer will scrutinize the return and may issue a notice to the registered person if any discrepancy is found. The notice will require the registered person to provide an explanation for the discrepancy and to pay any additional tax, interest, or penalty that may be due

Comparison between Old & New Scrutiny Norms

Feature	Old Scrutiny Norms	New Scrutiny Norms
Procedure for scrutiny	<p>The proper officer shall scrutinize the return in accordance with the provisions of section 61 of the CGST Act, 2017, with reference to the information available with him.</p> <p>In case of any discrepancy, he shall issue a notice to the registered person in Form GST ASMT-10, informing him of the discrepancy and seeking his explanation thereto within such time, not exceeding thirty days from the date of service of the notice or such further period as may be permitted by him.</p>	<p>The proper officer shall scrutinize the return in accordance with the provisions of section 61 of the CGST Act, 2017, with reference to the information available with him.</p> <p>In case of any discrepancy, he shall issue a notice to the registered person in Form GST ASMT-10, informing him of the discrepancy and seeking his explanation thereto within such time, not exceeding thirty days from the date of service of the notice or such further period as may be permitted by him.</p> <p>The proper officer may also use data analytics to identify returns that are likely to be high-risk.</p>

Comparison between Old & New Scrutiny Norms

Feature	Old Scrutiny Norms	New Scrutiny Norms
Other provisions	<p>The instruction also provides for the following:</p> <ul style="list-style-type: none"> -> The proper officer may call for additional information or documents from the registered person. -> The proper officer may issue a show-cause notice to the registered person if any discrepancy is found. -> The registered person has the right to appeal against any action taken by the proper officer 	<p>The instruction also provides for the following:</p> <ul style="list-style-type: none"> -> The proper officer may use technology-based tools to assist in the scrutiny process. -> The proper officer may share information with other officers of the GST department. -> The proper officer may take any other action that is necessary to ensure compliance with the GST Act
Conclusion	The instruction aims to ensure that GST returns are properly scrutinized and that any discrepancies are brought to light.	The instruction aims to improve the effectiveness of GST return scrutiny by using a risk-based approach and data analytics.

Comparison between Old & New Scrutiny Norms

Feature	Old Scrutiny Norms	New Scrutiny Norms
ASMT-12	The ASMT-12 form under Instruction No. 02/2022-GST was a simple one-page form that only required the proper officer to specify the discrepancy that was noticed and the amount of tax, interest, or penalty that was due.	The ASMT-12 form under Instruction No. 02/2023-GST is a more detailed form that requires the proper officer to specify the following information: -> The discrepancy that was noticed -> The amount of tax, interest, or penalty that is due -> The reasons for the discrepancy -> The evidence that was used to identify the discrepancy -> The action that the registered person is required to take to rectify the discrepancy

R.P. Buildcon Pvt. Ltd. vs The Superintendent, CGST & CX, Circle-II - Calcutta High Court
MAT No. 1595/2022 with IA No. CAN 1/2022 Dated: 19-Sep-2022a

Parallel Proceedings By Different Wings Of The Same Department For The Same Period Not Permissible.

R. P. BUILDCON PRIVATE LIMITED Vs THE SUPERINTENDENT, CGST & CX - Calcutta High Court MAT 1595/2022 & IA CAN 1/2022 Dated: 30-Sep-2022

Three wings of the same department are proceeding against the appellants for the very same period, i.e. financial years 2017- 2018, 2018-2019 and 2019-2020. The appellants had already furnished the details as called for in the said notice and also responded to the intimation for conducting GST audit. The three wings of the department are proceeding against the appellants because the Range office was not aware about the proceedings initiated by the Audit Commissionerate and the Anti Evasion also was not aware of the same. In the present days of electronic communications available in the department, such parallel proceedings cannot be conducted by three wings of the same department for the very same period. Since the audit proceedings under Section 65 of the Act has already commenced, it is but appropriate that the proceedings should be taken to the logical end. The proceedings initiated by the Anti Evasion and Range Office for the very same period shall not be proceeded with any further. Anti Evasion and Range Office are restrained from proceeding further against the appellants in respect of the very same period for which already action has been initiated by the first and fourth respondents – appeal is allowed.

Vimal Raj Vs. State Tax Officer – Kerala High Court W.P(C)NO. 927 OF 2020(M); Dated – 22 Jan 2020

- **Issue** - Competent Authority passed assessment order against deceased assessee - One of legal heirs of deceased assessee filed writ petition seeking relief in this regard Whether assessment order passed against deceased assessee was a nullity in eye of law.
- **Decision** - Competent Authority were directed to take fresh action in said assessment proceedings after ascertaining from Revenue Officials as to who all were legal representatives or legal heirs of deceased assessee and then he would be at liberty to render reasonable opportunity of being heard to such legal representatives and then finalise assessment proceedings in manner known to law.

ARSK Hardwares & Traders Vs. State Tax Officer, Madurai – Madras High Court W.P(MD)NOS.5150, 5162 AND 5164 OF 2021, Dated – 23 April 2021

- **Issue** - Section 61 of the Central Goods and Services Tax Act, 2017/Section 61 of the Tamil Nadu Goods and Services Tax Act, 2017 Assessment Scrutiny of returns Period 2017-18 to 2019-20 Competent Authority passed ex parte assessment order dated 7-2-2020 on assessee
- **Decision** - Hon'ble court held that since in instant case impugned order of assessment had been passed on 7-2-2020, whereas personal hearing had been on 3-12-2020, after much latter impugned order of assessment made, there was total non-application of mind on part of Competent Authority in passing impugned order of assessment dated 7-2-2020, impugned order dated 7-2-2020 deserved to be set aside and matter was to be remanded back to Competent Authority to pass fresh order after affording an opportunity of hearing to assessee

Krome Led Lighting Technologies Pvt Ltd Vs. Assistant Commissioner – Madras High Court W.A. NO. 693 OF 2020, Dated – 01 Sep 2020

- **Issue** – Assessee's case was that Superintendent of GST had already passed an order which was against it and after that event Assessing Officer had passed an order against which appeal filed by it was pending before Commissioner (Appeals) On other hand, Single Judge of High Court on writ petition, relegated assessee to appear before Assessing Officer and submit its application and Assessing Officer was directed to forward such application to Nodal Officer, who in turn would forward it to concerned Grievance Committee.
- **Decision** - Hon'ble Court stated that there was nothing to interfere with order of Single Judge; as case of assessee was admittedly pending before Commissioner (Appeals), assessee was to be relegated before Appellate Authority

National Plywood Industries Ltd with Vs. Union of India – Gauhati High Court W.P(C) NO. 1059 OF 2020, Dated – 17 Feb 2020

- **Issue** – Scrutiny of returns - GST Authority passed assessment order on assessee and imposed tax and penalty - Assessee filed writ petition stating that an order of moratorium had already been passed against it by National Company Law Tribunal under provisions of Insolvency and Bankruptcy Code, 2016 and GST Authority without examining aspect as to whether order of moratorium also covered proceeding pending before GST Authority had passed impugned order.
- **Decision** - matter was to be remanded back to GST Authority for a fresh consideration by examining aspect as to whether order of moratorium also covered proceeding pending before GST Authority under GST Act.

Travancore Mats & Mattings Pvt Ltd Vs. Assistant Commissioner – Madras High Court W.P. NOS.2869, 2875 & 2876 OF 2022 & OTHERS, Dated – 15 March 2022

- **Issue** – Writ petition was filed to quash said notice - Petitioner agreed to pay remaining tax amount from its new GSTIN as its partnership firm had been converted into private limited company and requested that claim of input tax credit might not be rejected based on different GSTIN by Kerala GST Authorities.
- **Decision** - Merits of notice were not decided as petitioner had agreed to pay remaining tax amount - Petitioner could have been made claim for ITC at jurisdictional GST Office in State of Kerala where headquarters of company was located - Such claim should not be rejected on ground of change of GST registration number as a result of change in composition of partnership firm into private limited company if petitioner was entitled to input tax credit. Writ petitions was disposed.

Tvl. J.F. International Vs. Commissioner of Commercial Taxes, Chennai – Madras High Court W.P. (MD) NO. 2609 OF 2020, Dated – 04 Nov 2020

- **Issue** - Competent Authority passed assessment order dated 8-11-2019 on assessee observing that at time of inspection conducted by Inspecting Officials on 10-9-2019 and 16-9-2019 in assessee's business premises assessee had deposed that it was not maintaining any books of account - Assessee filed writ petition before High Court challenging impugned assessment order - It contended that to pre-assessment notice dated 16-10-2019, it had sent a detailed reply on 18-10-2019 raising various objections and pleaded that it was ready and willing to produce books of account and it had claimed only eligible input tax credit under Form GSTR -3B filed by it with Competent Authority - Despite sending reply on 18-10-2019, same had not been considered by Competent Authority under impugned assessment order.
- **Decision** - Hon'ble Court was of the opinion that Competent Authority had mechanically and blindly accepted alleged statement given by assessee before Inspecting Officials without independently giving reasons after duly considering objections raised by assessee wherein, it had categorically pleaded that it was always ready and willing to furnish books of account to Competent Authority and Competent Authority had also not duly considered in assessment order with regard to assessee's claim of input tax credit as per Form GSTR-3B filed by it and no sufficient opportunity was granted to assessee impugned assessment order passed by Competent Authority was arbitrary and was in violation of principles of natural justice - Held, yes - Whether assessment order deserved to be quashed, matter was remanded to Competent Authority for fresh consideration.

Vimal Yashwantgiri Goswami Vs. The State of Gujarat – Gujarat High Court R/SPECIAL CIVIL APPLICATION NO- 13679 of 2019, Dated – 04 Nov 2020

- **Issue** - Whether for every authorized officer carrying out arrest, preparation of an arrest memo is mandatory
- **Decision** - Hon'ble High Court was of the opinion that Arrest memo is a crucial component of legal procedure of arrest and if Magistrate finds that arrest memo is absent or improperly filled or bereft of necessary particulars, he should decline production of arrested person and thus, arrest memo is a key safeguard against illegal arrest.

[2021] 125 taxmann.com 188 (SC)

Canon India Private Limited v. Commissioner of Customs

- **Section 28 of the Customs Act, 1962 - Recovery -** Of duty or tax not levied/paid or short-levied/paid or erroneously refunded - Proper Officer - Appellant importers had imported cameras/goods which were released without any customs duty after being allowed benefit of exemption notifications as per law by Deputy Commissioner of Customs being Proper officer - Later, a show cause notice was issued under section 28(4) by Additional Director General DRI, alleging that Customs Authorities had been induced to clear cameras by wilful mis-statement and suppression of facts about cameras - However, it was found that section 28(4) empowers recovery of duty not paid, part paid or erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts and, reassessment and recovery of duties contemplated by section 28(4) is by same authority and not by any superior authority such as Appellate or Revisional Authority - Further, it is impermissible to allow an officer, who has not passed original order of assessment to reopen assessment on ground that duty was not paid/not levied, by original officer who had decided to clear goods and who was competent and authorized to make assessment - Whether therefore, when cameras had been cleared for import by Deputy Commissioner of Customs who decided that cameras were exempted, Additional Director General of DRI was not proper officer to exercise power under section 28(4) and thus, entire proceedings initiated by Additional Director General of DRI for recovery of duty not paid under section 28(4) were invalid, without any authority of law and liable to be set-aside - Held, yes [Paras 14,15 and 23].

[2021] 125 taxmann.com 188 (SC)

Canon India Private Limited v. Commissioner of Customs

- An officer who did assessment, could only undertake reassessment under section 28(4) of Customs Act, hence, goods, cameras having been cleared for import by a Deputy Commissioner of Customs who decided that goods were exempted, Additional Director General of DRI was not proper officer to exercise power under section 28(4)

DIR officers are not proper officers

- Judgement by Larger bench of 3
- The expression 'the' in Section 28 indicates that the re-assessment by way of issuance of SCN is to be done by the same officer who has initially assessed- 'the' is difference from 'a/an'
- Where the statute confers the same power to perform an act on different officers, the two officers cannot exercise their power in the same case. Where one officer has exercised his powers of assessment, the power to order re-assessment must also be exercised by the same officer or his successor and not by another officer of another department though he is designated to be an officer of the same rank.- Doctrine of Comity

- **Parallel proceedings cannot be initiated by State GST authorities on the same subject matter**

Raj Metal Industries & Anr. v. UOI & Ors. [W. P. A. 1629 of 2021,]

Facts:-

- Raj Metal Industries (“the Petitioner”) has filed this petition challenging the actions initiated by the State GST Authorities (“the Respondent”) with respect to summons issued dated October 19, 2020 under Section 70 of the WBGST Act
- Challenging blocking of the electronic credit ledger on December 8, 2020 being challenged the vires of Rule 86A of the West Bengal Goods and Services Tax Rules, 2017 (“the WBGST Rules”)/ Central Goods and Services Tax Rules, 2017 (“the CGST Rules”) & Section 16(2)(c) of the WBGST Act/ CGST Act
- Further, the proceedings were already pending against the Petitioner on the same subject matter under the CGST Act.

Raj Metal Industries & Anr. v. UOI & Ors. [W. P. A. 1629 of 2021,]

Issues:-

Whether the summon issued and proceedings initiated by the Respondent is in violation of the Section 6(2)(b) of the WBGST Act?

Held:-

The Hon'ble Calcutta High Court in W. P. A. 1629 of 2021, dated March 24, 2021 stayed the summons and proceedings thereunder and held that the summons issued by the Respondent is, prima facie, in violation of Section 6(2)(b) of the WBGST Act.

Parallel proceedings cannot be initiated by State
GST authorities on the same subject matter

Certain relevant judgement on stated issue

- The Hon'ble Punjab & Haryana High Court in **Kaushal Kumar Mishra v. Additional Director General & Anr. [CWP21387-2020 (O&M)**, decided on February 12, 2021] dismissed the petition and refused to interfere with the investigations undertaken by the competent authorities against the proprietor, for alleged misuse and fake availment of Input Tax Credit ("ITC. Further, the Court held that where different officers appointed are independently investigating altogether different matters involving contraventions of prima facie cognizable and punitive offences under CGST Act, without any overlapping, such investigation is not barred by Section 6(2)(b) of the CGST Act.

Certain relevant judgement on stated issue

- The Hon'ble Allahabad High Court in **G.K. Trading Company v. Union of India & Ors. [Writ Tax No. 666 of 2020, dated 2.12.2020]** dismissed the petition filed for prohibiting another proper officer to initiate any inquiry/proceeding on the same subject-matter. The Court observed and held that, there was no proceeding initiated by a proper officer against the assessee on the same subject-matter referable to Section 6(2)(b) of the CGST Act as it was merely an inquiry by a proper officer under Section 70 of the CGST Act.
- Koenig Solutions Pvt. Ltd. Vs. UOI – 2021-TIOL-1013-HC-DEL-GST
- Himanshu Balram Gupta vs. UOI – 2020-TIOL-2241-HC-AHM-GST.

Overlapping/Different Jurisdictions [Sec .6 (2)(b)]

- Koenig Solutions Pvt. Ltd. Vs. UOI – 2021-TIOL-1013-HC-DEL-GST
- Raj Metal Indus. Vs. UOI – 2021-TIOL-744HC-KOL-GST
- Himanshu Balram Gupta vs. UOI – 2020-TIOL-2241-HC-AHM-GST.
- Kaushal Kumar Mishra vs. ADG, Ludhiana ZU-2021-TIOL-387-HC-P & H-GST

The powers vested in Commissioner u/s. 69 be further delegated by him

- Nathalal Maganlal Chauhan vs. State of Gujarat-2020 (35) GSTL 145 (Guj.)

Authority which initiates will conclude

- RAJ METAL INDUSTRIES-Kolkatta HC 2021-TIOL-744HC-KOL-GST Proceedings pending before CGST , simultaneously initiated by SGST

GENERAL DISCIPLINES RELATING TO DETERMINATION OF TAX

1. Opportunity of personal hearing shall be given to the taxpayer.
2. Adjournment maximum 3 times to each party.
3. Amount demanded in order must not exceed the amount mentioned in SCN
4. Interest is payable whether or not determined in the Order.
5. Officer issuing Order must be different from him who issued SCN.

GENERAL DISCIPLINES RELATING TO DETERMINATION OF TAX

6. Adjudication proceedings deemed to be concluded if not decided within stipulated time period.
7. Where the service of notice is stayed by an order of a Court or Appellate Tribunal, the period of such stay shall be excluded.
8. Order passed by the Proper Officer shall be a Speaking Order.
9. The Interest shall create automatic charge whether or not specified in the order determining the tax liability.
10. Direct recovery proceedings U/s 79 shall be initiated for any pending self-assessed tax liability along with interest in accordance with the returns furnished either GSTR-1 or GSTR-3B.

EXTENDED PERIOD

Where Notice does not allege suppression, etc with intent to evade, extended period (U/s 74) cannot be invoked. – Jagron Machine Tools vs CCE, [1993 (65) ELT 300 (CEGAT – New Delhi)]

Extended period of Limitation would not apply, if assessee had bona fide belief. – Mitul Engineering Services vs CCE, [(2011) STT 289 (CESTAT – New Delhi)] and Sunil Metal Corpn. Vs CCE, [(2010) STT 473 (CESTAT – Ahmedabad Branch)]

PERSONAL HEARING

The Supreme Court observed that personal hearing enables the concerned authority to watch the demeanour of the witness etc and also clear up his doubts during the course of the arguments. – Automative Tyre Manufacturers Asson. Vs Designated Authority, [(2011) 263 ELT 481 (Supreme Court)]

A Personal Hearing is not required in an application for a stay. – Union of India vs Jesus Sales Corporation, [(1996) 83 ELT 486 (Supreme Court)]

LETTERS ARE NOT NOTICE

Letters issued in the form of suggestion or advice cannot be regarded as SCN. – Metal Forgings vs UOI, [(2002) 146 ELT 241 (Supreme Court)]

Notice must be in Writing. In case of absence of a Notice in Writing the Principles of Natural Justice had not been applied. – Voltas Ltd. Vs CCE, [(2000) 121 ELT 802 (CEGAT – Bangalore)]

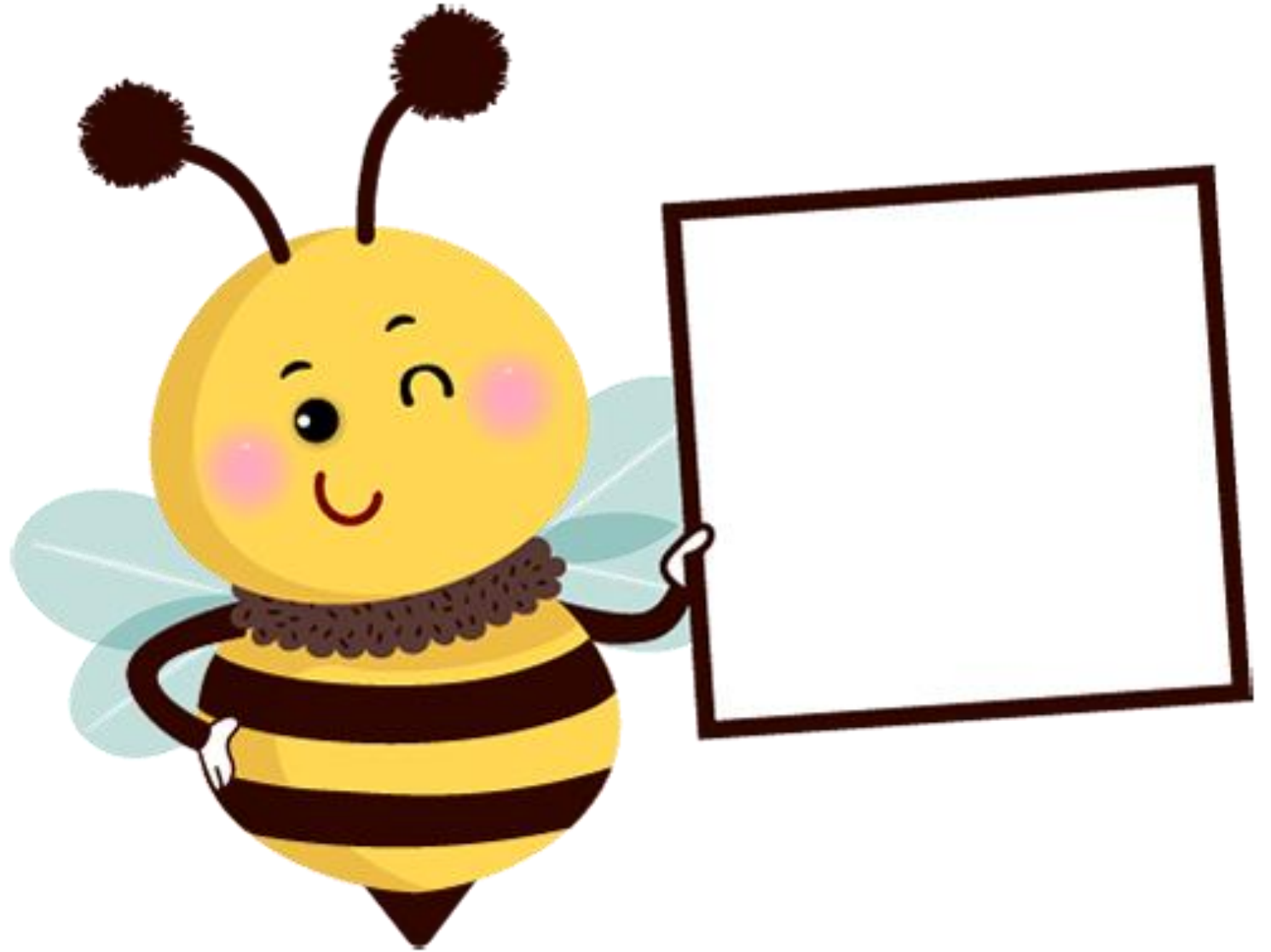
NO NOTICE
= NO
DEMAND

- Demand will not sustain without issuance of Show Cause Notice. – Prabhat Forgings

NO NOTICE
= NO
PENALTY

- Assessee can't be forced to pay penalty if show cause notice is not issued. – D. Rama Kotiah & Co. vs State of Andhara Pradesh, [(2019) 111 taxmann.com 536 (High Court – Telangana)]

Show Cause Notices - General



P. P. Chandrasekhara Pai v CCE (1987) 27 ELT 679 (Cegat Madras)

it was held that primary purpose of show cause notice was only to put the aggrieved party on notice of facts and necessary ingredients of charge so as to enable him to effectively meet it.

Gokak Patel Volkart Ltd. v. CCE (1987) 28 ELT 53, (1987) taxmann.com 621 (SC)

it was held that demand under indirect taxes without issue of show cause notice was to be considered as violation of statutory provision.

**Alcobex Metals Pvt. Ltd. v. CCE
(1992) 58 ELT 108;
(1991) taxmann.com388 (Cegat, New Delhi-LB)**

it was held that show cause notice is not sustainable, if partly invalid.

Mahindra & Mahindra v. CCE Hyderabad (2001) 129 ELT 188 (Cegat, Chennai),

it was held that if show cause notice did not indicate the basis for demand and there was no discussion prevailing thereto in adjudication order, the demand was considered to be unsustainable.

CCE & C, Vadodara v. ABS India Ltd. (2003) 162 ELT 487 (Cestat, Mumbai)

it was held that grounds beyond scope of show cause notice are not allowed. Hence, Department's appeal was rejected.

Shree Cements Ltd. v. Union of India (2005) 182 ELT 315 (Rajasthan)

it was held that Department cannot issue subsequent notice taking contrary stand, if decision of the Tribunal on the earlier notice had attained finality.

Modern Industrial Enterprises v. CCE (2006) 193 ELT 513 (Cestat, Delhi)

it was held that show cause notice is not valid in respect of an unit which is not within the jurisdiction of Commissioner.

CCE v. Career Point Infosystem Ltd. **(2006) 4 STR 293, (2006) 5 STT 225 (Cestat, New Delhi)**

it was held that if show cause notice proposes classification under one head, adjudicating authority cannot confirm demand under another head.

CCE v. Ballarpur Industries Ltd. (2007) 215 ELT 489 (SC)

it was held that show-cause notice is the foundation of matter of levy and recovery of duty, penalty and interest. Hence, if there was no invocation of a rule (Valuation Rule in this case), it would not be open to adjudicating authority to invoke that rule.

Sands Hotel Pvt. Ltd. v. CST Mumbai (2009) 17 STJ 385 (Cestat, Mumbai),

it was held that show cause notice and order in revision cannot go beyond the original show cause notice.

Varalakshmi Exports v. Union of India (2010) 259 ELT 344 (Karnataka),

it was held that firm acts only through its partners there is no need to issue show cause notice to every partner of the firm.

CCE v. Kesar Marble & Granites (2012) 278 ELT 42 (Kerala)

It was held that invalid show cause notice issued before any duty and penalty is levied and issued under one enactment cannot be converted into a notice under another enactment.

In CCE v. Merchant Impex (2012) 276 ELT 458 (Karnataka)

It was held that a letter from the department is not a proper SCN.

McNally Bharat Engineering Co. Ltd. v. CCE (2012) 25 STR 496 (Jharkhand)

It was held that order cannot travel beyond the scope of SCN.

Bharti Mulchand Chheda V. CCE, Mumbai (2016) 336 ELT 93 (Cesta, Mumbai)

Where the sole proprietor of assessee firm was already dead as recorded in order itself, it was held that once factum of death of sole proprietor came to the knowledge of the Department, Department should drop entire proceedings, as no demand can be confirmed against dead person even if notice was issued before his death.

Raghuveer Singh Metals Industries Ltd. v. CCE, Jaipur-II (2017) 3 GSTL 431 (Cestat, New Delhi)

It was held that date of SCN would be the date on which it signed by the issuing authority and not the date mentioned therein which was even prior to issue of summon.



Second/ Subsequent SCN

For Information purpose not to be considered as
Professional Advice from us.

CCE v. Asian Cranes and Engg. Services (2009) 17 STJ 5 (Cestat, New Delhi),

It was held that on the basis of same facts subsequent SCN could not have been issued alleging suppression.

CCE, Ahmedabad-III v. AksharChem (1) Ltd. (2013) 292 ELT 550 (Cestat, Ahmedabad)

Applying ratio of judgment in case of Nizam Sugar Factory v. Collector (2008) 9 STR 314; (2006) 197 ELT 465 (SC), it was held that second show cause notice for subsequent period on same issue was not maintainable as Department was fully aware of credit being taken by assessee since issuance of first show cause notice. Further, Uniworth Textiles Ltd. v. CCE, Nagpur (2009) 244 ELT 401 (Cestat, New Delhi) was not applicable as both show cause notices were issued prior to date of detection in that case.

Swiss Parenterals Pvt. Ltd. v. CCE & ST, Ahmedabad (2014) 308 ELT 81 (Cestat, Ahmedabad)

Where one show cause notice for earlier period was issued invoking extended period of limitation, it was held that second show cause notice on the same ground for later period cannot be issued by invoking extended period of limitation.

Door Deco Industries v. Customs, Central Excise & Service Tax (2016) 76 taxmann.com 355 (2017) 59 GST 230 (Delhi)

Where two sets of show cause notices were issued in relation to same search and seizure, assessee could not be directed to file two separate settlement applications for said two notices.

India Tourism Development Corporation Ltd. v. Delhi Administration (2017) 52 STR 229 (Delhi)

It was held that quasi-judicial authority cannot review its earlier decision unless power of review is conferred by statute. Second show cause notice after a gap of five years can not be issued once the first show cause notice is adjudicated, became final and accepted by both parties. [Also see: Raghuvver Metals Industries Ltd. v. CCE, Jaipur-11 (2017) 3 GSTL 431 (Cestat, New Delhi); CCE, Mumbai-11 v. Cona Industries (2017) 352 ELT 12 (Bombay); wherein Nijam Sugar Factory v Collector (2008) 9 STR 314 (SC) was applied)

Swapan Electricals v. Union of India (2017) 5 GSTL 254 (Jharkhand)

Where pursuant to show cause notice on which adjudication order had already been issued and quashed, another SCN was issued, it was held that later show cause notice is not sustainable as purpose of its issuance was not in existence and it was immaterial that said adjudication order had been challenged in appeal.

Other Pronouncements



Krishnapatnam Port Company v. CCE & C & ST
(2014) 46 GST 732, 47 taxmann.com 274
38 STR 974 (Cestat, Bangalore)

Where tax demand had been confirmed ignoring revised return completely, it was held that there was no case for tax demand at all. Accordingly, assessee had made out a case for complete waiver of pre-deposit, which was granted for a period of 180 days from date of order.

Kripa Fabs (P.) Ltd. v. Cestat, Chennai (2015) 59 taxmann.com 157(Madras)

It was held that non-payment of duty after crossing exemption limit amounts to 'suppression', which takes place at time of clearance of goods; when suppression has already taken place, subsequent voluntary disclosure by assessee to Department cannot justify a plea of no suppression.

Poddar Global Pvt. Ltd. v. Joint Commissioner of Customs, Chennai IV (2017) 350 ELT 498 (Madras)

It was held that gaps and deficiencies in the show cause notice cannot be plugged by averments made and/or Jexplanations given in counter affidavit. Failure to mention the amount of duty payable impregnates the notice with a fatal weakness.

CMS (India) Operations & Maintenance Co Pvt. Ltd. v. CCE Pondicherry (2017) 3 GSTL 164 (Cestat, Chennai)

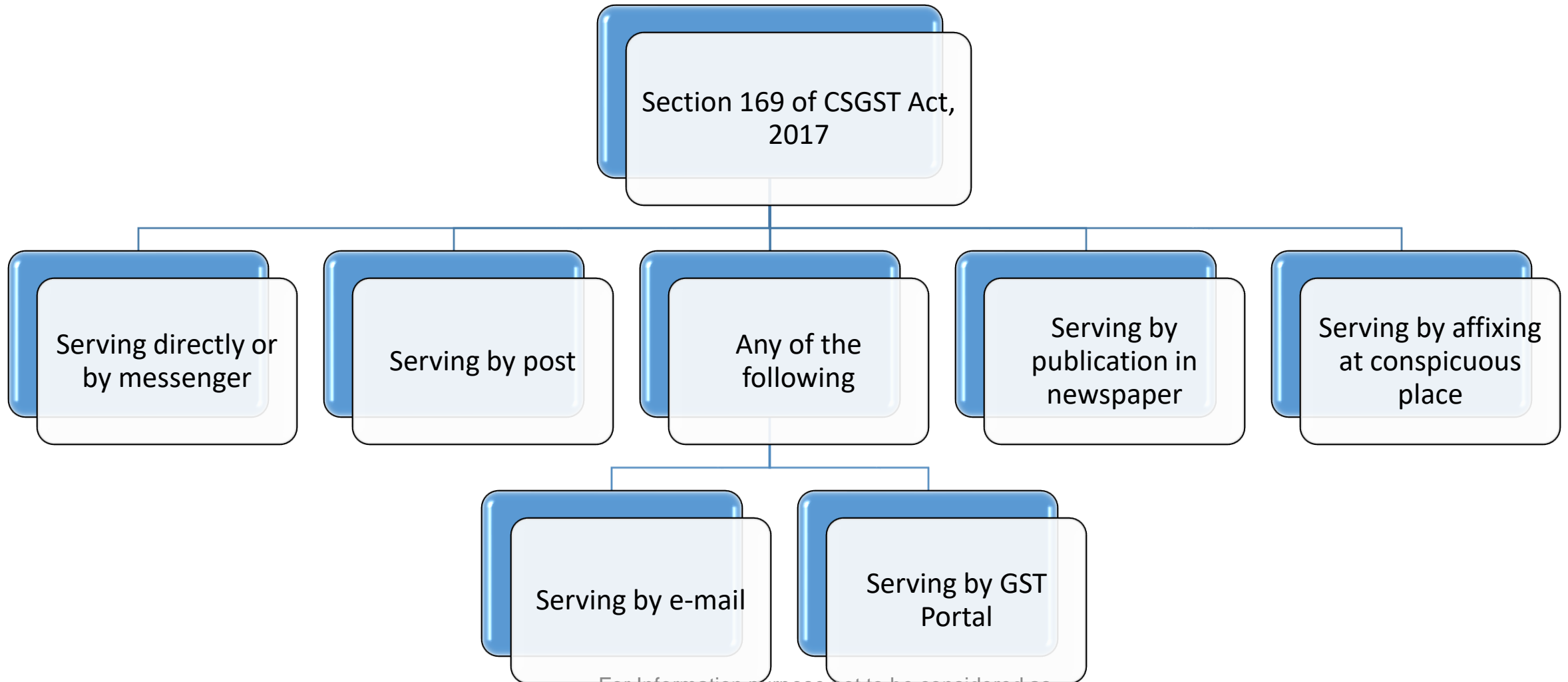
It was held that legal deficiency or infirmity in the show case notice cannot be cured at an appellate stage.

Issuance of Notice vs Service of Notice

Manner of Service of Notice [Sec. 169]

- Any decision, order, summons or other communication should be served in any of these matter:
 - By direct delivery or messenger through courier
 - By Registered Post or Speed Post with Acknowledgement Due
 - By sending communication to email
 - By Common Portal
 - By publication in Newspaper
 - By Affixing it in known place of business or residence

Service of Notice in certain circumstances





Every Non-Payment is not Suppression

For Information purpose not to be considered as Professional Advice from us.



Sec. 2 (2b) Contempt of Court Act'1971





Non-Application of Mind

For Information purpose not to be considered as
Professional Advice from us.

Quoting of Document Identification Number (DIN) Cir. No. 122/41/2019- GST & 128/47/2019

DIN

DIN on email??

Exceptions to Issuance of DIN

- Technical difficulty
- Inquiry, Investigation etc but authorised officer is outside the office
- Reasons to be recorded

Guideline by Gujarat High Court for Recovery – Bhumi Associates v UOI [2021-TIOL-397-HC-AHM]

No recovery or adjustment of ITC during
search/inspection

Even if Assessee comes forward to make payment DRC-03
not to take same day. Ask for next day.

Facility of grievance



Analysis of CBIC issues instructions for payment of tax during Search, Inspection & Investigation

Instructions 01/2022-23 GST Investigations dated 25-May-2022

CBIC issues Intrusions

- The CBIC has issued instructions for officers regarding recovery and payment of tax during Search, Inspection & Investigation.
- If any complaint is received against any officer regarding use of force or coercion for payment of tax then strict action will be taken after enquiry.
- But what led CBIC to issue these instructions?
- Are these Instructions sufficient?

Reasons behind CBIC issues Intrusions

- Let's go through few GST cases:
 - Shri Nandhi Dhall Mills India Private Limited vs Senior Intelligence Officer of Madras High Court
 - Bhumi Associate vs UOI of Gujarat High Court
 - UOI vs Bundl* Technologies Private Limited of Karnataka High Court. [*Swiggy]
- The Position was same in Indirect Taxes regime also and Delhi High Court decision in case of Makemytrip (India) Pvt. Ltd. vs Union of India is noteworthy. This was affirmed by Supreme Court also.

Shri Nandhi Dhall Mills India Private Limited vs Senior Intelligence Officer
Madras High Court: W.P. No.5192 of 2020 and WMP. No.6135 of 2020
Order Dated: 07-Apr-2021

- The petitioner is registered as a Small Scale Industry under the MSME Act and is an assessee under the provisions of the GST Laws, 2017.
- An investigation was conducted in the premises of the petitioner on 22.10.2019 and various documents and registers seized.
- In the course of that investigation, a statement was recorded from one S.A. Kumar, who has also deposed to the affidavit filed in support of this writ petition, to the effect that the petitioner has not discharged its GST liability correctly.
- In the statement, he accepts the mistakes in computation of GST and assures the respondents that the liability would be discharged at the earliest with applicable interest.

Shri Nandhi Dhall Mills India Private Limited vs Senior Intelligence Officer
Madras High Court: W.P. No.5192 of 2020 and WMP. No.6135 of 2020
Order Dated: 07-Apr-2021

- A scheme of payment has also been set out for the tax remaining unpaid, as follows: scheme of payment has also been set out for the tax remaining unpaid, as follows:

TIME LINE FOR PAYING GST LIABILITY ON TAXABLE OUTWARD SUPPLIES MADE DURING THE PERIOD FROM JULY, 2017 TO OCTOBER, 2019 (UP TO 21.10.2019)

22.10.2019 - Rs.1,00,00,000/- paid

23.10.2019 - Rs.1,00,00,000/-

30.10.2019 - Rs.1,00,00,000/-

07.11.2019 - Rs.1,00,00,000/-

13.11.2019 - Rs.1,00,00,000/-

20.11.2019 - Rs.1,00,00,000/-

27.11.2019 - Rs.1,00,00,000/-

04.12.2019 - Balance amount as quantified by the GST Department

Shri Nandhi Dhall Mills India Private Limited vs Senior Intelligence Officer
Madras High Court: W.P. No.5192 of 2020 and WMP. No.6135 of 2020
Order Dated: 07-Apr-2021

- This undertaking has been signed by the Managing Director on 22.10.2019. In line with the undertaking, the petitioner has, on the same day remitted a sum of Rs.1 crore in FORM GST DRC-03 corresponding to Rule 142(2) and (3) and Section 74(5) of the Act.
- The second installment of the tax was paid on 30.10.2019.
- However, on 05.11.2019 the Managing Director of the petitioner has retracted his statement in a letter written to the Department.

Shri Nandhi Dhall Mills India Private Limited vs Senior Intelligence Officer
Madras High Court: W.P. No.5192 of 2020 and WMP. No.6135 of 2020
Order Dated: 07-Apr-2021

- The petitioner has stated that it **has no liability to tax**, that the MD and officials were forced to accept liability to tax and the **admission** was, by **no** means, **voluntary**.
- The petitioner has also made serious allegations about the high handedness of the authorities during the conduct of search and the scant regard expressed for the sentiments of the family of the Managing Director and employees of the petitioner.
- They state that the visit was on the eve of Deepavali and investigation was carried out in an intrusive and acrimonious fashion.

Shri Nandhi Dhall Mills India Private Limited vs Senior Intelligence Officer
Madras High Court: W.P. No.5192 of 2020 and WMP. No.6135 of 2020
Order Dated: 07-Apr-2021

- Merely because an assessee has, under the stress of investigation, signed a statement admitting tax liability and has also made a few payments as per the statement, cannot lead to self-assessment or self-ascertainment.
- The ascertainment contemplated under Section 74(5) is of the nature of self-assessment and amounts to a determination which is unconditional, and not one that is retracted as in the present case.
- The Revenue's understanding and application of Section 74(5) in this case, is wholly **misconceived**. The amount collected shall be refunded to the petitioner.

Bhumi Associate vs Union of India

Gujarat High Court: R/SPECIAL CIVIL APPLICATION NOS. 2426, 2515, 2618 & 3196 OF 2021
Order Dated: 16-Feb-2021 & 18-Feb-2021

- Petitioner filed a writ petition complaining of undue harassment, threat, pressure, etc. by officers of GST department.
- Officers of GST department were to be directed to conduct search proceedings under section 67 against assessee strictly in accordance with law.
- We do not intend to discourage or lower down the morale of all the officers before us. Our endeavour is only to bring it to their notice that they should act and perform their duties within the four corners of law. **They should not take law in their hands.** [para 5]

Bhumi Associate vs Union of India : R/SPECIAL CIVIL APPLICATION NOS. 2426, 2515, 2618
& 3196 OF 2021 Order Dated: 16-Feb-2021 & 18-Feb-2021
Gujarat HC directed CBIC & Gujarat State GST to issue suitable guidelines following:

- 1) **No recovery** in any mode by cheque, cash, e-payment or adjustment of input tax credit **should be made at the time of search/inspection proceedings** under section 67 of the Central/Gujarat Goods and Services Tax Act, 2017 under any circumstances.
- 2) **Even if the assessee comes forward to make voluntary payment** by filing Form DRC-03, the assessee should be **asked/advised to file** such Form DRC-03 on the **next day** after the end of search proceedings and **after** the officers of the **visiting team** have **left the premises** of the assessee.

Bhumi Associate vs Union of India : R/SPECIAL CIVIL APPLICATION NOS. 2426, 2515, 2618 & 3196 OF 2021 Order Dated: 16-Feb-2021 & 18-Feb-2021
Gujarat HC directed CBIC & Gujarat State GST to issue suitable guidelines following:

- 3) Facility of **filing complaint/grievance** after the end of search proceedings should be **made available to the assessee** if the **assessee was forced** to make payment in any mode during the pendency of the search proceedings.
- 4) If **complaint/grievance** is filed by assessee and **officer** is **found** to have **acted in defiance** of the afore-stated directions, then **strict disciplinary action** should be initiated **against** the concerned **officer**.

Union of India vs Bundl* Technologies Pvt. Ltd [*Swiggy]
Karnataka High Court: WA No. 1274 & 4467 of 2021 (T-RES)
Order Dated: 3-Mar-2022

- The company has taken a stand in the writ petition that during the course of investigation, the DGGI officers have acted in a high handed and arbitrary manner and that the officers locked the door and extended threats of arrest to Directors of the Company.
- The Company (assessee) deposited a sum of Rs.15 Crores at about 4.00 a.m. on November 30, 2019 and a sum of Rs.12,51,44,157/- on December 27, 2019.
- The company filed an application seeking refund on September 29, 2020.
- The assessee filed refund application before jurisdictional officer. When the attempts of the company to seek refund did not yield any result, the assessee filed writ petition.

Union of India vs Bundl* Technologies Pvt. Ltd [*Swiggy]
Karnataka High Court: WA No. 1274 & 4467 of 2021 (T-RES)
Order Dated: 3-Mar-2022

- There is no communication in writing from company to the proper officer about either self ascertainment or admission of liability by company to infer that such a payment was made under Section 74(5) of the CGST Act.
- The company intimated the Department that it reserves its right to claim refund of the amount and the same should not be treated as admission of its liability.
- The company has also reiterated its stand in GST DRC-03. It is evident that **payments have not been made admitting the liability.**

Union of India vs Bundl* Technologies Pvt. Ltd [*Swiggy]
Karnataka High Court: WA No. 1274 & 4467 of 2021 (T-RES)
Order Dated: 3-Mar-2022

- If tax is collected without any authority of law, the same would amount to depriving a person of his property without any authority of law and would infringe his right under Article 300A of the Constitution.
- In the instant case, the only provision which permits deposit of an amount during pendency of an investigation is section 74(5) of CGST Act, which is not attracted in the fact situation of the case.
- Therefore, it is evident that amount has been collected from assessee in violation of Article 265 and 300-A of the Constitution.

Union of India vs Bundl* Technologies Pvt. Ltd [*Swiggy]
Karnataka High Court: WA No. 1274 & 4467 of 2021 (T-RES)
Order Dated: 3-Mar-2022

- **No one in a society governed by rule of law can take resort to a course of action not permissible in law.** A Statutory power has to be exercised reasonably and in good faith, and for the purpose for which it is conferred. The power vested in any Authority by law has to be exercised in consonance with the spirit as well as letter of the Act. **The broader the sweeper ambit of the power, the more caution and circumspection is required while invoking such power.** A statutory power has to be exercised within a system of controls and has to be exercised by relevance and reason. It needs reiteration that a statutory power should not be exercised in a manner, so as to instill fear in the mind of a person. **[Para 27]**

MakeMyTrip (India) Private Limited vs Union of India
Delhi High Court: W.P. (C) Nos. 525 and 1283 of 2016 & CM no. 2153 & 5642 of 2016
Order Dated: 1-Sep-2016

- DGCEI (Directorate General of Central Excise Intelligence) or Service Tax Department **cannot straightway presume** that a person has collected service tax and retained same without depositing it with Central Government.
- If assessee is regularly filing service tax returns (which have been accepted or examined by Service Tax Department), then, **without adjudication** of penalty under section 83A and **without even a show-cause notice or enquiry**, DGCEI or other agency cannot straightway arrest such assessee **merely on suspicion of evasion or non-payment**.
- In any case, **amount paid** as a result of search/arrest, **without an adjudication** much less a show-cause notice, is **required to be returned** to them forthwith **with interest**.

Conclusion

- In a strongly worded instruction, the GST Investigation wing of the CBIC has **warned its officers of disciplinary action** if they use **force and coercion** for recovery of tax or deposit of tax during the course of search, inspection, or investigation.
- In various Court Judgements it has come to notice that some of the officers have been subjecting the taxpayers to harassment and undue demands during inspection, search, and investigation.
- Gujarat High Court have directed CBIC to issue detailed guidelines that are missing in these instructions.
- **The CBIC should demonstrate its commitment to its instructions by punishing the officers not following its instructions.**

Validity of Show Cause Notice issued by an officer in excess of monetary limit not acceptable

- Pahawa Chemicals (P) Ltd. vs. CCE – 2005 (181) ELT 339 (SC).
- Palak Designer Diamond Jewellery Vs. UOI – 2021 – TIOL – 424 – CESTAT - AHM
- Aeon Construction Products Ltd. vs. CCE – 2005 (184) ELT 120 (SC)
- Palak Designer Diamond Jewellery vs. UOI – 2019-TIOL-1756-HC-AHM-CX

Show Cause Notice – a ‘condition precedent’ to a demand

- **Gokak Patel Volkart Pvt. Ltd. vs. CCE -1987 (28) ELT 53 (SC)**
- **Madhumilan Syntex Pvt. Ltd. vs. UOI -1981 (35) ELT 349 (SC)**
- **Metal Forgings vs. UOI-2002 (146) ELT 241 (SC)**

Mere letter or communication asking for payment is not a 'show cause notice'

- Metal Forgings vs. UOI (supra)
- CC vs. Merchant Impex – 2012 (276) ELT 458 (Kar.)
- Steel Ingots vs. UOI – 1988 (36) ELT 529 (MP)
- Sidwell Refrigeration vs. CCE – 2002 (145) ELT 682 (Tri-Del)

Show Cause Notice must be in writing?

- **Voltas Ltd. vs. CCE – 2000 (121) ELT 802 (Tri-Mum.)**

Notice must contain all essential details

- **CCE vs. Brindavan Beverages (P) Ltd.-2007 (213) ELT 487 (SC)**
- **Mehta Pharmaceuticals vs. CCE -2003 (157) ELT 105 (Tri-Mum)**
- **CCE vs. Bhikhalal Dwarkadas-1998 (99) ELT 438 (Tribunal).**

Show Cause Notice shall not be based on assumptions and presumptions

- **Oudh Sugar Mills Ltd. vs. UOI -1978 (2) ELT (J172) (SC)**

Show Cause Notice shall not be based on assumptions and presumptions

- **Bihari Silk & Rayon Processing Mills (P) Ltd. vs. CCE-2000 (121) ELT 617 [Trib- LB(3/2)]**
- **Hindustan Aluminium Corp. Ltd. vs. Supdt. of C.Ex. - 1981 (8) ELT 642 (Del.)**
- **JBA Printing Inks Ltd. vs. UOI -1980 (6) ELT 121 (Mad)**
- **Gwalior Rayon (Wgt.) Ltd. vs. UOI -1982 (10) ELT 844 (MP).**

CCE vs. Siddhartha Tubes – 2004 (170) ELT 33 (Tribunal)

- A second show cause notice for same period on different grounds cannot be issued after the matter has been adjudicated and matter is in appeal.
- Same view in **Paro Food Products vs. CCE – 2005 (184) ELT 50 (Tribunal)** where it was observed that this was barred on principle of ‘res judicata’.

Validity of the amount recovered during investigation and consequential refund thereof

- **Shri Nandhi Dhall Mills India Pvt. Ltd. vs. SIO -2021-TIOL-828-HC-MAD-GST**
- **Dabur India Ltd. vs. State of UP – 2002-TIOL-2781-SC-CX-LB**
- **Vodafone Essar South India Ltd. vs. UOI -2009-TIOL-117-HC-MUM-CUS.**
- **Cleartrip Pvt. Ltd. vs. UOI – 2016-TIOL-863-HC-MUM-ST**

Structure of SCN : A SCN should ideally comprise of the following parts, though it may vary from case to case :

- Introduction of the case
- Legal framework
- Factual statement and appreciation of evidences
- Discussion, facts and legal frame work,
- Discussion on Limitation
- Calculation of duty and other amounts due
- Statement of charges
- Authority to adjudicate.
- **(Master Circular on Show Cause Notice, Adjudication and Recovery: 1053/2/2017- CX. dated 10-Mar-2017 issued by CBEC)**

S.73(2) –Time limit prescribed

- Normal period of limitation
- Notice under sub-section (1) of S.73 to be issued at least 3 months prior to the time limit specified in sub-section (10) for issuance or order [S. 73(2) refers]

Status of limitation period for F.Y.2017-18 to 2019-20:

SR.NO.	Relevant F.Y. to which the demand relates	Due date for furnishing the AR in FORM GSTR-9	Last date for issuance of the show cause notice as per S.73(2) r/w. S.73(10)	Remarks
1	2017-18	05.02.2020 ¹ 07.02.2020	05.11.2022 07.11.2022	
2	2018-19	31.12.2020 ²	30.09.2023	
3	2019-20	31.03.202	21.12.2023	

²Not. No. 80/2020-CT dt. 28.10.2020 refers

³Not. No. 04/2021-CT dt. 28.02.2021 refers.

S.74(10) – Computation of time limit

- Proper officer to issue the Order under sub-section (9) i.e. the adjudication order **within a period of 5 years from the due date for furnishing of annual return for the financial year to which the demand or erroneous refund relates.**

Status of limitation period for F.Y.2017-18 to 2019-20 [S.74(2) r/w. S.74(10) refers].

SR.NO.	Relevant F.Y. to which the demand relates	Due date for furnishing the AR in FORM GSTR- 9	Last date for issuance of the show cause notice as per S.74(2) r/w. S.74(10)	Remarks
1.	2017-18	05.02.2020 07.02.2020	05.08.2024 07.08.2024	
2.	2018-19	31.12.2020	30.06.2025	
3.	2019-20	31.03.2021	30.09.2025	

Note: Refer slide 44 for further details

Sr. No.	Particulars	2017-18	2018-19	2019-20	2020-21	2021-22
1	Due Date for GST Annual Return	31.12.2018	31.12.2019	31.12.2020	31.12.2021	31.12.2022
2	Extended Due Date	05.02.2020	31.12.2020	31.03.2021	28.02.2022	-
Times lines for Bonafide / Genuine Cases						
3	Last date to issue Notice under Section 73(2) (33 Months)	05.11.2022 30.06.2023	30.09.2023	31.12.2023	28.11.2024	30.09.2025
4	Last date to issue Order under Section 73(10) (36 Months)	05.02.2023 30.09.2023 N/N 13/2022 5 th July'2022	31.12.2023	31.03.2024	28.02.2025	31.12.2025
Timelines for Malafide / Fraud Cases						
5	Last date to issue Notice under Section 74(2) (54 Months)	05.08.2024	30.06.2025	30.09.2025	28.08.2026	30.06.2027
6	Last date to issue Order under Section 74(10) (60 Months)	05.02.2025	31.12.2025	31.03.2026	28.02.2027	31.12.2027

Sr. No.	Particulars	2017-18	2018-19	2019-20	2020-21	2021-22
1	Due Date for GST Annual Return	31.12.2018	31.12.2019	31.12.2020	31.12.2021	31.12.2022
2	Extended Due Date	05.02.2020	31.12.2020	31.03.2021	28.02.2022	-
Times lines for Bonafide / Genuine Cases						
3	Last date to issue Notice under Section 73(2) (33 Months)	05.11.2022 30.06.2023 30.09.2023	30.09.2023 31.12.2023	31.12.2023 31.03.2024	28.11.2024	30.09.2025
4	Last date to issue Order under Section 73(10) (36 Months)	05.02.2023 30.09.2023 N/N 13/2022 5 th July'2022 31.12.2023 N/N 09/2023 31 st March'2023	31.12.2023 31.03.2024 N/N 09/2023 31 st March'2023	31.03.2024 30.06.2024 N/N 09/2023 31 st March'2023	28.02.2025	31.12.2025
Timelines for Malafide / Fraud Cases						
5	Last date to issue Notice under Section 74(2) (54 Months)	05.08.2024	30.06.2025	30.09.2025	28.08.2026	30.06.2027
6	Last date to issue Order under Section 74(10) (60 Months)	05.02.2025	31.12.2025	31.03.2026	28.02.2027	31.12.2027

Invocation of extended period u/s.74 only if the ingredient of-

- Fraud; or
 - wilful misstatement of facts; or
 - wilful suppression of facts exists
-
- Use of these expressions u/s. 11A of CEA and S.73 of FA
 - However, the expressions ‘wilful mis-declaration’ and ‘collusion’ are conspicuous by their absence!

Fraud vs Negligence

- As distinguished from negligence, fraud is always positive, intentional
- ***‘Tax Fraud’ – ‘Federal offence of wilfully attempting to evade or defeat the payment of taxes due and owing.’ I.R.C. § 7201.***

[Source: Black’s Law Dictionary – Sixth Edition]

“Wilful misstatement” or “Suppression of facts”

- **Cosmic Dye Chemical vs. CCE (supra)**
- **Tamilnadu Housing Board vs. CCE -1991 (74) ELT 9 (SC)**
- **CCE vs. Chemphar Drugs & Liniments – 1989 (40) ELT 276 (SC)**
- **Padmini Products vs. CCE – 1989 (43) ELT 195 (SC).**
- **Pushpam Pharmaceuticals Company vs. CCE 1995 (78) ELT 401 (SC)**
- **Continental Foundation Jt. Venture vs. CCE -2007 (216) ELT 177 (SC)**
- **Stone & Webster International Inc. vs. CCE -2011 (22) STR 467 (Tri-Ahmd).**

“S. 74–Extended period of limitation provided in the specified circumstances

❖ *Is mere inaction or failure a suppression of fact?*

- *Padmini Products vs. CCE (supra)*
- *Jaiprakash Industries vs CCE -2002 (146) ELT 481 (SC)*

“Will non-supply of information not mandated under the statute amount to suppression of facts?”

- *Smt. Shrushti Dhawan vs. Shaw Brothers – AIR 1992 SC 1555*
- *Apex Electricals (P) Ltd. vs. UOI – 1992 (61) ELT 413 (Guj.)*
- *Explanation 2 to S.74.*

Can mere claiming wrong classification or wrong exemption be considered a suppression or misstatement of facts?

- *Denson Pultretaknik vs. CCE – 2003 (155) ELT 211 (SC)*
- *Virlon Textiles Ltd vs. CE – 2003 (158) ELT 469 (SC)*
- *Northern Plastics Ltd. vs. CC [1998] 101 ELT 549 (SC)*
- *Biomax Life Sciences Ltd. vs. CCE – 2021 (375) ELT 263 (Tribunal)*

Is ignorance of law an excuse?

- *Peter & Millere Packers vs. CCE – 2008 (232) ELT 695 (Tribunal)*
- *D. Cawasji & Co. vs. State of Mysore – 1978 (2) ELT J154 (SC)*



REPRESENTATION AGAINST SHOW CAUSE NOTICE & ADJUDICATION PROCEEDINGS

For Information purpose not to be considered as
Professional Advice from us.

Study and Analysis of the SCN

- How to read the show cause notice?
 - Date of issue of SCN
 - Date of receipt of SCN
 - List of Relied upon documents (RUD)
 - Return of the non-relied upon documents
 - Statements and Free translation
 - Authority issuing the SCN.

Study and Analysis of the SCN

- **Facts of the case**
- **Basis of SCN/Demand**
 - Scrutiny of Returns
 - Audit
 - Anti-evasion or Preventive action
 - DGGI action

Study and Analysis of the SCN

- **Allegation/charges in the SCN**
 - Nature of allegations
 - Basis of allegations
 - Evidence
 - Interpretation of the statutory provisions
 - Judgements
 - AAR/AAAR Ruling
 - Technical Report
 - Third Party statements
 - Discrepancies in Records
 - CBIC's Circular
 - Recurring demand
 - Revenue's pending appeal

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Study and Analysis of the SCN

- **Computation of demand**
 - Classification
 - Valuation
 - Exemption notification
 - Rate of tax
 - Cum-tax principle
- **Statutory provisions invoked in the SCN**
 - Summary of the provisions invoked
 - Applicability/Relevance of the provisions
 - Action proposed under the provisions

Study and Analysis of the SCN

- **Time limit for filing the reply to SCN**
 - 30 days time limit – Statutory or administrative?
 - Reply and Hearing- Are they substitute of each other?
 - Acknowledgement of the SCN before expiry of 30 days
 - Extension of time for filing the Reply
 - Filing of additional submissions.

Study and Analysis of the SCN

- **Cross-examination**

- Need for cross-examination
- Can cross-examination be sought as a vested right?
- Persons whose cross-examination can be sought
- Admissibility of the statement in case the person does not appear for the cross-examination
- Written submissions on conclusion of the cross-examination
- Refusal to grant cross-examination – Consequence and course of action
- Law relating to cross-examination.

Checklist of Notice: Unregistered

Noticee	Notice			
Unregistered	by Central or State/UT Administration			
Underlying Proceedings	S.63 (Asst. of Unregistered Persons)	S.64 (Summary Asst. in certain Special Cases)	S.67 (Power of Inspection, Search & Seizure)	Other
Notice for Demand under	S.63 (Asst. of Unregistered Persons)	S.73 (Determination in genuine cases)	S.74 (Determination in Fraud Cases)	S. 76 (General Provisions relating to determination of Tax)
Notice for Penalty	S.122 (Penalty for Certain Offences)	S.125 (General Penalty)	S.127 (Power to impose penalty in certain cases)	Other
Accompanying Summary	DRC-01			Other
Pre-Notice Consultations	-	DRC-01A	None	-

For Information purpose not to be considered as Professional Advice from us.

Checklist of Notice: Registered

Noticee	Notice			
Registered	by Central or State/UT Administration			
Underlying Proceedings	S.61-62-64 (Scrutiny – Non Filers – Summary Asst. Special Cases)	S.65 (Audit by Tax Authorities)	S.67 (Power of Inspection, Search & Seizure)	Other
Notice for Demand under	-	S.73 (Determination in genuine cases)	S.74 (Determination in Fraud Cases)	S. 76 (General Provisions relating to determination of Tax)
Notice for Penalty	S.122 (Penalty for Certain Offences)	S.125 (General Penalty)	S.127 (Power to impose penalty in certain cases)	Other
Accompanying Summary	DRC-07	DRC 01-02	DRC-01	Other
Pre-Notice Consultations	-	DRC-01A	None	-

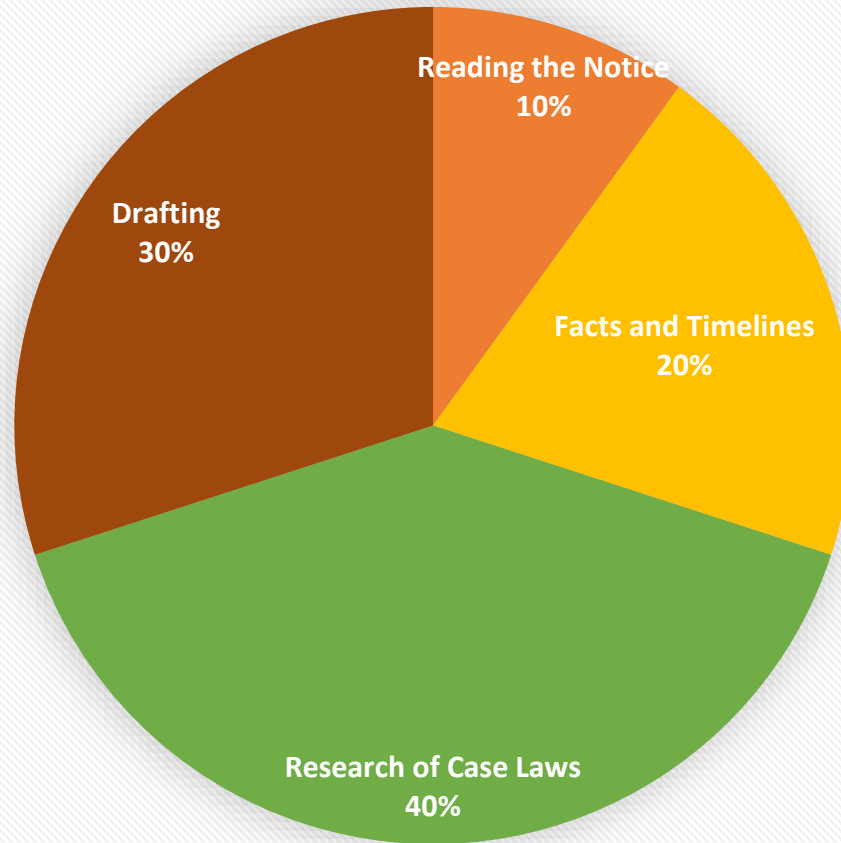
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Facts vs Opinion

- Taxpayer is a Company => Fact
- Taxpayer is registered => Fact
- Taxpayer is Trader => Incorrect Fact: Taxpayer is Manufacturer and Reseller of Steel
- Taxpayer has not discharged Output Tax Correctly => This is not a fact but an Opinion
- Taxpayer has claimed inadmissible Input Tax Credit => This is not a fact but an Opinion.
- Taxpayer has discharged IGST instead of CGST-SGST => This is not a Fact but an Interpretation of Underlying facts.

Time and Energy

Time and Energy



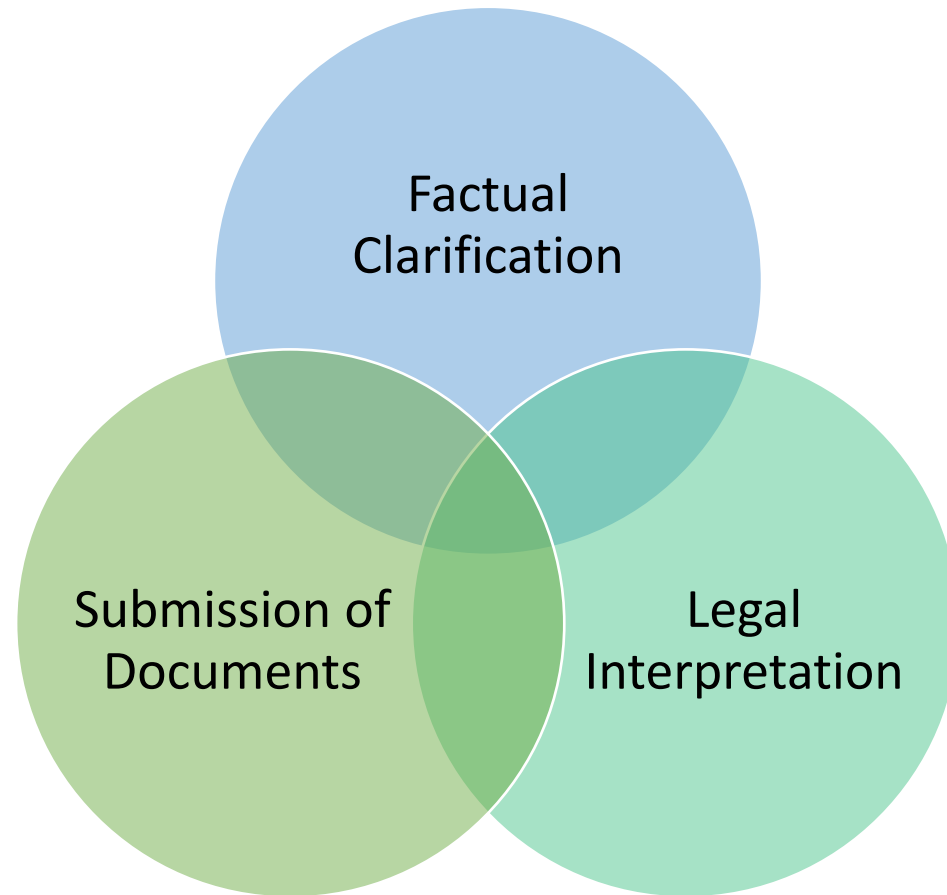
■ Reading the Notice ■ Facts and Timelines ■ Research of Case Laws ■ Drafting

For Information purpose not to be considered as
Professional Advice from us.

Drafting of Reply to SCN

- **Preparation of the defence reply to SCN**
 - Background or Statement of facts
 - a. Brief background of the Assessee
 - b. Narration of the relevant facts
 - c. Chronology of the events/facts
 - Relevant facts leading to the issue of SCN
 - Exhibits
 - Amount of tax, etc. demanded and other action proposed – statutory provisions invoked
 - Gist of the allegations

Identify the Issue



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Structuring the Response

Begin with a brief reference to the notice and its key queries.

Address each point raised in the notice with corresponding explanations and evidence.

End with a summary and assurance of compliance.

Legal Citations

Support the response with

- Relevant Legal Provisions
- Circulars
- Case Laws

Ensure the case laws cited are

- not overturned or
- contradictory to the submission.

Key Drafting Technique

Directly Address the Allegations:

- Quote the exact wording of the SCN for clarity and context.
- Explicitly refute incorrect allegations or presumptions.

Provide Alternative Arguments:

- Include "without prejudice" arguments to safeguard the case if the primary contention fails.

Anticipate Counterarguments:

- Preemptively address potential objections from the authority.

Request for a Hearing:

- If needed, request a video conference hearing to explain the case further.

Application for Waiver or Condonation

Explain Circumstances:

- Provide a detailed narrative of the genuine hardship or reasons for delay.
- Include affidavits or third-party certificates where applicable.

Emphasize Compliance:

- Highlight the assessee's track record of compliance to show bona fide intent.

Drafting of Reply to SCN

- Grounds of Defence
 - Merits of the case
 - Limitation
 - Computation
 - Challenge to the penal action and other action proposed

Drafting of Reply to SCN

- Importance of the Reply to the SCN
- Furnishing of evidence in support of each contention
- Judgements' compilation – Relevant para

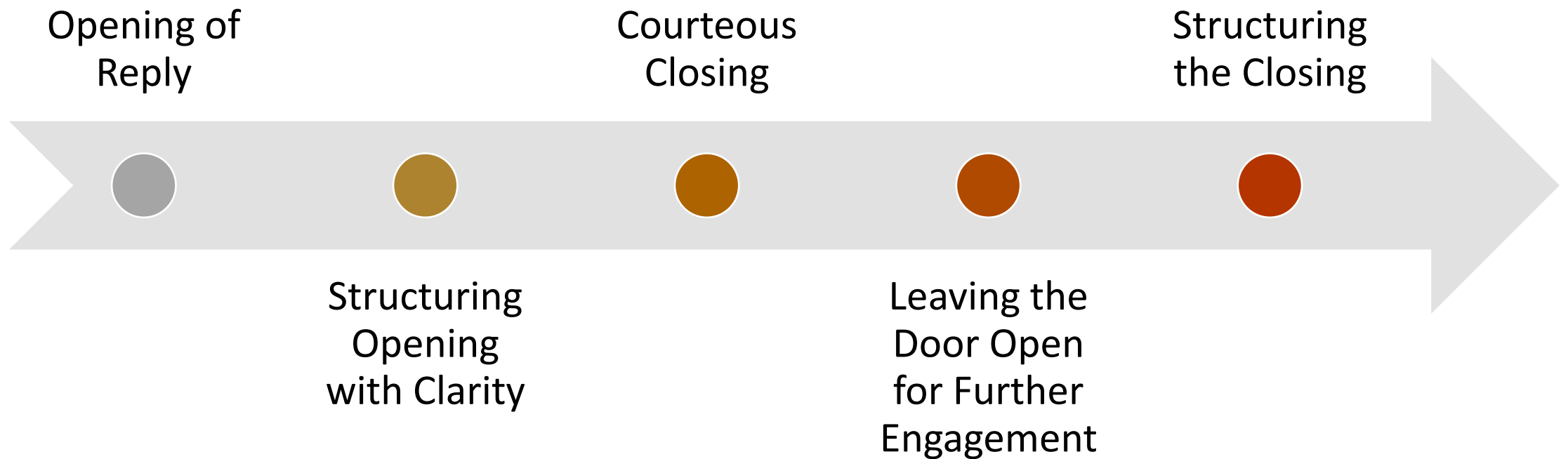
Drafting of Reply to SCN

- Procedural requirements
 - Summary of SCN – Form GST DRC-01
 - Statement of Demand u/s. 73(3)/74(3) – Form GST DRC-02
 - Payment of tax, etc. u/s. 73(5)/74(5) or in terms of other provisions - Form GST DRC-03
 - Acknowledgement – Form GST DRC-04
 - Payment of tax, etc. u/s. 73(8)/74 (8) or S.129 (1) – Form GST DRC-03

Drafting of Reply to SCN

- Procedural requirements
 - Acknowledgement – Form GST DRC-05
 - Representation/Reply to SCN – Form GST DRC-06
 - Summary of the Order – Form GST DRC-07
 - Rectification of Order (S.161) or withdrawal of Order – Form GST DRC-08.

Structure of Draft Reply



For Information purpose not to be considered as
Professional Advice from us.

Effective Opening: Example

- With reference to your notice dated DD/MM/YYYY under Section XXX of the CGST Act'2017, the assessee appreciates the opportunity to submit a detailed response. This submission is structured to address the specific points raised in your notice, supported by documentary evidence and legal precedents. We intend to clarify the issues at hand and ensure a comprehensive understanding of the facts.

Structuring Opening with Clarity: Example

- The issue raised in your notice pertains to [specific issue]. In this submission, we will provide the following:
 - A detailed explanation of the relevant transaction.
 - Documentary evidence to substantiate the facts.
 - Legal precedents to support our position.
 - This will demonstrate that the proposed addition under [specific section] is unwarranted and contrary to the established facts and law.

Courteous Closing: Example

- In conclusion, the assessee asserts that the facts and evidence provided directly address the concerns outlined in the show cause notice. We believe that our explanations are satisfactory and comply with the relevant legal provisions. If you require any further clarifications, we are available to provide additional details or explanations as needed.

Leaving the Door Open for Further Engagement: Example

- Sir, with the foregoing submissions, we believe that the proposal of making the reversal of ITC as laid out in the show cause notice would be dropped. If, however, Your Goodself still harbours any doubts or reservations in this regard, we shall be glad to provide further information or elucidate our submissions during a video conference hearing or through written communication, as deemed necessary.

Structuring the Closing: Example

To summarise:

1. The alleged claim of ineligible ITC is unfounded, as demonstrated by the detailed transaction records submitted.
2. The legal provisions cited to support the assessee's position that the ITC claim is valid.
3. We have meticulously provided all necessary evidence to substantiate the assessee's claims, leaving no room for doubt.
4. We respectfully request that you consider the above and drop the proposed reversal of ITC and associated penalties, as we firmly believe in the validity of our claim.
5. We are fully committed to providing any further clarification or submission that may be required, and remain available for this purpose.

Adjudication proceedings:

- Competent Authority to adjudicate the SCN
 - S.2 (4) – ‘Adjudicating Authority’ defined.
 - Whether adjudicating authority acts as a ‘quasi-judicial authority’?
-
- **Orient Paper Mills Ltd. vs. UOI – 1978 (2) ELT J345 (SC)**
 - **Orient Paper Mills Ltd. vs. UOI – 1978 (2) ELT J382 (SC)**
 - **CCE vs. National Tobacco Co. of India Ltd -1978 (2) ELT J 416 (SC)**

Adjudication proceedings:

- Opportunity of Personal hearing.
- Principles of natural justice
- ‘Reasonable opportunity of being heard’

Fedco (P) Ltd. vs. S. N. Bilgrami – 1999 (110) ELT 92 (SC)

Adjudication proceedings:

- Change of Adjudicating Authority—Whether a fresh hearing required?
 - **Gullapalli Nageshwara Rao vs. APSRTC - = AIR 1958 SC 308.**
 - **Bhagirathi Iron & Steel (P) Ltd. vs. CCE -1999 (113) ELT 678 (Trib)**
- Grant of personal hearing – S. 75(4)
- Grant of adjournment – S. 75 (5)
- Cap on number of adjournments – maximum 3 (three) adjournments – Proviso to S. 75(5)
- Fixing multiple dates of hearing by a single intimation- Is it valid?
 - **Bindal Sponge Ltd. vs. UOI – 2015 (122) ELT 657 (Tribunal)**
 - **Afloat Textiles (P) Ltd. vs. CCE – 2007 (215) ELT 198 (Tri-Ahd.)**

Adjudication proceedings:

- Fair and reasonable hearing
 - **Havacrum Rubber (P) Ltd. vs. Supdt. of C. Ex.-1983 (14) ELT 1685 (Kerala)**
 - **Aluminium Corporation of India Ltd. vs. UOI - 1978 (2) ELT J 320 (SC)**
- Reasoned and speaking Order is must:
 - **Siemens Engineering and Manufacturing Co. of India Ltd. vs. UOI-AIR 1976 SC 1785**
 - **S. 75 (6)**
- Order cannot go beyond or be contrary to the SCN:
 - **Saci Allied Products Ltd. vs. CCE – 2005 (183) ELT 225 (SC)**
 - **Hindustan Polymers Ltd. Vs. CCE – 1999 (106) ELT 12 (SC)**
- Can an officer review his own order?
 - **Dwarka Das vs. State of M. P.- AIR 1999 SC 1031**

Representation before the Adjudicating Authority:

- Appearance and Representation
 - Appearance by the Authorised Representative
- S.2 (15) r/w. S. 116
 - Preparation of Synopsis
 - Filing of additional submissions
 - Records of personal hearing

Some Do's & Don'ts

- **A few Do's**
- **Show Cause Notice:**
- Do make a note of the date of issue of the SCN
- Do make a note of the date of receipt of the SCN
- Do place acknowledgement of the receipt of the SCN by way of letter, etc.
- Do check that **all** RUDs are available with the SCN
- Do ask for the return of non-relied upon documents, if any
- Do ask for the free translation in in English of the statement/s, if recorded in a language other than English.

Reply to SCN

- Do address each allegation levelled in the SCN.
- Do provide evidence in support of each contention/ground raised.
- Do check the latest status of the judgement being relied upon.
- Do provide copies of judgements relied upon with the relevant paragraphs duly highlighted.
- Do provide index and do page numbering of the reply.
- Do provide legible (or typed) copy of each document relied upon.

Adjudication Proceedings

- Do ensure that the Authorisation /Vakalatnama is on records, wherever required.
- Do maintain Dress Protocol.
- Do carry short notes/synopsis with you which would facilitate the oral submissions.
- Do address each question put forth by the adjudicating authority.
- Do speak slowly, softly and clearly.
- Do maintain decorum of the proceedings.

A few Don'ts

- **Don't address any correspondence** by name of the officer.
- Don't seek adjournment on flimsy ground.
- Don't use harsh or abusive language in any correspondence/ communication and reply.
- **Don't go by 'headnotes'** of a judgement while relying upon it.
- Don't shout or be hysteric during the hearing.
- Don't make irrelevant submissions or state irrelevant facts.

Don't try to impress your client while arguing a case.

Don't 'copy and paste' pleadings.

REGISTRATON AND LITIGATION.. FEW IMP TIPS

- Section 29 and section 30 – implications ...
- Requirements...
- 5 leading judgments on revocation, appeal, show cause notices, and law.
- Pleadings....what to challenge and what to plead and what judgments to quote or not quote.
- Documentary evidence in support of grounds of appeal.
- Effect of suspension or cancellation of registration certificate.

Key Points to take care while Drafting Reply

- Taxpayers sometimes in a hurry to **prove their innocence** forget to **challenge the allegations**.
- Long-standing **relationships** with Advisors and Experts **can turn sour** when notices are issued.
- Divergent AAR's have **exposed** the “Other View” that is possible.
- Allegation is **not Suspicion**. Allegation is **not Actionable Cause**.
- **Allegation is accusation** about facts backed by Evidence, if proved reliable, will establish said Wrongdoing. **Allegation is not FACT**.

Key Points to take care while Drafting Reply

- Allegation is an Opinion or Interpretation of Facts as Observed.
- Fact is that which is undeniable by both sides.
- If it is deniable then it is not a FACT.
- Often Opinions are presented like a Fact. As an expert you have to segregate them like “*wheat from chaff.*”
- Merely offering disagreement with the allegation is not sufficient. Such disagreement should be substantial, it must be denied unequivocally.

Key Points to take care while Drafting Reply

- For example,
 - Whenever a Notice is issued for mismatch of ITC (2A vs 3B) based on data mismatch from common portal or retrospective cancellation
 - there is a presumption that Supplier has defaulted in payment of tax on supplies
 - whereas there is no presumption about accuracy of data on common portal
 - data has been regularly revised on common portal
 - supplier might have discharged his duty while he was active
 - 2A is dynamic and generates different reports on different dates

Key Points to take care while Drafting Reply

- For example,
 - SCN issued for charging GST on “other income” appearing in Financials
 - SCN demands tax liability as “CGST-SGST”
 - This means that there is presumption about “*place of supply*” is interstate

Key Points to take care while Drafting Reply

- Taxpayers records are rejected but demand is based upon values in the record or transaction in the record.
- “*Quod Approbo Non Reprobo*”: **Which I approve, I cannot Disapprove**
- Officer cannot act under Compulsion and/or Dictation
- Treatment of any transaction under other law has no role to GST as GST does not import views from other laws.

Key Points to take care while Drafting Reply

- Taxpayers cannot admit to any “interpretation of law”
- Taxpayer can only admit Facts or tax treatment
- The more acrimonious the statement, the less reliable it becomes, and this is polar opposite of taxpayer’s understanding and belief.

Checklist of Notice

Notictee	Notice (allegations)		
Demand Raised	Fact	Opinion	Evidence
Issue A	YES\NO	NO/YES	YES/NO
Issue B	YES\NO	NO/YES	YES/NO
Interest	YES\NO	NO/YES	YES/NO
Penalty 1	YES\NO	NO/YES	YES/NO
Penalty 2	YES\NO	NO/YES	YES/NO

Checklist of notice

Notice	Notice (Allegations)		
Demand raised	Accepted	Rejected	
		On facts	On law
Issue A	YES/NO	YES/NO	YES/NO
Issue B	YES/NO	YES/NO	YES/NO
Interest	YES/NO	YES/NO	YES/NO
Penalty 1	YES/NO	YES/NO	YES/NO
Penalty 2	YES/NO	YES/NO	YES/NO



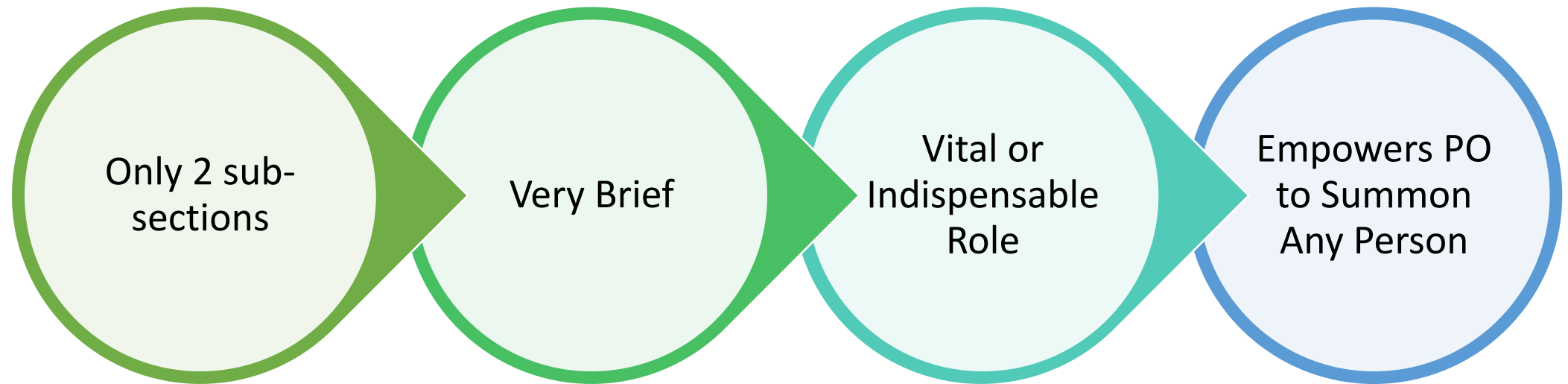
Summons under CGST/SGST Act

Power to summon persons to give evidence and produce documents. (Sec. 70)

(1) The proper officer under this Act shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry in the same manner, as provided in the case of a civil court under the provisions of the Code of Civil Procedure, 1908.

(2) Every such inquiry referred to in sub-section (1) shall be deemed to be a “judicial proceedings” within the meaning of section 193 and Section 228 of the Indian Penal Code.

Sec. 70: Summons



Summons can be issued for

Seeking
Personal
attendance

To give
Evidence

To Produce a
Document

To record a
Statement

Power of “Inquiry” is not restricted

- Word “Inquiry” cannot be given the restrictive meaning only to cover post enquiry post issue of notice as the inquiry is “for the purposes of Act” (Excise) – National Building Construction Co. Ltd. vs UOI (HC – Delhi), [2018] 100 taxmann.com 307
- “for the Purposes of the Act” are not mentioned in GST Laws , However as per my understanding, the scope of “Inquiry” would be as wide since the “Proper Officer” under the act is empowered to undertake inquiry to carry out functions assigned to him under the Act.
- Therefore, the inquiry shall not be limited to only issues raised in the SCN.

P.V. Ramana Reddy vs UOI (HC-Tel.) [2019] 104 taxmann.com 407 (Telengana)

- Enquiry before PO is by its nature, Criminal Proceeding, it is nevertheless a Judicial Proceedings and hence, the person summoned is obliged not to give false evidence nor to fabricate evidence.
- He is also obliged not to insult and not to cause any interruption to the Proper Officer in the course of such proceedings.

Consequence of Failure to attend as per Summons

- Court have the Powers to issue a warrant of arrest with or without bail and may also issue an order for attachment of his property and also impose fine (exception – Lawful Excuse for non-attendance)
- Penalty of Rs. 25,000/- U/s 122(3)(d) of CGST Act'2017 could also be imposed.

Details available with Department – Summons not to be issued

- A.S. Corporation vs UoI, [2008] 223 ELT 26 (HC-Gujarat)
- Dharampal Satyapal vs UoI, [2018] 360 ELT 718 (HC-Guwahati)

No Provisions in Law to Order the Assessee to Create Document not in his position

- A Truck of 123 cartons of documents were taken for submission to DGCEI office but the officer insisted on providing information in particular format.
- Delhi High Court rejected such demand by the Officer in eBiz.com vs UoI, [2016] 338 ELT 562 (HC-Delhi)

Presence of Advocate, though not in hearing range, is permissible

- Poolpandi vs Superintendent of Central Excise, [1992] 60 ELT 24 (SC)
- Agarwal Foundries Pvt. Ltd. vs UoI, [2020] 121 taxmann.com 134 (HC – AP & Telengana)

Detention of Assessee for Long Hours

- Custom Officers does not have the powers to detain assessee for long hours. There is no Fundamental Right (Article 21 of Constitution) which guarantee Presence of Lawyer during interrogation process. Anil G Merchant vs Director of Revenue, [1985] 20 ELT 292 (HC-Madras)
- FAQ of CBIC, 3rd Edition dated 15-Dec-2018, has instructed its Officers that statements should be recorded during office hours generally and no person should be made to wait for long hours.

Confessional Statements of co-accused

- The confessional Statements of a co-accused cannot be used as evidence unless it is corroborated by the other independent material.
 - Debu Saha vs Collector of Customs, [1990] 48 ELT 302 (Tribunal – Kolkata)
- Principles of Natural Justice – Power of Cross Examinations

Employee of Accused

- Where the person giving statement was the employee of the accused/person proceeded against, he cannot be called a third party witness and it was held that **even where cross-examination could not be conducted, the statement has evidentiary value.** – Shalini Steels Ltd. vs Commissioner of C. Ex. Hyderabad, [2010] 258 ELT 545 (Tribunal – Bangalore)

Summons in GST

Instruction No.03/2022-
23 (GST Investigation)
dated 17.08.2022



Points to be kept in mind before issuing Summons under Section 70 of GST by Proper Officer

Not to issue summon in routine manner to the top officials (CMD/MD/CEO/CFO) of Company to call for material evidence/documents.

Summons should indicate name of Offender so that the recipient of the Summon has prima facie understanding that whether he has been called as accused or co-accused or witness.

Not to call for statutory records available at GST Portal i.e. where records are available online/digitally no need for summon.

Understand that issuing of someone is one of the instrument with the department to get/ obtain information or document or statement from any person to find out the tax evasion etc.

Use power to issue Summon judiciously and with due consideration.

For Information purpose not to be considered as Professional Advice from us.

Points to be kept in mind before issuing Summons under Section 70 of GST by Proper Officer

Explore instances when instead of resorting to summons, a letter for requisition of information may suffice.

Ensure that summons have adequately been served upon the intended person in accordance with section 169 of CGST Act

Mandatory to Generate and Quote DIN in communications by officers

Issue Summon in prescribed Form

Follow the prescribed procedure before issuing Summons i.e. Prior Written Permission from AC/DC.

Registration Issues

How to Handle them?



Supreme Court in Amrit Foods VS Commissioner of Central Excise, U.P

CIVIL APPEAL NOS. 1329 & 7275 OF 2003

OCTOBER 26, 2005

Exact Contravention is needed

- Rule 173Q of the Central Excise Rules, 1944 - Penalty - Neither show cause notice nor order of Commissioner specified which particular clause of Rule allegedly contravened by appellant - **Assessee to be put on notice as to exact nature of contravention for which assessee was liable under provisions of Rule** - Tribunal order setting aside penalty upheld - appeals disposed of (Para 5)
- Rule 173Q contains six clauses the contents of which are not same.

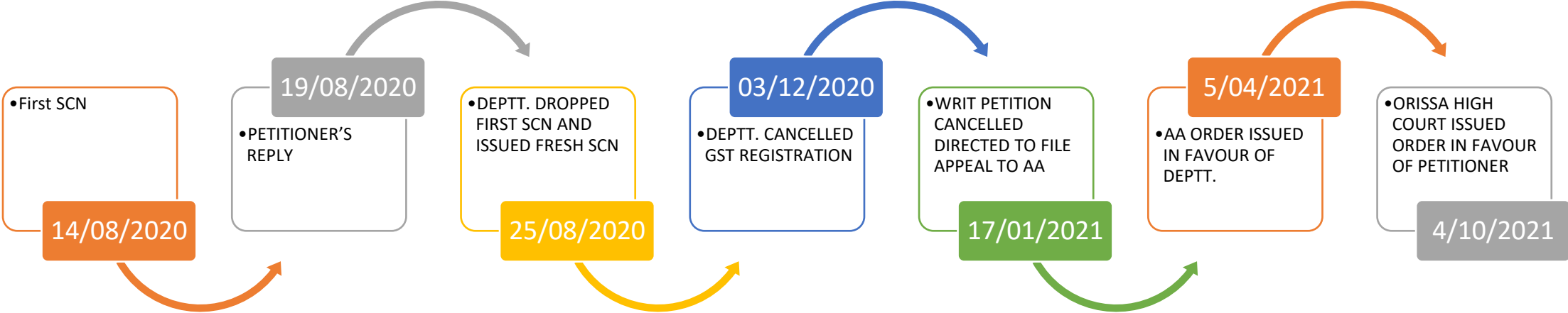
*M/S. Bright Star Plastic Industries
VS
Additional Commissioner of Sales Tax*

W.P. (C) No. 15265 of 2021

dated October 04, 2021

Orrisa HC

Important Timelines



Facts of the Case

- The Petitioner was involved in the **business of manufacturing and trade** of Poly Vinyl Chloride “PVC” pipes, iron scraps, etc.
- On August 14, 2020, the CT & GST Officer, Bhubaneswar issued a **SCN in Form GST REG-17** under Rule 22(1) of the OGST Rules, 2017 for cancellation of the Petitioner’s registration on the ground that:
“Registration has been obtained by means of fraud, willful misstatement or suppression of facts”.
- After the Petitioner filed a reply on 19th August, 2020, the CT & GST Officer by an order dated 25th August, 2020 dropped the proceedings for cancellation of the registration. **However, on the very same day**, issued **another SCN for cancellation of registration**, this time on the ground that:
“It was claimed that ITC of Rs.2,04,650 against fake invoices was issued by non-existent supplier”.

Facts of the Case

- **SCN** issued to The Petitioner for **Purchases made from M/s. Pawansut Enterprises** (Selling dealer).
- **Department** conducted a **field visit** to the address of the Selling dealer and it was found to be occupied by some other person and not by the selling dealer.
- **Department concluded** that the transactions entered into by the Petitioner with the selling dealer were **fake transactions** and hence, **cancelled the registration**.

Issue Involved

- In this case, **Section 16 of the OGST Act** and **Rule 21** of the OGST Rules 2017, states that

Registration to be cancelled in certain cases if the said person,-

(a) does not conduct any business from the declared place of business: or

(b) issues invoice or bill without supply of goods or services in violation of the provisions of the Act, or the rules made thereunder; or

(c) violates the provisions of Section 171 of the Act or the rules made thereunder.”

Respondent's Argument

- The Respondent (**Department**) argued that a field visit was undertaken to the address shown for the selling dealer (**M/s. Pawansut Enterprises**), the premises were found to be occupied by some other person and not by the selling dealer.
- The said visits which were undertaken on July 01, 2019, a **conclusion** was drawn that the transactions entered into by the Petitioner with the selling dealer in April and August 2018 were **fake transactions**.

Petitioner's Contention

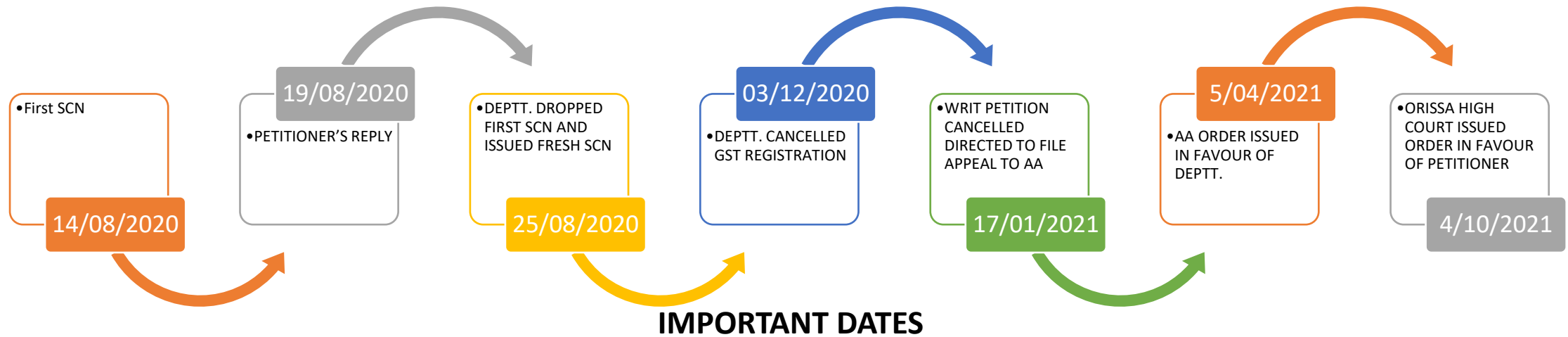
- The Petitioner contended that under Section 16 of the OGST Act and Rule 21 of the OGST Rules 2017, there is no provision that enables the cancellation of the registration of the **purchasing dealer** for any **fraud committed by the selling dealer**.
- The Petitioner argued that the cancellation registration of the selling dealer **M/s. Pawansut Enterprises** took place only on October 01, 2019, long after the dates of the purchases made by the Petitioner from the said dealer.
- **Therefore**, it was submitted that on the date of purchases taking place, there was no way that the Petitioner would have known that at some future point in time, the registration of the selling dealer was going to be cancelled.

The Honorable Orissa High Court Held

- The High Court came to the conclusion that because None of the three circumstances stated in Rule 21 are attracted. Hence, Rule 21 of the OGST Rules cannot be invoked by the Department.
- Also, on the dates that the Petitioner entered into the transactions of purchase with M/s. Pawansut Enterprises i.e. April and August, 2018, the GST registration had not been cancelled. That was to take place much later on 1st October, 2019. Therefore, on the date the purchases took place **there was no means for the Petitioner to know that entity which had a valid GST number, was in fact non-existent.**

The Honorable Orissa High Court Held

- The Orissa HC observed that the Respondent has failed to show that the Petitioner as a **purchasing dealer deliberately availed the ITC** in respect of the transactions with an entity knowing that such an entity was not in existence and on the basis of this observation, the Court revoked the GST Registration Cancellation.



FADA Trading Private Limited Vs Commissioner of GST HIGH COURT OF DELHI

W.P.(C) 1212/2022 & CM No.3560/2022

07-Apr-2022

Facts of the Case

- The Petitioner in this case is a Pvt Ltd Company named as FADA Trading Pvt Ltd.
- **Show Cause Notice received was completely deficient in material particular and GST Registration was cancelled.**

Petitioner's Contention

- The order passed by the Appellate Authority on the grounds that the **SCN gave no details as to the date and time on which the petitioner's authorized representative was to present himself for a personal hearing** before the Adjudicating Authority.
- Petitioner submitted that **neither the SCN nor the subsequent order cancelling the petitioner's GST registration was received by the petitioner.**

Delhi High Court held that:

- HC quashed the order cancelling the GST registration as **the Show Cause Notice was completely deficient in material particular.**
- The court noted that from the close perusal of the order by which petitioner's registration was cancelled, it was clear that there was no demand outstanding against the petitioner.
- The court while quashing the order cancelling the GST Registration, directed the department **to restore the petitioner's GST registration at the earliest.**

Micro Focus Software Solutions (I) Pvt Ltd vs Union of India HIGH COURT OF DELHI

W.P.(C) 8451/2021, CM Nos.26176/2021 & 28634/2021

26-Apr-2022

Facts of the Case:

- The Petitioner(Micro Focus Software Solutions India Pvt Ltd) was **issued a show cause notice to show cause** as to the factum of it not being found functioning or existing at the given address.
- **The time allowed to reply to SCN was seven days** and SCN also provided that the authorized representative of the petitioner will appear for personal hearing.
- The **petitioner sought extension of time** for personal hearing .

Facts of the Case:

- Pursuant to filing of reply on the last date of period for filing reply i.e. on the 7th day, **an order cancelling GST registration was passed** and subsequently a **second order was passed which related to the dismissal of the application for revocation of cancellation;**

Petitioner's Contention

- In the absence of notice to the Petitioner for carrying out physical inspection, **there has been a complete violation of principles of natural justice.**
- Petitioner was furnished the report generated on physical inspection having been carried out, only during the course of the proceedings.
- The request made by the petitioner for **grant of extention of time was not responded** and the **reply given by petitioner was not taken into consideration.**

Respondent's Contentions

- there is a discrepancy and/ or contradiction as to when the petitioner closed down his business at the given address
- the petitioner was given an opportunity to respond to the show cause notice and since there was no response and it was only thereafter that the order was passed
- the order rejecting the revocation application has been passed, the petitioner should be relegated to an alternate statutory remedy

Delhi High Court held that:

- Despite the time extension for filing reply sought by the Petitioner, the Petitioner duly filed a reply to show-cause notice on the 7th working day in which reasons were set out as to why the petitioner wished to continue with its registration;
- **Delhi HC sets-aside order cancelling GST registration as well as subsequent order of dismissal of revocation application on account of non-consideration of reply to SCN.**
- Respondents will ensure that the **petitioner's registration is revived and requires Petitioner to suo-moto apply for de-registration.**

Case Study on Registration

1. Cancellation
2. Suo Motto Registration

Case-1: Cancellation of Registration

- Shop was found closed of the vendor.

Case-2: Suo Motto Registration

- Dealer in Food Grains like Rice, Wheat etc
- Inquiry for Nuts like Almonds, Cashew, Hazelnuts, Peanuts etc
- Charges levied of selling Pulses.



Few Important Court Decisions on GST Registrations – word file

Rohit Varma vs Assistant Commissioner, Burtola, Kolkata North

IN THE HIGH COURT OF CALCUTTA
MAT 456 of 2022, With I.A. No. CAN 1 of 2022
12-May-2022



Facts of the Case

- The appellant was granted registration under the provisions of the VAT in 2013 and was migrated to GST in 2017.
- In 2018, a show cause notice was issued to the appellant by the Deputy Commissioner of GST calling upon the appellant to **show cause** as to why the registration should not be cancelled as it has been obtained by means of **fraud, wilful misstatement or suppression of facts**.
- The appellant did not avail the remedy granted and did not appear before the authority and therefore, the registration was cancelled.

Facts of the Case

- Later the appellant had filed an application for revocation of the cancellation of registration and the registration was restored.
- Thereafter, within a period of three days, another show cause notice was issued on the same ground as the earlier show cause notice.
- The appellant submitted the reply. However, the registration was cancelled expressing doubt on the documents produced by the appellant to show that he was carrying on business in the premises, which has been shown in the registration certificate.

Facts of the Case

- Against this cancellation Order the appellant filed an application for revocation of the said order, which was also dismissed.
- Against this dismissal appellant filed an appeal before the Joint Commissioner, which was dismissed.
- The appellant was granted registration under the provisions of the West Bengal Value Added Tax Act, 2003 dated 27th August, 2013. The appellant has been enjoying the benefit of such registration ever since 2013. After coming into force of the WBGST Act, the licence migrated under the new provisions. On 10th September, 2018 first SCN was issued. Appellant approached the High Court.

Respondent's (Department) Argument

- An inspection was conducted by the officers of the department, the receptionist of the building affirmed that power of attorney agent of the owner, used to come to the premises and carried on certain business activities. Nevertheless, **the said receptionist could not recognise the owner, whose photograph appears to have been shown to the said receptionist.**

Calcutta High Court Held:

- In any event, the authority **while cancelling the registration could not have solely relied upon a statement made by the receptionist of the building** and merely because she could not recognise owner's photograph, could not have been the reason for cancellation. [Para 10]
- The proper course that should have been adopted is to **issue a notice directing the owner and his power of attorney agent to be personally present in the office of the revenue and the landlord of the premises** also should have been summoned. If all the three parties are present, the correct facts will come to light. Had this procedure been adopted, the truth would have been established and a proper order could have been passed either way. [Para 10]

Calcutta High Court Held:

- Order of Joint Commissioner Set-aside and the matter is remanded back to the first respondent for conducting a fresh enquiry.
- As a result of the same, the order dated 17th March, 2021 directing rejection of application for revocation of cancellation is also set aside and the said application is restored to the file of the first respondent for conducting fresh enquiry.
- The first respondent is directed to depute one of his officers to effect personal service of the hearing notice on the landlord of the building to ensure that the landlord is present on the said date (20-Jun-2022).

DRS WOOD PRODUCTS LUCKNOW VS STATE OF U.P. 2022-VIL-550-ALH

- GST - Section 29 of the CGST Act – Rejection of application for revocation of cancellation of registration - Cancellation of registration on the ground that on an investigation at the principal place of business of the petitioner, no business activity was found nor any stock of goods / employee was found - whether the action taken against the petitioner in respect of cancellation satisfies the test of the requirement of Section 29 of the CGST Act HELD - perusal of the show-cause notice clearly depicts the opaqueness of the allegations levelled against the petitioner, which were only to the ground that 'tax payer found non-Functioning / non-existing at the principal place of business' - The said SCN did not propose to rely upon any report or any inquiry conducted to form the opinion and on what basis was the allegation levelled that the tax payer was found non-functioning as it does not indicate as to when the inspection was carried - A vague show-cause notice without any allegation or proposed evidence against the petitioner is violative of principles of administrative justice. Cancellation of registration is a serious consequence affecting the fundamental rights of carrying business and in a casual manner in which the show-cause notice has been issued clearly demonstrates the need for the State to give the quasi-adjudicatory function to persons who have judicially trained mind, which on the face of it absent in the present case

DRS WOOD PRODUCTS LUCKNOW VS STATE OF U.P. 2022-VIL-550-ALH

- Finding the orders contrary to the mandate of Section 29 and 30 of the Act as well as the principles of adjudication by the quasi-judicial authorities, the orders impugned are set aside - the registration of the petitioner shall be renewed forthwith – writ petition is allowed with cost to Revenue - The arbitrary exercise of power cancelling the registration in the manner in which it has been done has not only adversely affected the petitioner, but has also adversely affected the revenues that could have flown to the coffers of GST in case the petitioner was permitted to carry out the commercial activities. The actions are clearly not in consonance with the ease of doing business, which is being promoted at all levels. For the manner in which the petitioner has been harassed since 20.05.2020, the State Government is liable to pay a cost of Rs.50,000/- to the petitioner. The said cost of Rs.50,000/- shall be paid to the petitioner within a period of two months, failing with the petitioner shall be entitled to file a contempt petition

TVL. JEYALAKHSMI STORE VS THE COMMISSIONER OF COMMERCIAL TAXES, CHENNAI 2022-VIL-546-MAD

- GST - Cancellation of registration under Section 29(2)(C) of the CGST Act for non-filing of returns for a continuous period of six months – Rejection of revoke the cancellation of registration on the ground that request for revocation is not filed within the statutory limitation of 90 days – aggrieved assessee find instant petition – HELD - the petitioner during the Covid-19 pandemic period had not filed his returns and thereafter, he had not conducted any business so that he filed only nil returns – in Tvl.Suguna Cutpiece case the Court held that no useful purpose will be served by keeping those petitioners out of the Goods and Services Tax regime, as such assessee would still continue to do business and supply goods/services.
- By not bringing them back to the Goods and Services Tax fold, would not further the interest of the revenue – following the aforesaid case this writ petition is allowed

SMS INFRASTRUCTURE VS UNION OF INDIA

2022-VIL-531-BOM

- GST - Section 30 of the CGST Act - Revocation of cancellation of registration - Petitioner challenging impugned order dismissing appeal filed against cancellation of GST registration on the ground that petitioner should have filed an application under section 30 of the CGST Act – HELD – Section 107 of the CGST Act does not provide that a registered person, while challenging an order of cancellation of registration, should also file an application under section 30 of the CGST Act - While holding that the appeal is maintainable, still respondent No.2 has rejected the appeal on the ground that an application under section 30 has not been made. Court is not agreeable with the view expressed by said respondent - the impugned order is quashed and set aside. Respondent No.2 is directed to consider the appeal de novo and may pass on merits such order as it deems fit in accordance with law – Petition is disposed of



ITC Issues

For Information purpose not to be considered as Professional
Advice from us.

Section 38

“38. (1) The details of outward supplies furnished by the registered persons under sub-section (1) of section 37 and of such other supplies as may be prescribed, and an autogenerated statement containing the details of input tax credit shall be made available electronically to the recipients of such supplies in such form and manner, within such time, and subject to such conditions and restrictions as may be prescribed.

(2) The auto-generated statement under sub-section (1) shall consist of—

details of inward supplies in respect of which credit of input tax may be available to the recipient; and

details of supplies in respect of which such credit cannot be availed, whether wholly or partly, by the recipient, on account of the details of the said supplies being furnished under sub-section (1) of section 37,—

(i) **by any registered person within such period of taking registration as may be prescribed**; or

(ii) by any registered person, **who has defaulted in payment of tax** and where such default has continued for such period as may be prescribed; or

(iii) by any registered person, the output tax payable by whom in accordance with the statement of outward supplies furnished by him under the said subsection during such period, as may be prescribed, exceeds the output tax paid by him during the said period by such limit as may be prescribed; or

(iv) by any registered person who, during such period as may be prescribed, has availed credit of input tax of an amount that exceeds the credit that can be availed by him in accordance with clause (a), by such limit as may be prescribed; or

(v) by any registered person, who has defaulted in discharging his tax liability in accordance with the provisions of sub-section (12) of section 49 subject to such conditions and restrictions as may be prescribed; or

(vi) by such other class of persons as may be prescribed.”

New proposed Restrictions in ITC

Restrictions shall be placed wherein ITC reflecting in GSTR-2B cannot be availed wholly or partly in following cases:

Your GSTR-1 Liability > GSTR-3B Liability + Difference > Tolerance Limit

- Now Percentage can be checked on GST Portal. New Update

Supplier has defaulted in discharging his tax liability as per Sec. 49(12)

- ITC has been used by supplier upto a specified limit but how Purchaser can control this?

New proposed Restrictions in ITC

Restrictions shall be placed wherein ITC reflecting in GSTR-2B cannot be availed wholly or partly in following cases:

Your Supplier has defaulted in payment of tax and such default is continued for prescribed period.

- GSTR-3B filing status of supplier can be checked from GST Portal but Purchaser has no control

Your Supplier has availed ITC more than his GSTR-2B.

- Only GSTR-3B filing status of supplier can be checked from GST Portal but Purchaser has no control on his GSTR Return and ITC Claim.

New proposed Restrictions in ITC

Restrictions shall be placed wherein ITC reflecting in GSTR-2B cannot be availed wholly or partly in following cases:

Newly Registered Person

- Details & restrictions would be prescribed in due course

Such a class of Person as may be prescribed

- Details & restrictions would be prescribed in due course

Section 16(2)(c)-Tax to be paid by the Supplier

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,—

(c) subject to the provisions of section 41 or section 43A, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply;

Commissioner of Trade & Taxes, Delhi and others Vs. Arise India Limited and others (Delhi HC)

Therefore, there was need to restrict the denial of ITC only to the selling dealers who had failed to deposit the tax collected by them and not punish bona fide purchasing dealers. The latter cannot be expected to do the impossible. It is trite that a law that is not capable of honest compliance will fail in achieving its objective. If it seeks to visit disobedience with disproportionate consequences to a bona fide purchasing dealer, it will become vulnerable to invalidation on the touchstone of Article 14 of the Constitution. In the event that selling dealer fails to deposit the tax collected by him from the purchasing dealer, the remedy for the department would be to proceed against the selling dealer for recovery of such tax. Further, in cases where the department is satisfied that there is collusion of purchasing and selling dealer then proceeding under Section 40A of the DVAT Act can be initiated.



D.Y. Beathel Enterprises vs State Tax Officer (Data Cell), Tirunelveli

HIGH COURT OF MADRAS

W.P.(MD)NOS. 2127, 2117, 2121, 2152, 2159, 2160, 2168, 2177,
2500, 2530, 2532, 2534, 2538, 2539, 2540, 2503 & 2504 OF 2021

W.M.P. (MD) NOS. 1781 & 1791 OF 2021 & OTHER

24-FEBRUARY-2021

Facts of the Case

- Recovery of input tax credit for non-payment of GST by seller.
- Validity of recovery from petitioner-buyer in the absence of similar recovery action against the seller.
- Challenge to automatic reversal of input tax credit from the buyer on non-payment of tax by the seller.

Madras High Court Held:

- The respondent does not appear to have taken any recovery action against the seller on the present transactions.
- When the seller has collected tax from the purchasing dealers, the omission on the part of the seller to remit the tax in question must have been viewed seriously and strict action ought to have been initiated against the seller - in enquiry in question, the seller ought to have been examined and this is all the more necessary, because the respondent has alleged that the petitioners have not even received the goods and had availed input tax credits on the strength of generated invoices.

Madras High Court Held:

- the impugned orders suffers from fundamental flaws of non-examination of seller in the enquiry and non-initiation of recovery action against seller in the first place.
- The impugned orders are quashed and the matters are remitted back to the file of the respondent.

Radhakrishna Industries vs State of Himanchal Pradesh

Supreme Court

Civil Appeal No. 1155 of 2021

Dated 20-Apr-2021

2021 SCC Online SC 334



Supreme Court Judgment Radhakrishna Industries

- By utilizing the expression "**it is necessary so to do**" the legislature has evinced an intent that an attachment is authorized not merely because it is expedient to do so (or profitable or practicable for the revenue to do so) but because it **is necessary to do so** in order to protect interest of the government revenue.
- A provisional attachment under Section 83 is contemplated during the **pendency of certain proceedings**, meaning thereby that a final demand or liability is yet to be crystallized. An anticipatory attachment of this nature must strictly conform to the requirements, both substantive and procedural, embodied in the statute and the rules.

Suresh Kumar P.P. v.
Deputy Director,
Directorate General of
GST Intelligence (DGGI)



Kerala High Court

[2020] 120 taxmann.com 173/82 GST 734/41
GSTL 17 (Kerala)

Dated: 14-Aug-2020

Principles laid down in case of Suresh Kumar P.P.

- Operation carried out by a statutory authority invested with powers of search, inspection and seizure, by reason only of such activities having been carried out in residences and offices of any person under investigation for a long time, **cannot be labelled as harassment or high-handed; nor could inconvenience caused to person under investigation**, especially of remaining in premises for entire duration, termed to a detention pursuant to an arrest.

Principles laid down in case of Suresh Kumar P.P.

- If an officer not below rank of Joint Commissioner has reason to believe that any material, useful or relevant to any proceedings under aver Act, are secreted in a place, then he is empowered to carry out by himself or authorize in writing any other officer to carry out search and seizure.

Principles laid down in case of Suresh Kumar P.P.

Principle of natural justice does not apply insofar as an attachment made to protect interest of revenue.

An officer above rank of a Joint Commissioner carrying out investigation or enforcement activity can deposit any amounts collected, by way of cash, cheque or demand draft, during investigation or to enforcement activity and same does not require generation of Forms prescribed.

Audit under section 65 is independent of an investigation under section 67 and, thus, audit and investigation proceedings may be continued simultaneously GST.

Question???

Thanking You

This presentation was meant for private participation and any circulation of the same without permission of Team GSTpanacea &/or Abhishek Raja is an offence.

This PPT was compiled for Information purpose not to be considered as Professional Advice from us.



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Thank You!!!