

DRAFT REPLY FOR CONTESTING NOTICE UNDER SECTION 74

To,
The Office of the Deputy Commissioner
Ward No.,State GST
Room No., ... Floor
...City
State, Pincode.....

SUBJECT: - Reply to Notice issued dated for <Trade Name>;
<GSTIN>under section 74

Ref ID: _____

Respected Sir,

Greetings!!

1. With reference to the above-captioned subject, we, M/s _____(hereinafter referred as 'the company') located at _____ hereby bring to your kind attention that notice was issued on _____ .

2. FACTS OF THE CASE:

- 2.1.** This is in reference to the Show Cause Notice received, Reference No. _____, dated:___-___-2024 issued in the formof Goods and Services Tax Act, 2017 where you have issued the Notice under section 74 of the GST Laws.

2.2. This Show Cause Notice has been issued for demands for:

- A) ITC Mismatch in GSTR-3B and GSTR-2A
- B) Denial of ITC for time-barred claim under section 16(4)
- C) ITC Reversal against Exempt Supplies as per Rule 42 and Rule 43
- D) ITC Reversal against Cancelled Dealer

2.3. We hereby acknowledge receipt of the Show Cause Notice dated <date> referenced <notice number>. However, this acknowledgement should not be construed as an acceptance of the validity or legality of the said notice. We expressly reserve the right to challenge the notice on any and all grounds available under the law.

3. PROVISION RELATED TO THIS CASE

We hereby submit the following grounds, each of which is independently asserted and without prejudice to the others.

3.1. Extracts of Section 74

Section 74. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any willful- misstatement or suppression of facts.-

(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful- misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount

specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.

(2) The proper officer shall issue the notice under sub-section (1) at least six months prior to the time limit specified in sub-section (10) for issuance of order.

(3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.

(4) The service of statement under sub-section (3) shall be deemed to be service of notice under sub-section (1) of section 73, subject to the condition that the grounds relied upon in the said statement, except the ground of fraud, or any wilful-misstatement or suppression of facts to evade tax, for periods other than those covered under subsection (1) are the same as are mentioned in the earlier notice.

(5) The person chargeable with tax may, before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 and a penalty equivalent to fifteen per cent. of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1), in respect of the tax so paid or any

penalty payable under the provisions of this Act or the rules made thereunder.

(7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.

(8) Where any person chargeable with tax under sub-section (1) pays the said tax along with interest payable under section 50 and a penalty equivalent to twenty-five per cent. of such tax within thirty days of issue of the notice, all proceedings in respect of the said notice shall be deemed to be concluded.

(9) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order.

(10) The proper officer shall issue the order under sub-section (9) within a period of five years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within five years from the date of erroneous refund.

(11) Where any person served with an order issued under sub-section (9) pays the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty per cent. of such tax within thirty days

of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded.

Explanation 1.- For the purposes of section 73 and this section,-

(i) the expression "all proceedings in respect of the said notice" shall not include proceedings under section 132;

(ii) where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the persons liable to pay penalty under sections 122 and 125 are deemed to be concluded.

Explanation 2.- For the purposes of this Act, the expression "suppression" shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer.

3.2. Our Understanding of this section

This section applies to cases involving fraud or any wilful misstatement or suppression of facts. We have been following the law and have filed all returns with proper disclosures and information. This section is applicable to cases where there is misinformation and intention to evade tax.

4. OUR SUBMISSION

4.1. We respectfully submit that all four issues in our case are either related to interpretational issues or are most likely to be covered by procedural issues. However, these are not covered under any circumstances with the intention to evade tax. Let's sum up with each case:

[CUSTOMISE THESE AS IN YOUR CASE]

4.1.1. ITC Mismatch in GSTR-3B and GSTR-2A: The mismatch arises from discrepancies between our filed GST Returns and the credit available as per the GST portal. Since these discrepancies are based on disclosed transactions, the notice under section 74 is inappropriate.

4.1.2. Denial of ITC for time-barred claim under section 16(4): The delayed filing of returns, while procedural, does not amount to suppression of facts. These transactions have been disclosed through GST returns. The recent 53rd GST Council has already proposed extension of time period to 30th November 2021 for all first four financial years i.e. FY2017-18, 2018-19, 2019-20 and 2020-21. Therefore, this amount is not even recoverable under section 73 leave 74.

4.1.3. ITC Reversal against Exempt Supplies as per Rule 42 and Rule 43: The ITC reversal is documented and disclosed. The demand should be governed under section 73 rather than section 74, as there is no intent to evade tax.

4.1.4. ITC reversal for non-payment within 180 days: The ITC reversal requirement for non-payment within 180 days is adhered to as per the provisions. These transactions are

recorded and disclosed, and thus should fall under section 73, not section 74.

As these reversals are governed through recorded transactions, these can max be covered under section 73, not in 74.

5. ACCEPTANCE AND WORKING

5.1. In conclusion we respectfully reiterate our commitment to compliance with the GST laws and emphasize that the discrepancies and issues outlined in the Show Cause Notice are primarily interpretational and procedural, rather than indicative of any fraudulent intent or willful suppression of facts. We have provided detailed explanations and supporting evidence to demonstrate that the demands raised are not applicable under Section 74 of the GST Act.

Prayer

5.2. Therefore, we respectfully request the following:

5.2.1. Withdrawal of the Show Cause Notice:

Based on the detailed explanations, factual evidence, and legal grounds presented in our reply, it is evident that the discrepancies noted in the Show Cause Notice are attributable to interpretational and procedural issues, rather than any fraudulent intent or willful suppression of facts. Therefore, we earnestly request that the Show Cause Notice issued under Section 74 be withdrawn.

5.2.2. Opportunity for Hearing:

We respectfully request an opportunity for a personal hearing before any adverse order is passed against us. This will allow us to present our case in detail, address any further queries or concerns, and ensure that our submissions and the enclosed supporting documents are thoroughly examined.

5.2.3. Consideration of Submitted Documents:

We request that the submissions and supporting documents enclosed with this reply be given due consideration in assessing the allegations and demands raised in the Show Cause Notice. We believe that a fair examination of these documents will substantiate our compliance with GST laws and negate the claims made in the notice.

5.2.4. Correction of ITC Mismatches:

We request that the discrepancies noted between GSTR-3B and GSTR-2A be reviewed and reconciled in accordance with the disclosed transactions and applicable provisions. This will rectify the mismatch without invoking Section 74.

5.2.5. Re-evaluation of Denied ITC:

We request a re-evaluation of the denied ITC claims under Section 16(4), considering the procedural nature of the filing delay and the recent proposals by the GST Council to extend the time period for such claims.

5.2.6. Clarification on ITC Reversal for Exempt Supplies:

We request a detailed review and clarification regarding the ITC reversal against exempt supplies as per Rule 42 and Rule 43, ensuring that these are governed under Section 73 due to the absence of any intent to evade tax.

5.2.7. Resolution of ITC Reversal for Non-payment:

We request a resolution of the ITC reversal issues for non-payment within 180 days, recognising that these transactions have been recorded and disclosed, thus falling under Section 73.

We trust that our submissions and the enclosed supporting documents will receive your favourable consideration. We remain available for any further clarifications or information you may require.

Thanks & Regards

For

Director/Authorized Signatory

Date: 15-Jul-2024

Place: New Delhi