THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

WEBINAR SERIES ON GSTAT

Organised

GST & Indirect Taxes Committee

Part IV

Drafting replies in SCN proceedings

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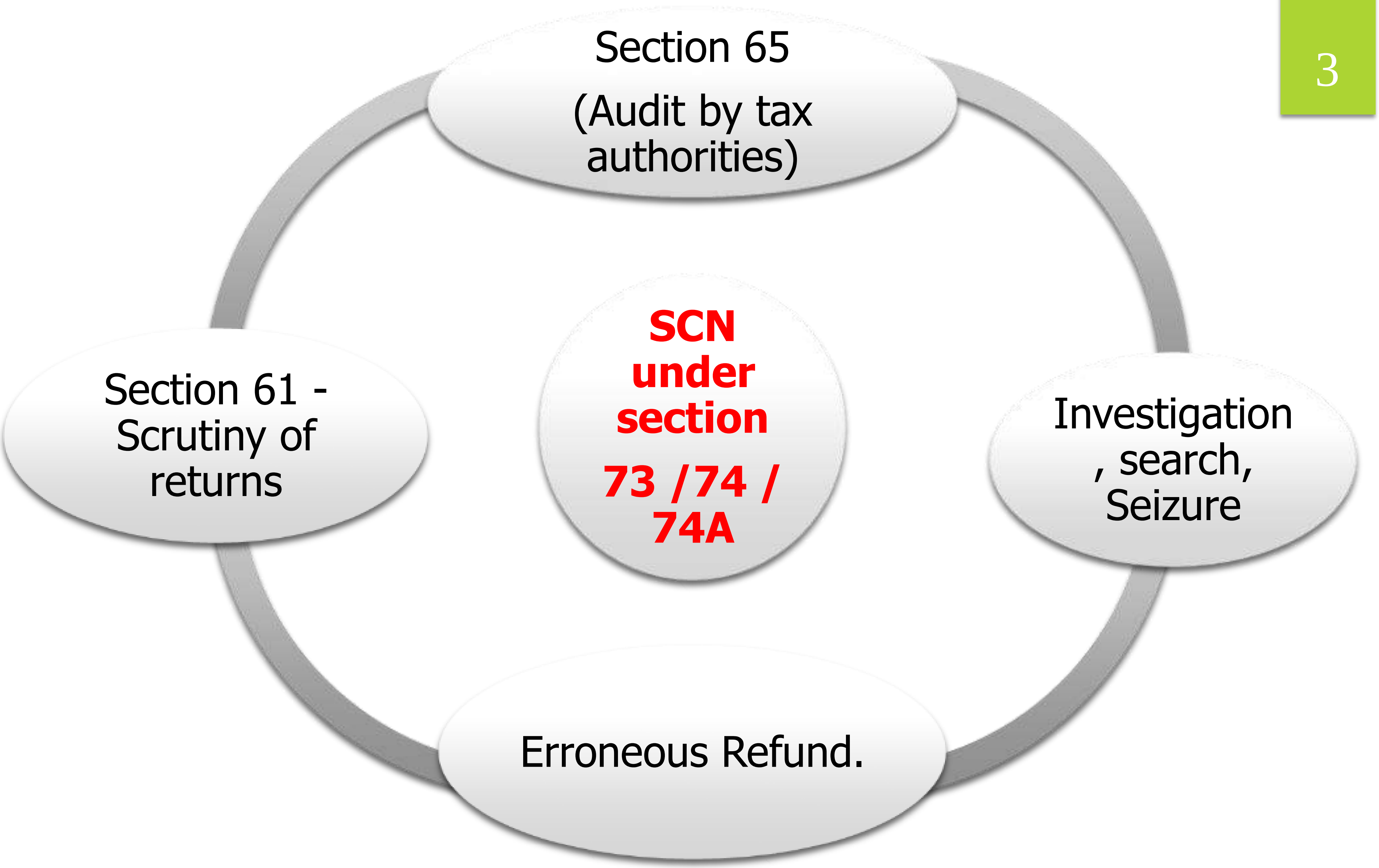
Notices / letters for demand under GST

- DRC-01B – Difference between GSTR -1 / IFF V/s GSTR 3B.
- DRC-01C – Difference between GSTR 2B v/s GSTR 3B.
- DRC-01D – Recovery of Self-assessed tax.
- ASMT-10 – Scrutiny proceedings.
- DRC-01A - Issue of DRC-01 A - Rule 142 (2) allows the proper officer to issue DRC-01A prior to issue of notice under section 73 / 74.
- SCN – Section 73 / 74.


Section 65
(Audit by tax authorities)
Section 61 - Scrutiny of returns
SCN under section
73 /74 / 74A
Investigation , search, Seizure
Erroneous Refund.

Time limit for Reply to SCN.

- Reply to be filed under **GST DRC-06.** (Rule 142 (4)) –

- Time for reply - SHEETAL DILIP JAIN 2022 (67) G.S.T.L. 11 (Bom.) - 30 days for reply.

Challenge to SCN in writ petition

❖ **Alternate Remedy – available in following cases:**

(i) where the writ petition seeks enforcement of any of the fundamental rights;

(i) where there is failure of principles of natural justice; or

(i) **<u>where the orders or proceedings are wholly without jurisdiction or the vires of an Act</u>**

- Whirlpool Corpn. vs. Registrar of Trade Marks [(1998) 8 SCC 1].
- Harbanslal Sahnia vs. Indian Oil Corpn. Ltd. [(2003) 2 SCC 107]

- Writ Petition normally not entertained if question is mixed question of facts and law.

Closure of proceedings after SCN

❖ **Section 73 / 74 and 74A provide for option of closure of proceedings**

- Decision of closure of proceedings to be made after receipt of SCN.
- Specific time limit to close the proceedings by making the payments.
- Payment of tax, interest and penalty to be made within specified time.
- Litigative computation to be avoided.
- Does law allow part closure ?
- Can assessee continue to challenge the proceedings even after making the payment of prescribed amount?

ANALYSIS OF SCN – BROAD AREAS

Analysis of Technical Aspects	A. Monetary limit / Authority to issue SCN. B. Jurisdiction to issue and adjudicate SCN. C. Manner of issue and serving of SCN. D. Relied upon Documents.
Analysis of Legal Aspects.	A. Limitation of issue of SCN. B. Cross- Examination and Relevancy of statement recorded during investigation.
Analysis of Factual and other Aspects	A. Facts in the SCN. B. Drafting of Grounds in reply to SCN. C. Opportunity of personal hearing and adjournments.

Defects vs. discrepancies in notice

- Defect – results in fundamental flaw in the SCN and hence acts as a valid ground for setting aside the demand.
- Not undertaking mandatory provisions / acts will amount to defective SCN.
- Defective SCN not rectifiable.
- Adjudication of Defective SCN amounts to abuse of law.
- **Examples –** SCN does not contain computation, basis of demand, amounts not quantified, beyond time period, etc.

Defects vs. discrepancies in notice

- Discrepancies do not affect the fundamentals of the SCN.
- Discrepancies are procedural infractions which courts may take a lenient view and condone such procedural lapses.
- **Section 160. Assessment proceedings, etc., not to be invalid on certain grounds.-**

(1) No assessment, re-assessment, adjudication, review, revision, appeal, rectification, notice, summons or other proceedings done, accepted, made, issued, initiated, or purported to have been done, accepted, made, issued, initiated in pursuance of any of the provisions of this ***Act shall be invalid or deemed to be invalid merely by reason of any mistake, defect or omission therein, if such assessment, re-assessment, adjudication, review, revision, appeal, rectification, notice, summons or other proceedings are in substance and effect in conformity with or according to the intents, purposes and requirements of this Act or any existing law.***

- **E.g. Typographical error –**

PRADYUMNA STEEL LTD -1996 (82) E.L.T. 441 (S.C.) - Mere mention of wrong provision of law when power exercised is available even though under a different provision, is by itself not sufficient to invalidate exercise of that power

Section 74A

- Inserted vide the Finance (No. 2) Act, 2024, notified through Notification No. 17/2024 – CT dated 27.09.2024, w.e.f. 01.11.2024
- Applicable from the Financial Year 2024-25 onwards.
- Non – Fraud provisions u/s. 73 and Fraud provisions u/s. 74 has been merged.
- **Tvl. Fancy Agency, Represented by its Proprietor M. Mohammed Ayub Versus The Deputy State Tax Officer-I, Virudhunagar. Dated 10.12.2025-** From 01.04.2024 onwards, proceedings should be under Section 74A of the Act, and not under Sections 73 or 74. Hence show cause notice and the consequent assessment order for FY 2024–25 under Section 74, are without authority of law – **<u>However it asked assessee to reply by treating such notice as issued under 74A.</u>**
- **TVL. PUNITHA ANTONY STORE (2026) 43 Centax 449 (Mad.)** – *wrong provision with wrong computation of penalty amount – proceedings set aside and fresh notice allowed.*

Monetary limit to issue SCN and pass orders

1. Different states might have different limits.

2. NEW PENSIA INDUSTRIES. 2020 (374) E.L.T. 721 (Guj.) – order adjudicated beyond adjudication powers to be set aside.

JURISDICTION FOR SECTION 122 NOTICES

- CBIC Circular No. 254/11/2025-GST, dated October 27, 2025, assigned proper officers for proceedings under Sections 122, 74A, and 75(2), and Rule 142(1A).

2. It is observed that no proper officer has been assigned in respect of the following provisions of the CGST Act and the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as "CGST Rules") :

(a) Section 74A of the CGST Act which shall be applicable for determination of tax not paid or short paid or erroneously refunded or input tax credit availed or utilised for any reason for the Financial Year 2024-25 onwards.

(b) Section 75(2) of the CGST Act which provides where any Appellate Authority/Appellate Tribunal/Court concludes that the notice issued under section 74(1) is not sustainable for the reason that the charges of fraud or any wilful-misstatement or suppression of facts to evade tax has not been established against the person to whom the notice was issued, the proper officer shall determine the tax payable, deeming as if the notice were issued under section 73(1) of CGST Act.

(c) Section 122 of the CGST Act, 2017 which provides for the penalties in respect of certain offences.

(d) Rule 142(1A) of the CGST Rules 2017 which provides for issuance of a communication in FORM GST DRC-01A before issuance of any show cause notice under Section 73 or Section 74 or Section 74 A of the CGST Act, 2017.

JURISDICTION FOR SECTION 122 NOTICES

- The Andhra Pradesh High Court answered this in Ganapati Ispat v. Union of India (W.P. No. 31263/2025, decided December 17, 2025). The petitioner challenged a Section 122 notice issued before October 27, 2025, on the ground that the issuing officer was not a proper officer before Circular No. 254/11/2025-GST. The pre-circular notice was set aside, with liberty granted to the Department to issue a fresh notice through the now-competent officer.

- The issue of jurisdiction of officers under section 122 is kept alive.

Duplicate / Parallel Proceedings

Section 6 (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.

TWO SCN / DEMAND ON SAME ISSUE- SECTION 73 & 74

LETTER D.O.F. NO. CBEC/20/43/01/2017- GST (PT.)

3 It is accordingly clarified that the officers of both Central tax and State tax are authorized to initiate intelligence based enforcement action on the entire taxpayer's base irrespective of the administrative assignment of the taxpayer to any authority. The authority which initiates such action is empowered to complete the entire process of investigation, issuance of SCN, adjudication, recovery, filing of appeal etc. arising out of such action.

C.B.I. & C. Instruction No. 01/2023-24- GST (Inv.), dated 30-03-2024.

(d) There may be a situation where it comes to the Commissionerate's notice that either the DGGI or the State GST department is also simultaneously undertaking record-based investigation of the same taxpayer on different subject matters. The (Pr.) Commissioner must engage in dialogue with the other investigating office(s) to consider the feasibility of only one of the offices pursuing all these subject matters with respect to the taxpayer, and the other offices consolidating their material with that office. If this outcome is not feasible, the reasons therefor should be confirmed on file by such (Pr.) Commissioner.

TWO SCN / DEMAND ON SAME ISSUE- SECTION 73 & 74

DLF HOME DEVELOPERS LTD. - 2024 (91) G.S.T.L. 384 (Del.)

State / UT GST Officer - Parallel proceedings with DGGI - Reversal of ITC on non-business transactions - Bar on simultaneous proceedings - Period July, 2017 to March, 2018 - Impugned order was passed against assessee under Section 73 of CGST Act, 2017 by GST Department confirming demand in respect of ITC to be reversed on non-business transactions and exempt supplies - Case of assessee was that DGGI had also issued a show cause notice, which included demand proposed in impugned order, therefore two authorities could proceed simultaneously in respect of same issue - *HELD :* Impugned order also indicated that GST Department was also fully conscious of same and therefore, it had proceeded to confirm demand without adjudicating same - Since, period covered under impugned order was also subsumed in show cause notice issued by DGGI, both proceedings could not be carried on simultaneously - Therefore, impugned demand was to be set aside - Section 6 read with Section 16 of Central Goods and Services Tax Act, 2017 - Section 6 read with Section 16 of Delhi Goods and Services Tax Act, 2017.

Followed in BIO VEDA ACTION RESEARCH COMPANY. 2025 (95) G.S.T.L. 91 (All.)

TWO SCN / DEMAND ON SAME ISSUE- SECTION 73 & 74

- Armour Security (India) Ltd. vs. Commissioner — 2025 (101) G.S.T.L. 289 (S.C.)

- TANSAM ENGINEERING AND CONSTRUCTION COMPANY. 2025 (102) G.S.T.L. 280 (Ori.) .

" ***9.*** *As a consequence of above discussions, as is apparent that the initiation of proceedings on the same subject-matter under Section 74 of the GST Act by the Deputy Director, DGGI, Rourkela Regional Unit (Annexure-13) in pursuance of which the Assistant Commissioner, GST and Central Excise, Rourkela-I Division, Rourkela proceeded to pass Order-in-Original on 30-01-2025, Show Cause Notice dated 13-8-2021, being at a later point of time than the Show Cause Notices dated 02-07-2021 and 30-07-3021 issued by the Additional State Tax Officer, Rourkela-II Circle, Sundargarh, the initiation of proceeding by the Central Proper Officer cannot be sustained in view of provisions contained in Section 6(2)(b) of the GST Act and is liable to be quashed. This Court, therefore, does so."*

SINGLE SCN FOR MULTIPLE YEARS

- Judgement of Titan Company Ltd. (2024) 15 Centax 118 (Mad) bunching not allowed for SCN for different years under section 73 of CGST Act, 2017.
- Milroc Good Earth Developers v. Union of India — 2025 (104) G.S.T.L. 45 (Bom.).
- **Decision in X L Interiors Vs Deputy Commissioner (Intelligence) – Kerala High Court – Single SCN can be issued for multiple years under section 74 of CGST Act, 2017.**
- **Bombay High Court referred to Larger Bench – Rollmet LLP.**

Signing of Notices / Orders

- **Notice / Order not signed.**

- Order is unsigned - Bombay High Court in the case of Ramani Suchit Malusare – W.P. no. 9331 of 2022 - set aside order.

- RAILSYS ENGINEERS PVT. LTD. 2022 (65) G.S.T.L. 159 (Del.).

" ***10.2*** *According to us, even a plain reading of the provision does not suggest that the orders need not be signed. At the least, the respondents / Revenue should have appended digital signatures on the SCN and the above-mentioned order, as it has grave implications for the assessee.*

Whether applicable for issue of DRC-01 or SCN?

BIGLEAP TECHNOLOGIES AND SOLUTIONS PVT. LTD. 2025 (98) G.S.T.L. 72 (Telangana) – **Since prescribed Forms as per Rule 142 ibid need signature, such requirement must be held to be mandatory, in absence of signature, said notice/order could not be held to be a valid notice/order**

Issue of notices without DIN

- C.B.I. & C. Circular No. 128/47/2019- GST, dated 23-12-2019.
- 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.*

- ***Requirement of DIN for orders / notices on portal -*** C.B.I. & C. Circular No. 252/09/2025- GST, dated 23-09-2025.

  *It is therefore decided that **for communications dispatched using public option in CBIC's eOffice application**, the verifiable eOffice 'Issue number' shall be deemed to be the Document Identification Number and such communication shall be treated as a valid communication.*

- MAHESH TRIVEDI - 2026 (110) G.S.T.L. 394 (Raj.) / (2026) 42 Centax 400 (Raj.) – SCN without DIN and issued on portal allowed.

- SURESH KUMAR P. P. 2020 (41) G.S.T.L. 17 (Ker.) – "*We do not think, Exhibit P4 issued to the appellants, which is also an order of seizure of documents, made in the presence of the appellants, to effectuate seizure requires a DIN or even subsequent generation of the same. The invalidity argued on that ground does not survive."*

Legal Aspects of SCN - RUD

- **FURNISHING OF RELIED UPON DOCUMENTS / STATEMENTS.**
- -Request to be made for furnishing relied upon documents.
- -Advised to make Request to be made immediately on receipt of SCN.
- -Non-furnishing of Relied upon Documents amounts to violation of principles of natural justice.
- a. MOZART GLOBAL FURNITURE. 2020 (33) G.S.T.L. 3 (Ker.)
- b. AGRIM CHEMICALS LTD. 2022 (59) G.S.T.L. 45 (All.)

ASMT-10

- Section 61(1) mandates that the proper officer may scrutinize the return and related particulars furnished and inform discrepancies noticed to seek his explanation in ASMT-10 under Rule 99 (1) –
- Assesse are required to furnish reply in ASMT-11 (Rule 99 (2)).
- Reply can be filed within a period of thirty days of ASMT-10 or permitted extension.
- In case the reply is found acceptable, proceedings are closed vide issue of ASMT-12.
- If no satisfactory explanation is furnished, further proceedings like audit, SCN, etc can be initiated.
- C.B.I. & C. Instruction No. 2/2023- GST, dated 26-05-2023 guidelines

SCN based on Scrutiny

- **VADIVEL PYROTECH (P.) LTD. 2023 (68) G.S.T.L. 120 (Mad.).**

- It is thus clear 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. In the present case, though ASMT 10 was issued on 22-12-2021 pointing out certain discrepancies, the GST DRC-01 dated 15-02-2022 and the impugned order in GST DRC-07 dated 09-05-2022 are made on the basis of issues that are completely different from what was set out in Form ASMT 10 dated 22-12-2021. As this Court is of the view that ASMT 10 is mandatory before proceeding to issue GST DRC-01, failure to issue the same in respect of the discrepancies forming the subject matter in GST DRC-01 dated 15-02-2022 culminating in GST DRC-07 dated 09-05-2022 would vitiate the entire proceedings. It is trite law that when the Act prescribes the method and manner for performing an act, such act shall be performed in compliance with the said method and manner and no other manner.

SCN based on data of return without ASMT-10 ?

- **NAGARJUNA AGRO CHEMICALS PVT. LTD. 2023 (73) G.S.T.L. 584 (All.)**
- Merely because no notices were issued under Section 61 ibid, it would not mean that issues of classification or short payment of tax could not be dealt with under Section 74 ibid as exercise of such power was not dependent upon issuance of notice under Section 61 ibid
- **MANDARINA APARTMENT OWNERS WELFARE ASSOCIATION (MAOWA) - 2024 (88) G.S.T.L. 190 (Mad.)** - close examination of both Section 61 ibid and Section 73 ibid indicate that mere scrutiny of returns and issuance of notice in Form ASMT-10 do not constitute a mandatory pre-requisite for adjudication even in cases where returns were scrutinized

DRC-01 A – PRE-SCN Rule 142 (1A)

- Rule 142 [(1A) *The [**<u>proper officer may</u>**], 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, [communicate] the details of any tax, interest and penalty as ascertained by the said officer, in **Part A of FORM GST DRC- 01A**.]*

- **Prior to 15-10-2020 - Rule 142 [(1A)-** *The [**<u>proper officer shall</u>**], 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, **<u>[shall communicate]</u>** the details of any tax, interest and penalty as ascertained by the said officer, in **Part A of FORM GST DRC- 01A**.*

DRC-01 A – PRE-SCN Rule 142 (1A)

- **GULATI ENTERPRISES - 2023 (68) G.S.T.L. 237 (Del.)** –
- Pre-show cause notice consultation mandatory under unamended Rule 142(1A) of Central Goods and Services Tax Rules, 2017 prior to 15-10-2020.
- **NEW MORNING STAR TRAVELS - 2023 (79) G.S.T.L. 430 (A.P.)**. –
- DRC-01A to be issued if demand is for the period prior to amendment.
- ABT LTD. 2024 (86) G.S.T.L. 343 (Mad.) – Amendment to apply to SCN issued after 15-10-2020 – Hence no requirement of DRC-01A
- WHETHER DRC-01 CAN BE BEYOND THE SCOPE OF DRC-01A?

ISSUE OF ADT-02 AND SCN.

- Validity of show cause notice if no discrepancy observed during audit and ADT-02 is issued?
- SCN issued without considering the reply to Audit Observations?
- ***Rule 101(4) :-*** Proper officer shall finalise the findings of the audit after due consideration of the reply furnished.”

-**VARDHAMAN GOLD. 2024 (81) G.S.T.L. 375 (A.P.) – SCN set aside without considering the reply.**

DRC-01 V/s SHOW CAUSE NOTICE

1. FORM DRC-01 is issued on the GST portal which is titled as "summary of show cause notice" and such DRC-01 contains brief para for demand. Whether such FORM GST DRC-01 is sustainable.

2. Show cause notice for demanding GST under section 74 has been issued but FORM DRC-01 not received on the GST portal or manually. Whether such show cause notice is sustainable.

3. DRC-01 is issued enclosing only Final audit report or ASMT-10

4. Form DRC-01 is issued which contains detailed show cause notice. There is no separate show cause notice. Whether such FORM DRC-01 can be called as show cause notice.

5. Whether DRC-01 is required when Show cause notice is issued manually.

SHOW CAUSE NOTICE – SECTION 73 & 74

- **<u>M/s. Juhi Industries Pvt. Ltd. in W.P. (T) No. 1991 of 2021 2022 (64) G.S.T.L. 406 (Jhar.)</u>** wherein Hon'ble High of Jharkhand has set aside the DRC-01 issued without show cause notice.

- **NKAS SERVICES PVT. LTD. - 2022 (63) G.S.T.L. 18 (Jhar.)**
- Show cause notice under Section 74 of Jharkhand Goods and Services Tax Act, 2017 law vis-à-vis Summary Notice in DRC-01- Summary notice ibid is not a substitute for a proper SCN to be issued under Section 74 ibid requiring detailing of allegations of fraud, suppression or misstatement, etc.- Rule 142 of Central Goods and Services Tax Rules, 2017.

Show cause notice – Defects?

Sulender Shah (2023) 13 Centax 187 (Del.) - Any notice issued under the relevant sections including section 74 of the Central Goods and Services Tax Act, 2017 (hereafter 'the CGST Act') is required to be accompanied by a summary thereof, electronically in FORM GST DRC-01 & FORM GST DRC-02 – Officer directed to issue DRC-01.

Shubham Gupta vs. Additional Commissioner / Joint Commissioner — 2023 (78) G.S.T.L. 298 (Del.) - Proper officer can issue a summary of notice and demands electronically in FORM GST DRC-01 even at instant stage.

PRADYUMNA STEEL LTD. 1996 (82) E.L.T. 441 (S.C.).
Adjudication - Show Cause Notice - Mere mention of wrong provision of law when power exercised is available even though under a different provision, is by itself not sufficient to invalidate exercise of that power - Sections 11A and 33 of the Central Excises and Salt Act, 1944 - Rule 9A of Central Excise Rules, 1944.

Legal Aspects of Reply to SCN.

- **VAGUE / ARBITARY AND CONTRADICTORY SCN -**

- \- COMMISSIONER OF C. EX., BANGALORE Versus BRINDAVAN BEVERAGES (P) LTD. 2007 (213) E.L.T. 487 (S.C.) has held that SCN is foundation on which the Department has to build up its case

- \- BALAJI ELECTRICALS. 2023 (74) G.S.T.L. 284 (M.P.) – SCN was vague to extent of not communicating relevant information and material - Assessee was not able to respond to show cause notice and, therefore, it was submitted that final order passed by authority were vitiated in law

Legal Aspects of Reply to SCN.

- VIRANI METAL INDUSTRIES. 2023 (71) G.S.T.L. 283 (Guj.) -

Registration - Cancellation of registration - Show Cause Notice - Principles of natural justice - SCN was issued without assigning any particular reason - Order cancelling registration was passed pending investigation by DGGI - *HELD:* Language of SCN did not communicate reasons - SCN issued was vague as it was bereft of any reasons - Reasons are heart and soul of order and non-communication of same amounts to denial of reasonable opportunity of hearing resulting in miscarriage of justice - SCN were to be set aside.

- NKAS SERVICES PVT. LTD - 2022 (63) G.S.T.L. 18 (Jhar.) Charges proposed to be levelled in notice are required to be specific and also to be informed properly.

Principles of res-judicata

- **CCE Allahabad vs. Surcoat Paints (P) Ltd., 2008 (232) E.L.T. 4 (S.C.)**
- Precedent - Finality of order - Non-challenge of similar order, effect - Revenue by not filing appeal accepted decision in another case which relied upon by Tribunal in its impugned order - Revenue precluded from challenging similar order passed in respect of another unit. [para 11]
- **SHREE BAIDYANATH AYURVED BHAWAN LTD. 2009 (237) E.L.T. 225 (S.C.)**
- Classification of goods - Change in - No justification for changing the classification without a change in nature or a change in use of the product, something more is required for changing the classification especially when product remains the same.
- **HIRA CEMENT 2006 (194) E.L.T. 257 (S.C.).**
- Order - Finality - Non-filing of an appeal against an order in any event would not be a ground for refusing to consider the matter on its own merit - When public interest is involved in interpretation of Law, the Court is entitled to go into the questions - **Precedent laid upon by the Tribunal expressly overruled by the Supreme Court subsequently.**

SCN – ISSUED AFTER PAYMENT.

Mere Payment of tax should not be construed as acceptance.

Dunlop India Ltd., 1983 (13) E.L.T. 1566 (SC). The observation Hon. Supreme Court is as follows:

- **40.** At one stage Mr. Sanghi pointed out that in certain Bill of Entry of Dunlop India Limited, their Agents, Messrs Mackinnon, Mackenzie & Co., Private Ltd., gave the I.C.T. Item No. 87 with regard to the imported V.P. Laitex. This, according to Mr. Sanghi, clearly shows how the appellants themselves have understood the matter. **There is, however, no estoppel in law against a party in a taxation matter. In order to clear the goods for the Customs, the appellant Agents may have given the classification in accordance with the wishes of the authorities or they may even be under some misapprehension. But when law allows them the right to ask for refund on a proper appraisement and which they actually applied for, we do not attach any significance to this aspect of the matter pointed out by counsel. The question is of general importance and must be decided on its merits.**

Legal Aspects of Reply to SCN.

- **CROSS – EXAMINATION.**

1. Noticee has right to ask for cross-examination of persons whose statement have been recorded and have been relied upon in the SCN.

2. **JINDAL DRUGS PVT. LTD. 2016 (340) E.L.T. 67 (P & H).**
   - Adjudication - Procedure - Cross-examination, opportunity of - Procedure prescribed in Section 9D (1) of Central Excise Act, 1944 to be scrupulously followed, as much in adjudication proceedings as in criminal proceedings relating to prosecution - Adjudicating authority cannot straightaway rely on statement recorded during investigation / inquiry before Central Excise officer, unless and until he can legitimately invoke clause (a) of Section 9D (1) ibid.

Cross-Examination

- ANDAMAN TIMBER INDUSTRIES. 2015 (324) E.L.T. 641 (S.C) - Principles of natural justice violated making order nullity.

- **Section 136 under GST Act - Similar provisions.**

- **KIN-SHIP SERVICES (INDIA) PVT. LTD. 2020 (36) G.S.T.L. 331 (Kar.).**

Dispute relating to Cenvat credit availment without declaration in ST-3 returns - Single judge holding that cross-examination cannot be claimed as matter of right and providing opportunity to petitioners to adduce any evidence to substantiate its stand - **Question of cross-examination of petitioner by himself and adjudicating authority would not arise -** Rights of petitioners protected as liberty granted to adduce any evidence to substantiate their stand with direction to authority to consider same and pass appropriate orders.

Allegation vs Evidence

- SCN Allegations to be supported by tangible evidence.
- Demand based on assumption and presumption not valid.
- Judgements where notices which were based on assumption and presumptions have been set aside:
- ANANT JIGNESH SHAH. 2021 (44) G.S.T.L. 342 (Guj.)
- ALPS CONTAINER PVT. LTD. 2018 (364) E.L.T. 103 (Tri. - Mumbai)
- CHAUDHARY STEEL TRADERS. 2015 (329) E.L.T. 934 (Tri. - Del.)
- NATIONAL ALUMINIUM COMPANY LTD. 2004 (177) E.L.T. 599 (Tri. - Del.)
- YASHA OVERSEAS. 2017 (345) E.L.T. 566 (Tri. - Mumbai).

Burden of Proof

- Burden of Proof to prove allegation is on revenue including burden of proof to prove mala-fide intent is on the Revenue.

- MEENESH CONSTRUCTION CO. 2018 (12) G.S.T.L. 97 (Tri. - Del
- Demand - Proof - Burden of proof - Person who alleges should establish fact - Assessee cannot be asked to establish that it had not rendered taxable service alleged in show cause notice. *[para 4].*

- ITC LIMITED. 2010 (257) E.L.T. 514 (Kar.).
- Demand - Limitation - Burden of proof - Intention to evade duty by invoking extended period of limitation to be proved by Department - Section 11A of Central Excise Act, 1944. *[para 29]*

Burden of Proof

- ***Once initial burden of Proof discharged by revnue then onus shifts to Assessee.***

  - AGGARWAL INDUSTRIES LTD. 2011 (272) E.L.T. 641 (S.C)

Onus to prove under-valuation is on the revenue but once the revenue discharges the burden of proof by producing evidence of contemporaneous imports at a higher price, the onus shifts to the importer to establish that the price indicated in the invoice relied upon by him is correct. [para 12].

Commissioner vs. Ashirwad Foundries Pvt. Ltd. — (2023) 4 Centax 265 (Cal.)

Cenvat credit - Fraudulent claim - Assessee's director accepted that suppliers were non-existent and fraudulent nature of cenvatable invoices - Other statements showed that transactions were fictitious - No retraction of statements - In reply to show cause notice, neither denial nor allegations made against department while recording statements - Verification of registration of transportation vehicles on "VAHAN" indicated that they were non-transport vehicles, but were three wheelers, mopeds etc., and not trucks - HELD: Statements could be relied on as they were not retracted - Department had sufficient material to establish fraudulent availment of credit and discharged its burden of proof - Burden had shifted to assessee to show that transactions were genuine and they failed to discharge it.

Burden of Proof under section 155

- **SECTION 155. Burden of proof. —** 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.

- Shifts onus to Prove ITC eligibility on assessee.
- Only applies to ITC and not to tax.

- Nahasshukoor. 2023) 13 Centax 316 (Ker)
- Input tax credit - Non-production of tax invoice - Burden is on dealer who claims benefit of input tax credit to prove that he is eligible for such benefit.

Burden of Proof under section 155

- ECOM GILL COFFEE TRADING PVT. LTD. - 2023 (72) G.S.T.L. 134 (S.C.)

- This burden of proof could not be shifted on revenue by mere production of invoices or fact of having made payments by account payee cheque to seller - Purchase transaction was required to be proved beyond doubt by furnishing other details and documents viz. name and address of selling dealer, details of vehicle which had delivered goods, payment of freight charges, acknowledgement of taking delivery of goods etc.- Aforesaid information was required in addition to tax invoices and payment particulars for establishing actual physical movement and receipt of goods.

REPLY TO SCN - FACTS

- SCN reply should contain Facts and Grounds of reply.
- Facts should contain all relevant facts pertaining to the demand made in SCN.
- Details of relevant old correspondence made before Audit / Investigation authority to be enclosed.
- Full Disclosure of facts in reply.
- If SCN contains any contrary facts then statement of facts submitted by the assessee should also give supporting documents to substantiate the true facts mentioned in its reply.

REPLY TO SCN – GROUNDS OF REPLY

- Grounds - Can be bifurcated into divisions – **e.g.** submissions on merits, limitation, penalty, etc.
- Break-up of demand when same consists of various grounds.
- Details to be asked from department – **e.g.** SCN Issued on the basis of various parameters.
- Grounds of appeal should sufficiently cover all the submissions.
- Each submissions can be made as alternate and independent submissions.
- Submissions which are taken as an alternate submissions should be "without prejudice".
- Submissions which are made under a presumption of acceptance should specifically state that to avoid any findings relating to acceptance.

REPLY TO SCN – GROUNDS OF REPLY

- Reliance on judgements to be made explicit with co-relation with the statutory provisions.
- Ratio of judgements will be applicable only when facts or circumstances are similar or law is similar.
- Valuation / computation should be supported by working and other documentary evidence.
- Annexures to be attached with reply so that the same are taken on record. If records are voluminous then samples can be attached.
- Certification from CA or Vendor, etc should be attached with the reply.
- Para-wise submissions may be incorporated.
- Scope of Additional Evidence in Future appeal proceedings.

REPLY TO SCN – Presentation of Grounds

- General Rebuttal to the allegations and statement that different grounds are without prejudice to each other.
- Submissions on legality of SCN – e.g. bunching, jurisdiction,
- Submissions on Merits.
- Other legal submissions – DRC-01A not issued, etc.
- Submissions on Computation.
- Submissions on Time –barring.
- Submissions on interest and penalty.
- Request for personal hearing.

Omission to file reply on merits.

- Impact of any Omission to file reply on merits - May lead to acceptance of merits.
- Demand can be contested on technical points also.
- Merits to be conceded only when no case.

Legal Maxims to be used.

- ***Audi alteram partem -*** "Hear the other side‟
- ***Lex non cogit ad impossibilia -*** "The law does not compel impossibility‟.
- ***Res judicata -*** "A matter already judged"

Use of AI Tools and precautions.

- ***Website providing legal material – taxmann, TMI, etc***
- ***Free websites like Indian Kanoon.***
- ***Online free AI tools.***
- ***Paid tools like Taxmann AI use only legal database.***
- ***AI Tools likely to give incorrect results, judgements, etc . Hence result of AI Tools to be checked.***
- ***Discrepancies to be pointed out if Department order based on AI and contains discrepancies / incorrect contents.***

Preparation of submissions.

- Preparation of sets –
- Legible copies, page numbering.
- Index
- Acknowledged set (full set to be kept for record).

Case Study 1

- Taxpayer registered and supplying goods taxable at 28%.
- Audit noted 'other income' in financials on which tax was not discharged.
- SCN issued demanding 28% tax on other income.
- Allegation of Mala-fide intent – Section 74 invoked.

Case Study 1 - Grounds for reply:

- No evidence that other income is on account of supply.
- No evidence that other income is for supply of goods @ 28%.
- Mere accounting of income will not result in tax liability.
- Demand based on presumption and assumption.
- Nature of income to be explained with proper evidence like ledgers, supporting documents, certificates, CA certificates, etc.
- Disclosure in Balance sheet – no suppression.
- Figures disclosed in 9C reconciliation.
- Balance sheet also uploaded along with GSTR 9C.

Case Study 2

- Taxpayer registered and supplying goods taxable with full input tax credit
- Audit noted ‘other income – discount allowed by Suppliers’ in financials.
- SCN issued demanding 18% tax on other income.
- SCN for FY 2024-25 issued under section 73 of CGST Act, 2017.

Case Study 2 - Grounds for reply:

- No evidence that other income is on account of supply.
- Mere accounting of income will not result in tax liability.
- Demand based on presumption and assumption.
- Discount received from suppliers is not a supply.
- Supporting documents to be provided.
- If tax paid on gross amount of invoice by suppliers then there is double taxation.
- SCN should be issued under section 74A.

Case Study 3

- SCN (s.74) issued denying credit to 'Start-Up' citing non-existence of business until date of monetization (start of revenues) and customer acquisition costs incurred charged off as period cost and disallowed in income-tax (final order).

- Credit was not utilised till date of SCN.

- Interest demanded under section 50(1).

Case Study 3 - Grounds for reply:

- Nature of business to be explained.
- Section 16 allows ITC for in furtherance of business.
- No time limit for utilisation of ITC.
- Interest not applicable as ITC unutilised.
- Interest not demandable under section 50(1).

Case Study 4

- ASMT10 for non-reversal of credit on exempt TO FY 2020-21.
- ASMT -10 issued under section 73.
- Reply filed objecting to ASMT-10 on grounds that:
  - No requirement to reverse ITC on total credit.
  - ITC already reversed on Total ITC.

- No DRC-01A issued.
- SCN issued demanding tax on exempted income disclosed in returns.
- SCN issued in March 2025 under section 74.

Case Study 4 - Grounds for reply:

- SCN beyond ASMT-10 as no allegation of demand.
- SCN cannot be issued under section 74 as ASMT-10 was issued.
- Tax not payable on the exempt income.
- Demand is time-barred hence proceedings are also time barred.

Case Study 5

- SCN issued by Audit Officer denying credit availed on invoices under section 17(5).
- SCN only includes a consolidated figure without any invoice wise break up.
- Subsequently on follow up list is provided based on GSTR 2A.
- The list includes invoices ‘Sunrise Hotels Ltd’, Housekeeping vendors, Grocery vendors, Water suppliers, etc.

Case Study 5 - Grounds for reply:

- Demand on presumption / assumption.
- SCN is vague.
- No specific sub-clause of section 17(5).
- No listing provided hence violation of principles of natural justice.
- Seek listing as a prejudice submissions.
- Furnish invoice wise reply with supporting evidences.
- Nature of service cannot be determined from name or HSN of registration certificate of vendor.

Personal Hearing.

- Section 75 - (4) An opportunity of hearing 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.

M.R. HITECH ENGINEERS (P) LTD. - 2020 (41) G.S.T.L. 29 (Mad.)

- Section 75 (5) The proper officer shall, if sufficient cause is shown by the person chargeable with tax, grant time to the said person and adjourn the hearing for reasons to be recorded in writing:

Provided that no such adjournment shall be granted for more than three times to a person during the proceedings.

Personal Hearing.

- REGENT OVERSEAS PVT. LTD. 2017 (6) G.S.T.L. 15 (Guj.) – Three dates in one notice to be treated as one date.

- **In case of change in adjudicating authority re-hearing to be given.**

CHANDRAKANT K. ZANGDA - 2006 (205) E.L.T. 1175 (Tri. – Mumbai).

BINAYKIA SYNTHETICS PVT. LTD. - 2008 (224) E.L.T. 294 (Tri. - Mumbai).

Personal hearing - Preparations

- Preparation of synopsis (if required).
- Additional Submissions (either to file earlier or record it in PH).
- Compilation of relevant case laws.
- Signing of PH note.
- Copy of PH note.

Thank You

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