
# GST NOTICES

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# FRACTURED NOTICES-A LUSCIOUS CANDY TO TAX PAYER

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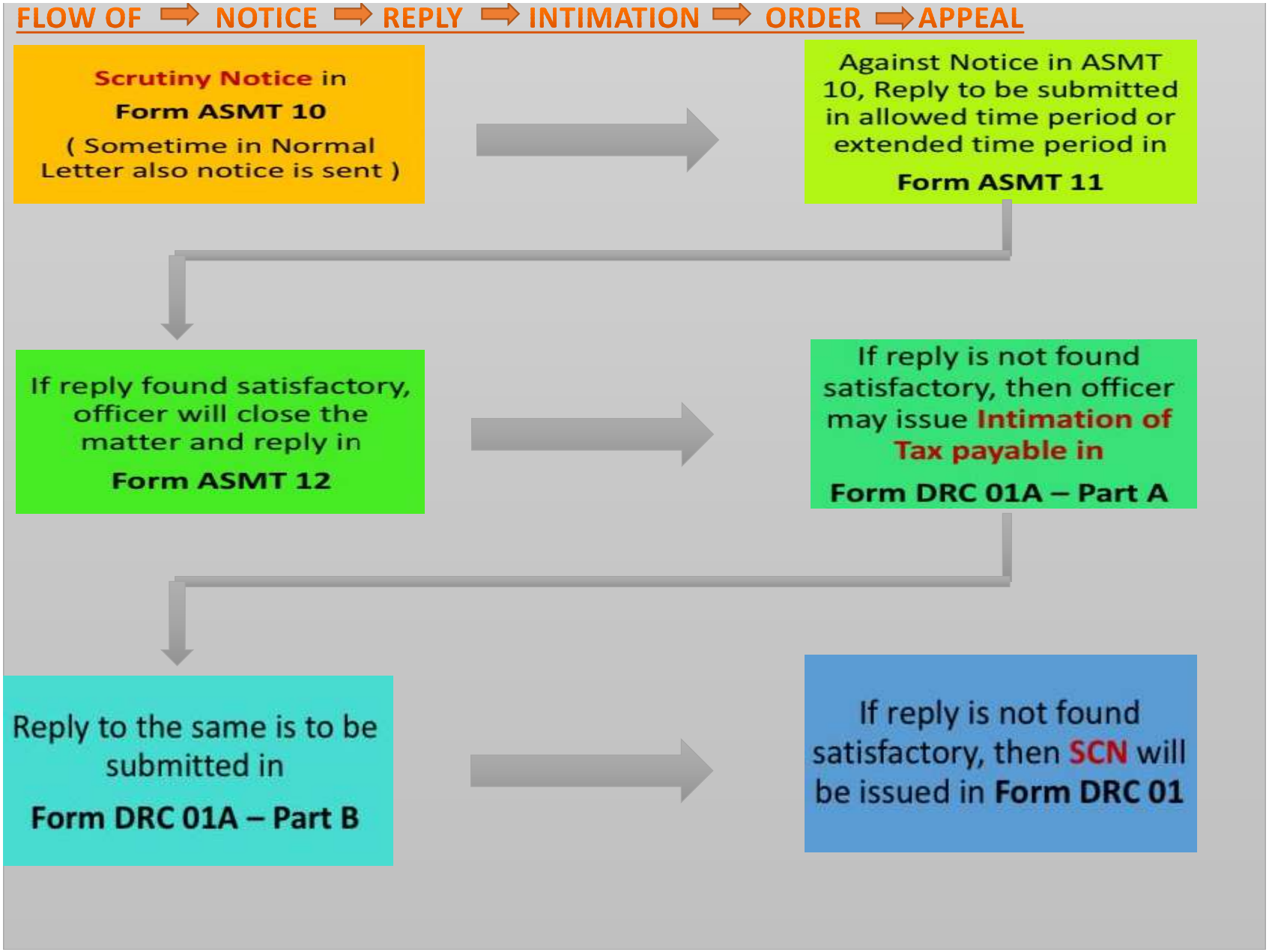
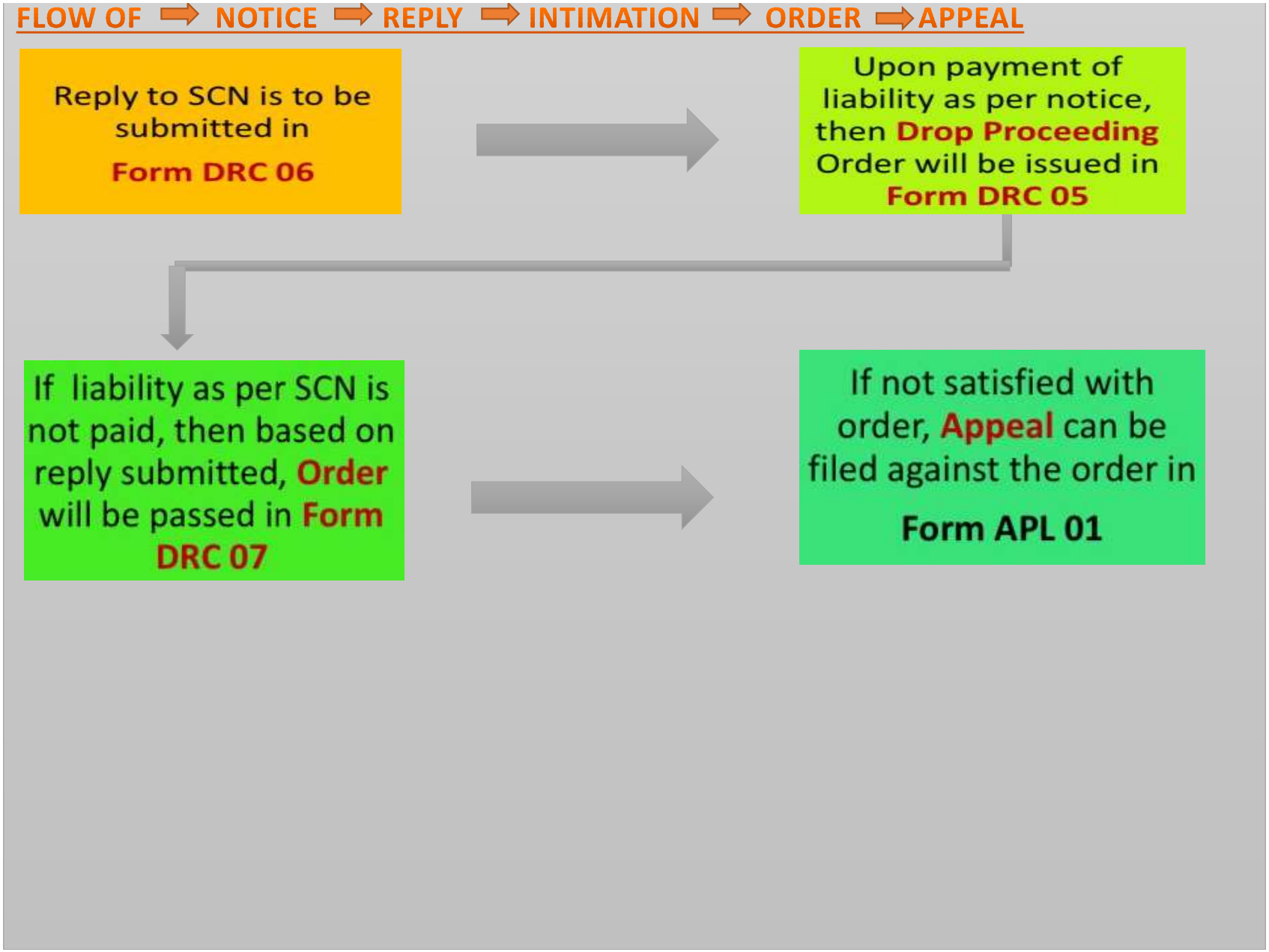
## **Audi alteram partem** meaning **'let the other side be heard'**

- That **no person can be adjudged guilty** without being given an **opportunity to answer charges against such person. To hear a person, such person should be "put at notice", which clearly states various aspects about the charges or allegations in such notice, so that the person can understand the allegations and answer them.**

- **Show Cause Notice – a 'condition precedent' to a demand**. However, cases have been observed where Registrations have been cancelled and Refunds have been rejected without proper opportunity of being heard ignoring the Principle of Natural Justice.


FLOW OF NOTICE REPLY INTIMATION ORDER APPEAL
Scrutiny Notice in
Form ASMT 10
( Sometime in Normal Letter also notice is sent )
Against Notice in ASMT 10, Reply to be submitted in allowed time period or extended time period in
Form ASMT 11
If reply found satisfactory, officer will close the matter and reply in
Form ASMT 12
If reply is not found satisfactory, then officer may issue Intimation of Tax payable in
Form DRC 01A – Part A
Reply to the same is to be submitted in
Form DRC 01A – Part B
If reply is not found satisfactory, then SCN will be issued in Form DRC 01


FLOW OF ⇨ NOTICE ⇨ REPLY ⇨ INTIMATION ⇨ ORDER ⇨ APPEAL
Reply to SCN is to be submitted in
Form DRC 06
Upon payment of liability as per notice, then Drop Proceeding Order will be issued in
Form DRC 05
If liability as per SCN is not paid, then based on reply submitted, Order will be passed in Form DRC 07
If not satisfied with order, Appeal can be filed against the order in
Form APL 01

# Assessment (Sec. 2(11))

"assessment" means determination of tax liability under this Act and includes self-assessment, re- assessment, provisional assessment, summary assessment, best judgment assessment;


Means Part

determination of tax liability under this Act

and

Includes Part

- Self-assessment
- Re-assessment
- Provisional assessment
- Summary assessment
- Best judgment assessment

# Types of Assessment under GST (Sec. 59-64 of CGST Act)

**Only self-assessment is done by the taxpayer himself. All the other assessments are by tax authorities.**

- **Self-assessment-Sec 59**
- **Provisional assessment-Sec 60**
- **Scrutiny of Returns –Sec 61**
- **Assessment of non-filers of returns –Sec 62**
  - **Best judgment assessment**
- **Assessment of unregistered persons-Sec 63**
- **Summary Assessment in Special Cases -Sec 64**
  - **Summary assessment**

Assessments & Audits are the Trigger Points for Demand & Recovery under Sec 73 & 74

# Sec. 59 :- Self assessment

# SELF ASSESSMENT- Section 59

Every registered person

Sec. 2(94)
Registered u/s 25

Mechanism Sec 41(2) Self Assessed ITC shall be utilized only for payment of Self Assessed Output Tax

shall asses the taxes payable under this act

and furnish a return for each tax period as specified under section 39.

GSTR 3/3B, GSTR 4(Comp), GSTR 7 (TDS), GSTR 6(ISD), GSTR 5(NRTP)

# Sec. 61 & Rule 99:-

Scrutiny of Returns

In GST ASMT -10


Proper Officer

2 Scrutinize the return and related particulars furnished by RP to verify **the correctness of the return** and inform him of the **discrepancies** noticed, if any and seek explanation within **30 days of notice service**

Furnish Return 1

**Registered Person**

3 Explanation furnished in ASMT-11

4 Or Accepts Demand

2(97) defines returns as any return prescribed or otherwise required to be furnished by or under this Act or the rules made thereunder.
**(Sec 39(GSTR-3B), 44 Annual,45(Final)**

4a Satisfactory Explanation

registered person shall be informed accordingly and no further action shall be taken in this regard.

GST ASMT-12
Order of Acceptance of Reply

4b No Satisfactory Explanation or No Action

- Within a period of **thirty days of being informed by the proper officer** or such further period as may be permitted by him or
- where the registered person, after accepting the discrepancies, fails to take the corrective measure in his return for the month in which the discrepancy is accepted,

the proper officer may initiate appropriate action including those under **section 65 or section 66 or section 67**, or proceed to determine the tax and other dues under **section 73 or section 74**.`

# Meaning of word discrepancy

- Discrepancy – is an **inconsistency or inaccuracy which is a very important requirement to invoke section 61 that the Proper Officer must 'discover' from within the returns itself.**
- Section 61 **does not permit investigation into new things** not emerging from the returns as there other provisions with checks and balances to undertaken investigation.
- It is very clear provision **'conferring jurisdiction' by this expression 'discrepancy'**.
- Discrepancy is not a doubt or confusion about what might have been the transactions carried out by taxpayer. **Discrepancy is a 'lack of compatibility' arising from within the returns and not from any external source of additional information.** Any inquiry without this jurisdiction makes the entire proceedings void.
- Where a notice is issued under section 61, care must be taken to identify whether the issue involved can **pass must be of being a 'discrepancy'.**
- While self-assessment has been stated NOT to be 'unsupervised self-administration' system, at the same time, self-assessment does not empower wide-ranging assessment in the name of scrutiny**. The scope is large but not unlimited scope that Proper Officer is permitted to carry out in the name of scrutiny under section 61**. Responding to notice under section 61 does not amount to admission of wrong-doing.

# Illustrative list of what may or may not constitute a 'discrepancy' to be taken up for scrutiny under section 61

| **Likely to be a 'discrepancy' for Scrutiny** |
| --- |
| Tariff notification **prescribing credit restriction or credit ban, but credit found to be taken in returns** |
| **'Net Tax' payable being 'negative' through out the year indicative of missing value addition or possibly investments in capital goods when inverted rate structure known not to exist** |
| **GSTR 2A showing inward supplies at 3% rate of tax but no outward supplies appearing at 3% rate of tax** |
| Tax paid via DRC 03 for 2017-18 utilizing credit |
| Taxpayer operating SEZ unit found to have paid IGST and claimed input tax credit without availing tax-free inward supplies |
| Taxpayer involved in non-seasonal trading business filed 'nil' returns for 6 months of the year |
| **Turnover in GSTR 1 and GSTR 3B mismatch or credit in GSTR 2A and GSTR 3B mismatch** |

## Meaning of Correctness

**UOI & Ors vs Naresh Chander on 27 August, 2014 has referred to the meaning of correctness as follows:**

- In its ordinary meaning and substance, 'correctness' is compounded of 'legality' and 'propriety' and that which is legal and proper is 'correct'.
- Verification of correctness covers both legality and propriety and therefore for any return and related particulars furnished by the registered person, proceedings initiated under Section 61 can extend to verify legality and propriety of the return and related particulars furnished in the return regarding output tax liability (Tax Rate, GSTR3B Vs GSTR-1 etc.), input tax credit (Section 16, GSTR 3B Vs GSTR-2A, Section 17(5) etc.).

FAQ

- **What recourse may be taken by the officer in case proper explanation is not furnished for the discrepancy detected in the return filed, while conducting scrutiny under section 61 of CGST ACT?**
  - If the taxable person does not provide a satisfactory explanation within 30 days of being informed (extendable by the officer concerned) or after accepting discrepancies, fails to take corrective action in the return for the month in which the discrepancy is accepted, the Proper Officer may take recourse to any of the following provisions:

a) *Proceed to conduct audit under Section 6 5 of the Act;*

b) *Direct the conduct of a special audit under Section 66 which is to be conducted by a Chartered Accountant or a Cost Accountant nominated for this purpose by the Commissioner; or*

c) *Undertake procedures of inspection, search and seizure under Section 67 of the Act; or*

d) *Initiate proceeding for determination of tax and other dues under Section 73 or 74 of the Act.*

# CBIC GST Instruction No. 02/2023 on SOP for Scrutiny of Returns


- The provisions for scrutiny of GST returns are specified under Section 61 of the Central Goods and Service Tax Act, 2017 and Rule 99 of the CGST Rules, 2017. A Scrutiny Module for online scrutiny of returns has been made available in May 2023 for scrutiny of returns filed in FY 2019-20 onwards. Thus, the Central Board of Indirect Taxes and Customs (CBIC) has issued two SOP (Standard Operating procedures) to ensure uniformity in selecting returns for scrutiny in 2022 for FY 2017-18 and FY 2018-19 as well as in 2023 for FY 2019-20 onwards.

## Relevant statutory provisions


**Section 61: Scrutiny of returns**

- The proper officer may scrutinize the return and related particulars furnished by the registered person to verify the correctness of the return and inform him of the discrepancies noticed, if any, in such manner as may be prescribed and seek his explanation thereto.
- In case the explanation is found acceptable, the registered person shall be informed accordingly and no further action shall be taken in this regard

**Rule 99 Scrutiny of returns**

- When a return is selected for scrutiny, the proper officer shall scrutinize the same as per section 61 based on information available to him. The discrepancies shall be intimated to the taxpayer via Form GST ASMT-10 and seek his explanation within 30 days of notice.
- The registered taxpayer accepts the discrepancy, makes the payment of tax via GST DRC-03 and explains the discrepancy vide Form GST ASMT-11.
- On satisfactory response, the proper officer may inform the taxpayer via Form GST ASMT-12.

# Selection of returns for scrutiny

- **The Directorate General of Analytics and Risk Management (DGARM) selects the GSTIN whose returns are to be scrutinised**. They then communicate the same to the field formations through the DDM portal, until April 2023, for further action for scrutiny of FY 2017-18 and 2018-19.

- As per the update in May 2023, the department has introduced the automated return scrutiny module from returns filed in FY 2019-20 onwards. It ensures minimal manual intervention in the adjudication process, making it more transparent, efficient and bridges any gaps leading to tax evasion. **So, the DGARM will make the list of GSTINs available through the DG systems on the scrutiny dashboard of the officers on the ACES-GST application.**

# Scrutiny Schedule

- **Scrutiny Schedule is a month-wise schedule prepared by the proper officer for scrutiny regarding all GSTINs selected.** The priority may be based on the revenue implication involved. The proper officer shall conduct scrutiny of three GSTINs per month until April 2023 as per SOP for FY 2017-18 and 18-19. Whereas, the number shall be four GSTINs per month with online scrutiny as per SOP for FY 2019-20 and later years from, May 2023 onwards. In any case, GSTINs with a higher revenue implications shall be prioritized.

# Process of scrutiny

The proper officer scrutinises the return for its correctness based on the information available on the system in various forms and statements filed by the registered taxpayer and other sources such as DGARM, ADVAIT, E-way Bill portal etc.

For convenience of proper officers, an indicative list of parameters to be verified is enclosed as Annexure B.

The proper officer is expected to rely upon the information available with him or with the department.

Scrutiny of returns should have minimal interface between the proper officer and the registered person. there should normally not be any need for seeking documents/ records from the taxpayers before issuance of FORM GST ASMT-10.

Proper officer shall issue a notice to the registered person in FORM GST ASMT-10 informing him of the discrepancies noticed and seeking his explanation thereto.

The payments thus made through FORM GST DRC-03 may also be taken into consideration while communicating discrepancies to the taxpayer in FORM GST ASMT-10.

The proper officer is required to scrutinize all the returns pertaining to the corresponding Financial Year

The registered person may accept the discrepancy mentioned in the notice issued in ASMT-10 and pay the amount in DRC-03 and inform the officer in ASMT -11.

The information submitted in respect of acceptance of discrepancy and payment of dues is found to be acceptable by the Proper Officer, he inform the registered person in ASMT-12.

# Timeline for scrutiny of returns

The scrutiny of returns shall be completed in a specified period to safeguard revenue. Below are some of the timelines:

| Sr . No. | Process | Timeline |
|---|---|---|
| **1** | Communicating the list of GSTINs selected for scrutiny by the DGARM to the nodal officer | From time to time |
| 2 | Distribution of the list of GSTINs selected for scrutiny by the nodal officer to the proper officers Concerned | Within three working days of receipt of the list from DGARM. |
| 3 | Finalisation of scrutiny schedule with the Assistant/ Deputy Commissioner | Within 7 working days of receipt of the list of GSTINs from the nodal officer (from 19-20 scrutiny onwards, it is available online on ACES portal) |
| 4 | Sharing the scrutiny schedule with the DGGST | Within 30 days of receipt of the list of GSTINs from DGARM |

| Sr . No. | Process | Timeline |
|---|---|---|
| 5 | Issuance of notice by the proper officer for intimating discrepancies in **FORM GST ASMT-10**, where required | Within the month, as mentioned in scrutiny schedule for scrutiny of the returns of the said GSTIN |
| 6 | Reply by the registered person in **FORM GST ASMT-11** | Within a period of 30 days of being informed by the proper officer in FORM GST ASMT-10 or such further period as may be permitted by the proper officer |
| 7 | Issuance of order in FORM GST ASMT12 for acceptance of reply furnished by the registered person, where applicable | Within 30 days from receipt of reply from the registered person in FORM GST ASMT-11 |
| 8 | Initiation of appropriate action for determination of the tax and other dues under section 73 or section 74, in cases where no reply is furnished by the registered person. | Within a period of 15 days after completion of the period of thirty days of issuance of notice in **FORM GST ASMT-10** or such further period as permitted by the proper officer. |

| Sr . No. | Process | Timeline |
|---|---|---|
| **9** | Initiation of appropriate action for determination of the tax and other dues under section 73 or section 74, in cases where reply is furnished by the registered person, but the same is not found acceptable by the proper officer | Within 30 days from receipt of reply from the registered person in FORM GST ASMT-11 |
| 10 | Reference, if any, to the Commissioner for decision regarding appropriate action under section 65 or section 66 or section 67. | Within thirty days from receipt of reply from the registered person in FORM GST ASMT-11 or within a period of forty-five days of issuance of FORM GST ASMT-10, in case no explanation is furnished by the registered person. |

# Reporting and Monitoring

A Scrutiny Register is maintained by the proper officer for all the GSTINs allotted for scrutiny. The format is mentioned in Annexure C. For scrutiny from the FY 2019-20 onwards, MIS report of scrutiny register along with the 'Monthly Scrutiny Progress Report' is available on the dashboard of the officer over the ACES portal.

Annexure C

**SCRUTINY REGISTER TO BE MAINTAINED BY THE PROPER OFFICER**
(Refer Para 8)

| S. No. | GSTIN | Name | FY under scrutiny | DGARM list details | | FORM GST ASMT-10 details | | |
|---|---|---|---|---|---|---|---|---|
| | | | | DGARM list no., if any | Likely revenue implication as per DGARM | Whether ASMT-10 issued or not? | Date of issuance of ASMT-10 | Amount of discrepancy as per ASMT-10 |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 |
| | | | | | | | | |

| FORM GST ASMT-11 details | | Payment details | | | FORM GST ASMT-12 | |
|---|---|---|---|---|---|---|
| Whether reply in ASMT-11 received | Date of receipt of reply in ASMT-11 | Amount of discrepancy accepted by registered person | Amount paid in DRC-03 | ARN and date of DRC-03 | Whether ASMT-12 has been issued | Date of issuance of ASMT-12 |
| 10 | 11 | 12 | 13 | 14 | 15 | 16 |
| | | | | | | |

| Action under section 73 or 74 | | | Action under section 65 or 66 or 67 | |
|---|---|---|---|---|
| Whether action for determination of the tax and other dues under section 73 or section 74 has been initiated | Date of issuance of SCN under section 73 or 74 | Amount of demand as per SCN | Date of reference, if any, to the Commissioner for decision regarding action under section 65 or section 66 or section 67 | Date of acceptance of such reference, if any |
| 17 | 18 | 19 | 20 | 21 |
| | | | | |

The progress of the scrutiny is monitored by the jurisdictional Principal Commissioner every month. The proper officer shall prepare a scrutiny progress report at the end of every month as mentioned in Annexure D. This report shall be forwarded to the Director-General of Goods and Service Tax by the Principal Chief Commissioner of the concerned zone by the 10th of the succeeding month. The DGGST shall submit this report to the Board by the 20th of the corresponding month.

**MONTHLY SCRUTINY PROGRESS REPORT**

(Refer Para 8)

Zone: .....

Commissionerate: .....

Financial Year: .....

Report for the Month: .....

(Amount in Rs. Lakhs)

| S. No. | Opening Balance | New returns allocated for scrutiny | | FORM GST ASMT-10 issued | |
|---|---|---|---|---|---|
| | | During the month | Upto the month | During the month | Up to the month |
| 1 | 2 | 3 | 4 | 5 | 6 |
| | | | | | |

| Returns whose scrutiny has been culminated | | | | | | | | Closing Balance (2+3-7-8-9-10) |
|---|---|---|---|---|---|---|---|---|
| During the month | | | | Up to the month | | | | |
| No discrepancy found | ASMT-12 issued | Action u/s 65 or 66 or 67 | Action u/s 73 or 74 | No discrepancy found | ASMT-12 issued | Action u/s 65 or 66 or 67 | Action u/s 73 or 74 | |
| 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 |
| | | | | | | | | |

| Tax liability detected | | Recovery during the month | | | | Recovery upto the month | | | |
|---|---|---|---|---|---|---|---|---|---|
| During the month | Upto the month | Tax | Interest | Late Fee / Penalty | Total | Tax | Interest | Late Fee / Penalty | Total |
| 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 |
| | | | | | | | | | |

## Section 73 of CGST Act, 2017

**Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for any reason other than fraud or any willful-misstatement or suppression of facts.**

What does Section 73 say:

Section 73 talks about the determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for any reason other than fraud or any willful-misstatement or suppression of facts.

# Sec. 62 Assessment of non-filers of returns.

Best Judgement Assessment

# Best Judgement Assessment

Registered Person has not filed return u/s 39, 45


- Sec. 39:- GSTR 3B
- Sec. 45:- Final Return

~~Sec 44 Annual Return~~

Notice u/s 46 in in **Form GSTR 3A** → Within 15 days → Furnish return → If no return furnished → Best judgment assessment u/s 62

Issue an assessment order in Form **GST ASMT-13** and summary in DRC-07 within a period of 5 years from the due date of annual return

Return furnished within 30days

assessment order shall be deemed to have been withdrawn (Summary in DRC-08)

Liable to pay TAX+ Interest+ Late Fee

**Sec. 46:-** Where a registered person fails to furnish a return under section 39 or section 44 or section 45, a notice shall be issued requiring him to furnish such return within fifteen days in such form and manner as may be prescribed.

The Notice u/s 46 is treated as Notice for best judgment assessment under Section 62.

# Sec. 62

Notwithstanding anything to the contrary contained in section 73 or section 74

overriding impact over provisions of Section 73 and 74

Registered Person

**fails to furnish the return under section 39 or section 45, even after the service of a notice under section 46**


## Service of notice u/s 46

No separate notice u/s 62

The proper **officer may proceed to assess the tax liability** of the said person **to the best of his judgement taking into account all the relevant material** which is available or

- which he has gathered and **issue an assessment order within a period of five years from the date specified under section 44** for furnishing of the annual return for the financial year to which the tax not paid relates.

Where the registered person furnishes a **valid return within thirty days of the service of the assessment order under sub-section (1),** the said assessment order **shall be deemed to have been withdrawn but the liability for payment of interest under sub-section (1) of section 50** or **for payment of late fee under section 47 shall continue.**

## Circular No. 129/48/2019 dated 24-12-2019

PO has to consider the below material:-

- GSTR-1, 2A, E- way Bills.
- Other available information including from inspection u/s 71.

**SOP for carrying out this assessment**

Detailed procedure for carrying out best judgment assessment are as follows:-

- No separate notice would be issued for ex-parte assessment, in case notice has already been issued under form 3A ibid. and 15 days has been elapsed.
- 3 days before due date, reminder(message system generated) would be sent for filing return.
- Immediately after the due date- email/ message would be sent to defaulters for furnishing the return.
- Five days after the due date, notice in form 3A would be issued to furnish return within 15 days.
- After the above procedure, if the return remains un-filed, the PO may assess the tax liability on ex-parte basis.

# Other important points

'Best judgement assessment' must not be 'worst' judgement assessment, that is, the determination of tax liability cannot be aggressive estimation of turnover based on some arbitrary growth rate oblivious of the nature of business activities.

Where turnover projection is made based on turnover in previous months, there is nothing in section 62 to indicate that **possible credits should not be estimated on the premise that claiming credit requires positive action by taxpayer under section 16(2)(d).**

Best judgement assessment must not be worst judgement and determine high turnover but ignore seasonal downward variations and even benefit of estimate of credits. There is nothing in the law to support view **that 'tax liability' to be determined on best judgement basis should be 'gross liability' and not 'net tax liability'.** Courts will have final say in the matter and when one has failed to file returns, it is scarce that such a taxpayer can find favour of courts in the manner of arriving at best tax liability

In case an order of best judgement is passed under section 62 and returns are not filed within 30 days, the **order becomes final and even if returns are filed subsequently, the order CANNOT be withdrawn**. Only remedy will be to file such returns and also prefer appeal under section 107. As section **107 prescribes maximum 3 months days to file appeal before First Appellate Authority who has a further time limit of 1 month to condone explainable** delay in filing appeal.

# Sec. 63 Assessment of Unregistered persons + Rule 100

# Best Judgement Assessment of Unregistered Person

**Notwithstanding anything to the contrary contained in section 73 or section 74,**

- where a **taxable person fails to obtain registration even though liable to do so**

  or

  **whose registration has been cancelled under sub-section (2) of section 29** but who was liable to pay tax,

- the proper officer may proceed to assess the tax liability of such taxable **person to the best of his judgment for the relevant tax periods** and
- issue an assessment order **within a period of five years from the date specified under section 44** for furnishing of the annual return for the financial year to which the tax not paid relates:

*Provided that no such assessment order shall be passed without giving the person an opportunity of being heard.*

Sec 2(107): "taxable person" means a person who is registered or liable to be registered under section 22 or section 24;

# Rule 100:- Assessment in certain cases.

*(1) The order of assessment made under sub-section (1) of section 62 shall be issued in **FORM GST ASMT-13** and a summary thereof shall be uploaded electronically in FORM GST DRC-07.*

*(2) The proper officer shall issue a notice to a taxable person in accordance with the provisions of section 63 in **FORM GST ASMT-14** containing the grounds on which the assessment is proposed to be made on best judgment basis and shall also serve a summary thereof electronically in **FORM GST DRC-01**, and after allowing a time of fifteen days to such person to furnish his reply, if any, pass an order in **FORM GST ASMT-15** and summary thereof shall be uploaded electronically in **FORM GST DRC-07**.*

*(3) The order of assessment under sub-section (1) of section 64 shall be issued in **FORM GST ASMT-16** and a summary of the order shall be uploaded electronically in **FORM GST DRC-07.***

*(4) The person referred to in sub-section (2) of section 64 may file an application for withdrawal of the assessment order in **FORM GST ASMT-17.***

*(5) The order of withdrawal or, as the case may be, rejection of the application under sub-section (2) of section 64 shall be issued in **FORM GST ASMT-18**.]*

# Show Cause Notice

## Section-73

- Show cause as to why -
- He should not pay the amount specified in the notice
- Along with interest payable thereon u/s 50
- And a penalty leaviable under the provisions of this act or the rules made there under

## Section-74

- Show cause as to why -
- He should not pay the amount specified in the notice
- Along with interest payable thereon u/s 50
- And a penalty equivalent to the tax specified in the notice

# The 12 GOLDEN POINTERS to be considered before replying the show cause notices U/S 73 or 74 or Filling of appeals.

**1.** The **notice must specify**:

- whether it is: U/s 73 or 74 along with the limb,
- whether it is: tax not paid, tax short paid, erroneously refunded or ITC wrongly availed or utilized.

**2.** The **monetary limits** must be adhered to.

**3.** The **Time period limits** must be adhered to while issuing the notices.

**4.** The notice must come from **the jurisdictional officer.**

**5.** The **requisite approvals** must have been taken by the officer.

**6.** The **mode of service** of the notice must be as per **Sec 169** of CGST act.

**Note:** Please make sure **there is difference between the mode of service and the communication to the taxpayer.**

**7**. Order must **not travel beyond SCN**.

**8.** The order **must be passed considering the reply given** by the taxpayer.

**9. Personal hearing** must be given to the taxpayer, even if not demanded by the taxpayer and adverse opinion is being formed by the officer.

**10.** The order passed **must be a speaking order** with all the base documents or evidences placed on record.

**11.** The order **must be passed with a DIN,** even the notice must have the DIN placed on it if it is **from the central department or state reference number** wherever applicable in the states.

**12.Unsigned Order:** The order passed must be signed order because as for the various judgments, the unsigned order is ***VOID AB INITIO.***

**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**

**Speaking Order**

**Sec 75(6)**- The proper officer, in this order, shall set out the relevant facts and the basis of his decisions.

**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.**

**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.**

**Penalty imposed should commensurate with the degree and severity of Breach of provisions of law and rules alleged**

**Penalty depends on totality of facts and circumstances of case**

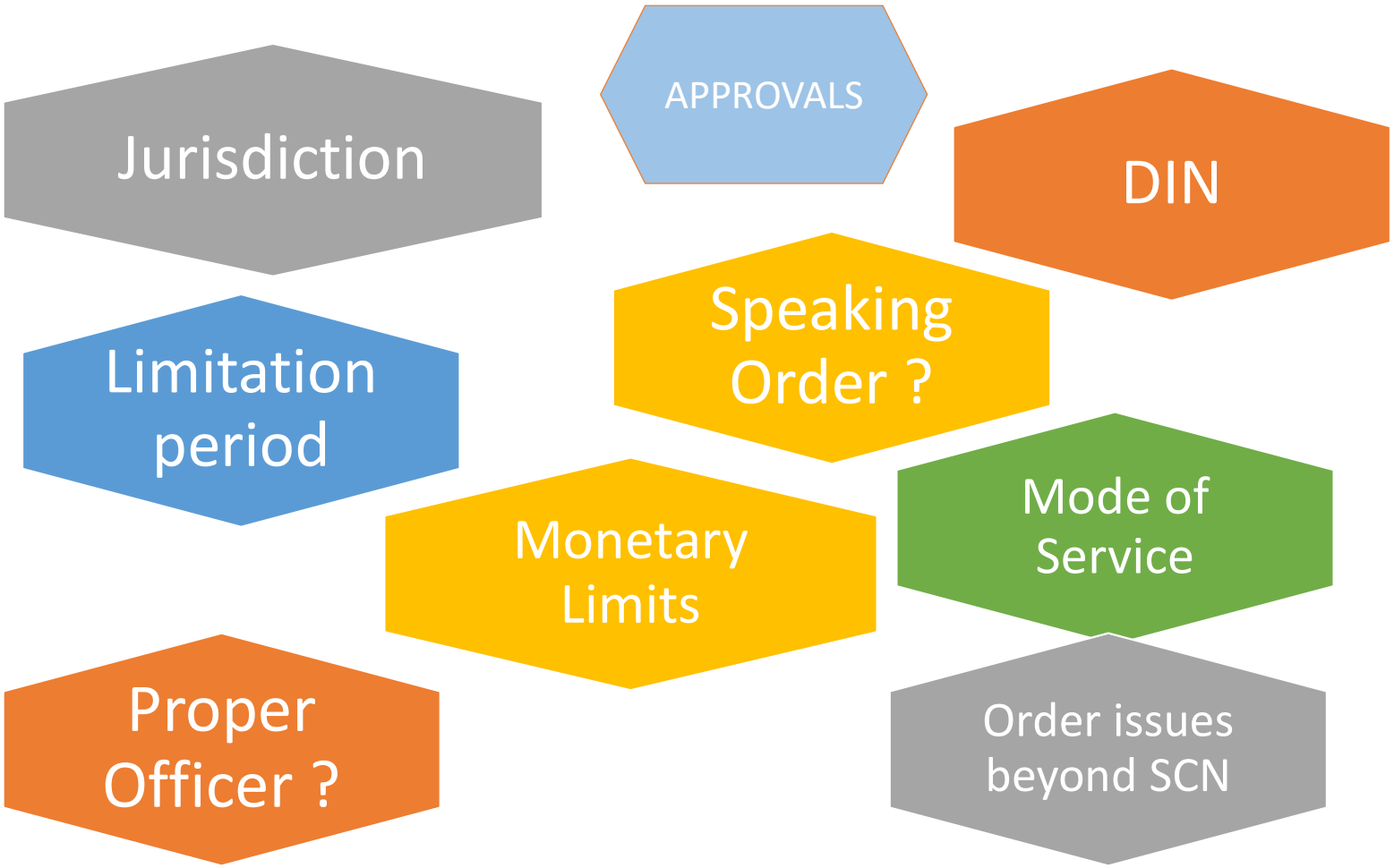
**Penalty not imposable if the demand of duty/tax is not sustainable**

**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.

**Nature of breach & provisions of law under which penalty is imposed is to be specified**

**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.

# Points to be considered for Replying the Notices



# Grounds

1. Constitutional
2. Time barring
3. Not a reasoned order or non- speaking order
4. Without application of mind
5. Not given fair or reasonable hearing
6. Breach of Principle of Audi Alterm Partem
7. SCN is Vague- on the basis of presumption and assumptions
8. Authority has not acted as quasi judicial authority
9. Deemed acceptance of an appeal

## •Notice must contain all essential details and should not be based on assumptions

| NO | Name & Citation | Particulars |
|---|---|---|
| 1 | [2007] taxmann.com 728 (SC) SUPREME COURT OF INDIA Commissioner of Central Excise, Bangalore v. Brindavan Beverages (P.) Ltd | Show cause notice - is foundation on which Department has to build up the case - allegations have to be specific and not vague, lacking in details or unintelligible in order to give proper opportunity to noticee to defend. |
| 2 | Oudh Sugar MillsLtd. vs. Union of India 1978 ELT J172 | It stated that the findings based on such show cause notice are without any tangible evidence and are based only on inferences involving unwarranted assumptions. |
| 3 | [2022] 137 taxmann.com 474 (Jharkhand)<br>HIGH COURT OF JHARKHAND Godavari Commodities Ltd. v. State of Jharkhand | - HELD : Entire adjudication proceedings had been carried out in stark disregard to mandatory provisions and in violation of principles of natural justice - Adjudication order was non best in eye of law, as same had been passed without issuance of proper SCN<br>- Summary of SCN, adjudication order and summary of orders issued were to be quashed and set aside |
| 4 | [2021] 131 taxmann.com 230 (Jharkhand)<br>HIGH COURT OF JHARKHAND<br>Nkas Services (P.) Ltd. v. State of Jharkhand | Show cause notice under section 74 issued by Deputy Commissioner to petitioner had been challenged on ground that impugned show cause notice was vague and did not disclose offence and contraventions and, thus, it did not fulfil ingredients of a notice in eyes of law<br>- Perusal of show cause notice showed that it was a notice issued in a format without even striking out any irrelevant portions and without stating contraventions committed by petitioner, i.e., whether it was actuated by reason of fraud or any wilful misstatement or suppression of facts in order to evade tax |

## Section 73 of CGST Act, 2017

**Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for any reason other than fraud or any willful-misstatement or suppression of facts.**

What does Section 73 say:

Section 73 talks about the determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for any reason other than fraud or any willful-misstatement or suppression of facts.

**CAUSE?? Relevant Material on Record**
**Application of Mind**
**Mechanical Basis of Notices (System Generated)**

L
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B

(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

for any reason, other than the reason of fraud or any willful-misstatement or suppression of facts to evade tax, INTENTION-Non Disclosure + Intention

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 leviable** under the provisions of this Act or the rules made thereunder.

# CASE LAWS:

## ISSUE OF DRC-01A/DRC-01 WITHOUT ISSUING ASMT 10

| SR. NO. | Name & Citation | Particulars |
|---|---|---|
| 1 | 2022 (10) TMI 784 - MADRAS HIGH COURT<br><br>M/S. VADIVEL PYROTECH PRIVATE LIMITED VERSUS THE ASSISTANT COMMISSIONER (ST) , CIRCLE-II, COMMERCIAL TAX DEPARTMENT, NGO COLONY, SATCHIYAPURAM, SIVAKASI | **Show cause notice issued and order passed citing discrepancies different from discrepancies mentioned in scrutiny notice in Form ASMT-10, were not sustainable**<br>**Proper officer cannot issue DRC-01/01A on matters not intimated to taxpayer in form ASMT 10**<br>HELD : ASMT-10 notice is mandatory before issuing DRC-01 if same is pursuant to scrutiny under section 61 and not issuing DRC-01 in accordance with ASMT-10 will vitiate entire proceedings - Matter was remanded to Assessing Officer for redoing-assessment |
| 2 | 2024 (3) TMI 483 - TELANGANA HIGH COURT<br><br>M/S. ADIL TRADING. VERSUS SUPERINTENDENT OF CUSTOMS AND ORS. | HELD THAT : Where the issuance of the provisional attachment order, the respondents have not served the petitioner with any notice in Form ASMT-10<br>In the process, the petitioner was not provided with any notice calling for his explanation for the discrepancy notice and for the payment of tax liability. Instead, the respondent officer has straightaway issued the impugned DRC-22. This order of provisional attachment is un-just, arbitrary and with malafied intentions. The same has also not in conformity to the principles of natural justice and is liable to be set aside/quashed |
| 3 | 2023 (6) TMI 1300 - ANDHRA PRADESH HIGH COURT<br><br>M/S DEVI TRADERS VERSUS THE STATE OF ANDHRA PRADESH, REP. BY ITS PRINCIPAL SECRETARY TO GOVERNMENT, STATE TAX DEPARTMENT | HELD THAT : any proceeding in GST DRC-01A/1 culminating in an Order in GST DRC-07, if pursuant to Scrutiny under Section 61 of the TNGST Act ought to be preceded by issuance of Form ASMT 10. |
| 4 | Pepsico India Holdings (P.) Ltd. v. Union of India, 2023] 157 taxmann.com 428 (Gauhati), HIGH COURT OF GAUHATI | Held that: Form GST ASMT-10 was not issued to petitioner - An act of issuance of impugned demand-cum-show cause notice under section 73(1) by proper officer was without compliance of mandatory conditions, more particularly, provisions of section 61 read with rule 99, to derive jurisdiction to issue such a demand-cum-show cause notice under section 73(1) - Therefore, operation of impugned demand-cum-show cause notice was to be stayed. |

**VAGUE**

**NOTICE**

## Mehta pharmaceuticals

## vs

## Commissioner Or Cus. And C. Ex. on 4 April, 2003-Equivalent citations 2003 (157) ELT 105 Tri Mumbai

# [Vague notice]

The extract of the show cause notice cited above does not seem to challenge inadequacy of the documents. It could be that such inadequacy could be inferred there from but the Notice, which is meant to put the recipient on notice, must should spell always spell out the exact charge. A notice, which is ambiguous or capable of interpretation, cannot be the ground exact for sustaining an order based on the inference drawn from the nature of show cause notice.

## SCN Was Bereft Of Any Details And No Details Were Provided

**[2024] 159 taxmann.com 39 (Delhi)**
**HIGHCOURT OF DELHI**
**Nirmal Metal**
***v.***
**Union of India***
SANJEEV SACHDEVA AND RAVINDER DUDEJA, JJ.
W.P.(C) NO. 593 OF 2024
JANUARY 24, 2024

**FACTS**

**Show cause notice Cancellation of Registration**

Show cause notice was issued to petitioner - assessee sought quashing of said show cause notice and further sought restoration and revival of GST registration of assessee **on ground that SCN was bereft of any details and no details were provided to assessee**

HELD

- Respondent authorities were to be directed to furnish to assessee entire material available with them in support of show cause notice –
- **Assessee was at liberty to file detailed response to same**

Thereafter, respondent authorities were to dispose of show cause notice by a speaking order after giving opportunity of personal hearing to assessee [Section 29 of Central Goods and Services Tax Act, 2017/Delhi Goods and Services Tax Act, 2017]

## SCN & ORDER Was Bereft Of Any Details And No Details Were Provided

**[2024] 160 taxmann.com 428 (Delhi)**
**HIGH COURT OF DELHI**
**Krishan Mohan**
***v.***
**Commissioner of GST***
SANJEEV SACHDEVA AND RAVINDER DUDEJA, JJ.
W.P.(C) NO. 3597 OF 2024
MARCH 11, 2024

**FACTS**

**Show cause notice Cancellation of Registration**

- Show cause notice was issued for cancelling assessee's GST registration retrospectively as assessee had not filed returns for continuous period of six months
- Thereafter order was passed stating that same was with 'reference to assessee's reply in response to show cause' notice
- **Show cause notice and order cancelling assessee's registration were bereft of any details and neither show cause notice, nor order spelt out reasons for retrospective cancellation;**

**HELD**

- Impugned order in itself was contradictory
- Show cause notice and impugned order were bereft of any details and neither show cause notice, nor order spelt out reasons for retrospective cancellation
- Accordingly, same could not be sustained, Assessee did not seek to carry on business or continue with registration.

**Registration cancellation order was to be modified to limited extent that registration should be treated as cancelled with effect from date when show cause notice was issued** [Section 29 of Central Goods and Services Tax Act, 2017/Delhi Goods and Services Tax Act, 2017]

**CRYPTIC ORDER**

**Non-consideration of Reply**

Section 73 of Central Goods and Services Tax Act, 2017

# [2024] 161 taxmann.com 399 (Delhi)

## HIGH COURT OF DELHI

## Biba Fashion Ltd.

## *v.*

## Government of NCT of Delhi*

**Cryptic order**

1. Assessee filed a detailed reply to show cause notice, Adjudicating Authority was required to consider same on merits and then form an opinion and if it was of view that any further details were required, same could have been specifically sought from assesse

2. However, impugned order dated 26-12-2023 did not take into consideration reply submitted by petitioner and was

**A Cryptic Order**

3. Proper Officer **had to at least consider reply on merits and then form an opinion** - He merely held that reply was incomplete, not duly supported by adequate documents, not clear and unsatisfactory, which ex-facie showed that Proper Officer had not applied his mind to reply submitted by petitioner

4. Further, if Proper Officer was of view that any further details were required, same could have been specifically sought from petitioner - However, record did not reflect that any such opportunity was given to petitioner to clarify its reply or furnish further documents/details - Impugned order was to be set aside and matter was to be remitted to Proper Officer for re-adjudication

## NON-CONSIDERATION OF REPLY

- In case of **Oswal Agencies (P.) Ltd. v. Union of India** W.P.(C) No. 208 of 2024 CM APPLS. No. 977 of 2024 FEBRUARY 12, 2024 **(HIGH COURT OF DELHI) [2024] 159 taxmann.com 547 (Delhi)**: it has been held that **Order was cryptic order without any reasons and without taking into account reply filed by petitioner. Non-consideration of assessee's replies is passing Cryptic order** - Impugned order records that no proper reply had been submitted and **reply stated to be improper was not found to be satisfactory - However, none of averments of petitioner had been taken into account while passing impugned order .**

- In case of **DELHI HIGH COURT M/S. SHRI SHYAM METAL VERSUS THE UNION OF INDIA & ANR.** W.P.(C) 2237/2024 & CM. APPLS. 9266-67/2024 dated 15-2-2024 **{2024 (2) TMI 999} it has been held that detailed replies were furnished by the petitioner giving full particulars under each of the heads. The impugned order, however, after recording the narration, records that the reply uploaded by the taxpayer is not satisfactory. It merely states that "And whereas, after analyzing, examining and evaluating the reply filed by the taxpayer and details available, as on date on the GST portal, reply of the tax payer is found to be vague and miserably fails to counter the demands mentioned in the DRC-01." - In case the GST Officer was of the view that reply was vague or further details were required**, the same could have been sought from the petitioner, however, the record does not reflect that any such opportunity was given to the petitioner to clarify its reply or furnish further documents/details - Further petitioner was not provided with an adequate opportunity to defend the show cause notice by way of a hearing. **Impugned order is a cryptic order without adverting to any of the submissions raised by the petitioner and records that the reply was not found satisfactory - violation of principles of natural justice.**

- In case of **HIGH COURT OF MADRAS Make My Trip (India) (P.) Ltd. v. State Tax Officer[2024] 158 taxmann.com 492 (Madras) it has been held that Non-consideration of reply to show cause notice certainly prejudices assessee's and denies assessee a reasonable opportunity to establish its position - Therefore, without expressing any opinion on merits of matter, orders were to be quashed and matter was remanded for reconsideration by assessing officer after providing a reasonable opportunity to the petitioner** [Section 73 of Central Goods and Services Tax Act, 2017/Tamil Nadu Goods and Services Tax Act, 2017] [Paras 4 and 5].

- In case of **HIGH COURT OF DELHI Paras Enterprises v. Union of India [2024] 159 taxmann.com 657 (Delhi) it has been held that** impugned order did not consider assessee's reply and instead concluded that it was unsatisfactory, leading to issuance of demand ex parte - Assessee contended that **impugned order was cryptic, failed to consider his detailed reply, and he was not afforded proper hearing,thus**, **High Court, recognizing merit in assessee's contentions, held that impugned order lacked sufficient reasoning and highlighted Revenue authorities' failure to afford assessee opportunity to clarify his reply or furnish additional documents/details - Impugned order and show cause notice was set aside and matter was remitted back to Proper Officer for re-adjudication, with directions to provide assessee with specific details/documents required.**

[2024] 161 taxmann.com 260 (Delhi)

# HIGH COURT OF DELHI

# A. B. Traders

# v.

# Commissioner of Delhi Goods and Service Tax

SANJEEV SACHDEVA AND RAVINDER DUDEJA, JJ.

W.P. (C) NO. 4739 OF 2024

CM APPL. NO. 19450 OF 2024

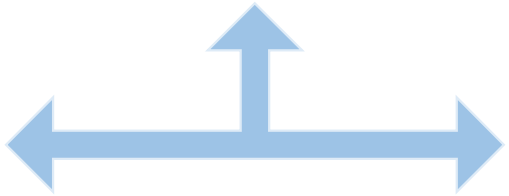
APRIL 2, 2024

**AO can't hold that reply of SCN was insufficient without examining documents submitted by asssee** **Adjudication - Reversal of ITC - A show cause notice was issued to petitioner-assessee proposing demand of Rs. 44.48 lakhs under heads i.e. under declaration of output tax; excess claim of ITC; ITC claimed from cancelled dealers, return defaulters and tax non-payers and scrutiny of ITC reversal - Assessee filed reply to said notice - Impugned order was passed recording that reply uploaded by assessee was insufficient and unsatisfactory - HELD : Impugned order did not specifically deal with reply of assessee to show cause notice, however referred to certain judgments to hold that burden to prove admissibility of any input tax credit could not be shifted to tax authorities - Proper officer was required to examine documents submitted by assessee and then hold whether input tax credit was admissible or not - Proper officer had not stated why such transactions were not acceptable - Impugned order was to be set aside and matter was to be remanded to proper officer to re-adjudicate issues [Section 73 of Central Goods and Services Tax Act, 2017/Delhi Goods and Services Tax Act, 2017] [Paras 5 and 6] [In favour of assessee/Matter remanded]**

# POINTS TO PONDER

- NON CONSIDERATION OF THE SPILL OVER EFFECTS, GSTR 9 & 9C available on record, payments made through DRC 03 BY DEPARTMENT INCREASES THE LEGAL COSTS OF TAXPAYERS AND UNNECESSARY BURDEN OF COMPLIANCES.
- TIMELY REPLY SHOULD BE FILED BY THE TAXPAYER In APPROPRIATE FORMATS IRRESPECTIVE OF ERROR IN CALCULATION OF DEPARMENT.
- REPLY SHOULD BE GIVEN ON LEGAL GROUNDS (OBJECTIONS) FOLLOWED BY FACTUAL GROUNDS
- FACTS EXPLAINING THE ACTUAL FIGURES SHOULD BE PUT FORWARD IN REPLY
- SUPPORITNG DOCUMENTS SHOULD BE ATTACHED ALONG WITH THE REPLY
- TABLE SHOWING ACTUAL FIGURES SHOULD BE PUTFORTH IN THE REPLIES
- WHEREEVER REQUIRED JUDICIAL PRONOUNCEMENTS SHOULD BE REFEREED

## SPILL OVER EFFETCS- RULE TO BE FOLLOWED



### P.Y. ADJUTMENT DONE THIS YEAR

Table no 10 of P.Y gstr-9
Reduce it in C.Y. output of 3B

Table no 11 of P.Y gstr-9
Increase it in C.Y. output of 3B

### CURRCET YEAR ADJUSTMENT DONE NEXT YEAR

Table no 10 of C.Y gstr-9
Increase it in C.Y. output of 3B

Table no 11 of C.Y gstr-9
Decrease it in C.Y. output of 3B

# BURDEN OF PROOF

**Burden of Proof lies upon the person making the allegation. 1st Assessment is Self Assessment, so Burden of Proof shifts on department except ITC due to Section 155(Specific Provision). Department to provide Copy of Statement, Basis of Allegation and RTP's right to have the relied upon documents. SCN should not be merely based upon matching of Return data, Auto generated but should be with application of mind. Section - 155, Central Goods And Services Tax Act, 2017 Burden of proof.**

**155.** Where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claim shall lie on such person.

## BURDEN OF PROOF ON PURCHASING DEALER

## HELD

**The State of Karnataka v. M/s Ecom Gill Coffee Trading Private Limited 2023 [2023] 148 taxmann.com 352 (SC)**

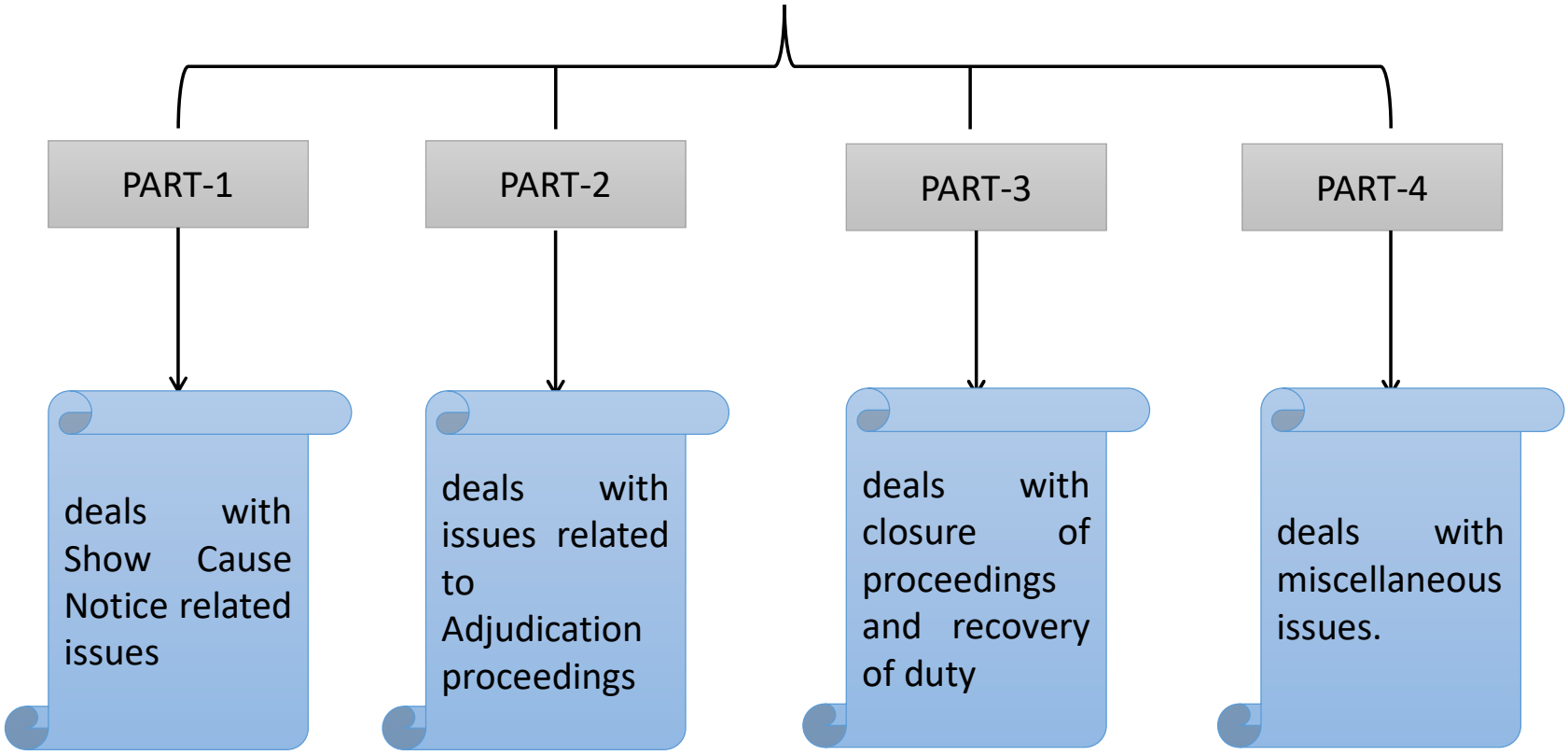
- **Input Tax Credit would be available to purchasing dealer only after he discharge burden to establish actual receipt of goods; mere production of invoice and payment to selling dealer by account payee cheque was not sufficient**

- **The provisions of Section 70, in its plain terms clearly stipulate that the burden of proving that the ITC claim is correct lies upon the purchasing dealer claiming such ITC. Burden of proof that the ITC claim is correct is squarely upon the assessee who has to discharge the said burden. Merely because the dealer claiming such ITC claims that he is a bona fide purchaser is not enough and sufficient. The burden of proving the correctness of ITC remains upon the dealer claiming such ITC. Such a burden of proof cannot get shifted on the revenue. Mere production of the invoices or the payment made by cheques is not enough and cannot be said to be discharging the burden of proof cast under section 70 of the KVAT Act, 2003. The dealer claiming ITC has to prove beyond doubt the actual transaction which can be proved by furnishing the name and address of the selling dealer, details of the vehicle which has delivered the goods, payment of freight charges, acknowledgement of taking delivery of goods, tax invoices and payment particulars etc.**

# Circular No. 1053/02/2017-CX

**F.No. 96/1/2017-CX.I**

**Subject: Master Circular on Show Cause Notice, Adjudication and Recovery –reg**



**IMPORTANT POINTS OF THE CIRCULAR ARE DISCUSSED AS FOLLOWS:**

**PART-1** **Deals with Show Cause Notice related issues**

## 2.1 Understanding Show Cause notice (SCN)

1. Show Cause Notice (SCN) is the starting point of any legal proceedings against the party.
2. It lays down the entire framework for the proceedings that are intended to be undertaken and therefore it **should be drafted with utmost care**.
3. Issuance of SCN is a statutory requirement and it is the basic document for settlement of any dispute relating to tax liability or any punitive action to be undertaken for contravention of provisions of act and the rules made there under.
4. A SCN offers the noticee an opportunity to submit his oral or written submission before the Adjudicating Authority on the charges alleged in the SCN.
5. The issuance of show cause notice is a mandatory requirement according to the principles of natural justice which are commonly known as “audi alteram partem” which means that no one should be condemned unheard.

## 2.2 Structure of Show Cause notice (SCN):

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

a) Introduction of the case
b). Legal frame work
c). Factual statement and appreciation of evidences
d). Discussion, facts and legal frame work,
e). Discussion on Limitation
f). Calculation of duty and other amounts due
g). Statement of charges
h). Authority to adjudicate.

**2.4 Legal framework:** **The authority issuing the SCN should clearly lay down the legal provisions in respect of which the person shall be put to notice.** While specifying the provisions, care should be taken to be very accurate in listing all the provisions and the law in respect of which the contraventions are to be alleged in the SCN.

**2.5 Factual statement and appreciation of evidence:** In this part of SCN, the facts relating to act of omission and commission pertinent to the initiation of the proceedings against the noticee need to be stated in a most objective and precise manner. **All evidences in form of documents, statements and material evidence resumed during the course of enquiry /investigation should be organized serially in a manner so as to establish the charges against the noticee**. While discussing the facts and evidences, care should be taken to be precise and succinct in expression so that unnecessary details are avoided.

**2.8 Quantification of duty demanded**: It is desirable that the demand is quantified in the SCN, however **if due to some genuine grounds it is not possible to quantify the short levy at the time of issue of SCN, the SCN would not be considered as invalid**. It would still be desirable that the principles and manner of computing the amounts due from the noticee are clearly laid down in this part of the SCN

**3.1 Limitation to demand duty:** A show cause notice demanding duty not paid or short paid or erroneous refund can be issued by the Central Excise Officer normally within two year from the relevant date of non-payment or short payment of duty, whereafter the demand becomes time-barred. **Where duty has not been paid or short paid by any person chargeable with the duty by reason of fraud or collusion or any willful mis-statement or suppression of facts or contravention of any of the provisions** of the Central Excise Act, 1944 or of the Rules made thereunder with intent to evade payment of duty, **a longer period of limitation applies and show cause notice demanding duty can be issued** within five years from the relevant date.

**3.4 Extended period in disputed areas of interpretation**: There are cases where either no duty was being levied or there was a short levy on any excisable goods on the belief that they were not excisable or were chargeable to lower rate of duty, as the case may be. Both trade and field formations of revenue may have operated under such understanding. Thus, the general practice of assessment can be said to be non-payment of duty or payment at lower rate, as the case may be. In such situations, Board may issue circular clarifying that the general practice of assessment was erroneous and instructing field formations to correct the practice of assessment. **Consequent upon such circular, issue of demand notice for extended period of time would be incorrect as it cannot be said that the assessee was intentionally not paying the duty.**

**3.6 Power to invoke extended period is conditional**: **Power to issue notice for extended period is restricted by presence of active ingredients which indicate an intent to evade duty** as explained above. Indiscriminate use of such restricted powers leads to fruitless adjudications, appeals and reviews, inflates the figures of outstanding demands and above all causes unnecessary harassment of the assessees. Therefore, before invoking extended period, it must be ensured that the necessary and sufficient conditions to invoke extended period exists.

**3.7 Second SCN invoking extended period**: **Issuance of a second SCN invoking extended period after the first SCN invoking extended period of time has been issued is legally not tenable**. However, the second SCN, if issued would also need to establish the ingredients required to invoke extended period independently. For example, in cases where clearances are not reported by the assessee in the periodic return, second SCN invoking extended period is quite logical whereas in cases of willful mis-statement regarding the clearances made under 8 appropriate invoice and recorded in the periodic returns, second SCN invoking extended period would be difficult to sustain as the department comes in possession of all the facts after the time of first SCN. **Therefore, as a matter of abundant precaution, it is desirable that after the first SCN invoking extended period, subsequent SCNs should be issued within the normal period of limitation.**

PART-2

# Adjudication of Show Cause Notice

**13.0 Service of Show Cause Notice and Relied upon Documents:** **A show cause notice and the documents relied upon in the Show Cause Notice needs to be served on the assessee for initiation of the adjudication proceedings.** The documents/records which are not relied upon in the Show Cause Notice are required to be returned under proper receipt to the persons from whom they are seized. Show Cause Notice itself may incorporate a clause that unrelied upon records may be collected by the concerned persons within 30 days of receipt of the Show Cause Notice. The designation and address of the officer responsible for returning the relied upon records should also be mentioned in the Show Cause Notice. This would ensure that the adjudication proceedings are not delayed due to non-return of the non-relied upon documents.

**14.5 Adjudication order:** **The adjudication order must be a speaking order. A speaking order is an order that speaks for itself.** A good adjudication order is expected to stand the test of legality, fairness and reason at higher appellate forums. Such order should contain all the details of the issue, clear findings and a reasoned order.

**14.6 Analysis of issues:** **The Adjudicating authority is expected to examine all evidences, issues and material on record, analyze those in the context of alleged charges in the show cause notice. He is also expected to examine each of the points raised in the reply to the SCN and accept or reject them with cogent reasoning.** After due analysis of facts and law, adjudicating authority is expected to record his observations and findings in the adjudication order

**14.7 Body of the order:** The adjudication order should generally contain brief facts of the case, written and oral submissions by the party, observation of the adjudicating authority on the evidences on record and facts of omission and commission during personal hearing and finally the operating order. **At any cost, the findings and discussions should not go beyond the scope and grounds of the show cause notice.**

**14.8 Quantification of demand:** The duty demanded and confirmed should be clearly quantified and the order portion must contain the provisions of law under which duty is confirmed and penalty is imposed. **The duty demanded in an adjudication order cannot exceed the amount proposed in the Show Cause notice.**

**14.9 Corroborative evidence and Cross-examination:** **Where a Statement is relied upon in the adjudication proceedings, it would be required to be established though the process of cross-examination, if the noticee makes a request for cross-examination of the person whose statement is relied upon in the SCN.** During investigation, a statement can be fortified by collection of corroborative evidence so that the corroborative evidence support the case of the department, in cases where cross-examination is not feasible or the statement is retracted during adjudication proceedings. **It may be noted retracted statement may also be relied upon under given circumstances.**

**15. Corrigendum to an adjudication order:** **A corrigendum to an adjudication order can only be issued to correct minor clerical mistakes which do not alter the adjudication order per se.** Therefore, adjudicating order should normally be issued. **It may be noted that after issuing an adjudication order, the adjudicating authority becomes functus officio, which means that his mandate comes to an end as he has accomplished the task of adjudicating the case.** As a concept, functus officio is bound with the doctrine of res judicata, which prevents the reopening of a matter before the same court or authority. **It may also be noted that under the Central Excise Act, adjudicating authority does not have powers to review his own order and carry out corrections to the adjudication order.**

**16. Transfer of adjudicating authority:** Adjudicating officers are expected to issue orderin-original before being relieved in cases where personal hearing has been completed. The successor in office can not issue any order on the basis of personal hearing conducted by the predecessor. **The successor in office should offer a fresh hearing to the noticee before deciding the case and issuing adjudication order/formal order.**

# WHETHER MERELY INTEREST AND PENALTY NOTICE CAN BE ISSUED UNDER SECTION 73/74

## Sec. 75(12) General provisions relating to determination of tax.

12) Notwithstanding anything contained in section 73 or section 74, where any amount of self-assessed tax in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 79.

Explanation.- 'Explanation.—For the purposes of this sub-section, the expression "self-assessed tax" shall include the tax payable in respect of details of outward supplies furnished under section 37, but not included in the return furnished under section 39.'

Finance Act 2021 w.e.f 01.01.2022

Amendment of section 75.

**8 General provisions relating to determination of tax.**

Explanation inserted:-

'Explanation.—For the purposes of this sub-section, the expression "self-assessed tax" shall include the tax payable in respect of details of outward supplies furnished under section 37, but not included in the return furnished under section 39.'

## Analysis

- This proposed amendment **widens the scope of self assessed tax** by including tax payable in respect of output supplies in GSTR 1 but not included in GSTR 3B.
- In cases where the liability in **GSTR-1 exceeds that from GSTR-3B, the same would be construed as "Self Assessed Tax"**
- Such short payment may give rise to invocation of **recoveries u/s 79** by virtue of sec. 75(12) and even attachment of **bank accounts through amended provision of Sec. 83.**
- In case of mismatch between GSTR 1 and 3B, **SCN need not to be issued and Opportunity of being heard need not to be provided**. (Although one may rely upon the judgment of LC infra [2020] 116 taxmann.com 205 (Karnataka) and Mahadeo Construction Co. [2020] 116 taxmann.com 262.)
- This will **curb the malpractices whereby liability was shown more in GSTR 1 rather than GSTR-3B, to avoid tax payments.**

- In the case of **Rajkamal Builder Infrastructure (P.) Ltd. v. Unionof India - 2021 (3) TMI 1139 - GUJARAT HIGH COURT** in which it was held in the following paras that-

9. Thus, the plain reading of the aforesaid rules indicates that Form GST DRC 01 can be servedby the proper officer along with the notice issued under section 52 or Section 73 or section 74 orsection 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section129 or section 130 and that too, electronically as a summary of notice.

10. We do not find reference of any notice under section 50 so far as Rule 142(1)(a) of the CGSTRules is concerned. In such circumstances, **DRC 01 could not have been issued for the purposeof recovery of the amount towards interest on delayed payment of tax.**

...
...

18. In view of the aforesaid, **the Form GST DRC 01 could be said to have been issued without any authority of law.**

***(Emphasis Supplied)***

**From perual of above, it is evident that standalone Interest and Late Fee cannot be demanded through the Show Cause Notice u/s 73.**

**[2020] 116 taxmann.com 205 (Karnataka) Union of India *v.* LC Infra Projects (P.) Ltd.**

**Competent Authority without issuing show cause notice as contemplated under section 73 determined interest payable under section 50 and attached bank account of assessee**

- Whether issuance of show cause notice is sine qua non to proceed with recovery of interest payable in accordance with sub-section (1) of section 50 –
  - Held, yes –
- Whether therefore, interest levied upon assessee without issuing show cause notice was in breach of principles of natural justice and deserved to be set aside –
  - Held, yes

Without issuing SCN --- the Notion is Misconceived

No SCN required u/s 75(12) but Interest Liability generated u/s 50(1) by Deptt is not Self Asssessed

## [2020] 116 taxmann.com 262 (Jharkhand) Mahadeo Construction Co. *v.* Union of India*

**Facts of the case**

Assessee (Partnership Firm)

**filed its monthly return for month of February, 2018 and March, 2018**


**directed petitioner to make payment of interest on ground of delay in filing of GSTR-3B return for said months**

Revenue Authorities

Revenue further exercised powers under section 79 by initiating garnishee proceedings for recovery of said amount of interest by issuing notice to assessee's Banker

**Held**

- Whether since petitioner disputed computation or very leviability of said interest, liability of said interest was required to be adjudicated by initiation of adjudication proceedings under section 73 or 74 –
  - Held, yes –
- Whether, therefore, without initiation of any adjudication proceedings, no recovery proceeding under section 79 could be initiated for recovery of interest amount –
  - Held, yes

# IMPLEMENTATION OF PROVISIONS OF 75(12)

# Notification 26/2022 dated 26-12-2022

Tax in GSTR-1 > GSTR-3B

## ➢ RULE 88C

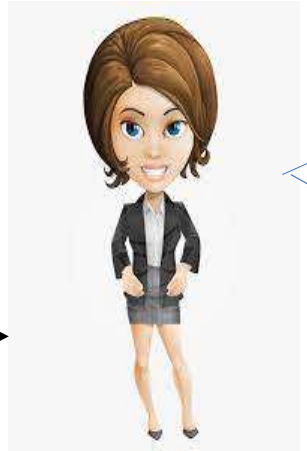
**"88C. Manner of dealing with difference in liability reported in statement of outward supplies and that reported in return i.e. difference in GSTR-1 & GSTR-3B.**

To put an end to the uncertainties prevailing in the trade due to absence of any requirement to issue any notice/intimation under the law u/s 75(12) by the department before initiating direct recovery, Rule 88C has been inserted in the CGST Rules. This rule basically provides for as under:

1. Where tax payable for a tax period under GSTR-1 exceeds the amount of tax payable under GSTR-3B, by specified amount and percentage, a system generated intimation in Part A of Form DRC-01B of such difference shall be given to registered person.
2. On receipt of DRC-01B, registered person shall **within a period of 7 days** either pay such differential tax liability fully or partially with interest and furnish details thereof and furnish the same in Part B of Form DRC-01B electronically on the common portal, or
3. Furnish a reply electronically on common portal incorporating reasons in respect of unpaid differential liability, if any, **in Part B of Form DRC-01B**.
4. In case, differential tax liability is not paid within period specified, or where no explanation or reason is furnished by registered person or where such reason is not found to be acceptable by proper officer, **the said amount shall be recoverable in accordance with Section 79 of the CGST Act.**

**Tax in GSTR-1 > GSTR-3B by Specified %age**

**System generated intimation in Part A of Form DRC-01B on Portal and intimation on E-mail**



RTP

**Within 7 days**

**PAY & Furnish the same in Part B of Form DRC-01B on Common Portal**

Not PAid

**Furnish a Reply electronically on common portal in Part B of Form DRC-01B**

Reply Not acceptable by PO

RECOVERY PROCEEDINGS AS PER SECTION 79


# Notification 26/2022

**As an outcome of the recent 48th GST council meeting, the manner of dealing with difference in liability reported in statement of outward supplies (GSTR-1) and that reported in return (GSTR-3B) has been codified in the form of Rule 88C of the CGST Rules. This rule is likely to affect the taxpayers in case of any discrepancies between the supplies reported in GSTR-1 and GSTR-3B. The onus will be on the taxpayers to ensure compliance.**

## ➢ The First Question that arises

**The first question that arises in mind is whether this rule has got a statutory backing?** The answer to this question apparently seems to be a yes. **Section 75(12) of the CGST Act provides for direct recovery of unpaid or short-paid self-assessed tax as per GSTR-3B without following the demand procedures laid down under the CGST Act.** The Finance Act, 2021 has amended this section by inserting an explanation to provide that the expression "self-assessed tax" shall include the tax payable in respect of details of outward supplies furnished in form GSTR-1, but not included in the return furnished in form GSTR-3B. This explanation extended statutory power to department for direct recovery of tax in a situation of difference between the output liability reported in GSTR-1 and actual tax discharged in GSTR-3B for the relevant period. However, the provision was silent on grant of any opportunity of being heard before initiating recovery proceedings which was later clarified vide a benevolent circular.

**RULE 59**

**Rule 59 has also been amended to provide that in case where intimation is received by registered person under Rule 88C,** such person shall not be allowed to furnish GSTR-1 for a subsequent tax period, unless he has either deposited the amount specified in intimation or has furnished a reply explaining the reasons for any amount remaining unpaid. It was stated in the 48th GST council meeting that this would facilitate taxpayers to pay/ explain the reason for the difference in such liabilities reported by them, without intervention of the tax officers. Here, it would be interesting to see whether any reply by the taxpayer explaining the differences would suffice or such reply will have to be to the satisfaction of the officer.

- The newly inserted rule has made the GSTR-1 and GSTR-3B reconciliation an indispensable time-sensitive exercise wherein a limited window of 7 days has been provided to reconcile the difference and take a call either to pay or to explain the differences.

**RULE 138**

Further, the newly inserted rule does not provide for any sort of extension of the strict time limit of 7 days. The inaction would not just trigger the direct recovery action by the department but also block filing of GSTR-1 for the subsequent periods. Since there is mandate of sequel filing of GSTR-1 and GSTR-3B under Section 39, effectively, GSTR-3B can also not be filed for subsequent periods unless this difference is sorted. In case, default in filing GSTR-1 or GSTR-3B continues for one more tax-period, filing of **E-way bill will also be restricted under Rule 138E** rendering the businesses completely helpless for movement of any goods under the cover of E-way bill and thereby, disrupting the entire business chain.

- **The nature of the intimation in the form of DRC-1B is not clear as to whether it is a notice for demand under Section 75. If so, rigours of that section should be made applicable to this intimation as well which would include opportunity of being heard, grant of time/adjournments and requirement of passing speaking order by the proper officer whereas Rule 88C does not provide for any of these. In case the reasons furnished by the registered person are not acceptable to proper officer, the rule provides that the differential amount shall be recoverable in accordance with Section 79 of the CGST Act. It may also be possible that explanation furnished by registered person for few of the items is acceptable whereas for other items, it is not acceptable to proper office which would require determination and passing of order by the proper officer for the amount payable by the registered person. However, from the perusal of Rule 88C or the form DRC-1B, it appears that the proper officer would directly initiate recovery proceedings without passing any order. If so, where is the scope of challenging the order of proper officer regarding differential tax liability before appellate forums. This poses a serious question whether the only remedy with the registered person would be to rush to High Courts for stay of recovery action**

Rule should not be implemented till Negative Figures not allowed in GSTR 3B in Output Liability

- ***The newly inserted Rule 88C is not yet effective since the amount/percentage of differences must be specified to bring it in force.*** *Nevertheless, this rule is set to result in flood of system generated DRC-1B thrown on taxpayers in the coming months. Therefore, it is paramount that the department clarifies these issues at the earliest to avoid unnecessary litigation in the times to come.*

INTRODUCED SEQUENTIAL FILING OF RETURNS (GSTR 1 & 3B)
NO subsequent Period can be furnished if previous not filled

Sec 39(10) File GSTR 1 then GSTR 3B can be filed by FA 2022 w.e.f 01-10-2022

Rule 59(6) Pay Taxes otherwise GSTR 1 cannot be filed (if 88C intimation issued)

Rule 21 if no consecutive filling for 6 months/2 Tax periods in quarterly Number Cancelled.

3years from due date -Maximum Time Limit prescribed for GSTR3B, GSTR 1,GSTR 9 (Budget 2023 proposal)

TAX in GSTR 1 > TAX in GSTR 3B -----GSTR 1 Tax will be Self Assessment Tax , Number can be cancelled as per Rule 21 and can be suspended as per RULE 21A


# Consequence of non-compliance of Rule 88C

In the case where the **Amount specified in DRC-01B remains unpaid**, or no reply was furnished, or where the reply furnished was found to be unacceptable by the proper officer, recovery proceedings would be initiated by provisions of Section 79 of the CGST Act, 2017.

# OPPORTUNITY OF BEING HEARD

Where the response submitted by the taxpayer is found to be not satisfactory**, direct recovery proceedings under Section 79 of the CGST Act, 2017** would be initiated against the taxpayer without any further opportunity of being heard.

**Section 75(4)** warrants that an opportunity would be required where a request is received in writing or where any adverse decision is contemplated against such person. Raising of any demand / recovery on account of mismatch between GSTR-1 and 3B clearly gets classified here

In a case where the taxpayer disputes the liability computed on account of any reason, it is pertinent that he should be provided with a personal hearing before any adverse action is taken on him.

# Reason For The Mismatch in GSTR-3B And GSTR 1

**Misallocation:**

GSTR-1 is prepared at the invoice level and GSTR-3B is prepared at the aggregate level. This can lead to furnishing supplies under the wrong head in GSTR-3B, but declaring the same details correctly in GSTR-1.

**Negative Sales**

Credit note being more than sales made during the period for earlier period adjusted subsequently. GSTR 3B=0, GSTR 1 with liability of current month.

Errors

Errors in filling GSTR 1 or GSTR 3B.

**Tax not paid in GSTR 3B on supplies :**

There have been multiple instances of ITC being passed on by the supplier vide GST-R1 for which tax have not been discharged through GSTR 3B.

**Post-filing Amendments**

Amendment in supplies made after GSTR-1 filed.

**Vide the recommendations of the 48th GST Council Meeting on 17th December 2022, Rule 88C was inserted to provide for a mechanism for dealing with the difference arising from taxpayer's liability as reported in GSTR-1 v/s GSTR-3B.**

# INTEREST CALCULATION IN NOTICES WITH EXAMPLES

# Notification No. 9/2022-CT

**The provisions of Sec 110 (c) & 111 of the Finance Act, 2022 are applicable w.e.f. 5th July,2022**

**Section 50(3) of CGST ACT,2017 Amendment w.e.f .1.07.2017 (Section 111) RETROSPECTIVELY**

To provide that interest will be payable on wrongly availed ITC only when same is UTILISED.

**RULE 88B inserted N 14/2022**

MANNER OF CALCULATING INTEREST ON DELAYED PAYMENT OF TAX

**Section 49(10) of CGST ACT,2017 Amendment w.e.f. 5.07.2022 (Sec 110 (c) )**

- To provide for transfer of balance in E-cash ledger of a registered person to E-cash ledger of CGST and IGST of distinct person (i.e. another registration of same entity having same PAN).
- CONDITION :- if the transferor unit is not having any outstanding liability.

**RULE 87(14) inserted N 14/2022**

Above transfer of Tax, Interest, Penalty, Fee or any other amount e.g Pre Deposit is allowed in FORM GST PMT-09

# Notification No. 14/2022-CT

## RULE 88B

## MANNER OF CALCULATING INTEREST ON DELAYED PAYMENT OF TAX

**RETROSPECTIVE AMENDMENT w.e.f. 01.07.2017**

**(1) In case, where the supplies made during a tax period are declared by the registered person in the return for the said period and**
**the said return is furnished after the due date in accordance with provisions of section 39,**
**EXCEPT where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period,**

- **Interest** on tax payable in respect of such supplies shall be calculated on the **portion of tax which is paid by debiting the electronic cash ledger,**

Net

- **for the period of delay in filing the said return beyond the due date,**
- **at such rate as may be notified under sub-section (1) of section 50.**

18%

# Notification No. 14/2022-CT

## RULE 88B

## MANNER OF CALCULATING INTEREST ON DELAYED PAYMENT OF TAX

**(2) In all other cases, where interest is payable in accordance with sub section (1) of section 50, such as short payment of tax, non payment of tax etc.**

- **Interest** calculated on amount of tax which remains unpaid — Gross
- For the period starting from the date on which such tax was due to be paid till the date such tax is paid
- at such rate as may be notified under sub-section (1) of section 50. — 18%

Amendment in section 50

**6 Interest on delayed payment of tax.**

**Budgetary Amendment (Notified on 1st June, 21 vide Not. 16/2021-CT Effective date 01.7.2017)**

(1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council.

~~[1][Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger.]~~

w.e.f. 01.07.2017

***"Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be payable on that portion of the tax which is paid by debiting the electronic cash ledger.".***

## Impact

- **Retrospective amendment** made that interest to be paid on Net liability and not on gross liability in case of short payment of Tax with effect from 01.07.2017.
- **Right to claim refund arises, wherever the interest has been paid on gross GST liability**.

## Analysis with Examples

This provision **does not give relief** on the following amounts:-

- On **Any unpaid tax amount, even if the balance is lying in electronic cash / credit ledger**. E.g Jan (Output Rs. 100000- 80000 credit) Rs. 15000 deposited in Cash Ledger on 24th Feb , return filed on 26th March , Interest will be on 20000 from 21st Feb to 26th March.
- **Tax payable in one tax period but paid later with subsequent return, would not enjoy such relief even when paid through ITC** . As the words in poviso says, Payable and declared in the return for the said period.

**eg.** Jan return filed NIL. Jan (Output Rs. 100000- 80000 credit) added in Feb ,2021 return. The same was paid using the carried forward ITC in the month of Feb, 2021. But the interest on tax of Rs. 1,00,000/- for the period of delay is to be paid, even if the same is paid by ITC. **(Rule 88B(2))**

However, if Jan return is delayed and filed in March, interest will be charged on Rs. 20000/- for the period of delay. **(Rule 88B(1))**

- **Return not filed and tax not paid upto initiation of any proceedings under Section 73/74** in respect of such tax period would not get this benefit even when amount is lying in Cash / Credit ledger of the taxpayer.

# Notification No. 14/2022-CT

## RULE 88B

## MANNER OF CALCULATING INTEREST ON DELAYED PAYMENT OF TAX

**(3) In case, where interest is payable on the amount of input tax credit wrongly availed and utilized in accordance with sub-section (3) of section 50,**

- **Interest** calculated on amount of input tax credit wrongly availed and utilised,
- For the period starting from the date of utilization of such wrongly availed input tax credit till the date of reversal of such credit or payment of tax in respect of such amount
- at such rate as may be notified under sub-section (1) of section 50.

18%
(Budget 2022 change applicable from date of enactment)

# EXPLANATION TO SUB-SECTION (3) OF RULE 88B

**(1) input tax credit wrongly availed shall be construed to have been utilized,**

- when the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed,
- and the extent of such utilization of input tax credit shall be the amount by which the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed.

For example, if ITC of Rs. 60,000 is availed wrongly in January 2022 and the closing balance of ITC after March 2022 GSTR-3B return is Rs.40,000. Rs.20,000 of wrongly availed ITC is deemed to have been utilized in the month of March 2022.

**(2) the date of utilization of such input tax credit shall be taken to be, —**

**(a) The due date, on which the return is to be furnished under section 39 or the actual date of filing of the said return, whichever is earlier**, if the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, on account of payment of tax through the said return; or

e.g DRC-03

**(b) the date of debit in the electronic credit ledger** when the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, in all other cases.

Continuing with the example, the date of utilization of wrong ITC of Rs.20,000 would be:
I. The date of filing of GSTR-3B return (or)
II. Due date for filing the said return, whichever is earlier.
Hence, the taxpayer cannot reduce the interest liability on utilization of wrong credit, by delaying the filing of GSTR-3B.

Mr. Ram claimed ineligible ITC of Rs 60000 in the month of January, 2022. February return was NIL. The ITC amount of Rs 60000 was c/f in E-Credit Ledger in March, 2022. In March, 2022 an outward supply involving tax of Rs 40000.00 wherein the said amount was used by him. The balance in ECrL was Rs. 20000/- He reversed the entire Incorrect ITC in June,2022. June, 2022 return filed on 22nd July,2022.

**Case 1-Return for the Month of March,22 is filed on 15th April,2022**

**Amount= 40000 (60000-20000) (Balance fall below-Exp(1))**

**Period= Date of utilization till Date of Reversal**

(Return Furnished or Due to be furnished whichever is earlier-Exp (2)) 22nd July,2022

**15th April, 2022 till 22nd July, 2022**

**Rate= 18%**

**Case-2-Return for the Month of March,22 is filed on 25th April,2022**

**Amount= 40000 (60000-20000) (Balance fall below-Exp(1))**

**Period= Date of utilization till Date of Reversal**

(Return Furnished or Due to be furnished whichever is earlier-Exp (2)) 22nd July,2022

**20th April, 2022 till 22nd July, 2022**

**Rate= 18%**

18

## NON-PAYMENT OF INTEREST ON DELAYED PAYMENT OF TAX THROUGH CREDIT LEDGER

Section 50 of the CGST Act clearly states that Interest is required to be paid only on the Portion of Liability Paid through Cash ledger . As regards to the liability paid through Credit ledger, Interest is not applicable. In the instant case the liability has been disposed off only through credit ledger as already explained above.

*Section 50(1) "Interest on delayed payment of tax"*

*Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council.*

*Provided that the **interest on tax payable in respect of supplies** made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, **shall be payable on that portion of the tax which is paid by debiting the electronic cash ledger.***

## JURISPRUDENCE

**M/S. F1 AUTO COMPONENTS P LTD VERSUS THE STATE TAX OFFICER , CHENNAI 2021 (7) TMI 600 - MADRAS HIGH COURT**

Partly set aside the order passed by the Revenue Department to the extent that **interest on remittances by way of adjustment of electronic credit register is not leviable**, in a matter challenging levy of interest under Section 50 of the Central Goods and Services Tax Act, 2017 (**"the CGST Act"**) on reversal of wrongly availed Input Tax Credit (**"ITC"**) and upheld the levy of interest on the belated cash remittance. Held that, the interest on cash remittances is compulsory and mandatory. Further held that, in a case where the claim of ITC by an assesse is erroneous, then the question of Section 42 of the CGST Act does not arise at all, since it is not the case of mismatch, one of wrongful claim of ITC.

**M/S. F1 AUTO COMPONENTS P LTD VERSUS THE STATE TAX OFFICER , CHENNAI 2021 (7) TMI 600 - MADRAS HIGH COURT**

Partly set aside the order passed by the Revenue Department to the extent that **interest on remittances by way of adjustment of electronic credit register is not leviable**, in a matter challenging levy of interest under Section 50 of the Central Goods and Services Tax Act, 2017 (**"the CGST Act"**) on reversal of wrongly availed Input Tax Credit (**"ITC"**) and upheld the levy of interest on the belated cash remittance. Held that, the interest on cash remittances is compulsory and mandatory. Further held that, in a case where the claim of ITC by an assesse is erroneous, then the question of Section 42 of the CGST Act does not arise at all, since it is not the case of mismatch, one of wrongful claim of ITC.

**MADRAS Maansarovar Motors (P.) Ltd. v. Assistant Commissioner, Chennai [2020] 121 taxmann.com 135 (Madras) HIGH COURT**

Interest on delayed payment of tax - Whether proviso to section 50 inserted by section 100 of Finance (No.2) Act, 2019 which stated that interest on delayed remittance of tax is **leviable only on that portion of output GST liability which is discharged by way of cash** and effective date of amendment was not specified would operate retrospectively from 1-7-2017 and accordingly no interest would be levied on tax remitted by reversal of available ITC - Held, yes
The petitioners had challenged the levy interest on remittances of tax by adjustment of available ITC on ground that (i) the credit was available even prior to the arising of the output tax liability and hence the question of delay does not arise (ii) no opportunity was granted prior to raising of the impugned demand and consequential proceedings (iii) **interest is a measure of compensation and since ITC is already available in the electronic ledger, there is no question of the same being due to the revenue** (iv) the proviso to section 50 which states that interest shall be levied only on part paid in cash has been inserted to set right an anomaly and is therefore retrospective in operation.

**Pratibha Processors v. Union of India 1996 taxmann.com 72 (SC)/[1996] 88 ELT 12 (SC)[11-10-1996] [1996] 1996 taxmann.com 72 (SC) SUPREME COURT OF INDIA**
Sections 61(1) and 61(2) of the Customs Act, 1962 - Interest on warehoused goods - interest is linked to the duty payable - when goods wholly exempted from payment of duty at the time of removal from warehouse, no interest is payable - **payment of interest under Section 61(2) is solely dependent upon the factual liability to pay the principal amount**

**Refex Industries Ltd. v. Assistant Commissioner of CGST & Central Excise[2020] 114 taxmann.com 447 (Madras) HIGH COURT OF MADRAS**

Section 50 of the Central Goods and Services-tax Act, 2017/Section 50 of the Tamil Nadu Goods and Services Tax Act, 2017 - Interest on delayed payment of tax - Assessment year 2017-18 - Whether proviso to section 50(1) as per which **interest shall be levied only on that part of tax which is paid in cash, has been inserted with effect from 1-8-2019, is clarificatory in nature and, thus, it operates retrospectively** - Held, yes - Whether, therefore, where assessee filed its return belatedly for relevant assessment year, **interest to be remitted on tax accompanying return could be demanded only on cash component of tax remitted belatedly and not on Input Tax Credit (ITC) available with Department** - Held, yes [Paras 15 and 17]
**The proper application of section 50 is one where interest is levied on a belated cash payment but not on ITC available all the while with the department to the credit of the assessee. The latter being available with the department is, neither belated nor delayed. [Para 12]**

**Sumilon Polyster Ltd.v. Union of India [2022] 145 taxmann.com 185 (Gujarat) HIGH COURT OF GUJARAT**

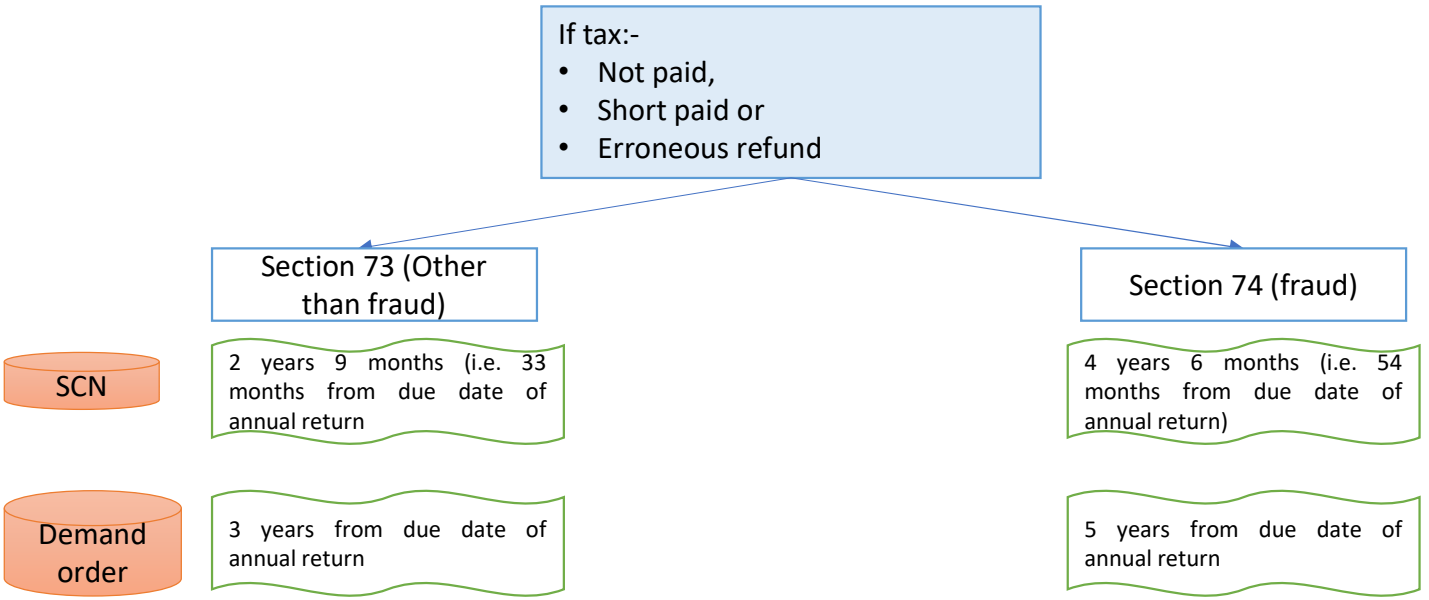
In mean time, amendment was brought in section 50(1) with effect from 1-7- 2017 by section 112 Finance Act, 2021 - It was submitted that after said amendment, where tax was payable in respect of supplies made during a tax period and declared in return for said period furnished after due date in accordance with provisions of section 39, except where such return was furnished after commencement of any proceedings under section 73 or section 74 of said period**, interest would be payable on portion of tax which is paid by debiting electronic cash ledger** - In view of above submissions, these petitions were to be disposed of as having become infructuous and respondents were to be directed to give effect to aforesaid amendment [Section 50 of Central Goods and Services Tax Act, 2017 /Gujarat Goods and Services Tax Act, 2017 - Section 112 of the Finance Act, 2021] [Paras 5.2, 5.3, 6 and 7] [In favour of assessee]

**Prasanna Kumar Bisoi v. Union of India [2021] 125 taxmann.com 53 (Orissa) HIGH COURT OF ORISSA**
Since GST council in its 39th meeting held on 14-3-2020 decided **that interest on delay in payment of GST was to be charged on net cash tax liability** retrospectively w.e.f. 1-7-2017/Competent Authority was to be directed to dispose of 'representation' filed by assessee with a prayer not to charge interest on availed input tax credit, keeping in view decision taken in 39th meeting of GST Council

# TIME LIMITS

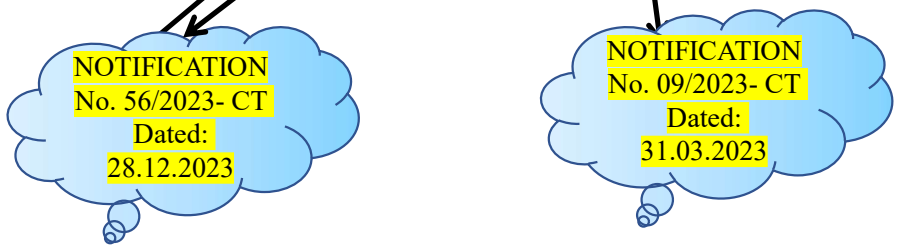
## Section 73(2) Time Limit

The proper officer is required to issue the show-cause notice **3 months** before the time limit. The maximum time limit for the order of payment is **3 years** from the due date for filing of annual return for the year to which the amount relates.


If tax:-
• Not paid,
• Short paid or
• Erroneous refund
Section 73 (Other than fraud)
Section 74 (fraud)
SCN
2 years 9 months (i.e. 33 months from due date of annual return
4 years 6 months (i.e. 54 months from due date of annual return)
Demand order
3 years from due date of annual return
5 years from due date of annual return

## Time limit u/s 73 and 74 Issue of Show Cause Notice & Order

| 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) | Last date for issuance of the show cause notice as per S.74(9) r/w. S.74(10) | Last date for issuance of order as per S.73(9) r/w. S.73(10) | Last date for issuance of order as per S.74(9) r/w. S.74(10) |
|---|---|---|---|---|---|---|
| 1 | 2017-18 | 05.02.2020<br>07.02.2020 | 30.09.2023 | 04.08.2024<br>06.08.2024 | 31.12.2023 | 04.02.2025<br>06.02.2025 |
| 2 | 2018-19 | 31.12.2020 | 31.01.2024 | 30.06.2025 | 30.04.2024 | 30.12.2025 |
| 3 | 2019-20 | 31.03.2021 | 31.05.2024 | 30.09.2025 | 31.08.2024 | 30.12.2025 |
| 4 | 2020-21 | 28.02.2022 | 27.11.2024 | 27.08.2026 | 27.02.2025 | 27.02.2027 |
| 5 | 2021-22 | 31.12.2022 | 30.09.2025 | 30.06.2027 | 30.12.2025 | 30.12.2027 |



# EXTENSION OF SCN TIME PERIOD UNDER SCANNER?

- **M/S NEW INDIA ACID BARODA PVT. LTD. Versus UNION OF INDIA IN THE HIGH COURT OF GUJARAT AT AHMEDABAD R/SPECIAL CIVIL APPLICATION NO. 21165 of 2023**

**AND**

- **M/S GAJANAND MULTISHOP THROUGH PANKAJKUMAR ROSHANLAL GANDHI Versus UNION OF INDIA IN THE HIGH COURT OF GUJARAT AT AHMEDABAD R/SPECIAL CIVIL APPLICATION NO. 20227 of 2023**

It was submitted that there is no ground mentioned in the impugned notification no.9 of 2023 dated 31.03.2023 extending the time period for issuance of the show-cause-notice under Sub-section 10 of Section of the Central Goods and Service Tax Act, 2017 (for short "the Act") while exercising the powers under the Central Board of Indirect Taxes and Customs under Section 168A of the Act. **It was submitted that after the year 2022 there was no COVID Pandemic in existence and accordingly the provisions of Section 168A of the Act would not be applicable for extension of time**. He also invited the attention of the Court to the explanation to section 168A of the Act and submitted that none of the eventuality mentioned therein existed when the impugned notification was issued by the Central Board of Indirect Taxes and Customs.

**It was therefore submitted that such extension is not sustainable in law and is contrary to the provision of Section 168A of the Act.**

Considering the above submissions, issue Notice returnable on 8 th February, 2024. By way of ad-interim relief, no final order shall be passed by the respondent authority pursuant to the show-cause-notice issued during the period extended by the impugned notification without permission of the Court till the next date of hearing. Direct service is permitted.

# [2023] 156 taxmann.com 656 (Gujarat)

# HIGH COURT OF GUJARAT

# SRSS Agro (P.) Ltd.

## v.

# Union of India

**Where petitioner submitted that notification dated 31.03.2023 extending time limit specified under Section 73 by virtue of powers under Section168A is unjustified as extension has to be for special circumstances and having once extended period by virtue of notification dated 05.07.2022, no subsequent extension could be made, notice was to be issued to respondent-state returnable on 30.11.2023**

Unjustified extension of limitation - Case of petitioner that notification dated 31.03.2023 extending time limit specified under Section 73 by virtue of powers under Section168A is unjustified as extension has to be for special circumstances and having once extended period by virtue of notification dated 05.07.2022, no subsequent extension could be made – Held: notice was to be issued to respondent returnable on 30.11.2023 [Section 73, read with section168A of Central Goods and Services Tax Act, 2017/Gujarat Goods and Services Tax Act 2017] [para 3]

## CHAPTER VI

### AMENDMENT TO THE CENTRAL GOODS AND SERVICES TAX ACT, 2017

**7.** After section 168 of the Central Goods and Services Tax Act, 2017, the following section shall be inserted, namely:—

Insertion of new section 168A in Act 12 of 2017.

'168A. (*1*) Notwithstanding anything contained in this Act, the Government may, on the recommendations of the Council, by notification, extend the time limit specified in, or prescribed or notified under, this Act in respect of actions which cannot be completed of complied with due to *force majeure*.

Power of Government to extend time limit in special circumstances.

(*2*) The power to issue notification under sub-section (*1*) shall include the power to give retrospective effect to such notification from a date not earlier than the date of commencement of this Act.

*Explanation.*—For the purposes of this section, the expression "*force majeure*" means a case of war, epidemic, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature or otherwise affecting the implementation of any of the provisions of this Act.'.

**At present, there is no such ground attributable to force majeure which affects the implementation of any of the provisions of the act (GST Act) throughout India. Thus the invocation of Section 168A is an act of grave misuse of legislative provisions.**

SECTION 168A

**Power Of Government To Extend Time Limit In Special Circumstances.**

(1) Notwithstanding anything contained in this Act, the Government may, on the recommendations of the Council, by notification, extend the time limit specified in, or prescribed or notified under, this Act in respect of actions which cannot be completed or complied with due to *force majeure*.

(2) The power to issue notification under sub-section (1) shall include the power to give retrospective effect to such notification from a date not earlier than the date of commencement of this Act

*Explanation*.—For the purposes of this section, the expression *"force majeure"* means a case of war, epidemic, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature or otherwise affecting the implementation of any of the provisions of this Act.]

- **Gujarat HC M/s NEW INDIA ACID BARODA PVT. LTD. vs UNION OF INDIA**

Second Extension of GST Notice Time Limit in 2023 under Challenge for violation of S. 168A,

- **Gujarat HC issues Notice GAJANAND MULTISHOP THROUGH PANKAJKUMAR ROSHANLAL GANDHI [R/SPECIAL CIVIL APPLICATION NO. 20227 of 2023, Gujarat HC]**

In summary, the recent notifications extending the time limits for issuing Goods and Services Tax demand orders under Section 73(9) raise significant concerns regarding their constitutionality and adherence to the statutory framework.

[2023] 146 taxmann.com 531 (Kerala)

HIGH COURT OF KERALA

Pappachan Chakkiath

*v.*

Assistant Commissioner, of SGST Department, North Paravur*

**When time limit for issuance of order for financial year 2017-18 was extended till 30-9-2023, automatically time limit for show cause notice would also be extended with reference to that date**

**FAIZAL TRADERS PVT LTD**
**BROTHERS TOWER, ALATHUR PO, PALAKKAD-678541 REP BY ARIF K, DIRECTOR**
**Vs**
**DEPUTY COMMISSIONER CENTRAL TAX AND CENTRAL EXCISE, PALAKKAD DIVISION**
**METTUPALAYAM STREET, PALAKKAD**

- Petitioner's claim for input tax credit for the period from July 2017 to September 2017 has **been denied**

FACTS

- Petitioner has challenged the assessment order on the ground that the same is barred by limitation - Inasmuch as the last date for filing the return in GSTR-9 was 07.02.2020, and therefore, the last date for completing the proceedings under Section 73(9) and serving the demand notice was 07.02.2023; that the last date for completing the proceedings under Section 73(9) and serving the demand notice was 07.02.2023 - **Petitioner has also impugned the notification issued by the 2nd respondent bearing No.13/2022-Central Tax dated 05.07.2022**

- **whereby the time limit specified under Section 73(10) for issuance of the order under 73(9) was extended up to 30.09.2023 and notification No.09/2023-Central Tax dated 31.03.2023**
- **Whereby the time limit was extended to 31.12.2023 - Petitioner contends that both these notifications purported to be issued under Section 168A of the CGST Act, are beyond the powers conferred on the 2nd respondent under Section 168A of the Act; that the force majeure was not present for extending the time for completion of proceedings in passing the assessment order under sub-section (9) of Section 73 and thus, the impugned notification is bad in law and is ultra vires the provisions of Section 168A of the CGST/SGST Act.**

# Held: Valid Extention. What is Force Majure not discussed

Held: If there is force majeure as defined in Section 168A, the Government is empowered to extend the limitation period for taking actions which could not be completed or complied with due to force majeure - No one can deny that COVID-19 was a force majeure as it was a pandemic that caused large-scale human tragedy and suffering all over the world and paralyzed the world, including economic activities - It was observed that the Central and the State Governments were working with reduced staff, along with staggered timings and exemption to certain categories of employees from attending offices, from time to time during the COVID period - A conscious policy decision was taken not to do enforcement actions in the initial period of implementation of the GST law - Therefore, no action for scrutiny, audit, etc., could be undertaken during the initial period of GST implementation - As the due date for filing the annual return for Financial Year 2017-18 was 07.02.2020, based on which limitations for demand under the Act are linked - As Covid happened immediately after that, thereby the audit and scrutiny for the Financial Year 2017-18 were impeded due to the various restrictions during the Covid period - Therefore, the decision was taken to extend the limitation under Section 73 for the Financial Year 2017-18 for issuance of the order in respect of demand linked with due date of annual return till 30.09.2023 under the powers available under Section 168A of the GST Act - How much time could have been extended considering the pandemic is the discretion of the Executive, which has been taken based on the recommendation of the GST Council - **Bench does not find that the notifications impugned in the writ petition are ultra vires the provisions of Section 168A of the CGST/SGST Act -**

# UNSIGNED ORDER

**SRK Enterprises *v.* Assistant Commissioner (ST) [2023] 157 taxmann.com 93 (Andhra Pradesh) HIGH COURT OF ANDHRA PRADESH**

**GST : Where order is unsigned, it is no order in eyes of law and could not be covered under any mistake, defect or omission therein as used in Section 160 of the CGST Act 2017**

**RAMANI SUCHIT MALUSHTE VERSUS UNION OF INDIA AND ORS. - 2022 (9) TMI 1263 - BOMBAY HIGH COURT** has held that unless signature is put on the order by the issuing authority, it will have no effect in the eyes of law therefore, the time to file appeal would begin from the date on which the signature of issuing authority was put on such order

Rule 26

## Method of authentication

1)

- All Applications, including
- Reply if any, to the notices
- Returns including the details of outward and inward supplies
- Appeals, or
- Any other document required to be submitted under the provisions of these rules

Shall be so submitted electronically with digital signature certificate or through e-signature as specified under the provisions of the Information Technology Act, 2000 (21 of 2000) or verified by any other mode of signature or verification as notified1 by the Board in this behalf.

2) Each document including the return furnished online shall be signed or verified through electronic verification code-

a) In the case of an individual, by the individual himself or where he is absent from India, by some other person duly authorised by him in this behalf, and where the individual is mentally incapacitated from attending to his affairs, by his guardian or by any other person competent to act on his behalf;
(b) In the case of a Hindu Undivided Family, by a Karta and where the Karta is absent from India or is mentally incapacitated from attending to his affairs, by any other adult member of such family or by the authorised signatory of such Karta;
(c) In the case of a company, by the chief executive officer or authorised signatory thereof;
(d) In the case of a Government or any Governmental agency or local authority, by an officer authorised in this behalf;
(e) In the case of a firm, by any partner thereof, not being a minor or authorised signatory thereof;
(f) In the case of any other association, by any member of the association or persons or authorised signatory thereof;
(g) In the case of a trust, by the trustee or any trustee or authorised signatory thereof; or
(h)In the case of any other person, by some person competent to act on his behalf, or by a person authorised in accordance with the provisions of section 48.

All notices, certificates and orders under the provisions of this Chapter shall be issued electronically by the proper officer or any other officer authorised to issue such notices or certificates or orders, through digital signature certificate 3[or through e-signature as specified under the provisions of the Information Technology Act, 2000 (21 of 2000) or verified by any other mode of signature or verification as notified by the Board in this behalf].

**2024(2) TMI 175 - ANDHRA PRADESH HIGH COURT M/S. SRI SRINIVASA ENTERPRISES VERSUS THE ASSISTANT COMMISSIONER OF STATE TAX, THE CHIEF COMMISSIONER OF STATE TAX, THE STATE OF ANDHRA PRADESH, THE DEPUTY ASSISTANT COMMISSIONER (ST) -II** Principles of natural justice - petitioner submits that the order has not been signed and without signature there can be no order in the eyes of law - impugned order has been passed on a ground which was not mentioned in the show cause notice - **HELD THAT:- Following the judgements of the Co-ordinate Bench in M/S. SRI RAMA ENERGY SOLUTIONS VERSUS THE ASSISTANT COMMISSIONER (ST) , STATE OF ANDHRA PRADESH, THE UNION OF INDIA [2023 (11) TMI 1217 - ANDHRA PRADESH HIGH COURT], the impugned order is quashed only on the ground that it has not been signed.**

**2024 (4) TMI 610 - TELANGANA HIGH COURT M/S. KUNDAN STEEL INDUSTRIES VERSUS ASSISTANT COMMISSIONER- Validity of assessment order - SCN as also the assessment order have not been signed by the 2nd respondent either digitally or physically as is otherwise required under Rule 26 of the Central Goods and Services Taxes Rules** - HELD THAT:- It is relevant to take note of the recent decision of the High Court for the State of Andhra Pradesh in M/S. SRK ENTERPRISES, VERSUS ASSISTANT COMMISSIONER (ST) , BHEEMILI CIRCLE, VISAKHAPATNAM [2023 (12) TMI 156 - ANDHRA PRADESH HIGH COURT] wherein the Hon'ble Division Bench of the Andhra Pradesh High Court had under similar circumstances held we are of the view that Section 160 of CGST Act 2017 is not attracted. An unsigned order cannot be covered under - any mistake, defect or omission therein‖ as used in Section 160. The said expression refers to any mistake, defect or omission in an order with respect to assessment, re-assessment; adjudication etc and which shall not be invalid or deemed to be invalid by such reason, if in substance and effect the assessment, reassessment etc is in conformity with the requirements of the Act or any existing law.

Thus, the impugned order in the instant case also set aside, since it is an un-signed document which lose its efficacy in the light of requirement of Rule 26(3) of the CGST Rules 2017 and also under the TGST Act and Rules 2017. The show cause notice as also the impugned order both would not be sustainable and the same deserves to be and is accordingly set aside/quashed. However, the right of the respondents would stand reserved to take appropriate steps strictly in accordance with law governing the field

**2024 (4) TMI 367 - TELANGANA HIGH COURT M/S. SILVER OAK VILLAS LLP VERSUS THE ASSISTANT COMMISSIONER (ST) , THE ADDITIONAL COMMISSIONER OF CENTRAL TAX, STATE OF TELANGANA, UNION OF INDIA, CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS - Validity Of show cause notice and unsigned assessment order - Unsinged order either digitally or physically as is otherwise required under Rule 26 of the Central Goods and Services Taxes Rules ("CGST") -**

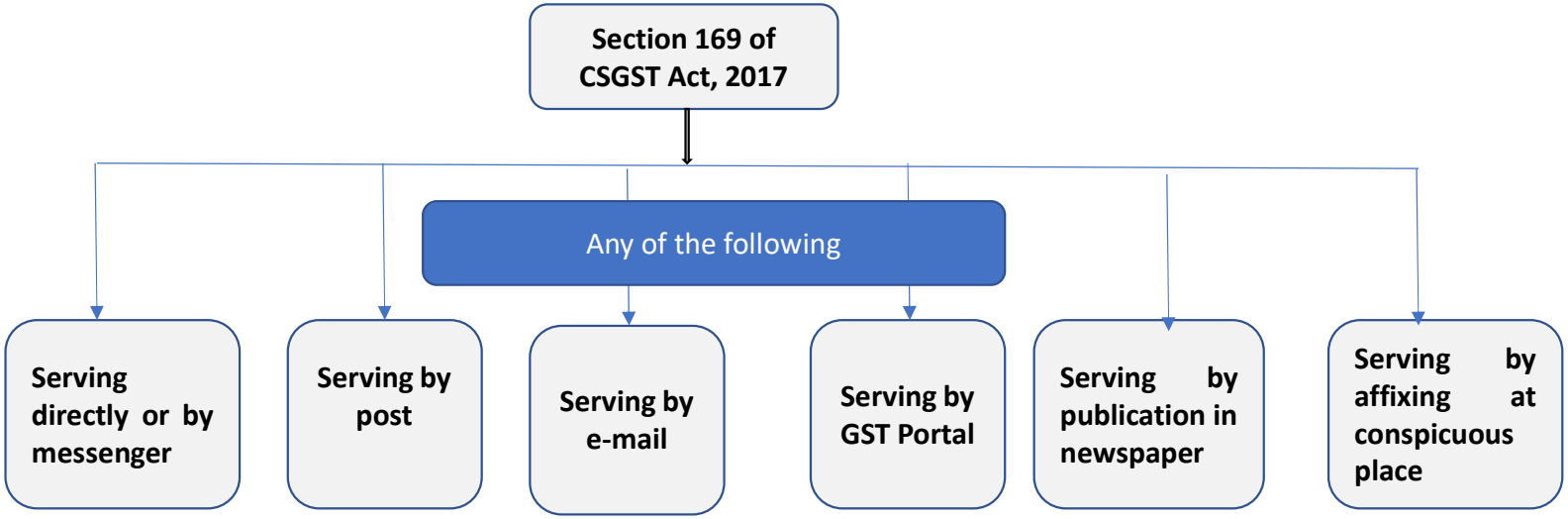
HELD THAT:- We are of the considered opinion that the impugned order in the instant case also since it an unsigned document which lose its efficacy in the light of requirement of Rule 26(3) of the CGST Rules 2017 and also under the TGST Act and Rules 2017. The show cause notice as also the impugned order both would not be sustainable and the same deserves to be and is accordingly set aside/quashed. However, the right of the respondents would stand reserved to take appropriate steps strictly in accordance with law governing the field.

**In case of Railsys Engineers (P.) Ltd. v. Additional Commissioner of Central Goods and Services Tax, Appeals-II* [2022] 141 taxmann.com 527, (Delhi) HIGH COURT OF DELHI** held that In SCN issued and order passed thereafter did not bear signature of concerned officer, **Digital signature on these documents should have been appended** as implications of these documents were grave for assessee, Relevant provision did not suggest that orders need not be signed.

**In case of M.S. Shoes East Ltd. v. Union of India*, [2016] 72 taxmann.com 94 (Delhi) HIGH COURT OF DELHI held that:** An authority who makes corrections to a draft order is **statutorily obliged to sign final order and it is only thereafter that any other officer can attest a copy of said order to be true copy of original order; hence, certified copies of a draft and unsigned order have no legal status.**

**In case of Roushan Kumar Chouhan v. Commissioner of State Tax*, High Court of Jharkhand, [2022] 142 taxmann.com 4:-** Held That: Adjudication order - Show cause notice - Validity - Impugned show cause notice (SCN) was issued in standard format without striking out irrelevant portions and without stating specific contravention committed which was required to enable assessee to file reply - Writ petition was filed to quash said SCN, summary of SCN and consequential summary of order. SCN was vague and violates principle of natural justice - Further, Adjudication order was not served by department - Levy of penalty equal to tax in adjudication order indicates non-application of mind by officer concerned as SCN had been issued under section 73 which provides for maximum penalty of 10 per cent of tax - Impugned SCN, summary of SCN and summary of order were to be quashed

- **Service of Notice in certain circumstances**



RULE 142

# Notice And Order For Demand Of Amounts Payable Under The Act

**(1) The proper officer shall serve, along with the**

(a) Notice issued under section 52 or section 73 or section 74 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130, a summary thereof **electronically in FORM GST DRC-01,**

(b) Statement under sub-section (3) of section 73 or sub-section (3) of section 74, a summary thereof electronically in **FORM GST DRC-02,** specifying therein the details of the amount payable.

1A. The proper officer shall, before service of notice to the person chargeable with tax, interest and penalty, under sub-section (1) of Section 73 or sub-section (1) of Section 74, as the case may be, shall communicate the details of any tax, interest and penalty as ascertained by the said officer, in Part A of FORM GST DRC-01A.

**2.** Where, before the service of notice or statement, the person chargeable with tax makes payment of the tax and interest in accordance with the provisions of section 73(5) or, as the case may be, tax, interest and penalty in accordance with the provisions of section 74(5), or where any person makes payment of tax, interest, penalty or any other amount due in accordance with the provisions of the Act 2 whether on his own ascertainment or, as communicated by the proper officer under sub-rule (1A), **he shall inform the proper officer of such payment in FORM GST DRC-03** and the proper officer shall issue an acknowledgement, accepting the payment made by the said person in FORM GST DRC -04

(2A) Where the person referred to in sub-rule (1A) has made partial payment of the amount communicated to him or desires to file any submissions against the proposed liability, he may make such submission in **Part B of FORM GST DRC-01A.**

**3.** Where the person chargeable with tax makes payment of tax and interest under section 73(8) or, as the case may be, tax, interest and penalty under section 74(8) **within 30 days of the service of a notice** under sub-rule (1),
or where the person concerned makes payment of the amount referred to in section 129(1) within seven days of the notice issued under sub-section (3) of Section 129 but before the issuance of order under the said sub-section (3), he shall intimate the proper officer of such payment in FORM GST DRC-03 and **the proper officer shall issue an intimation in FORM GST DRC-05** concluding the proceedings in respect of the said notice.

4. The representation referred to in section 73(9) or section 74(9) or section 76(3) or the reply to any notice issued under any section whose summary has been uploaded electronically **in FORM GST DRC-01 under sub-rule (1) shall be furnished in FORM GST DRC-06**.

5. A summary of the order issued under section 52 or section 62 or section 63 or section 64 or section 73 or section 74 or section 75 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130 shall be uploaded electronically in FORM GST DRC-07, specifying therein the amount of tax, interest and penalty, as the case may be, payable by the person concerned

6. The order referred to in sub-rule (5) shall be treated as the notice for recovery

7. Where a rectification of the order has been passed in accordance with the provisions of section 161 or where an order uploaded on the system has been withdrawn, a summary of the rectification order or of the withdrawal order shall be uploaded electronically by the proper officer in FORM GST DRC-08.

# SERVICE OF NOTICE/ORDER ON PORTAL

| CITATION | PARTICULARS |
|---|---|
| **Baghel Trading Co.**<br>***v.***<br>**State of U.P.**<br>**[2023] 155 taxmann.com 95 (Allahabad)**<br>**HIGH COURT OF ALLAHABAD** | **[Matter listed]**<br><br>Appeals to appellate authority - Limitation period - Service of adjudication order - **Petitioner's case was that though impugned order was made available on portal as provided under section 169, but same did not amount to communication of order as stipulated in section 107 as an order can be said to be communicated only when person concerned comes to know about same** - HELD : Since matter required consideration, same was listed [Section 107, read with section 169, of Central Goods and Services Tax Act, 2017/Uttar Pradesh Goods and Services Tax Act, 2017] [Paras 6 and 9] |

**Section 107 vs. Section 169**: The petitioner asserts that while the order may have been made available on the GSTN Portal (Goods and Services Tax Network Portal), as allowed under Section 169 of the GST Act, **this alone does not constitute communication of the order. According to the petitioner, an order can only be considered communicated when the relevant party becomes aware of it.**

**Section 107(1):** Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or **order is "communicated" to such person.**

| CITATION | PARTICULARS |
|---|---|
| **Pandidorai Sethupathi Raja *v.* Superintendent of Central Tax [2022] 145 taxmann.com 632 (Madras) HIGH COURT OF MADRAS** | **[In favour of revenue]** Making an order available on common portal would tantamount to 'tendering' of that order to recipient - **There was no conscious intention on part of legislature to exclude 'uploading' as one of modes of service** -<br><br>**Necessity for an alert by way of SMS/email that notice/order was uploaded on portal stood obviated as it was obligation of taxpayers to file returns monthly resulting in accessing portal at least once a month** –<br><br>**Uploading of orders on common portal constitutes proper mode of service** [Section 169 of Central Goods and Services Tax Act, 2017/Tamil Nadu Goods and Services Tax Act, 2017] [Paras 37, 39 and 40] |
| **New Grace Automech Products (P.) Ltd. *v.* State Tax Officer* [2023] 148 taxmann.com 9 (Madras) HIGH COURT OF MADRAS** | **[In favour of revenue]** Service of order - Methods of - **Methods of service adumbrated in section 169 of TNGST Act, 2017 is not conjunctive but provide alternate methods of service** - Impugned order was uploaded or made available in common portal on same day - Therefore, there was no ground to interfere qua impugned order in writ petition [Section 169 of the Central Goods and Services Tax Act, 2017/Tamil Nadu Goods and Services Tax Act, 2017] [Paras 7, 8 and 11] |

| CITATION | PARTICULARS |
|---|---|
| **Tvl. Alaghu Vivek *v.* Appellate Deputy Commissioner (ST)* [2023] 153 taxmann.com 731 (Madras) HIGH COURT OF MADRAS** | In writ petitions, question was raised as to whether service of assessment order through web portal under section 169(1)(d) of CGST Act has to be considered as sufficient for purpose of reckoning limitation while filing appeal; **writ petitions in cases where petitioner had already received assessment orders through RPAD also were to be dismissed while in case where there was no receiving through RPAD same would be decided in writ petition**<br>Notice - Service of assessment order - Period 2017-18 to 2020-21 - Assessee being aggrieved by assessment orders filed appeals - Appeals were rejected on ground that same were filed beyond period of limitation - Petitioner stated that there was a service of communication of Assessment Orders through web portal, but it was not sufficient for purpose of reckoning limitation - However, record indicated that petitioner had also received Assessment Orders through RPAD in all cases except one - HELD : Issue as to whether service of order through web portal under section 169(1)(d) of CGST Act, has to be considered as sufficient or not, had to be decided only in said one case - All other writ petitions were liable to be dismissed [Section 169 of Central Goods and Services Tax Act, 2017/Tamil Nadu Goods and Services Tax Act, 2017] [Paras 3 and 4] [Partly in favour of assessee] |

**[In favour of revenue]**

**Koduvayur Constructions *v.* Assistant Commissioner [2023] 153 taxmann.com 333 (Kerala)**

**HIGH COURT OF KERALA**

GST : **Making assessment order available in GST portal is an alternate mode of service; such service of assessment order cannot be challenged**

Notice, service of - Uploading on GST portal - Petitioner's GST registration was cancelled - Petitioner's case was that it was under impression that it had no GST liability to pay but petitioner was served assessment order on GST portal calling upon petitioner to pay an amount of Rs. 19,22,566 - Assessee alleged that there was no effective service of notice on petitioner by respondents and that unreasonable demand was raised by respondents - HELD : **Assessment order was made available on common portal - It was an alternative mode of service provided under section169(1) of CGST Act** - It was bounden duty of petitioner to have verified its common portal that was made available as per provision - Thus, contentions raised that assessment order was not served as per provisions of Act was untenable [Section169 of Central Goods and Services Tax Act, 2017/Kerala State Goods and Services Tax Act, 2017] [Para 7]

# MERE SERVICE OF NOTICE ON PORTAL INVALID (INCOME TAX)

**IN THE INCOME TAX APPELLATE TRIBUNAL DIVISION BENCH, "B" CHANDIGARH**

**Sant Kabir Mahasabha, 1030/25, Gurudwara Colony, Rohtak Road, Jind. Vs The CIT (Exemption), Chandigarh.**

ld.CIT(E) has summarily rejected the application of the assessee without giving any opportunity of hearing to the assessee to present its case. **No notice of date of hearing was served by the ld.CIT(E), either through physical mode or through e-mail etc. That the notice of date of hearing was allegedly uploaded on Income Tax Portal and the assessee was not aware of uploading of any such notice** regarding date of hearing. That no service of notice was ever affected on the assessee

**Merely uploading of information about the date of hearing** on the Income Tax Portal **is not an effective service of notice** as per the provisions of Section 282 of the Income Tax Act. The impugned order of the ld.CIT(E) is, therefore, **not sustainable in the eyes of law**. The same is hereby set aside with a direction to the ld.CIT(E) to decide the appeal of the ITA No.84/CHD/2023 A.Y. 2022-23 3 assessee afresh after giving proper and adequate opportunity to the assessee to present its case. The ld. CIT (E) will serve notice of hearing through physical mode as well as through electronic mode upon the assessee.

# Whether The Assessment Order Liable To Be Set Aside When The Notices Is Not Served Physically (Uploaded In Web Portal)

[2024] 158 taxmann.com 332 (Madras)

HIGH COURT OF MADRAS

Jak Communications (P.) Ltd.

*v.*

Deputy Commercial Tax Officer*

KRISHNAN RAMASAMY, J.
W.P. NO. 35453 OF 2023
W.M.P. NO. 35420 OF 2023
DECEMBER 19, 2023

- Notices were **uploaded by revenue authorities in their web portal. No notice was served physically to assessee**

- Subsequently, impugned assessment order was passed

- Assessee challenged assessment **order on plea that assessee was unaware of said notice** and that impugned order was passed in violation of principles of natural justice as neither any opportunity for filing reply nor opportunity of personal hearing was provided to assessee by revenue authorities

**JUDGEMENT**

It appears that notices and assessment order had been uploaded in web portal and same were not at all physically served to assessee –

**Thus, Reason provided by assessee for being unaware about impugned notices appeared to be genuine.** Hence, impugned order was liable to be set aside [Section 169, read with section 73, of Central Goods and Services Tax Act, 2017/Tamil Nadu Goods and Services Tax Act, 2017 - Article 226 of Constitution of India

[2024] 159 taxmann.com 418 (Allahabad)

HIGH COURT OF ALLAHABAD

**Shyam Shanti Scrap Traders**

*v.*

**State of U.P.***

SAUMITRA DAYAL SINGH AND MANJIVE SHUKLA, JJ.

WRIT TAX NO. 118 OF 2024

FEBRUARY 7, 2024

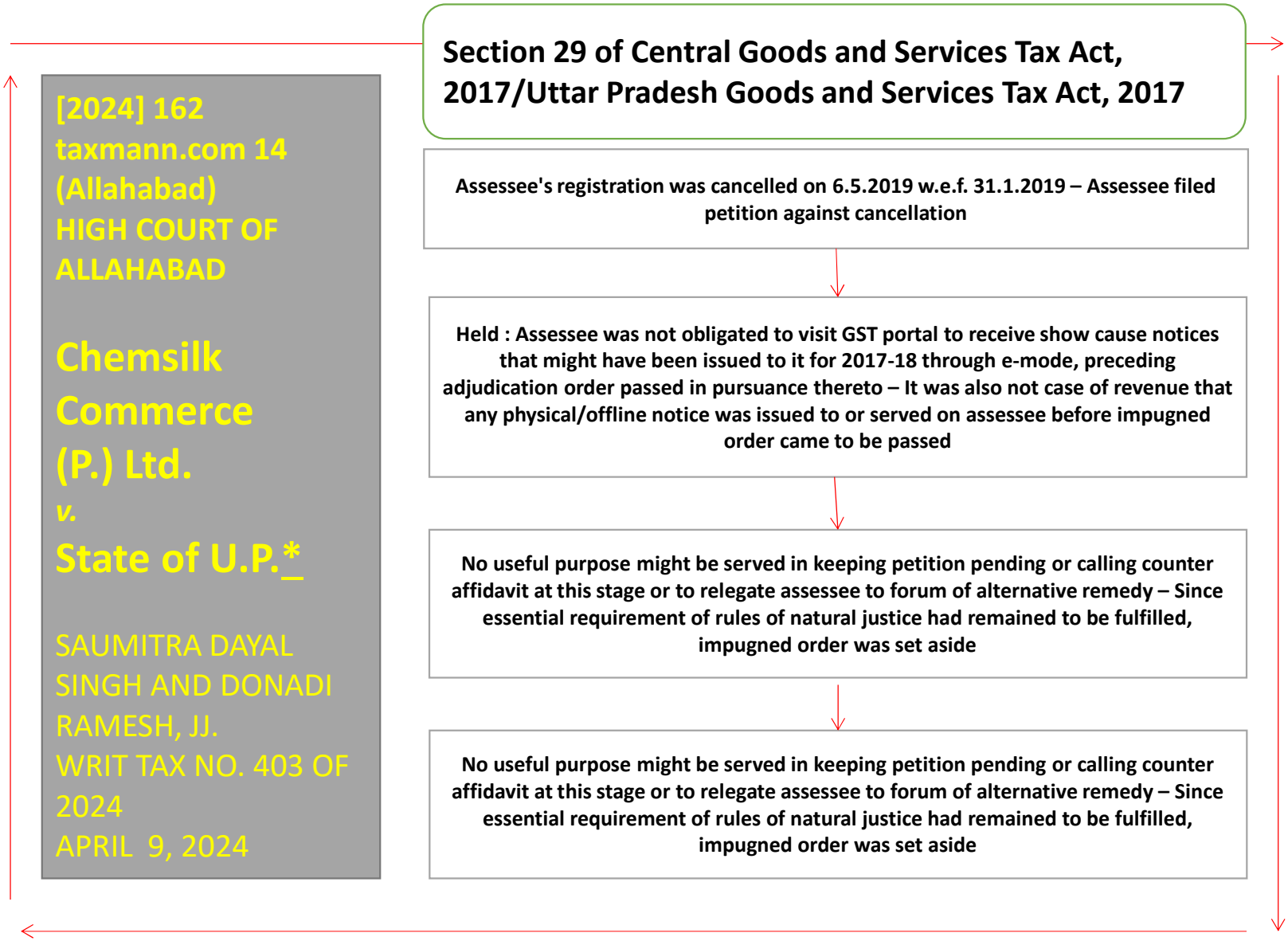
- Registration of petitioner-assessee was cancelled with effect from 28-2-2022 and Said registration was not revived,

- Impugned adjudication order came to be passed on 17-10-2023 **no physical/offline notice was issued to or served on assessee before impugned order came to be passed. It was stated that SCN, were issued through e-mode**

**HELD**

Since registration of **assessee was already cancelled, assessee was not obligated to visit GST portal to receive show cause notices** - Essential requirement of rules of natural justice had remained to be fulfilled

Fresh order was to be passed after affording opportunity of personal hearing to assessee [Section 75, read with section 29, of Central Goods and Services Tax Act, 2017/ Uttar Pradesh Goods and Services Tax Act, 2017]


[2024] 162 taxmann.com 14 (Allahabad)
HIGH COURT OF ALLAHABAD
Chemsilk Commerce (P.) Ltd.
v.
State of U.P.*
SAUMITRA DAYAL SINGH AND DONADI RAMESH, JJ.
WRIT TAX NO. 403 OF 2024
APRIL 9, 2024
Section 29 of Central Goods and Services Tax Act, 2017/Uttar Pradesh Goods and Services Tax Act, 2017
Assessee's registration was cancelled on 6.5.2019 w.e.f. 31.1.2019 – Assessee filed petition against cancellation
Held : Assessee was not obligated to visit GST portal to receive show cause notices that might have been issued to it for 2017-18 through e-mode, preceding adjudication order passed in pursuance thereto – It was also not case of revenue that any physical/offline notice was issued to or served on assessee before impugned order came to be passed
No useful purpose might be served in keeping petition pending or calling counter affidavit at this stage or to relegate assessee to forum of alternative remedy – Since essential requirement of rules of natural justice had remained to be fulfilled, impugned order was set aside
No useful purpose might be served in keeping petition pending or calling counter affidavit at this stage or to relegate assessee to forum of alternative remedy – Since essential requirement of rules of natural justice had remained to be fulfilled, impugned order was set aside

**Show Cause Notices to Taxpayers Under GST Act Mandatory to Upload on Website – Mere E-Mail is not Suffice.[Akash Garg Vs State of M.P, vide order dated 19.11.2020]**

The Honourable Madhya Pradesh Court in case of Akash Garg Vs State of M.P, vide order dated 19.11.2020 held that statutory procedure **prescribed for communicating show-cause notice or order under Rule 142(1) of CGST Act is required to be followed mandatorily by the revenue.**

- Rule 142 prescribes the **manner to upload show-cause notices on Website.**
- Thus, a mere **e-mail of show-cause notices to the taxpayer would not suffice**. Upload of such notices on the website is mandatory.

Accordingly, instant petition stands allowed with liberty to the revenue to follow the procedure prescribed under Rule 142 of CGST Act by communicating the show-cause notice to the petitioner by appropriate mode thereafter to proceed in accordance with law.

*5.2)* **The following case laws are worth considering where in the Hon'ble courts have duly held that DRC forms are merely a summary and proper procedure as laid down in Rule 142 must be followed i.e The proper officer shall serve DRC on portal, along with the Notice and order .**

| Sr. No. | Name and Citation | Particulars |
|---|---|---|
| 1 | 2022 (4) TMI 1026 - JHARKHAND HIGH COURT<br>M/S. GODAVARI COMMODITIES LTD. VERSUS THE STATE OF JHARKHAND, COMMISSIONER, STATE TAX, JOINT COMMISSIONER OF STATE TAX (ADMINISTRATION) RANCHI, DEPUTY COMMISSIONER OF STATE TAX, RANCHI., ASSISTANT COMMISSIONER OF STATE TAX, THE PRINCIPAL COMMISSIONER, CENTRAL GST & CENTRAL EXCISE, RANCHI. | Validity of "summary of the order" as contained in Form-GST DRC 07 dated 11.09.2020 - Rule 142(1) of the GST Rules - specific case of the petitioner is that no show cause notice was ever issued to the petitioner and even in the summary of the show cause notice, no time line was provided as to when the petitioner was to submit its reply - Whether the very initiation of the adjudication proceeding without issuance of show cause notice is void ab initio and any consequential adjudication order passed thereto is non est in the eye of law as the same has been passed without issuance of proper show cause notice and, thus, amounts to violation of principles of natural justice. |
| 2 | [2021 (10) TMI 880 - JHARKHAND HIGH COURT]<br>M/s NKAS Services Private Limited Vs. State of Jharkhand and ors, | 'Summary of Show Cause Notice' was issued and Adjudication Order was passed pursuant thereto, this Court has observed that the impugned show cause notice as contained in Annexure-1 does not fulfill the ingredients of a proper show-cause notice and thus amounts to violation of principles of natural justice, the challenge is entertainable in exercise of writ jurisdiction of this Court.<br>A summary of show-cause notice as issued in Form GST DRC-01 in terms of Rule 142(1) of the CGST/JGST Rules, 2017 cannot substitute the requirement of a proper show-cause notice<br>- the Commissioner of State Tax Department are directed to issue appropriate guidelines/circular/notification elaborating therein the procedure which is to be adopted by the State Tax authorities regarding the manner of issuance of Show Cause Notice, adjudication and recovery proceedings, so that proper procedure is followed by the State Tax authorities in conduct of the adjudication proceedings, as huge revenue of the State is involved and it would be in ultimate interest of the Respondent-State of Jharkhand itself that the adjudication proceedings are conducted after following due procedure |

| | | |
|---|---|---|
| 3 | **[2021] 124 taxmann.com 295 (Allahabad)**<br>**HIGH COURT OF ALLAHABAD**<br>**Singh Traders**<br>**v.**<br>**Additional Commissioner, Grade-2*** | **GST : Where Competent Authority by an order passed under section 129(3) detained goods of assessee under transport, since service of detention order on driver of truck would not fall within any of category specified from clauses (a) to (j) of section 169(1), same could not be deemed to be a valid service and thus, period of limitation would commence from day when a certified copy/copy of order is made available to the assessee.** |
| 4 | Tanay Creation Vs State of Gujarat [2021] 133 taxmann.com 78 (Gujarat) | "Owner of goods was not afforded opportunity of personal hearing and no show cause notice was issued to him or owner of conveyance - Order was served on truck driver instead of owner of goods - Impugned order was quashed and set aside as there was a complete breach of principles of natural justice - Department was directed to issue a fresh show cause notice [Sections 129 and 130 of Central Goods and Services Tax Act, 2017/Gujarat Goods and Services Tax Act 2017] [Paras 18, 21 and 22]" |
| 5 | **Madhya Pradesh Court in case of Akash Garg Vs State of M.P vide order dated 19.11.2020** | **Held that statutory procedure prescribed for communicating show-cause notice or order under Rule 142(1) of CGST Act is required to be followed mandatorily by the revenue.** |

# DATE OF COMMUNICATION ????

**[2021] 133 taxmann.com 222 (Bombay) Meritas Hotels (P.) Ltd.*v.* State of Maharashtra***

**GST : Date of communication of order by e-mail, and not subsequent date of uploading in GST portal, was to be considered for computing time-limit for filing appeal with Appellate Authority**

# Date of Uploading order is to be considered as Communication

**[2022] 142 taxmann.com 444 (Andhra Pradesh)Navya Foods (P.) Ltd. *v.* Superintendent of Central***

**GST : Time period to file appeal would start only when order was uploaded on GST portal even if physical copy of adjudication order was handed over to petitioner earlier**

**[2021] 124 taxmann.com 98 (Gujarat)**

**HIGH COURT OF GUJARAT**

**Gujarat State Petronet Ltd.**

***v.***

**Union of India*[*]**

**GST : Where even though physical copy of adjudication order was handed over to assessee, limitation period to file appeal would start only when adjudication order was uploaded on GST portal**

| | |
|---|---|
| **[2024] 159 taxmann.com 434 (Madras)**<br>**HIGH COURT OF MADRAS**<br>**Great Heights Developers LLP**<br>**v.**<br>**Additional Commissioner Office of the Commissioner of CGST & Central Excise, Chennai**<br>**SENTHILKUMAR RAMAMOORTHY, J.**<br>**W.P.NO. 1324 OF 2024**<br>**W.M.P.NO. 1358 OF 2024**<br>**FEBRUARY 1, 2024** | Appeal filing deadline - Condonation of Delay - Assessee faced order in original imposing penalty and interest under Sections 73(9) and 73(7) of CGST Act - Assessee failed to file appeal within 90-day limit following receipt of assessment order - Assessee contended that he fell ill with septic shock and encountered associated difficulties in following up with consultant, causing delay in filing appeal - HELD : High Court recognized assessee's medical condition as valid reason for condoning delay - Appellate Authority must receive and consider assessee's appeal on its merits, even though it was filed late ten [Section 107 of Central Goods And Services Tax Act, 2017/Tamil Nadu Goods And Services Tax Act, 2017] [Para 3] [In favour of asessee] |
| **[2024] 159 taxmann.com 514 (Andhra Pradesh)**<br>**HIGH COURT OF ANDHRA PRADESH**<br>**Manjunatha Oil Mill v. Assistant Commissioner (ST) (FAC)**<br>**U.DURGA PRASAD RAO AND SMT. KIRANMAYEE MANDAVA, JJ.**<br>**W.P.NOS. 2153, 2177 OF 2024 & OTHS.**<br>**FEBRUARY 2, 2024** | Pre Deposit - Condonation of Delay - Assessee intended to prefer appeals against Assessment Orders but encountered technical issues while making pre-deposit of 10% of demanded tax via prescribed Form APL-01 - Due to technical glitch, assessee made payment through Form GST DRC-03 instead, which was accepted by Web Portal - However, assessee's appeals were rejected on grounds that pre-deposit was made through wrong format - Assessee filed separate applications to condone delay, but Respondent Authority did not mention or consider these delay condoning petitions in impugned orders - Rejection of appeals led to enforcement of assessment orders by attaching assessee's bank accounts - Assessee contended that due to a technical glitch, they were compelled to make pre-deposit through Form GST DRC-03 instead of APL-01, asserting it was not willful act, further contending that their petitions for condoning delay were disregarded by Respondent Authority - HELD : High Court found merit in assessee's contentions regarding non-consideration of his delay condoning petitions by Respondent Authority - High Court acknowledged that whether assessee were forced to use Form GST DRC-03 instead of APL-01 due to technical issues is factual question - Hence, matter was remanded back to Respondent Authority to consider reasons in delay condoning petitions and pass appropriate orders accordingly [Section 107 of Central Goods and Services Tax Act, 2017/Andhra Pradesh Goods and Services Tax Act, 2017] [Para 6 and 7] [In favour of assessee/Matter Remanded] |

**Maintainability of Appeal: In case the Petitioner awaited for impugned order to be uploaded on portal**

**[In favour of Taxpayer]**

**K.P. Shaneej Versus The Joint Commissioner (Appeals) I, Additional Charge Of Joint Commissioner (Appeals) II, State Goods And Services Tax Department, Kozhikode-2022 (7) Tmi 701 - Kerala High Court**

**Maintainability of appeal - appeal filed within the time limitation or not - It is submitted that if the date 12.12.2019 is taken as a relevant date for ascertaining the period of limitation, the appeals filed on 17.02.2020 were within the period of limitation**

HELD THAT:- Reliance placed in the case of JOSE JOSEPH, VERSUS ASSISTANT COMMISSIONER OF CENTRAL TAX AND CENTRAL EXCISE, ALAPPUZHA, ADDITIONAL COMMISSIONER (APPEALS) , KOCHI, THE UNION OF INDIA [2022 (1) TMI 50 - KERALA HIGH COURT] where it was held that **When the mode of appeal prescribed by Rules is only the electronic mode, the time limit of three months can start only when the assessee had the opportunity to file the appeal in the electronic mode. The assessee cannot be blamed if he waited for the order to be uploaded to the web portal, even if he had in the meantime received the physical copy of the order.**

**It is directed that if the appeals filed by the petitioner are within time, counting the period of limitation from 12.12.2019, the appeals shall be heard and decided on merits** - petition disposed off.

## Failure to upload the order copy on GSTN portal alone cannot prevent the time-barred appeal

**[In favour of revenue]**

**Britannia Industries Ltd. *v.* Union of India [2023] 153 taxmann.com 255 (Gujarat) HIGH COURT OF GUJARAT**

**GST : Limitation period to file appeal under section 107 would start from date of service of order-in-original manually even if order is not uploaded online as rule 108 nowhere prescribes that an appeal is to be filed only after order-in-original is uploaded on GSTN Portal**

Appeals to Appellate Authority - Limitation period - Computation of - Serving of Manual Order - Petitioner's application for refund of accumulated ITC was rejected and Order-in-original dated 23-8-2019 was served manually - A new application was filed for said refund but it was also rejected vide order dated 3-12-2020 on ground that once order dated 23-8-2019 rejecting same claim was passed and no appeal was filed, same having attained finality, claim was not maintainable - Appeal against order dated 3-12-2020 was also rejected on ground that there was no powers to review an earlier order - Against order dated 23-8-2019, petitioner could not file appeal electronically, due to Non-receipt of an electronic copy of said order, which is only mode of filing such appeal - HELD : Section169 indicates that any decision or order shall be served by giving or tendering it directly or by a messenger including a courier to address of taxable person - Petitioner had admitted that order dated 23-8-2019 was served manually - Rule 108 no doubt prescribes that appeal has to be filed electronically, but it nowhere prescribes that same is to be filed only after impugned order is uploaded on GSTN Portal - Merely because orders were subsequently uploaded would not render or save appeals from being time barred - Therefore, limitation period to file appeal under section 107 would start from date of service of manual order, even if order is not uploaded online - Petitioner's contention that they were handicapped in filing appeal, as appeal could only be filed through electronic mode while Orders-In-Original was not uploaded, was not acceptable - Petitioners had filed appeals only after orders of recovery had been passed and they were aware as recovery order was manually served with adjudication orders - **Merely because orders were subsequently uploaded would not render or save their appeals from same having been time barred especially when recovery proceedings had already been done and orders to debit freeze accounts had been made in exercise of powers under section 79 of CGST Act** [Section107, read with section169 of CGST Act,2017 - Section37C of Central Excise Act, 1944 - Rule 108 of CGST Rules, 2017/ Gujarat Goods and Services Tax Rules, 2017] [Paras 15 and 16]

# SERVICE OF NOTICE ON WRONG EMAIL ID

## Order is liable to be set aside if notices were sent to different e-mail id and not on assessee's registered e-mail id: HC

## [In favour of Taxpayer]

**Raghava- HES- Navayuga (JV). *v.* Additional Commissioner of Central Tax[2024] 160 taxmann.com 21 (Telangana)**

**HIGH COURT OF TELANGANA**

**GST : Limitation period to file appeal under section 107 would start from date of service of order-in-original manually even if order is not uploaded online as rule 108 nowhere prescribes that an appeal is to be filed only after order-in-original is uploaded on GSTN Portal**

Determination of tax - Opportunity of hearing - Assessee in instant case impugned an order which referred to intimations of personal hearing sent to assessee on three different dates for personal hearing - However, said notices were not served upon assessee because intimations were sent at a different email-id which was not registered email-id of assessee - Therefore, assessee could not be served with those intimations which prevented him from availing opportunity of personal hearing awarded by department - Department did not dispute fact that assessee had much in advance brought to notice of department so far as his registered email address was concerned - HELD : Because of technicalities, notices of personal hearing had not been served upon assessee and he had not been provided with a fair opportunity of personal hearing - Impugned order being violative of principles of natural justice was to be set aside [Section 73 of Central Goods And Services Tax Act, 2017/Telangana Goods And Services Tax Act, 2017] [Paras 6 & 7]

# MANUAL FILLING JUSTIFIED

**[In favour of Taxpayer]**

**JOSE JOSEPH, VERSUS ASSISTANT COMMISSIONER OF CENTRAL TAX AND CENTRAL EXCISE, ALAPPUZHA, ADDITIONAL COMMISSIONER (APPEALS) , KOCHI, THE UNION OF INDIA- 2022 (1) TMI 50 - KERALA HIGH COURT {Other Citation: 2022 (62) G. S. T. L. 464 (Ker.)}**

**GST : Right to appeal - Order was not uploaded on the portal - Refund of unutilized input tax credit - grievance of the writ petitioner arises from the allegation that Ext.P1 order was never uploaded in the web portal of the respondents and hence, the petitioner could not file appeals in the electronic form - Principles of natural justice** HELD THAT:- It is the admitted case of both the petitioner and the respondents that the orders impugned in the appeals, though dated 29.03.2019, were never uploaded in the web portal to enable the petitioner to prefer the electronic filing of appeals, as prescribed. There is no quarrel that the Commissioner has not issued any notification specifying any other form of appeal. However, on the basis of receipt of a copy of the order on 10.04.2019, the petitioner preferred appeals manually only on 09.01.2020, with a delay of 184 days - Thus, after referring to the decision in DEBABRATA MISHRA VERSUS THE COMMISSIONER OF CT AND GST, ADDL. COMMISSIONER, CT AND GST, CT AND GST OFFICER [2020 (3) TMI 1204 - ORISSA HIGH COURT] and ASSISTANT COMMISSIONER (CT) LTU, KAKINADA & ORS. VERSUS M/S. GLAXO SMITH KLINE CONSUMER HEALTH CARE LIMITED [2020 (5) TMI 149 - SUPREME COURT] the Appellate Authority dismissed the appeals as time-barred.

**When admittedly there was a failure on the part of the respondents to upload the order in the original, petitioner cannot be mulcted with the responsibility of preferring appeals within the time period stipulated. The time period stipulated in the statute for filing an appeal is part of the same transaction that exists with the uploading of an order in the original** - When the mode of appeal prescribed by Rules is only the electronic mode, the time limit of three months can start only when the assessee had the opportunity to file the appeal in the electronic mode. The assessee cannot be blamed if he waited for the order to be uploaded to the web portal, even if he had in the meantime received the physical copy of the order.

**The petitioner is entitled to have his appeals that were filed manually, to be treated as having been filed within time - Petition allowed.**

# NON-Speaking Refund Rejection order

| CITATION | PARTICULARS |
|---|---|
| **Bhumika Highstreet (P.) Ltd. *v.* Assistant Commissioner GST, Division-VI, 157taxmann.com 476 Bombay (2023** | Impugned order was passed without considering reply of petitioner and documents which were placed on record of revenue - Impugned order was to be withdrawn by revenue authority and accordingly set aside - Revenue was directed to issue fresh show cause notice to assessee and to hear assessee on all materials/documents before passing reasoned order |
| **Tvl. Naggaraj Anooradha, 137 taxmann.com 386 (Madras) [2022])** | Where Competent Authority rejected assessee's claim for refund without adducing reasons, an order held to be passed on refund after hearing assessee. |
| **Jay Jay Mills (India) (P.) Ltd. *v.* State Tax Officer, Special Circle-II, Tirupur, 123 taxmann.com 115 (Madras) (2021)** | Where assessee's claim of refund of input tax credit was rejected by respondent Tax Officer without adducing any reasons by non-speaking order, said order was to be set aside and matter was to be remanded to respondent officer |

| CITATION | PARTICULARS |
|---|---|
| **Chennai Silks *v.* Assistant Commissioner (ST) (FAC), 157 taxmann.com 65 (Madras) (2023)** | Once assessee filed reply/objections pursuant to show cause notice, it was bounden duty of revenue to pass a speaking order, providing reasons for rejection of the reply/objections raised by assessee - In instant case revenue admittedly, failed to consider reply/objections made by petitioner pursuant to show cause notice and passed a non-speaking order - Therefore, failure on part of revenue to address reply/objections of assessee by a speaking order, would vitiate impugned proceedings.**[Paras 12 and 13],** |
| **Vainguinim Valley Resort Unit of Britto Amusements Pvt Ltd Vs Union of India (Bombay High Court)Writ Petition No. 324 of 2021 dated 13.12.2022])** | There is no reference to the contents of the reply filed by the Petitioner to the show-cause notice. It therefore clearly revealed that there is non-application of mind while passing the impugned order. Similarly, it is clear from the reasoning in the impugned order that Respondent No.2 failed to take into account reply and the document produced by the Petitioner to the show-cause notice, which now compelled us to quash and set aside the impugned order and to remand the matter for fresh consideration by taking into account the reply and the documents to the show-cause notice as well as the orders passed by the Appellate Tribunal with regard to the earlier show cause notices |

# CROSS EMPOWERMENT

- **Show cause notice**

Authority empowered to issue show cause notice
- ✓ 'Proper officer'
- ✓ S. 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**

**6.** (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 notification[33], 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.**

CIRCULAR NO.3/3/2017-GST

## GST PROPER OFFICER RELATING TO PROVISIONS OTHER THAN REGISTRATION AND COMPOSITION UNDER THE CENTRAL GOODS AND SERVICES TAX ACT, 2017

**CIRCULAR NO.3/3/2017-GST, DATED 5-7-2017**

**AS AMENDED BY CIRCULAR NO.31/05/2018-GST, DATED 9-2-2018**

In exercise of the powers conferred by clause (91) of section 2 of the Central Goods and Services Tax Act, 2017 (12 of 2017) read with Section 20 of the Integrated Goods and Services Tax Act (13 of 2017) and subject to sub-section (2) of section 5 of the Central Goods and Services Tax Act, 2017, the Board, hereby assigns the officers mentioned in Column (2) of the Table below, the functions as the proper officers in relation to the various sections of the Central Goods and Services Tax Act, 2017 or the rules made thereunder given in the corresponding entry in Column (3) of the said Table:—

TABLE

| *S. No.* | *Designation of the officer* | *Functions under Section of the Central Goods and Services Tax Act, 2017 or the rules made thereunder* |
|---|---|---|
| (1) | (2) | (3) |
| 1. | Principal Commissioner/ Commissioner of Central Tax | *i.* Sub-section (7) of Section 67<br>*ii.* Proviso to Section 78 |
| 2. | Additional or Joint Commissioner of Central Tax | *i.* Sub-sections (1), (2), (5) and (9) of Section 67<br>*ii.* Sub-section (1) and (2) of Section 71<br>*iii.* Proviso to section 81<br>*iv.* Proviso to sub-section (6) of Section 129<br>*v.* Sub-rules (1),(2),(3) and (4) of Rule 139<br>*vi.* Sub-rule (2) of Rule 140 |
| 3. | Deputy or Assistant Commissioner of Central Tax | *i.* Sub-sections (5), (6), (7) and (10) of Section 54<br>*ii.* Sub-sections (1), (2) and (3) of Section 60<br>*iii.* Section 63<br>*iv.* Sub-section (1) of Section 64<br>*v.* Sub-section (6) of Section 65 |

| | | |
|---|---|---|
| | | *xxxv.* Rule 152<br>*xxxvi.* Rule 153<br>*xxxvii.* Rule 155<br>*xxxviii.* Rule 156 |
| 4. | Superintendent of Central Tax | *i.* Sub-section (6) of Section 35<br>*ii.* Sub-sections (1) and (3) of Section 61<br>*iii.* Sub-section (1) of Section 62<br>*iv.* Sub-section (7) of Section 65<br>*v.* Sub-section (6) of Section 66<br>*vi.* Sub-section (11) of Section 67<br>*vii.* Sub-section (1) of Section 70<br>*viii.* Sub-sections (1), (2), (3), (5), (6), (7), (9) and (10) of Section 73<br>[2][*(viii)(a).* *Sub-sections (1), (2), (3), (5), (6), (7), (9) and (10) of Section 74*]<br>*ix.* Sub-rule (6) of Rule 56<br>*x.* Sub-rules (1), (2) and (3) of Rule 99<br>*xi.* Sub-rule (1) of Rule 132<br>*xii.* Sub-rule (1), (2), (3) and (7) of Rule 142<br>*xiii.* Rule 150 |
| | Inspector of Central Tax | *i.* Sub-section (3) of Section 68<br>*ii.* Sub-rule (17) of Rule 56<br>*iii.* Sub-rule (5) of Rule 58 |

## 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.

**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.

# Taxpayers Assigned To Either CGST Or SGST Authorities Can't Be Adjudicated By Counterparts:Cross Empowerment

**[2024] 162 taxmann.com 240 (Madras)**

**HIGH COURT OF MADRAS**

**Ram Agencies**

***v.***

**Assistant Commissioner of Central Tax***

C. SARAVANAN, J.

W.P. (MD) NO. 8674 OF 2024

W.M.P. (MD) NOS. 7920 & 7921 OF 2024

APRIL 10, 2024

The petitioner **was assessed to the State Tax Authorities pursuant to the allocation made by the Central Government in terms of Circular No.1/2017-GST (Council), dated 20.09.2017.**The petitioner challenged the Order-in-Original passed by the respondent in respect of the assessment years 2017-2018, 2018-2019 and 2019-2020.

The specific case of the petitioner was that the impugned order had been passed despite the stay being granted by the Principal Seat of the Madras High Court against the operation of notification extending the period of limitation. The **order was further assailed on the ground that the petitioner was assessed to the State Tax Authorities and therefore, the impugned order passed by the Central Tax Authorities was also contrary to the law settled by the Court**.

**The Madras High Court held that the issue regarding cross-empowerment** and the jurisdiction of the counterparts to initiate proceedings when an assessee has been allocated either to Central Tax Authorities or to the **State Tax Authorities was examined in detail in case of Tvl. Vardhan Infrastructure [2024] 160 taxmann.com 771 (Madras).** After examining the provisions, the Court concluded that in the absence of notification issued for cross-empowerment, **the authorities from the counterpart Department cannot initiate proceedings where an assessee is assigned to the counterpart. Therefore, the impugned Order-in-Original was to be set aside.**

**[2024] 160 taxmann.com 49 (Gauhati)**

**HIGH COURT OF GAUHATI**

**Rajesh Mittal**

***v.***

**Union of India**

MANISH CHOUDHURY, J.

WP(C) NO. 371 OF 2024

JANUARY 25, 2024

- Assessee received show cause notice stating that he had wrongly availed Input Tax Credit by **SGST Authority**

- Despite ongoing proceedings initiated by SGST authorities, assessee **received another Show Cause Notice CSGT authorities for same violation**

Assessee contended that issuing second Show Cause Notice on same subject matter by CGST authorities while proceedings initiated by SGST authorities were ongoing violated **Section 6(2)(b) of CGST/SGST Act**

**JUDEMENT**

**CGST authorities were directed *not to proceed with second notice till next hearing, considering pendency of first notice* and statutory provisions [Section 6(2)(b) of Central Goods and Services Tax Act, 2017/Assam Goods and Services Tax Act, 2017]**

**Ideal Unique Realtors (P.) Ltd.**

***v.***

**Union of India***

**[2022] 145 taxmann.com 484 (Calcutta)**

**HIGH COURT OF CALCUTTA**

**Where multiple proceedings were initiated by different wings of same department but none of proceedings were concluded properly, spot memos issued by Audit Officer were to be quashed**

From 2018, for very same issue of TRAN-1, assessee was repeatedly summoned, notices were issued and proceedings were commenced by three different wings of same department - On issue, assessee was issued summons on 14-1-2020 by another wing of same department - Assessee appeared in response to summons and stated to have submitted requisite documents - Inspite of same, two spot memos were issued by respondent No. 7-Audit Officer - Assessee challenged Audit Officer's jurisdiction to issue spot memos - HELD - Different wings of same department had been issuing notices and summons to assessee - None of proceedings initiated by department had been taken to logical end - Spot memos in question were to be quashed - Department was to be directed to logically end proceedings after affording opportunity of personal hearing to assessee [Section 140 of Central Goods and Services Tax Act, 2017/West Bengal Goods and Services Tax Act, 2017] [Paras 2, 3, 9 and 10] [In favour of assessee]

**Nestle India Ltd.**

***v.***

**Union of India**

**[2024] 158 taxmann.com 21 (Rajasthan)**

**HIGH COURT OF RAJASTHAN**

**Where a notice had already been issued by Superintendent based on an audit report and subsequently another notice was issued by Additional Commissioner, on writ petition filed by assessee, notice was to be issued to revenue and proceedings relating to notice issued by Additional Commissioner was to be stayed**

Audit - Show Cause Notice - Jurisdiction of Additional Commissioner - Based on an audit report show-cause notice had already been issued by Superintendent - **Another show cause notice was issued by by Additional Commissioner,** CGST - Additional Commissioner, CGST passed an order relating to jurisdiction and came to conclusion that he had jurisdiction to issue said subsequent show-cause notice - Petitioner/assessee submitted that determination made was contrary to language of section 65 (7) inasmuch only one notice could be issued based on said audit report as per monetary limit - Held : Notice was to be issued and proceedings pursuant to show cause notice issued by Additional Commissioenr was to be stayed [Section 65 of Central Goods and Services Tax Act, 2017/Rajasthan Goods and Services Tax Act, 2017] [Paras 8 and 10] [In favour of assessee]

[2024] 159 taxmann.com 577 (Bombay)

HIGH COURT OF **BOMBAY Fomento Resorts & Hotels Ltd. *v.* Union of India**

**Proper officer - Power to issue audit report or show cause notice - Petitioner-assessee challenges validity of Circular No.3/3/2017-GST dated 05.07.2017, Circular No.31/05/2018- GST and Circular No.169/01/2022-GST on ground that CBIC had no power to issue same and based thereon to confer any power of assignment of functions of 'proper officer' upon Central Tax Officers for issuing an audit report under section 65(6) or show cause notice under section 73 or 74 - Assessee also challenged action of Audit Authority issuing of audit report and consequent three show cause notices - HELD : Section 3 of CGST Act, empowers Government, by notification, to appoint certain classes of officers for purposes of CGST Act - Accordingly, in exercise of powers conferred by Section 3 r/w Section 5 of CGST Act and Section 3 of IGST Act, Central Government, vide notification, has already appointed certain central tax officers and central tax officers subordinate to them for purposes of CGST Act and vested in them all powers under GST Act - Thus, in instant case, by impugned circular Circular No.3/3/2017-GST, CBIC had inter alia assigned Deputy or Assistant Commissioner of Central Tax to function as a "proper officer" in relation to CGST Act and this includes clause (v) of Section 65(6) concerning communication of audit report on conclusion of audit - Consequently, respondent no 4 was "proper officer" to communicate audit report under Section 65(6) of CGST Act - Similarly, other two impugned circulars have assigned functions under Section 74 to subordinate officers of central tax by specifying monetary limit and impugned circulars very clearly assign powers to issue notices under Sections 73 and 74 of CGST Act - Therefore no case was made out to strike down impugned circulars or impugned show cause notices on aforesaid ground [ Section 2(91), read with sections 65 and section 73 of Central Goods And Services Tax Act, 2017/][Paras 53 to 62][In favour of revenue]**

## 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. [CWP-21387-2020 (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.

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

- **The stay on arrest grantable in case of GST frauds**

  - Govind Enterprises vs. State of UP -2019 (27) GSTL 161 (All.)

## Other Points

**1.** Simultaneous Investigation by Center and State GST Authorities for same period is not allowed. A person cannot be put to adjudication under both.

**Eg.** If person has state jurisdiction then center cannot assess. It can be challenged as violation of Article 14 (Equality Before Law)

***Sri Balaji Rice Mill, vs The State Of Andhra Pradesh (WRIT PETITION No.20786 of 2020 )***

***Krishna ShivRam Hegde – Kerala High Court***

***Raj Metal Industries & Anr. Vs. Union of India & Ors (W.P.A. 1629 OF 2021)***

***Anurag Suri Vs. DGGSIT (WP (c ) no. 158 of 2020)***

**2.** Maximum detention under section 167 CRPC is 60 days

**3.** Bail is the rule, not the jail, if a person cooperates even if Cognizable + Non Bailable -> No Need to arrest, held in case of ***Naresh Kumar Mangla–SC. In Vimal Yashwantgiri Goswami vs. State Of Gujarat (GHC)*** -The powers of arrest under section 69 are to be exercised with lot of care and circumspection. Prosecution should normally be launched only after the adjudication is completed. To put it in other words, there must be in the first place a determination that a person is liable to a penalty. Till that point of time, the entire case proceeds on the basis that there must be an apprehended evasion of tax by the assessee.

**4.** Any professional filing Returns cannot be arrested directly, unless found involved and defending client in Fake Invoice cases as a counsel is not challengeable, as ones job is to defend.

***Canon India (P.) Ltd. v. Commissioner of Customs [2021] 125 taxmann.com 188 (SC)[09-03-2021]***

# MULTIPLE SCNS ISSUE

## SECTION 73/74

As per section 73/74 of the CGST Act'2017, where any GST has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason,, the Proper (GST) Officer may 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 leviable under the provisions of this Act or the rules made thereunder. Section 73 is for normal genuine cases of mistake whereas cases of fraud etc are covered in Section 74.

> **There is no restriction in the above said provisions regarding the number of short show-cause notices which can be issued.** The object behind issuing show levied or short paid. **If after issuing one show-cause notice,** the cause notice is to recover tax not levied or short levied the assessee, **it can issue another show-cause notice for recovery of the department comes across further incriminating facts and material against tax not/short paid.**

**There is restriction of the time period for issuing show-cause notice** which is 3 months prior to three years in normal case and 6 months prior to five years in cases involving fraud, or any wilful-misstatement or suppression of facts to evade tax. **But there is no restriction on the number of show cause notices that can be issued by the department.**

# JURISPRUDENCE IN THIS REGARD

In **Garibdasji Distributors vs Commissioner of Central Excise, Coimbatore, (2008) 11STR 145 (CESTAT-Chennai) / 2008 TaxPub(ST) 0426 (CESTAT-Chen)**, **by a second show-cause notice, department raised a demand** of differential tax by adding to taxable value certain amount of expenses reimbursed to assessee by their principal (manufacturer). Assessees contended that it was not open to the department to reopen assessment already approved by way of issue of show-cause notice.
The Tribunal held that assessees had filed service tax returns, albeit belatedly, but those returns had returned only the amounts received as commission from principal. The reimbursed expenses were not returned. The department was, therefore, very much within their right to demand tax which escaped assessment and this was precisely what they did by issue of show-cause notice.

In the case of **India Tourism Development Corportion Ltd vs Delhi Administration (2017) 52 STR 229 (HC – Del.) / 2017 TaxPub(ST) 1065 (Del-HC),** Delhi High Court has **held that quasi- judicial authority cannot review its earlier decision unless power of review is conferred by statute**. The Collector of Central Excise while adjudicating upon the first show cause notice was clearly performing quasi-judicial function Second SCN after gap of five years cannot be issued once first SCN is adjudicated, became final and accepted by both parties.

In the case **CCE vs Prince Gutka Ltd. (2017 ) 52 STR 83 (SC) / 2017 TaxPub(ST) 1023 (SC) ,** CESTAT has held that there could not have been second show cause notice on the same cause of action on which adjudicating authority had dropped the earlier demand . **Supreme court has held that issue of second SCN on same cause of action is not permissible** and that there was no error on Tribunal ‘s order setting aside demand under second SCN.

**Varun Beverages Limited**
**Vs**
**Commissioner of Central Excise & Service Tax (CESTAT Delhi)**

**CESTAT upheld validity of Issue of two SCNs for the same Period**

Department on piecemeal basis for the same period and for this submission reliance was placed on the Simplex Infrastructures Ltd., in which Calcutta High Court held as follows : "there cannot be a double assessment for the period 10 September 2004 to 31 September 2005 as the Department has sought to do. The periods pertaining to which the show cause notice dated 21 April 2006 and the show cause notice dated 7 September 2009 were issued overlap to an appreciable extent". It has also been submitted that this is not permissible in law as held by the Calcutta High Court in Avery India Ltd. Vs. Union of India11. Learned Counsel also relied upon in Duncans Industries Ltd. Vs. Commissioner of Central Excise, New Delhi12, Paro Food Products and Shreeji Colourchem Industries.

**We find all these case laws dealt with cases in which the assessment of duty/service tax was proposed for the same period and differential duty/service tax was demanded on different grounds in different show cause notices. The present case is different.**

**We do not find any illegality in the Revenue issuing two show cause notices; one for recovery of irregular availed Cenvat credit (which is subject matter of the present appeal) and another show cause notice for recovery of duty short paid. It does not amount to two assessments for the same period in this case.**

**Simplex Infrastructures Ltd.**
**Versus**
**Commissioner of Service Tax, Kolkata-2016 (4) TMI 548 – CALCUTTA HIGH COURT while** following the ratio in Avery India Ltd.-vs.-Union of India (2011) (268 ELT 64) read with Hon'ble Supreme Court in the case of Dankan Industries Ltd.-vs.-Commissioner of Central Excise, New Delhi (2006) (201 ELT 517) held that

**Two show cause notices could not have been issued in relation to the same period. The impugned show cause notice, therefore, cannot be sustained.**
**It further held that**
it is trite law that an authority cannot confer on itself jurisdiction to do a particular thing by wrongly assuming the existence of a certain set of facts, existence whereof is a sine qua non for exercise of jurisdiction by such authority. An authority cannot assume jurisdiction to do a particular thing by erroneously deciding a point of fact or law. Here, **since the petitioner has challenged the jurisdiction of the authority to issue the impugned show cause notice, the Writ Petition cannot be rejected at the threshold**. Whether or not the petitioner will ultimately succeed on merits is a different question altogether. However, it cannot be said that the Writ Petition is not maintainable at all and should not be entertained for adjudication.

**SECTION 61 Scrutiny of returns** .[20]

[21] **61.** (1) The proper officer **may scrutinize the return** and related particulars furnished by the registered person to verify the correctness of the return and inform him of the discrepancies noticed**, if any, in such manner as may be prescribed and seek his explanation thereto.**

(2) In case the explanation is found acceptable, the registered person shall be informed accordingly and no further action shall be taken in this regard.

(3) In case no satisfactory explanation is furnished within a period of thirty days of being informed by the proper officer or such further period as may be permitted by him or where the registered person, after accepting the discrepancies, fails to take the corrective measure in his return for the month in which the discrepancy is accepted, the proper officer may initiate appropriate action including those under section 65 or section 66 or section 67, or proceed to determine the tax and other dues under section 73 or section 74.

**RULE 99.**

(1) **Where any return furnished by a registered person is selected for scrutiny,** the proper officer shall scrutinize the same in accordance with the provisions of section 61 with reference to the information available with him, and in case of any discrepancy, **he shall issue a notice to the said person in FORM GST ASMT-10, informing him of such 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 and also, where possible, quantifying the amount of tax, interest and any other amount payable in relation to such discrepancy.

(2) The registered person may accept the discrepancy mentioned in the notice issued under sub-rule (1), and pay the tax, interest and any other amount arising from such discrepancy and inform the same or furnish an explanation for the discrepancy in FORM GST ASMT-11 to the proper officer.

(3) Where the explanation furnished by the registered person or the information submitted under sub-rule (2) is found to be acceptable, the proper officer shall inform him accordingly in FORM GST ASMT-12.

# Circular No.169/01/2022-GST dated the 12th March, 2022

**7.1 In respect of show cause notices issued by officers of DGGI**, there **may be cases** where the principal place of business of **noticees fall under** the jurisdiction of **multiple** Central **Tax Commissionerates or where multiple show cause notices are issued on the same issue to different noticees**, including the persons having the same PAN but different GSTINs, having principal place of business falling under jurisdiction of multiple Central Tax Commissionerates.

For the purpose of adjudication of such show cause notices, Additional/Joint Commissioners of Central Tax of specified Commissionerates have been empowered with All India jurisdiction vide Notification No. 02/2022-Central Tax dated 11th March, 2022. Such show cause notices may be adjudicated, irrespective of the amount involved in the show cause notice(s), by one of the Additional/Joint Commissioners of Central Tax empowered with All India jurisdiction vide Notification No. 02/2022-Central Tax dated 11th March, 2022. Principal Commissioners/ Commissioners of the Central Tax Commissionerates specified in the said notification will allocate charge of Adjudication (DGGI cases) to one of the Additional Commissioners/ Joint Commissioners posted in their Commissionerates. **Where the location of principal place of business of the noticee, having the highest amount of demand of tax in the said show cause notice(s), falls under the jurisdiction of a Central Tax Zone mentioned in column 2 of the table below, the show cause notice(s) may be adjudicated by the Additional Commissioner/ Joint Commissioner of Central Tax,** holding the charge of Adjudication (DGGI cases), of the Central Tax Commissionerate mentioned in column 3 of the said table corresponding to the said Central Tax Zone. Such show cause notice(s) may, accordingly, be made answerable by the officers of DGGI to the concerned Additional/ Joint Commissioners of Central Tax

7.2 In respect of a **show cause notice issued by the Central Tax officers** of Audit Commissionerate, where the principal place of business of noticees fall under the jurisdiction of multiple Central Tax Commissionerates, a **proposal for appointment of common adjudicating authority may be sent to the Board**.

**[In favour of revenue]**

**Aasanvish Technology (P.) Ltd.**
***v.***
**Director General of GST Intelligence**
**[2024] 158 taxmann.com 50 (Delhi)**
**HIGH COURT OF DELHI**

**Where multiple SCN's were issued in connected matters and highest demand was raised under a notice issued to company registered in jurisdiction of a particular Commissionerate, jurisdiction to adjudicate all such SCNs vested with said Commissionerate, even if principal place of business of another noticee fell under different Commissionerate**

Highest demand raised under notice - SCN was issued by Revenue Authority to assessee questioning his alleged online gaming service However, assessee did not hand any wherewithal to provide any such services - **Assessee challenged** SCN, arguing that Additional / Joint Commissioner of Central Tax, Thane **lacked jurisdiction** to adjudicate matter - Assessee contended that his principal place of business is in Hyderabad, Telangana, not Thane - HELD : Circular dated 12-03-2022 applies even though assessee's principal place of business is located in Hyderabad - **Multiple show cause notices were issued in connected matters - Highest demand was raised under notice issued** to Belz Tech Private Limited, registered **in Thane** - Assessee's contention that Additional / Joint Commissioner of Central Tax, Thane would have no jurisdiction was unmerited [Section 73 of Central Goods and Services Tax Act, 2017/Delhi Goods and Services Tax Act, 2017] [Para 12]

# Bridging The Gap Between ST-3 Returns And ITR/Form 26 AS

**[2024] 159 taxmann.com 336 (Mumbai - CESTAT)**
**CESTAT, MUMBAI BENCH**
**Umesh Tilak Yadav**
***v.***
**Commissioner of Central Excise****
DR. SUVENDU KUMAR PATI, JUDICIAL MEMBER
AND ANIL G. SHAKKARWAR, TECHNICAL MEMBER
FINAL ORDER NO. 87105 OF 2023
SERVICE TAX APPEAL NO. 85246 OF 2023
NOVEMBER 8, 2023

Demand of service tax merely on difference between figures of ST Return and IT return was **not sustainable without establishing that consideration was received for activity covered under definition of services under Finance Act, 1994**

## FACTS

- Difference between figures of Service Tax Return and Income-tax return - For demanding any amount of service tax under Section 73 of Finance Act, 1994, first requirement for Revenue was to establish that a particular amount of service tax was either not paid or short paid or not levied or short levied

- It was also essential to establish that value on which such service tax was calculated was in terms of section 67 of Act ibid. and that it represented consideration for activity which satisfied definition of service under section 65B(44) of Act ibid.

Demand of service tax had been made merely on basis of aforesaid difference, prima facie examination of fact that appellant had received consideration by providing service, was missing - In view of aforesaid, **impugned demand order was to be quashed [Section 73 of Finance Act, 1994]**

[2022] 136 taxmann.com 109 (Kolkata - CESTAT)

CESTAT, KOLKATA BENCH

**Luit Developers (P.) Ltd.**

***v.***

**Commissioner of Central Goods and Services Tax & Central Excise, Dibrugarh**

**Service tax cannot be demanded for mismatch of income reflected in Form 26AS and ST-3 Returns because service recipients deducted TDS on rent/commission along with Service Tax component**; Figures reflected in Form 26AS and figures shown to **Income Tax authorities cannot be used to determine Service Tax liability unless there is an evidence shown that it is taxable**

- Inflated figure in **Form 26AS is because some service recipients deducted TDS on rent/commission along with service tax component**
- Part of service tax being demanded under reverse charge mechanisms cannot be sustained since service tax was already collected by service providers as seen from invoices and Reconciliation Certificate and for some service providers tax is on forward charge basis
- **Figures reflected in Form 26AS and figures shown to Income Tax authorities cannot be used to determine Service Tax liability unless there is an evidence shown that it is taxable**

Demand of Service tax, interest and penalty not sustainable - Appeal allowed - Sections 73, 75 and 76 of Finance Act, 1994 [Para 10, 11]

[2020] 118 taxmann.com 164 (Allahabad - CESTAT)

CESTAT, ALLAHABAD BENCH

**Kush Constructions**

***v.***

**Central Goods and Services Tax, NACIN***

FEBRUARY 20, 2019

Demand of tax could not be raised from assessee on basis of difference between figures of ST-3 return and Form 26AS filed under Income-tax Act, 1961, without examining reasons for said difference and without establishing that entire differential amount was on account of consideration for providing services

## FACTS

- Revenue authority compared figures reflected in ST-3 return and those reflected in Form 26AS filed in respect of assessee as required under provisions of Income-tax Act, 1961

- On basis of difference in two figures, revenue authority passed impugned order demanding tax along with penalty

**HELD:**

Revenue authority could not raise demand on basis of difference between figures of ST-3 return and Form 26AS filed under 1961 Act without examining reasons for said difference and without establishing that entire differential amount was on account of consideration for providing services .**Therefore, impugned order was to be set aside**

# SUPPRESSION OF FACTS

# Where the Issue Involved Interpretation of Law, Extended Period Cannot Be Invoked

- In **[2010] 1 taxmann.com 778 (Gujarat) HIGH COURT OF GUJARAT Commissioner of Central Excise & Customs v. Mafatlal Industries Ltd.*** *Section 11A of Central Excise Act, 1944 - Demand of duties not levied or not paid or* **short paid -** *Limitation - extended time limit not invokable as there were ambiguity about applicability of Rules and favourable orders of Tribunal during relevant period - Revenue's appeal dismissed. (Paras 8)*

- In **Atul Kaushik and Ors. Vs. C.C. (Export), New Delhi** reported in **[2017] 43 GSTR 256 (Trib – Delhi)**

  the Hon'ble CESTAT New Delhi observed that – *"It is a well settled rule that when two reasonable constructions can be put upon the penal provision, court must lean towards that construction which exempts subject from penalty rather than one which imposes penalty.* ***When no penalty is held to be imposable when the issue involved is interpretational, it almost axiomatically follows that even extended period cannot be invoked in such cases."***

- In **Shri Shakti LPG Limited Vs. Commr. of C. Ex. and Cus.** cited in **2005 (187) ELT 487 (Tri. – Bang.)** the Hon'ble CESTAT Banglore held that *"Since the issue itself is amenable to dual interpretation, there is not much force in Revenue's contention in invoking the longer period for demand on grounds of suppression of facts in respect of the appellants."*

- In **Brij Motors Pvt. Ltd. Versus Commissioner Of Central Excise, Kanpur** cited in **2012 (25) S.T.R. 489 (Tri. – Del.)** the Hon'ble CESTAT New Delhi held that – *".....****the matter was being interpreted by judicial forums in different ways as may be seen from the decisions quoted by the Appellants. The Higher Courts have been taking the view that in such situations the extended period of time cannot be invoked for raising demand.*** *Even in the case of Bridgestone Financial Services the Tribunal has given the benefit for such reason. So we are of the view that the demand in this case can be sustained only to the extent covered in the normal period of limitation."*

- In **Singh Transporters Vs. Commissioner of Central Excise, Raipur** cited in **2012 [27] S.T.R. 488(Tri. – Del)** it was held by the Hon'ble CESTAT New Delhi that – *"Inasmuch as the issue involved is of legal interpretation of the definition of the various services and being a complicated issue, the assessee cannot be saddled with any suppression or misstatement or mala fide intention so as to invoke longer period of limitation."*

## Extended Period Of Limitation Cannot Be Invoked When Income Pertaining To The Issues On Which Tax Has Been Demanded Is Appropriately Reflected In The Financial Statement/Return Which Is A Public Document

## The Fact of **NON-PAYMENT AND CREDITOR STANDING IN THE BALANCE SHEET WAS PRIME FACIE AND CANNOT BE HELD TO BE SUPPRESSION OF FACTS**

## ***Judgements in Pre-GST Period:***

- *Suppression of facts cannot be alleged when the trading activities in form of Balance Sheet are declared*

**The Hon'ble Karnataka High Court in** THE COMMISSIONER OF CENTRAL TAX, BANGALORE NORTHCOMMISSIONERATE VERSUS M/S. ABB LIMITED [2022 (6) TMI 1212 - KARNATAKA HIGH COURT]**affirmed the order passed by the CESTAT, Bangalore holding that the assessee is not liable to reverse the CENVAT credit availed, on the grounds of absence of suppression of facts. Held that, balance sheet is conclusive evidence in itself to infer trading activities of an assessee and allegations levelled for suppression of facts are not tenable when the same was already available with the Revenue Department.**

2.8.2) In the matter of **Commissioner Of Service Tax, New Delhi Versus Jitender Lalwani** cited in **2017 (51) S.T.R. 312 (Tri. – Del.)** the Hon'ble CESTAT has held that – "*It is settled principle of law that extended period is not invokable where the issue involves interpretation of various provisions of law and information is already disclosed in statutory documents such as Balance Sheet or Income Tax Returns.*"

- In **Bismee India Enterprises Vs. Commissioner of Central Excise & S.T., Kanpur** cited in **MANU/CN/0126/2018** the Hon'ble CESTAT, Allahabad, held that *"The appellants were reflecting value of the services in their profit and loss account maintained in the ordinary course of business. Such reflection of the activities in the profit and loss account has been held to be a reason for not allowing the revenue to invoke the extended period. Inasmuch as, profit and loss account is a public document and reflection of the entire facts in the said documents cannot lead to the presence of malafide suppression on the part of the assessee."*

- In the matter of **Central India Engineering Co. v. Commissioner of C. Ex., Nagpur** reported in **2016 (44) S.T.R. 657** the Hon'ble CESTAT Mumbai held that *"the appellant recorded the transaction in the books of account, therefore, there is no mala fide intention on their part which shows reasonable cause for non-payment of Service Tax."*

- The Hon'ble Mumbai CESTAT in the matter of **Khandwala Securities Ltd. v. Commissioner of Service tax, Mumbai – I** reported in **2015 (40) S.T.R. 738** held that *"The transactions have been found to be duly recorded in the Books of Account, as found by the Audit party. ..... In this view of the matter, I hold neither extended period of limitation is attracted nor any penalty is imposable under Section 76 or 78."*

- 2.8.6) In the matter of **Valencia Construction Pvt. Ltd. v. Commr. of C. Ex., Cus. & S.T., Nagpur** reported in **2016 (41) S.T.R. 436,** the Hon'ble Mumbai CESTAT held that *"transaction were recorded in their books of account, therefore they had no intention to evade service tax. Moreover, immediately on pointed out by the department, payment of service tax along with interest was admittedly made by the appellant and there is no contest thereon"*

# EXTENDED PERIOD OF LIMITATION cannot be invoked where assessee had bonafide belief on exemption and evidence not brought by department on evasion of tax.

| Name and Citation | Particulars |
|---|---|
| **[2022] 137 taxmann.com 248 (New Delhi - CESTAT)**<br>**CESTAT NEW DELHI BENCH**<br>**Sitaram India Ltd.**<br>***v.***<br>**Commissioner CE & CGST, Division-E** | Extended period of limitation is not invokable where there is no suppression of facts, assessee had bona fide belief on exemption and evidence not brought by department on evasion of tax<br>Demand - Limitation - Suppression - Whether extended period of limitation can be invoked where there is no suppression of facts and appellant had bona fide belief on availability of exemption - HELD: **Extended period of limitation cannot be invoked as appellant did not suppress any fact with intent to evade duty and issue involved interpretation of law**<br>**Absence of corroborative evidence to support that there was a deliberate attempt to suppress material facts with an intent to evade payment of tax**<br>-**Extended period of limitation is not invokable as everything was disclosed to the Department at time of scrutiny -** Appellant was of bona fide belief that exemption is available and in such cases extended period of limitation is not invokable - Imposition of penalty does not arise as extended period is not invokable [Para 17] [In favour of Assessee] |
| **[2022] 138 taxmann.com 359 (SC)**<br>**SUPREME COURT OF INDIA**<br>**C.C.,C.E. & S.T. Bangalore**<br>**v.**<br>**Northern Operating Systems (P.) Ltd.** | **Extended period of limitation for raising demand was not invokable in absence of any 'wilful suppression' of fact, or deliberate misstatement; assessee would be liable to discharge service tax liability for normal period**<br>Demand - Limitation – Extended period - Assessee had bona fide belief that it was not liable to pay any service tax in relation to seconded employees - However, revenue discharged assessee two show cause notices - HELD : Extended period of limitation was not invokable in absence of any 'wilful suppression' of facts, or deliberate misstatement - Assessee was liable to discharge its service tax liability for normal period [Section 73 of Finance Act, 1994] [Paras 64 and 66] [Partly in favour of assessee] |
| **[2022] 139 taxmann.com 440 (New Delhi - CESTAT)**<br>**CESTAT, NEW DELHI BENCH**<br>**Power Finance Corporation Ltd.**<br>**v.**<br>**Commissioner (Appeal), Central Excise & Service Tax, LTU, New Delhi** | **In absence of fraud or Collusion or willful misstatement or suppression of facts, demand invoking extended period of limitation and consequent penalties were to be set aside**<br>Demand - Limitation - Show Cause Notice was issued on 12-4-2016 denying service tax taken by appellant during period 1-4-2011 to 31-12-2015 - : Demand invoking extended period of limitation and consequent imposition of penalties were to be set aside as there was no evidence of fraud or collusion or wilful miss statement or suppression of facts in matter |

| Name and Citation | Particulars |
|---|---|
| **[2022] 137 taxmann.com 288 (Chandigarh - CESTAT)**<br>**CESTAT, CHANDIGARH BENCH**<br>**R D Contractors And Consultants**<br>**v.**<br>**Commissioner of Central Excise & Service Tax, Panchkula** | - Limitation – Extended period - Suppression of facts - Availment of benefit of Notification No. 30/2012-ST and computation of taxable turnover not suppressed by assessee from Department - HELD : **Absence of malafide on assessee's part, extended period of limitation is not invokable** - **Penalty is not imposable [Section 73 of Finance Act, 1994]** |
| **[2017] 88 taxmann.com 234 (SC)**<br>**SUPREME COURT OF INDIA**<br>**Commissioner of Central Excise, Indore**<br>**v.**<br>**Raymond Ltd.** | **Where material on basis of which demand had been raised against assessee was before revenue at all material points of time, extended period of limitation provided under proviso to section 11A not available**<br>As the materials on the basis of which the claims/demands have been raised were before the Revenue at all material points of time, No question of suppression or mis-statement can legitimately arise to enable the Revenue to avail the benefit of extended period of limitation. |
| **[2013] 31 taxmann.com 67 (SC)**<br>**SUPREME COURT OF INDIA**<br>**Uniworth Textiles Ltd.**<br>**v.**<br>**Commissioner of Central Excise, Raipur** | **For invocation of extended period of limitation, there must be deliberate default on part of assessee and burden of proving same lies on Department and assessee cannot be asked to substantiate his bona fide conduct**<br><br>Section 73 of the Finance Act, 1994 - Recovery of service tax not levied or paid or short-levied or short-paid or erroneously refunded - Every non-payment/non-levy of tax doesn't attract extended period - There must be some positive action which betrays a negative intention of wilful default - For operation of extended period of limitation, intention to deliberately default is a mandatory prerequisite and inadvertent non-payment doesn't attract extended period of limitation<br><br>**Burden of proving mala fide on part of assessee lies on shoulders of Department who alleges it and assessee cannot be asked to substantiate his bonafide conduct**<br><br>Further, extended period of limitation finds application only when specific and explicit armaments challenging bona fides of conduct of assessee are made in show cause notice [Paras 17, 19, 22, 24 and 25] [In favour of assessee] |

| Name and Citation | Particulars |
|---|---|
| **[2014] 51 taxmann.com 35 (SC)<br>SUPREME COURT OF INDIA<br>Commissioner of Service Tax, Ahmedabad<br>v.<br>Vijay Travels** | Where High Court held that : (a) hiring of cabs on per Km. basis is also liable to service tax under rent-a-cab services; but (b) **extended period was not invocable, as assessee held bona fide belief as to non-taxability, Supreme Court admitted cross Special Leave Petitions filed by assessee and revenue** |
| **Simplex Infrastructure Ltd. v. Commissioner Service Tax, Kolkata** | **Extended period not applicable-when assessee is diligent in responding to all notices issued by the Department explaining nature and scope of their business with supporting documents**<br><br>-**There was full and sufficient disclosure of nature of assessee's business**<br><br>- There was no suppression of material facts to keep Department in dark with deliberate intent to evade payment of Service tax - Section 73 of Finance Act, 1994 not invocable.<br><br>**It is settled law that the element of 'intent to evade' is inbuilt in the expression 'suppression'**<br>- Reliance in this regard is also placed on 2006 (4) S.T.R. 583 (Tri.-Bang.) in the matter of Elite Detective Pvt. Ltd. v. Commissioner, and Religare Securities Ltd. v. CST, Delhi as reported in 2014 (36) S.T.R. 937 (Tri.-Del.): wherein it was held that the suppression of fact has to be 'with intent to evade'." |

# SUPPRESSION OF FACTS there must be deliberate suppression of information for the purpose of evading the tax

| Name and Citation | Particulars |
|---|---|
| **2003 taxmann.com 2501 (SC)/[2002] 128 STC 647 (SC)[27-02-200...**<br>**[2003] 2003 taxmann.com 2501 (SC)**<br>**SUPREME COURT OF INDIA**<br>**Centre for Development of Advanced Computing**<br>**v.**<br>**Commissioner of Central Excise, Pune** | Section 11 of the Central Excise Act, 1944 - Excise duty - Contention of assessee that he was in bona fide belief that the goods emerging during the research and experiments were fully exempt from payment of duty - No reason to conclude that appellant would not have so believed - **No tangible basis for the department to come to conclusion that there was wilful suppression for evasion of duty by the appellant - Provision of section cannot be invoked extending period of limitation of five years.** |
| **Pushpam Pharmaceuticals Co.**<br>**v.**<br>**CCE 1995 (78) ELT 401 (SC)** | It is in this context that the Supreme Court observed that since "suppression of facts" had been used in the company of strong words such as fraud, collusion, or wilful default, **suppression of facts must be deliberate and with an intent to escape payment of duty.** |
| **Continental Foundation Jt. Venture Holding v. CCE 2007 taxmann.com 532** | The Supreme Court held:<br>**The expression 'suppression" has been used in the proviso to Section 11A of the Act accompanied by very strong words as 'fraud' or "collusion"** and, therefore, has to be construed strictly.<br>**Mere omission to give correct information is not suppression of facts unless it was deliberate to stop the payment of duty**. Suppression means failure to disclose full information with the intent to evade payment of duty. When the facts are known to both the parties, omission by one party to do what he might have done would not render it suppression. When the Revenue invokes the extended period of limitation under section 11-A the burden is cast upon it to prove suppression of fact. An incorrect statement cannot be equated with a willful misstatement. The latter implies making of an incorrect statement with the knowledge that the statement was not correct." |

| Name and Citation | Particulars |
|---|---|
| **Bharat Hotels Ltd. (supra)** | The Delhi High Court in Bharat Hotels Ltd. (supra) also examined at length the issue relating to the extended period of limitation under the proviso to section 73 (1) of the Act and held as follows;<br><br>"27. Therefore, it is evident that **failure to pay tax is not a justification for imposition of penalty.** Also, the word "suppression" in the proviso to Section 11A(1) of the Excise Act has to be read in the context of other words in the proviso, i.e. "fraud, collusion, wilful misstatement". As explained in Uni worth (supra), **"misstatement or suppression of facts" does not mean any omission. It must be deliberate**. In other words, there must be deliberate suppression of information for the purpose of evading of payment of duty. It connotes a positive act of the assessee to avoid excise duty. |
| **Cosmic Dye Chemical v. CCE 1995 taxmann.com 926** | In the context of section 11A of the Central Excise Act, 1944, which is in identical terms with section 73 of the Finance Act, 1994 was that:<br>**"Now so far as fraud and collusion are concerned, it is evident that the requisite intent, i.e., intent to evade duty is built into these very words.** So far as misstatement or suppression of facts are concerned, they are clearly qualified by the word **"wilful" preceding the words "misstatement or suppression of facts" which means with intent to evade duty.** The next set of words "contravention of any of the provisions of this Act or rules" are again qualified by the immediately following words "with intent to evade payment of duty". It is, therefore, not correct to say that there can be a suppression or misstatement of fact, which is not wilful and yet constitute a permissible ground for the purpose of the proviso to section 11-A. **Misstatement or suppression of fact must be wilful."** |
| **Emaar MGF Land Ltd. V. Commissioner of Central Excise and CGST (CESTAT Delhi)** | The Hon'ble CESTAT (**Respondent)**, Delhi observed that the Appeallant did not suppress any facts from the department. **There is no reason or discussion given by Respondent for stating the order "in any case, the notice in this case has willfully contravened the provisions of the Finance Act."**<br>**Also noted that when the demand u/s 73(1) of the Finance Act cannot be confirmed, it is not necessary to examine the other contentions raised by the respondent to quash the order.`** |

# SUPPRESSION OF FACTS there must be deliberate suppression of information for the purpose of evading the tax

| Name and Citation | Particulars |
|---|---|
| **2003 taxmann.com 2501 (SC)/[2002] 128 STC 647 (SC)[27-02-200...**<br>**[2003] 2003 taxmann.com 2501 (SC)**<br>**SUPREME COURT OF INDIA**<br>**Centre for Development of Advanced Computing**<br>**v.**<br>**Commissioner of Central Excise, Pune** | Section 11 of the Central Excise Act, 1944 - Excise duty - Contention of assessee that he was in bona fide belief that the goods emerging during the research and experiments were fully exempt from payment of duty - No reason to conclude that appellant would not have so believed - **No tangible basis for the department to come to conclusion that there was wilful suppression for evasion of duty by the appellant - Provision of section cannot be invoked extending period of limitation of five years.** |
| **Pushpam Pharmaceuticals Co.**<br>**v.**<br>**CCE 1995 (78) ELT 401 (SC)** | It is in this context that the Supreme Court observed that since "suppression of facts" had been used in the company of strong words such as fraud, collusion, or wilful default, **suppression of facts must be deliberate and with an intent to escape payment of duty.** |
| **Continental Foundation Jt. Venture Holding v. CCE 2007 taxmann.com 532** | The Supreme Court held:<br>**The expression 'suppression" has been used in the proviso to Section 11A of the Act accompanied by very strong words as 'fraud' or "collusion"** and, therefore, has to be construed strictly.<br>**Mere omission to give correct information is not suppression of facts unless it was deliberate to stop the payment of duty**. Suppression means failure to disclose full information with the intent to evade payment of duty. When the facts are known to both the parties, omission by one party to do what he might have done would not render it suppression. When the Revenue invokes the extended period of limitation under section 11-A the burden is cast upon it to prove suppression of fact. An incorrect statement cannot be equated with a willful misstatement. The latter implies making of an incorrect statement with the knowledge that the statement was not correct." |

# WHEN THERE EXIST BONA FIDE BELIEF THAT TAX IS NOT APPLICABLE THEN EXTENDED PERIOD CANNOT BE INVOKED

- The Hon'ble High Court in the matter of **Bharat Hotels Limited Vs. Commissioner, Central Excise (Adjudication)** cited in **2018 [12] G.S.T.L. 368** held that *"In the present case, the appellant was under a bona fide belief that it was not liable to pay service tax for the Mandap Keeper Service and Management, Maintenance and Repair Services as discussed earlier. The conduct of the appellant of prompt payment of service tax during the enquiry and after gaining knowledge about its liability to pay service tax, is sufficient reason to believe that the* ***assessee did not have an intention to evade the payment of service tax. For these reasons, it is held that the revenue cannot invoke the proviso to Section 73(1) of the Finance Act to extend the limitation period for issuing of SCN.***"

- In **India Yamaha Motor Private Limited Vs. The Commissioner of G.S.T. and Central Excise, Chennai Outer Commissionerate** cited in **MANU/CC/0274/2019** the Hon'ble CESTAT Chennai held that – *"The Revenue has not been able to prove an intention on the part of the appellant to evade tax by suppression of material facts. In fact, it is clear that the appellant did not have any such intention and was acting under bona fide beliefs. For these reasons, it is held that the Revenue cannot invoke the proviso to Section 73(1) of the Finance Act to extend the limitation period for issuing of SCN."*

- In **CCE, Raipur v. Satyam Digital Photo Lab** reported in **[2012 (27) S.T.R. 64 (Tri. -Del.)],** the Hon'ble New Delhi CESTAT held that – *"it was held that the notices issued beyond the period of limitation would not stand inasmuch during the relevant period, there was* ***sufficient material for the assessee to entertain a bona fide belief that the value of raw material used would not form part of the value of services****. By holding so, the matter was sent back for requantifying the demand falling within the period of limitation. The Bench further observed that* ***on account of bona fide belief, no penalty is required to be imposed****. By applying the ratio of the above decision to the facts of the present case, we hold that the* ***demand beyond the period of limitation is time-barred and no penalty is required to be imposed..***"

# EXTENDED PERIOD OF LIMITATION CANNOT BE INVOKED WITHOUT ANY EVIDENCE BROUGHT ON RECORD

- The Hon'ble Supreme Court in the matter of **Uniworth Textiles Ltd. v. Commissioner of Central Excise, Raipur** cited in **2013 (288) ELT 161 (S.C.)** while setting aside the extended period of limitation held that *"**It is a cardinal postulate of law that the burden of proving any form of mala fide lies on the shoulders of the one alleging it.** This Court observed in Union of India v. Ashok Kumar and Ors. MANU/SC/1135/2005 : (2005) 8 SCC760 that "it cannot be overlooked that burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demand proof of a high order of credibility."*

- In the case of **Collector of Central Excise v. H.M.M. Limited** reported in **1995 (76) ELT 497 (SC)**, the Hon'ble Supreme Court concluded that *"The show cause notice did not specifically state as to which of the default enumerated in the proviso to Section 11A was committed by the Assessee. It was held that such a notice was not sufficient as the Assessee must know what case he has to meet. It was held that mere failure to make a declaration would not justify an inference that the intention was to evade payment of duty."*

- The Hon'ble CESTAT New Delhi, in the matter of **Nylon Laminated Belts (P) Ltd. Vs. Collector of Central Excise** cited in **1990 (49) ELT 138 (Tri. – Delhi)** held that *"It is a well settled proposition that the onus to prove suppression lies upon the Department. In this case, the onus has not been discharged. There is also no allegation of evidence of wilful misstatement or suppression of facts or violation of the Act or Rules with intent to evade duty, in the absence of which allegation, the longer period of limitation cannot be applied."*

- In **National Building Construction Corporation Ltd. Vs. C.C.E., Bhopal** cited in MANU/CE/0511/2018, the Hon'ble CESTAT, NEW DELHI held that – *"Proviso to Section 73 of Central Excise Act, 1944 entitles Department to invoke the extended period to the maximum of five years provided there is suppression or misrepresentation of facts on part of the assessee that too with an intention to evade tax, and that it has to be willful/deliberate. The burden of proving the alleged mala fide lies on the alligator i.e. the Department."*

- The Hon'ble Madhya Pradesh High Court in the case of **Godrej Foods Ltd v. Union of India 1993 (68) ELT 28**, categorically held that – *"If there is no material on record placed by the Department to establish that any material facts were suppressed by the petitioners or there was any misrepresentation on their part with the intention to evade duty, the extended period of limitation is clearly inapplicable."*

# SUPPRESSION AS DEFINED BY EXPLANATION 2 TO SECTION 74

***Explanation 2.to Section 74***—*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.*

[2024] 160 taxmann.com 153 (Ahmedabad - CESTAT)

CESTAT, AHMEDABAD BENCH

**Vimal Stocks (P,) Ltd.**

***v.***

**Commissioner of Service Tax***

**Demand (Service Tax) - Limitation period - Extended period - Suppression of facts - Issue involved interpretation of definition of 'Banking and other financial services' - Transaction of assessee's alleged activities were recorded in their books of account - HELD : There was no suppression of fact with intent to evade payment of service tax on part of assessee - Therefore, demand of service tax was clearly hit by limitation of time [Section 73 of Finance Act, 1994] [Para 4.7] [In favour of assessee]**

# Once Tax And Interest Is Paid No Further Action Under Section 74 Of GST Act For The Same Period.

| Citation | Particulars |
|---|---|
| **[2024] 160 taxmann.com 190 (Telangana)**<br>**HIGH COURT OF TELANGANA**<br>**Rays Power Infra (P.) Ltd.**<br>***v.***<br>**Superintendent of Central Tax***<br>P. SAM KOSHY AND N. TUKARAMJI, JJ.<br>WRIT PETITION NO. 298 OF 2024<br>FEBRUARY 28, 2024 | **Facts of The Case:** During GST audit certain discrepancies were pointed out by audit team and **assessee immediately cleared entire tax liability along with interest which was accepted in final audit report,** initiating proceedings under section 74 thereafter and raising demand was in excess of jurisdiction and same was to be set aside<br><br>**We are also of the considered opinion that applicability of Section 74 would come into play only if the conditions stipulated in Section 73 has not been met with by the taxpayer** i.e. to say in the event if the conditions stipulated in Section 73(5) is not honored by the taxpayer in spite of the tax liability being brought to his knowledge. Then in the said circumstances, Section 74 would automatically attract and in those circumstances, the contention of the learned Senior Standing Counsel would be acceptable**. Further, keeping in view the provisions of 73(5) & (6), it will go to establish that once having discharged their tax liability also by paying interest on the said tax payable, then no further proceedings could be drawn for the same tax any further**. This view of the Bench stands further fortified from reading of Sub-Section (8) as well which again gives an indication that if necessary compliance in respect of tax as is stipulated under Sub-Sections (1) and (3) is paid along with interest even after issuance of show cause notice, even then the penalty cannot be levied and the notice proceedings shall be deemed to have been concluded. |

# 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.

**Circular No. 122/41/2019-GST dated 05/11/2019 of the CBIC.** The Board vide the circular has directed that any specified communication which does not bear the electronically generated DIN and is not covered by the exceptions mentioned in para 3 of the circular, **shall be treated as invalid and shall be deemed to have never been issued** The relevant extract of the circular is as follows:

**Subject: Generation and quoting of Document Identification Number (DIN) on any communication issued by the officers of the Central Board of Indirect Taxes and Customs (CBIC) to tax payers and other concerned persons- reg.**

In keeping with the Government's objectives of transparency and accountability in indirect tax administration through widespread use of information technology, the CBIC is implementing a system for electronic (digital) generation of a Document Identification Number (DIN) for all communications sent by its offices to taxpayers and other concerned persons. To begin with, the DIN would be used for search authorization, summons, arrest memo, inspection notices and letters issued in the course of any enquiry. This measure would create a digital directory for maintaining a proper audit trail of such communication. Importantly, it would provide the recipients of such communication a digital facility to ascertain their genuineness. Subsequently, the DIN would be extended to other communications. Also, there is a plan to have the communication itself bearing the DIN generated from the system.

2. The Board in exercise of its power under section 168(1) of the CGST Act, 2017/ Section 37B of the Central Excise Act, 1944 directs that no search authorization, summons, arrest memo, inspection notices and letters issued in the course of any enquiry shall be issued by any officer under the Board to a taxpayer or any other person, on or after the 8th day of November, 2019 without a computer-generated Document Identification Number (DIN) being duly quoted prominently in the body of such communication. The digital platform for generation of DIN is hosted on the Directorate of Data Management (DDM)'s online portal "cbicddm.gov.in"

3. Whereas DIN is a mandatory requirement, in exceptional circumstances communications may be issued without an auto generated DIN. However, this exception is to be made only after recording the reasons in writing in the concerned file. Also, such communication shall expressly state that it has been issued without a DIN. The exigent situations in which a communication may be issued without the electronically generated DIN are as follows:-

(i) when there are technical difficulties in generating the electronic DIN, or
(ii) when communication regarding investigation/enquiry, verification etc. is required to issued at short notice or in urgent situations and the authorized officer is outside the office in the discharge of his official duties.

4. The Board also directs that any specified communication which does not bear the electronically generated DIN and is not covered by the exceptions mentioned in para 3 above, shall be treated as invalid and shall be deemed to have never been issued.

5. Any communication issued without an electronically generated DIN in the exigencies mentioned in para 3 above shall be regularized within 15 working days of its issuance, by:

(i) obtaining the post facto approval of the immediate superior officer as regards the justification of issuing the communication without the electronically generated DIN;
(ii) mandatorily electronically generating the DIN after post facto approval; and
(iii) printing the electronically generated pro-forma bearing the DIN and filing it in the concerned file.

**Circular No. 128/47/2019-GST dated 23/12/2019 of the CBIC. (IN CONTINUATION OF CIRCULAR 122 )**

**Circular No.128/47/2019-GST**

**No. GST/INV/DIN/01/19-20**

**Ministry of Finance**
**Department of Revenue**
**Central Board of Indirect Taxes and Customs**
**GST-Investigation Wing**

Room No.01, 10th Floor,
Tower-2, 124, Jeevan Bharti Building,
Connaught Circus, New Delhi- 110001.
Dated the 23rd December, 2019

To:

All Principal Chief Commissioner(s)/ Chief Commissioner(s)/ Principal Director General(s)/ Director General(s)/ All Principal Commissioner(s)/ Commissioner(s) / Principal Additional Director General(s)/ Additional Director General(s)/ Joint Secretaries/Commissioners, CBIC.

Madam/Sir,

**Subject: Generation and quoting of Document Identification Number (DIN) on any communication issued by the officers of the Central Board of Indirect Taxes and Customs (CBIC) to tax payers and other concerned persons – reg.**

Attention is invited to Board's Circular No. 122/41/2019- GST dated 05th November, 2019 that was issued to implement the decision for Generation and Quoting of Document Identification Number (DIN) on specified documents. This was done with a view to leverage technology for greater accountability and transparency in communications with the trade/ taxpayers/ other concerned persons.

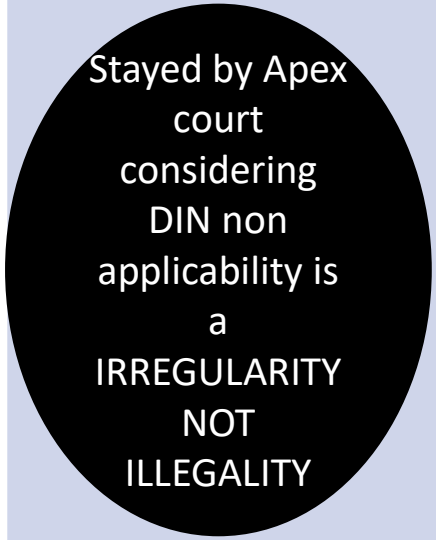
2. Vide the aforementioned Circular, the Board had specified that the DIN monitoring system would be used for incorporating a DIN on search authorisations, summons, arrest memos, inspection notices etc. to begin with. Further, a facility was provided to enable the recipient of these documents/communications to easily verify their genuineness by confirming the DIN on-line at cbic.gov.in. In continuation of the same, the Board has now directed that electronic generation and quoting of Document Identification Number (DIN) shall be done in respect of all communications (including e-mails) sent to tax payers and other concerned persons by any office of the Central Board of Indirect Taxes and Customs (CBIC) across the country. Instructions contained in this Para would come into effect from 24.12.2019.

3. Accordingly, the online digital platform/facility already available on the DDM's online portal "cbicddm.gov.in" for electronic generation of DIN has been suitably enhanced to enable electronic generation of DIN in respect of all forms of communication (including e-mails) sent to tax payers and other concerned persons. On the one hand electronic generation of DIN's would create a digital directory for maintaining a proper audit trail of communications sent to tax payers and other concerned persons and on the other hand, it would provide the recipient of such communication a digital facility to ascertain the genuineness of the communication.

4. In this context, the Board also felt it necessary to harmonize and standardize the formats of search authorisations, summons, arrest memos, inspection notices etc. issued by the GST/Central Excise/Service Tax formations across the country. Accordingly, the Board had constituted a committee of officers to examine and suggest modifications in the formats of these documents. The committee has submitted its recommendations. The standardized documents have since been uploaded by DDM and are ready to be used. When downloaded and printed, these standardized documents would bear a pre-populated DIN thereon. Accordingly, the Board directs that all field formations shall use the standardized authorisation for search, summons, inspection notice, arrest memo and provisional release order (the formats are attached). These formats shall be used by all the formations w.e.f. 01.01.2020.

5. The Board once again directs that any specified communication which does not bear the electronically generated DIN and is not covered by the exceptions mentioned in paragraph 3 of Circular No. 122/41/2019-GST dated 05.11.2019, shall be treated as invalid and shall be deemed to have never been issued.

| CITATION | PARTICULARS |
| --- | --- |
| **[2022] 141 taxmann.com 64 (SC)**<br>**SUPREME COURT OF INDIA**<br>**Pradeep Goyal**<br>***v.***<br>**Union of India***   | **In view of larger public interest and to bring in transparency and accountability in indirect tax administration, Union of India and GST Council were directed to issue advisory/instruction/recommendations regarding implementation of digital generation of DIN for all communications sent by SGST officers to taxpayers; concerned States should consider implementing system of e-generation of DIN**<br>Implementation of system of e-generation - PIL was filed to direct respective States and GST Council to take necessary steps to implement system for electronic (digital) generation of DIN for all communications sent by State Tax Officers (STOs - SGST Officers) to taxpayers and other concerned persons - HELD: **Implementation of system for electronic (digital) generation of DIN for all communications sent by STOs to taxpayers would be in larger public interest and enhance good governance** - Implementation of DIN would bring in transparency and accountability in indirect tax administration which are vital to efficient governance - **GST Council should issue advisories to respective States for implementation of DIN System**, which would be in larger public interest and might bring in transparency and accountability in indirect tax administration - **Union of India and GST Council were directed to issue advisory/instructions/recommendations** to respective States regarding implementation of system of electronic (digital) generation of DIN in indirect tax administration, which was **already being implemented by Karnataka and Kerala** - Concerned States were to be impressed upon to consider implementation of digital generation of DIN [Article 279A of Constitution of India] [Paras 6 and 7] [In favour of assessee] |

| CITATION | PARTICULARS |
| --- | --- |
| CIT (Internatinal Taxation)-1<br>*v.* Brandix Mauritius Holdings Ltd.*<br>[2023] 149 taxmann.com 238 (Delhi) HIGH COURT OF DELHI<br><br>  <br> | **Where AO passed final assessment order without DIN, since there were no exceptional circumstances as mentioned in Circular No. 19/2019, dated 14-8-2019 which would sustain communication of impugned order manually without DIN, failure to allocate DIN would not be an error which could be corrected by taking recourse to section 292B and, thus, impugned final order could not be sustained**<br>Return of income not to be invalid on certain grounds (Issue of order manually without DIN) - Assessment year 2011-12 - Whether object and purpose of issuance of Circular No. 19/2019, dated 14-8-2019 was to create an audit trail, thus, communication related to assessments, appeals, orders without DIN (document identification number) would have no standing in law - Held, yes - **Whether since in instant case, final assessment order passed by Assessing Officer did not bear any DIN** and there was nothing on record to show that there were exceptional circumstances as mentioned in Circular No. 19/2019 which would sustain communication of final assessment order manually without DIN, failure to allocate DIN would not be an error which could be corrected by taking recourse to section 292B and, thus, impugned final order could not be sustained - Held, yes [Paras 18 and 19] [In favour of assessee] |

# Taxsutra Breaking News: Noting 'serious' consequences, SC stays HC judgment on DIN less assessments

taxsutra | Direct Tax

**Noting 'serious' consequences, SC stays HC judgment on DIN less assessments**

SC stays Delhi HC judgment in Brandix on the issue of validity of assessments where DIN is missing; SC, on briefly hearing ASG N. Venkataraman & Sr. Adv. Ajay Vohra for both sides, orally remarks that not mentioning DIN in assessment orders may be an 'irregularity' but that does not make it an 'illegality'; SC further quips " Can assessment go because DIN is not there... to say assessment goes, there will be a vacuum. Can entire assessment be null & void...?" ; SC observes that the consequences of the ITAT order further confirmed by High Court, are 'serious'; SC therefore issues interim stay on both ITAT as well as HC order.

# DIN ISSUED BUT NOT MENTIONED IN THE BODY OF ORDER

**CRITEO SINGAPORE PTE LTD. VERSUS ACIT, CIRCLE : 1 (2) (1) INTERNATIONAL TAXATION, NEW DELHI. - 2023 (12) TMI 975 - ITAT DELHI**

**AY - 2019-20**

**Facts of case**

- **In the letter dated 13.09.2023 the DRP stated that directions were up-loaded on system on 7.06.2022 for which a DIN was generated by the system**
- **Whereas no such DIN which was generated on 7.06.2022 was mentioned in the body of the directions**
- **Generation of DIN for the directions of the DRP was separately communicated through letter dated 17.06.2022.**

**Whether the subsequent generation of DIN will suffice as the requirement of the CBDT Circular which mandates quoting of DIN in the body of communication/order ?**

**Held that**

- Communication/order passed in violation of the Circular of the CBDT without mentioning the DIN in the body of the order or without taking prior approval from the Chief Commissioner/Director General of Income Tax when there are exceptional circumstances in not quoting the DIN in the body of the order such communication/order was held to be invalid and shall be deemed to have never been issued.
- As the Revenue could not show us any exceptional circumstances for not quoting the DIN number in the DRP order, we hold that the DRP order is invalid and consequently the final assessment order passed by the AO u/s 143(3) r.w.s.144C(13) of the Act pursuant to such invalid directions is deemed to have never been issued and thus bad in law.

# DIN VS REFERENCE NUBMBER

REFRENCE NUMBER CAN BE USED INSTEAD OF DIN NO. AS NOTIFIED BY SOME STATE GOVT

**GOVERNMENT OF ASSAM**
**OFFICE OF THE PRINCIPAL COMMISSIONER OF STATE TAX**
**CUM COMMISSIONER OF TAXES, ASSAM**
**KAR BHAWAN, DISPUR, GUWAHATI-781006**
**&&&**

**INSTRUCTION NO. 08/2023-GST**

Dated Dispur the 4th May, 2023

**Sub: Facility of generation of Document Reference Number (RFN) and use of the same in all offline communications with the Taxpayers and other concerned persons relating to Goods and Service Tax – regarding.**

**No. CT/GST-40/2020/64** : In inviting a reference to the above subject, I am to inform you that Hon'ble Supreme Court of India in their order in the **W.P. (C) No. 320 of 2022** (in case of Pradeep Goyal Vs Union of India and Others) have directed to implement a system of electronic generation of a DIN (Document Identification Number) for all communications sent by State Tax Officers to taxpayers and other concerned persons so as to bring in transparency and accountability in the indirect tax administration.

2. As per the above directions, a new facility for generation of a document **Reference Number (RFN)** has been developed by GSTN in the GST Back Office for the tax officers and in the GST Common Portal for verification of such RFNs by the taxpayers.

2. As per the above directions, a new facility for generation of a document **Reference Number (RFN)** has been developed by GSTN in the GST Back Office for the tax officers and in the GST Common Portal for verification of such RFNs by the taxpayers. The facility is now available both in GST Back Office and the GST Common Portal. The RFNs generated can also be viewed by the taxpayers and other concerned persons in the GST Common Portal with login and without login as well.

3. The documents, notices, orders, intimations etc. generated by the Tax Officers in the GST Back Office (i.e. system generated) using their Digital Signature Certificates or otherwise are generated with a unique reference number or ARN, which is also printed and communicated on such documents. The same can be seen by the taxpayers in the GST Common Portal in their dashboards. In those types of communications, the RFNs need not be generated again.

4. In all other types of communications between the Tax Officers(s) and the taxpayers and other concerned persons relating to administration of GST, the **RFN must be generated and mentioned on the document(s)**. An advisory for generation of such RFN by the Tax Officers in the GST Back Office application and search and verification of the same by the taxpayers in GST Common Portal is enclosed for kind reference.

5. It is hereby instructed to all concerned that **all offline communications** with taxpayers and other concerned relating to administration of GST Back Office (BO) and communicated to the taxpayers/concerned persons through GST Common Portal) **must be superscribed with the RFN** generated from the GST Back Office (BO) in the process enumerated in the advisory enclosed.

| CITATION | PARTICULARS |
| --- | --- |
| **Ashok Commercial Enterprises v. Assistant Commissioner of Income Taxation – [2023] 154 taxmann.com 144 (Bombay)** | Whether where assessment order does not bear a DIN and said order issued without a DIN does not bear required format set out in paragraph 3 of Circular No. 19/2019, said order ought to be treated as invalid and deemed never to have been issued.The CBDT, in exercise of powers under section 119(1) has issued a Circular No. 19/2019 dated 14-8-2019 providing that no communication shall be issued by any Income-tax Authority inter alia relating to assessment orders, statutory or otherwise, inquiries, approvals, etc. to an assessee or any other person on or after 1-10-2019 unless a computer generated DIN has been allotted and is quoted in the body of such communication. |

## 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

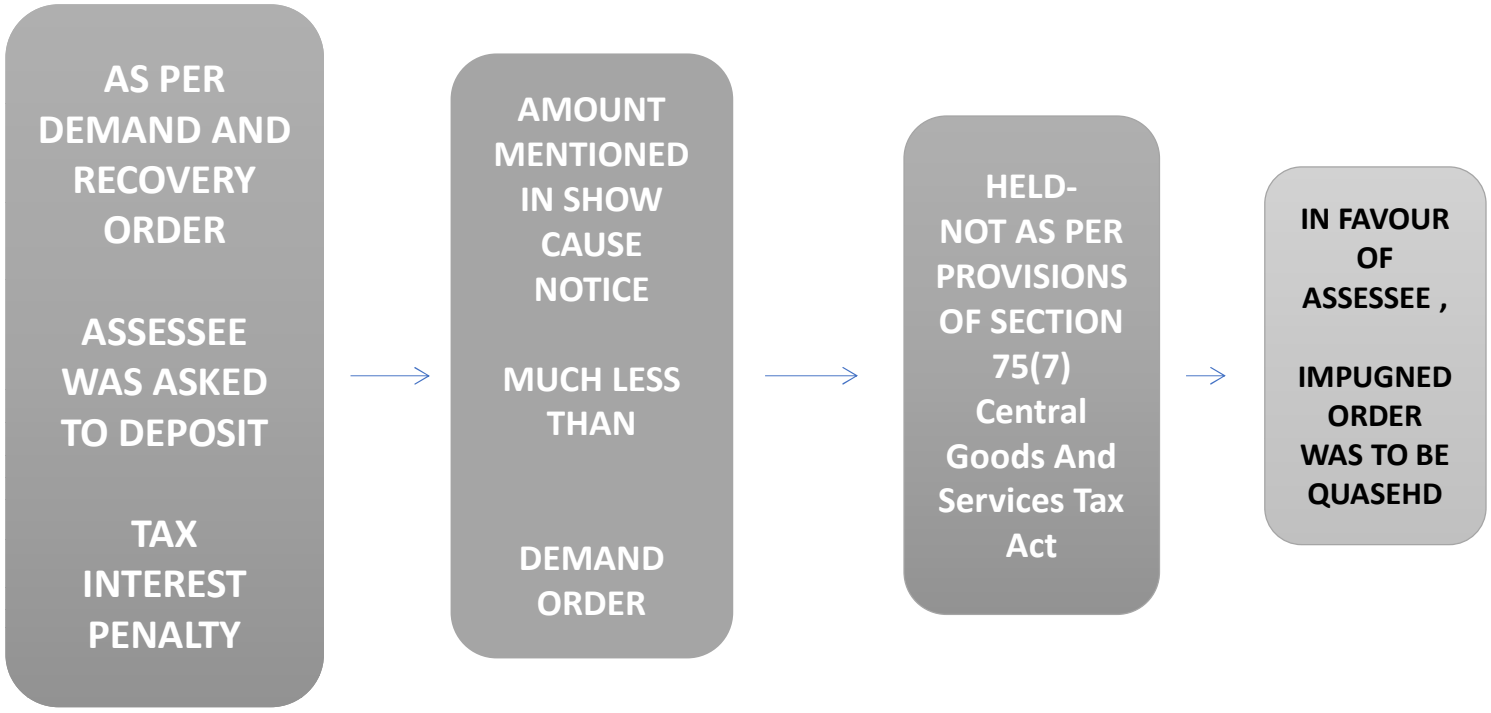
## *SECTION: 75(7) AMOUNT OF TAX PENALTY DEMANED IN IMPUGNED ORDER CANNOT EXCEED AMOUNT SPECIFIED IN SHOW CAUSE NOTICE*

**[2024] 161 taxmann.com 659 (Uttarakhand)**
**HIGH COURT OF UTTARAKHAND**

# Horizon Packs (P.) Ltd.

***v.***

**Union of India****



# Order issued on grounds other than grounds specified in SCN

| | | |
|---|---|---|
| **1** | **[2006] 2006 taxmann.com 1488 (SC)**<br>**SUPREME COURT OF INDIA**<br>**Commissioner of Customs, Mumbai**<br>**v. Toyo Engineering India Ltd.** | **Section 129B of the Customs Act, 1962 - Appeal-New grounds - submissions not made before adjudicating authority and lower appellate authority, cannot be raised before CESTAT**<br>**The Department cannot be travel beyond the show cause notice. Even in the grounds of appeals these points cannot been taken.** |
| **2** | [2022] 138 taxmann.com 436 (Gujarat) HIGH COURT OF GUJARAT Pantone Enterprises (P.) Ltd. v. Union of India* | Registration - Cancellation of registration - Violation of principles of natural justice - Registration was cancelled on ground of availing fake input tax credit while applicants had done no activity - However, show cause notice issued by department was bereft of material particulars - Reasons assigned was without any basis being found in SCN - Sufficient opportunity was not provided while adjudicating such SCN and impugned order also lacked reasons - Department had chosen to proceed on ground other than reason given in original SCN - While rejecting application for revocation of cancellation of rejection, principles of natural justice was also not followed - Department failed to adhere to instructions issued by CBIC - Impugned SCN and consequential orders cancelling registration and further order rejecting revocation application seeking restoration of registration were to be quashed and set aside - |
| **3** | [2007] 11 STT 6 (SC) SUPREME COURT OF INDIA<br>Commissioner of Central Excise, Nagpur v. Ballarpur Industries Ltd. | The Supreme court held that the show cause notice is the foundation in the matter of levy and recovery of duty, penalty and interest; where a certain matter has not been invoked in the show cause notice, it would not be opened to the Central Excise Officer to invoke the same subsequently. |

# Opportunity of personal hearing

| Sr. No | Citation | Held |
|---|---|---|
| 1 | **[2022] 136 taxmann.com 275 (Allahabad)**<br>**HIGH COURT OF ALLAHABAD**<br>**Bharat Mint and Allied Chemicals**<br>***v.***<br>**Commissioner of Commercial-tax*** | **Demand - Principles of natural justice - Where an adverse decision is contemplated, such a person need not even request for opportunity of personal hearing, it is mandatory for authority to afford an opportunity of personal hearing as per section 75(4) - Section 75(4) specifically mandates for opportunity of hearing before passing an order - Perusal of adjudication order showed that opportunity of hearing was not provided to assessee - Availability of alternate remedy is not a complete bar to entertain writ petition where there is a gross violation of principles of natural justice - Impugned order in violation of principles of natural justice is an exception to rule of alternate remedy - Impugned order was to be set aside - Department should pass order afresh after giving personal hearing - [Section 75 of Central Goods and Services Tax Act, 2017/Uttar Pradesh Goods and Services Tax Act, 2017] [Paras 13, 14, 15, 17, 18 and 19] [In favour of assessee]** |
| 2 | **[2022] 143 taxmann.com 381 (Gujarat)**<br>**HIGH COURT OF GUJARAT**<br>**Graziano Trasmissioni India (P.) Ltd.**<br>***v.* State of Gujarat*** | **GST : Even without any request for personal hearing made by party concerned, opportunity of personal hearing was to be provided when any adverse decision was contemplated against person chargeable with tax or penalty** |

| Sr. No | Citation | Held |
|---|---|---|
| 3 | **[2023] 148 taxmann.com 394 (Madras)<br>HIGH COURT OF MADRAS<br>Sendhil Kumar<br>*v.*<br>State Tax Officer*** | **Assessment - Demand and penalty - Natural Justice - Personal hearing - Section 75(4) of CGST Act, 2017 specifically requires grant of hearing opportunity where adverse decision is contemplated against assessee - Impugned order imposed tax liability as well as penalty on assessee-petitioner - Admittedly, no personal hearing was afforded to petitioner in impugned assessment proceedings - Therefore, impugned assessment order was to be quashed on ground of violation of principles of natural justice [Section 75 of Central Goods and Services Tax Act, 2017/Tamil Nadu Goods and Services Tax Act, 2017] [Paras 4 and 7] [In favour of assessee/Matter remanded]** |
| 4 | **2024 (2) TMI 237 - BOMBAY HIGH COURT MAULI SAI DEVELOPERS PRIVATE LIMITED VERSUS UNION OF INDIA, STATE OF MAHARASHTRA DEPUTY COMMISSIONER STATE TAX, (E-711) , MUMBAI** | Violation of principles of natural justice - no opportunity of personal hearing granted to the Petitioner - Petitioner had not paid or short paid CGST/MGST - **HELD THAT:- From a plain reading of Section 75(4), it is absolutely clear that, even in a case where the person chargeable with tax or penalty has not requested for a personal hearing, the Department is bound to give a personal hearing when an adverse decision is contemplated against such a person. This would be irrespective of the fact as to whether the Petitioner had asked for such a personal hearing or not.**<br>**In the present case, since the said Order is in violation of the principles of natural justice and ex-facie contrary to the provisions of Section 75(4) of the CGST/MGST Act.** |

| Sr. No | Citation | Held |
|---|---|---|
| 5 | **2023 (12) TMI 666 - BOMBAY HIGH COURT HYDRO PNEUMATIC ACCESSORIES INDIA PVT. LTD. VERSUS THE ASSISTANT COMMISSIONER OF STATE TAX, MULAND WEST & ANR.** | **Violation of principles of natural justice - impugned order is passed without giving any personal hearing although mandated by Section 75(4) of the CGST Act - HELD THAT:- There has been a violation of principles of natural justice in passing the impugned order for more than one reason; firstly, under Section 75 sub-section (4), it is mandatory for the respondents to give a personal hearing to the petitioner if an adverse order is contemplated to be passed against the assessee. In the facts of the present case, a personal hearing was not given to the petitioner, inspite of an adverse order having been passed.**<br>**The impugned order would certainly be required to be held to be in breach of principles of natural justice so as to enable this Court to exercise jurisdiction under Article 226 of the Constitution of India although, an alternate remedy is available - order under Section 73 dated 26th July 2023 is quashed and set aside.** |

**[2024] 161 taxmann.com 266 (Madras)**

**HIGH COURT OF MADRAS**

**Sanjai Gandhi**

**v.**

**Deputy Commercial Tax Officer (ST)**

SENTHILKUMAR RAMAMOORTHY, J.

W.P. NO. 8676 OF 2024

W.M.P. NOS. 9678 & 9679 OF 2024

APRIL 1, 2024

# TAX DEMAND COULD NOT BE CONFIRMED WITHOUT PROVIDING OPPORTUNITY OF BEING HEARD

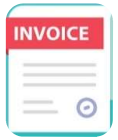
**Demands – Tax or ITC not involving fraud, etc. - Discrepancies in Form GSTR-3B and GSTR-2B - Period 2018-19 - Assessee was engaged in business of supplying water purifiers and R.O. systems and providing services in relation thereto - Upon examining returns of assessee, a notice in Form GST ASMT 10 was issued - Assessee replied thereto - Thereafter, impugned order was passed under section 73 demanding tax on ground that there were discrepancies between input tax credit (ITC) claimed by assessee in Form GSTR 3B on comparison with GSTR 2B - HELD : It was found that such tax demand was confirmed without petitioner being heard - Impugned order was to be set aside on condition that assessee remitted 10 per cent of disputed tax demand and assessee was also to be permitted to submit a reply to show cause notice and upon being satisfied that 10 per cent of disputed tax demand was received, authority was to provide a reasonable opportunity to assessee, including a personal hearing, and thereafter issue a fresh order [Section 73 of Central Goods and Services Tax Act, 2017/Tamil Nadu Goods and Services Tax Act, 2017] [Paras 5 and 6] [In favour of assessee/Matter remanded]**

# DIFFERENT TYPES OF FAKE INVOICES

**1.** **Issuing Bill without Supply**

Mr. A Files GSTR-1 but do not file GSTR-3B and vanish without paying taxes

Mr.A

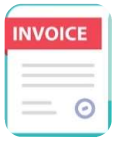



**Issues invoice without any supply**

**2.** **Took invoices from Mr. A without any receipt of goods from a different source.**

**Procures goods without payment of taxes from small vendors.**

Mr.B




**ITC on Bills without Receiving goods**

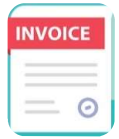
**Makes supply of such goods and Issue invoices Genuine Transaction**

Mr. B avails the ITC (reflected in GSTR 2A/2B) without receipt of goods and utilizes such ITC for further payment of tax.

Mr. C gets the goods and invoices as well.

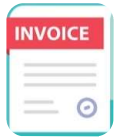
**3.** **CIRCULAR TRADING**

Mr. A Files GSTR-1 but do not pay any taxes

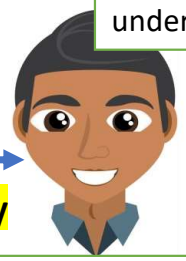



**Issues invoice without any supply**

Mr. B avails ITC.




**Issues invoice without any supply**



Mr. C again issues invoice without underlying supply

Mr. C avails ITC

# Circular No.171/02/2022

## Clarifications in case of Fake Invoicing

| Sno | CASE | ISSUE | CLARIFICATION |
|---|---|---|---|
| 1. | • Mr. A issued tax invoice to Mr. B without any underlying supply of goods or services or both. | (a) Whether it is a supply u/s 7?<br>(b) Whether any demand and recovery can be made from Mr. A u/s 73 or 74?<br>(c) Whether any penal action can be taken against Mr. A ? | **(a) Not a supply u/s 7.**<br>**(b) As no tax liability arises** from Mr. A, hence **No Demand and Recovery u/s 73 or 74 can be made from Mr. A.**<br>**(c) Penal action under section 122(1)(ii)** would be taken against Mr. A for issuance of fake invoice |
| 2. | • Mr. A issued tax invoice to Mr. B without any underlying supply of goods or services or both<br>• Mr. B utilizes the ITC availed based on the fake invoice.<br>• Further, Mr. B issues tax invoice against an underlying supply to its customer | (a) Whether Mr. B liable for demand and recovery of said ITC u/s 73 or 74?<br>(b) Whether any penal action can be taken against Mr.B? | (a) Mr. B **has utilized fraudulent ITC without receiving the goods** and services, in contravention of sec 16(2)(b), so he shall be liable for **demand and recovery of said ITC, along with penal action, under u/s 74 for wrongful availment of ITC and Interest u/s 50.**<br>**(b) No separate penalty for the same act u/s 122.** |

# Circular No.171/02/2022

## Clarifications in case of Fake Invoicing

| Sno. | CASE | ISSUE | CLARIFICATION |
|---|---|---|---|
| 3. | • Mr. A issued tax invoice to Mr. B without any underlying supply of goods or services or both.<br>• Mr. B utilizes the ITC availed based on the fake invoice.<br>• Further, Mr. B issues tax invoice without an underlying supply to Mr. C. | (a) Whether Mr. B liable for demand and recovery of said ITC u/s 73 or 74?<br>(b) Whether any penal action can be taken against Mr.B? | **(a) As no tax liability arises** from Mr. A, hence **No Demand and Recovery u/s 73 or 74. Penal action u/s 122(1)(ii). (Case 1)**<br>(b) Mr. B has utilized fraudulent ITC without receiving the goods and services, in contravention of sec 16(2)(b). No Recovery u/s 74 as ITC utilized against Supply.<br>(c) There was no supply u/s by Mr. B to Mr. C, **Penal action under section 122(1)(ii) and 122(1)(vii)** would be taken against Mr. B for issuance of fake invoice and utilizing ITC without actual receipt of Goods and/or services. |

- **IN ABOVE CASES-** Actual action to be taken against a person shall depend upon specific circumstances of the case which may involve complex mixture of above scenarios.
- **The proceedings initiated under sec 73 & 74 were struck down due to lack of underlying supplies.**
- **Section 132 may also be invokable.**

- Issuing fake invoice and availing ITC on basis of such fake invoice is an offence punishable with penalty
- If ITC availed on the basis of fake invoice is once again passed on by issuing fake invoice, then only penal action can be taken.
- Sec. 73/74 invoked when Tax demand are underlying while Sec 122 is when No Tax demand pending but only penalty for offences.

- **SECTION 73- for non fraud cases**
  i) Penalty under sec 73 = 10% of tax or ITC
  ii) If ITC or tax with interest paid before issue of notice or within 30 days of notice, No penalty
- **SECTION 74- for fraud cases**
  i) Penalty under sec 74 = Equal to tax
  ii) If tax with interest paid before issue of notice, penalty 15%
  iii) If tax with interest paid within 30 days of notice, penalty 25%
- **SECTION 75(13)** –If penalty imposed under sec 73/74, no further penalty under any other provision.

## CASE 1

Mr. A


**(a) Not a supply u/s 7.**
**(b) Hence, no tax liability arises**
**(c) No Demand and Recovery u/s 73 or 74.**
**(d) Penal action under section 122(1)(ii)** would be taken against Mr. A for issuance of fake invoice

PENALTY u/s 122(1)(ii) =ITC passed on

**section 122(1)(ii)**

**Without** supply of G/S/both

Mr. B

## CASE 2

Mr. A


PENALTY u/s 122(1)(ii)=ITC passed on

**Without** supply of G/S/both

Mr. B

**Mr. B has utilized fraudulent ITC without receiving the goods and services, in contravention of sec 16(2)(b)**


**Demand and recovery u/s 74 Of ITC wrong availment and utilization of ITC**

Demand and recovery under u/s 74 for wrongful availment of ITC and Interest u/s 50.

**No separate penalty for the same act u/s 122.**

**With** supply of G/S/both

Mr. C

Received actual supply of G/S/Both

**CASE 3**

Mr. A


**Without** supply of G/S/both

PENALTY u/s 122(1)(ii)=ITC passed on

Mr. B

**Mr. B has utilized fraudulent ITC without receiving the goods and services, in contravention of sec 16(2)(b)**


**No Supply made**
**No** Output tax liability
So, **No** Demand and recovery under u/s 74 for wrongful availment of ITC and
**No** Interest u/s 50.

**Penal action under**

- **section 122(1)(ii)** for ITC passed on without supply thru fake invoice
- **Section 122(1)(vii)** for ITC wrongly availed without receipt of Goods and/or services

**Without** supply of G/S/both

Mr. C

**section 122(1)(ii)**
**&**
**section 122(1)(vii)**

## Section 122:- Penalty for certain offences


**If a taxable person**

**Involved in**

**21 offences as specified in section 122(1)**

Sec 2(107) person2(84) liable to be registered u/s 22/24, whether or not actually registered

**shall be liable to pay a penalty of**

**A. RS. 10000 or** **10000*2**

B. an amount equivalent to the 100%

i. **tax evaded** or

ii. TDS (the tax not deducted under section 51 or short deducted or deducted but not paid to the Government) or

iii. TCS ( tax not collected under section 52 or short collected or collected but not paid to the Government) or

iv. **input tax credit** availed of or passed on or distributed irregularly, or the **refund claimed fraudulently**,

**Tax, TDS,TCS,ITC.Refund**

**whichever is higher**

# THANK YOU

**Disclaimer** The views expressed are solely of the author and the content of this document is solely for information purpose and not to be construed as a professional advice. In cases where the reader has any legal issues, he/she must in all cases seek independent legal advice.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