The Institute of Chartered Accountants of India

SE

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

GST & INDIRECT TAXES COMMITTEE

Webinar Series on GSTAT Part V – "Representation in Adjudication Proceedings"

Date: 01-09-2026

By FCA ARCHANA JAIN

AGENDA

7 Core Modules — Session Roadmap

This session covers the full lifecycle of a GST adjudication proceeding — from the moment you receive a Show Cause Notice to the day an Order-in-Original lands on your desk. Each module is self-contained and builds on the previous.

01

Written Synopsis & Hearing Record

Preparation checklist, synopsis structure, incomplete PO recording, and post-hearing documentation.

02

Jurisdiction Objections

Administrative & subject-matter jurisdiction, monetary limits, dual-authority assignment, challenge strategy.

03

Limitation

Statutory timelines, mandatory 3-month gap, Sec 169 portal service, Sec 75(10) deemed conclusion.

04

Demand: Sec 54 v. 73/74

Refund rejection vs. recovery proceedings, Circular 125 Para 20(b), Hybon Technologies (SC 2025).

05

Demand: Sec 63 v. 64

Best judgment assessment (unregistered persons) vs. summary assessment — preconditions and defences.

06

Demand: Sec 73 v. 74 v. 74A v. 76

Jurisdiction, burden of proof, penalty windows, fraud classification, litigation strategy.

07

Penalties: Sec 122–127

Nature of penalty provisions, Sec 126 checklist, structuring penalty hearings, mitigation arguments.

MODULE 01

Written Synopsis & Hearing Record

Preparation checklist · Synopsis structure · Hearing flow · Protective measures · Post-hearing documentation

MODULE 01

Personal Hearing Rights — The Legal Foundation

The right to a personal hearing is not a procedural formality — it is a substantive safeguard rooted in the principles of natural justice. Four key questions dominate practice.

Can an order be passed without a Personal Hearing?

No. *RP Industries v. State of UP*, 2025 (102) GSTL 111 (All): An order passed without affording a personal hearing violates principles of natural justice and is liable to be set aside.

Minimum time before PH can be scheduled

Sec 73(8) r/w 73(9) | Sec 74(8) r/w 74(9) | Sec 74A(6) r/w 74A(8)/(9) — the benefit payment window must expire first. *Raymond Ltd v. UOI* WP 26693/2022 | *AM Marketplaces v. UOI* WP 7941/2025 (Bombay HC).

PH date fixed in DRC-01 — reply filed after PH date / not filed

Cosmopolitan Solar Energiser v. State of WB, 2025 (103) GSTL 382 (Cal): Even where the taxpayer has not replied within time, the Proper Officer must still afford an opportunity before passing the order.

Hearing rights — mandatory or merely directory?

Mandatory. *Sayyad Akhtar Ali v. M.P.* (MP HC, Dec 2025) — PH rights are mandatory, not directory. *Allied Enterprises v. UOI* (MP HC) — orders quashed for denial of hearing opportunity.

MODULE 01

Preparation Checklist & Structure of Written Synopsis

Pre-Hearing Preparation

- Compile SCN + replies + RUD + page-numbered annexure — documents on the right side of your file
- One-line SCN summary: **Period | Quantum | Principal allegation** — if you cannot state this in one line, you are not ready
- Carry Authorisation u/s 116 CGST — hard copy + digital; send to PO before PH by email
- Argue **Limitation / Jurisdiction FIRST** — they go to the root; merits arguments come after

Synopsis Structure — What to Include

- ≤3 lines: Period · Quantum · Allegation
- Grounds — principle only; no new grounds at this stage
- Best points on facts + law — not a re-statement of the reply
- One binding decision most identical to your facts per ground
- Evidence index + Relief sought — concisely stated

Delivery Protocol

- Hand over hard copy + soft copy **before hearing commences**
- Obtain written acknowledgment from PO — non-negotiable
- At hearing: prioritise 2–3 strongest points; follow synopsis order

MODULE 01

Record of Personal Hearing — Protective Measures

The hearing note recorded by the Proper Officer is a legal document. Discrepancies between your record and the PO's record constitute a standalone ground of appeal. Protect yourself at every stage.

During the Hearing

- Read the PO's hearing note carefully **before signing** — does it correctly capture your submissions? Does it record an admission you never made?
- Politely disagree and request correction before signing
- If PO refuses to correct — note disagreement in writing and submit separately the **same day**
- New grounds introduced at PH — immediately reduce to writing; PO must record the substance and afford further opportunity

After the Hearing — Always Do These

- Send email immediately after PH: grounds raised, documents submitted, PO's observations, next date — creates an independent contemporaneous record
- File **'Reply Pursuant to Hearing'** if new points emerged during the hearing — Rule 142(2) CGST Rules
- A discrepancy between your email record and the PO's hearing note = a fully usable ground of appeal

Jurisdiction objections must be raised in the **first reply**. Belated objection = deemed waiver. Do not wait for the order.

MODULE 02

Jurisdiction Objections

Administrative jurisdiction · Subject-matter jurisdiction · Monetary limits · DGGI All India jurisdiction · Challenge strategy

MODULE 02

Administrative vs. Subject-Matter Jurisdiction

Administrative Jurisdiction

- **Dual GST assignment:** CBIC Circular 01/01/2017 — every taxpayer is assigned to either Centre or State. Notice by an officer NOT assigned to your taxpayer category = VOID AB INITIO, not merely voidable.
- Sec 6(1) CGST: where one authority has initiated proceedings, the other authority cannot proceed simultaneously — anti-parallel proceedings principle.
- **RAISE AT THE FIRST REPLY** — belated objection is treated as waiver; you lose the point permanently.
- **Monetary limits — CBIC hierarchy:** Superintendent: up to ₹20L (combined CGST+IGST) | Dy./Asst. Commissioner: ₹20L–₹2 Cr | Addl./Jt. Commissioner: above ₹2 Cr.
- **DGGI SCNs:** Circular No. 239/33/2024-GST dt. 04.12.2024 — Addl./Jt. Commissioners of specified Commissionerates have All India jurisdiction.

Subject-Matter Jurisdiction

- Is the transaction a 'supply' at all u/s 7 CGST? If not — no GST demand can be raised whatsoever.
- Schedule III (non-supply activities)? PO has no jurisdiction to raise demand on these items.
- Wrong head of tax: IGST vs. CGST/SGST — demand is jurisdictionally flawed where the wrong tax is invoked.
- Valuation: confined to Rules 28–31; PO cannot substitute his own estimate outside these rules.
- ITC demand: specific to Sec 16–17; cannot be clubbed with output tax demand unless squarely arising from the same transaction.

⚠ Audit/Enforcement officer acting as AO: Challenge under Circular No. 31/05/2018-GST Para 6 — adjudication must be by officer other than the detecting officer. *Gullapalli Nageswara Rao v. APSRTC*, AIR 1959 SC 308 — Nemo Judex in Causa Sua.

MODULE 03

Limitation
& Online Service

Statutory timelines · Mandatory 3-month gap · Sec 169 portal service · Sec 75(10) deemed conclusion · Live alerts for May 2026

MODULE 03

Statutory Limitation — SCN Linked to Order Deadline

There is **NO independently fixed SCN date** in the Act. The Act prescribes the ORDER deadline. The SCN must be issued within a derived window – at least 3 months before the order deadline (Sec 73) or 6 months before (Sec 74).

Sec 73 — Non-Fraud (≤FY 2023-24)

- Order by: 3 yrs from GSTR-9 due date [Sec 73(10)]
- SCN latest: 2 yrs 9 months from GSTR-9 due date
- Penalty: 10% of tax or ₹10,000 (whichever higher)

Sec 74 — Fraud (≤FY 2023-24)

- Order by: 5 yrs from GSTR-9 due date [Sec 74(10)]
- SCN latest: 4 yrs 6 months from GSTR-9 due date
- Penalty: 100% of tax

Sec 74A — Unified (FY 2024-25 onwards)

- Order by: 12 months from SCN (+6 months extendable)
- SCN latest: 42 months from GSTR-9 due date (no separate fraud/non-fraud deadline)

⚠ **Live Alert — Sept 2026:** Sec 73 FY 2022-23: SCN latest date 30.09.2026 (order deadline 31.12.2026) — approaching fast. FY 2020-21 & 2021-22 Sec 73 orders are already time-barred. Sec 74 FY 2020-21: SCN latest date 28.08.2026 (order deadline 28.02.2027) — imminent. **Check EVERY recent SCN for limitation as your FIRST ground.**

Sec 75(10) Proviso: If order is NOT passed in time → proceedings are **DEEMED concluded in favour of the assessee**. Raise this proactively, even before the order is passed.

MODULE 03

Mandatory 3-Month Gap — SCN to Order — Growing Judicial Consensus

The 3-month gap (Sec 73) / 6-month gap (Sec 74) is a **substantive taxpayer protection** — not merely a reference point for computing limitation. If the order is passed before this period elapses, the taxpayer's Sec 73(5)/(8) voluntary payment rights are extinguished, and the order is liable to be quashed.

AP HC Feb 2025 — Cotton Corporation of India v. Asst. Commissioner (W.P.1463/2025)

SCN for FY 2020-21 issued 30.11.2024; statutory SCN deadline was 28.11.2024 — just 2 days late. Court: limitation periods are mandatory and cannot be condoned. SCN quashed.

Delhi HC Oct 2025 — C.H. Robinson Worldwide Freight India v. Addl. Commissioner CGST (W.P.(C) 15508/2024)

3-month gap mandatory. SCN served to wrong address after the department itself had approved an address update = invalid service. Technical portal glitch = no excuse. SCN and order both quashed.

Delhi HC Jul 2025 — Tata Play Ltd v. Sales Tax Officer (W.P.(C) 4781/2025)

'Three months' u/s 73(2) = 3 calendar months, NOT 90 days. Sec 75(5) = maximum 3 adjournments only with sufficient cause; it is not a minimum entitlement.

Bombay HC Jan 2026 — A.M. Marketplaces v. UOI (WP 7943/2025)

Order passed 2 months 13 days after SCN — quashed. 3-month gap is mandatory, not optional. Protects: (a) right to reply; (b) Sec 73(5) voluntary payment right; (c) Sec 75(4) personal hearing right.

MODULE 03

Online Service — Sec 169 | 4-Step Limitation Checklist

4-Step Limitation Checklist

1. **Step 1:** Identify the due date of GSTR-9 for the disputed financial year
2. **Step 2:** Compute order deadline = GSTR-9 due date + 3 yrs (Sec 73) / + 5 yrs (Sec 74)
3. **Step 3:** Derive SCN latest date = Order deadline minus 3 months (Sec 73) / 6 months (Sec 74)
4. **Step 4:** Was SCN issued after the latest date? → TIME-BARRED. Raise as **First Ground** in your reply.

Sec 169 — Online Service: Key Issues

- Portal upload = deemed valid service even if taxpayer was unaware — obligation to monitor the GST portal regularly and continuously.
- Uploading ≠ Effective Communication — where no response is received, other modes u/s 169 must be attempted; *Bambino Agro Industries Ltd. v. UOI*, Allahabad HC, Dec 2025 — portal upload without further attempt ≠ effective service.
- Absence of read receipt / download log — argue notice was not actually accessed; challenge effective service.
- Uploading SCN but failing to grant PH — fatal to the order; independent ground to quash.
- Categorisation error on the portal — simultaneously raises a jurisdiction objection.

MODULE 03

Sec 75(10) Proviso — The Assessee's Trump Card

If the order is **NOT passed within the statutory time limit** → proceedings are **DEEMED CONCLUDED IN FAVOUR OF THE ASSESSEE.** This is a statutory right — not a discretionary remedy.

How to Use This Provision

- Raise as **First Ground in the reply itself** — do not wait for the order to be passed out of time.
- Also take this point separately where the SCN was within limitation but the order was passed late.
- File a separate representation to the PO pointing out that the order deadline has passed.

Practical 3-Step Checklist

1. Is the SCN time-barred? Compute GSTR-9 due date + 3/5 yrs, subtract 3/6 months
2. Is the order time-barred? Compare OIO date with order deadline u/s 73(10)/74(10)
3. If either is time-barred → First Ground in reply AND in written synopsis

Key Principle — Limitation is Mandatory, Not Condonable

- *Cotton Corporation of India* (AP HC 2025) — SCN 2 days late = time-barred; limitation is mandatory and non-condonable regardless of circumstances.
- *C.H. Robinson Worldwide Freight* (Delhi HC 2025) — portal glitch is no excuse; wrong address = invalid service even if technically uploaded.
- *A.M. Marketplaces* (Bombay HC 2026) — order passed 2 months 13 days after SCN = quashed; 3-month gap is mandatory and protects three independent taxpayer rights.

⚠ An order passed after the statutory deadline is not merely voidable — it is void. The deeming provision operates automatically.

MODULE 04

Demand: Sec 54 v. Sec 73/74

Refund rejection vs. recovery proceedings · Circular 125 Para 20(b) · Hybon Technologies (SC 2025)

MODULE 04

Refund Rejection vs. Recovery — Choosing the Right Battleground

Sec 54 — Refund Rejection (Claim Pending, Not Yet Paid)

- SCN in Form RFD-08 → Order in Form RFD-06
- No DRC-01 required; no penalty imposable
- RFD-08 issued without DRC-01 = defective demand — challenge the form of proceedings
- Applies only to claims that are still pending; cannot be used to recover an erroneous refund already paid out

Sec 73/74 — Recovery (Refund Already Paid Erroneously)

- SCN in Form DRC-01 → Order in Form DRC-07
- Penalty mandatory u/s 73(9) / 74(9)
- Circular 125/44/2019 Para 20(b) — both proceedings may run simultaneously
- Challenge if Sec 74 is invoked without a specific fraud allegation with particulars

Illustrations — Which Provision Applies?

- ₹100 applied → ₹90 provisional → ₹70 final → ₹30 rejected: **Sec 54 only** — no DRC-01, no penalty, RFD-06 is the correct order form.
- ₹100 applied → ₹80 paid → ₹20 found ineligible ITC after payment: **Sec 73/74 DRC-01 required** to recover the ₹20 already paid out.

What to Press in the Personal Hearing

- Re-crediting to Electronic Credit Ledger only after finality of the order → double jeopardy argument if credit is reversed before finality.
- Circular 125 = administrative convenience only — it cannot override the statutory rights of the taxpayer.

Always identify which form has been issued before filing your reply — a reply to the wrong proceedings is dangerous.

MODULE 04

The Hybon Technologies Principle — ITC Admissibility Beyond Refund Authority's Scope

> The refund authority under Sec 16 IGST r/w Sec 54 CGST has **NO jurisdiction to examine the admissibility or eligibility of ITC** while processing a refund claim — that examination is alien to and beyond the scope of the refund authority's powers. Revenue's only route is a fresh SCN u/s 73/74.

Supreme Court — 29.08.2025 — Special Commissioner, Zone 11 & Ors. v. Hybon Technologies Pvt. Ltd. (SLP Diary No. 21165/2025)

Revenue's SLP dismissed. SC found no reason to interfere with the Delhi HC order. The Delhi HC ruling stands confirmed and continues to govern all similar fact situations.

Delhi HC — 18.03.2025 — Hybon Technologies Pvt. Ltd. v. Special Commissioner, Zone 11 (W.P.(C) 3137/2025)

Authority under Sec 16 IGST r/w Sec 54 CGST does not empower revenue officers to examine ITC admissibility while adjudicating refund claims. Order passed without jurisdiction — writ maintainable as a remedy.

CBIC Circular No. 125/44/2019-GST dt. 18.11.2019 — Para 20(b)

Refund rejection u/s 54 = applies to pending claims only. Recovery of erroneous refund already paid = Sec 73/74. Both proceedings may run simultaneously as the facts of the case may require — but each has its own prescribed form, penalty structure, and limitation.

MODULE 05

Demand: Sec 63 v. Sec 64

Best judgment assessment (unregistered) · Summary assessment · Preconditions · Curative remedies

MODULE 05

Best Judgment Assessment — Sec 62, 63 & Summary Assessment Sec 64

Sec 62 — Non-Filers (Registered)

- Was 15-day notice u/s 46 actually given before assessment? If not — order is procedurally invalid.
- Demand access to material relied upon: GSTR-1 of counterparty / EWB data / GSTR-07 TDS/TCS data.
- File valid GSTR-3B + reconciliation vs. ASMT-13 → order withdrawable; interest on NET tax only.

Sec 63 — Best Judgment (Unregistered / Cancelled)

- Applies ONLY where: failed to register though liable, OR registration cancelled u/s 29(2) and person still liable.
- Returns filed for period of cancellation → demand must be under Sec 73/74, not Sec 63.
- Establish person NOT liable for registration — ₹20L threshold / fully exempt → Sec 63 jurisdiction ousted.
- ASMT-14 must disclose all material relied upon + give minimum timelines — if not, challenge.
- Notice u/s 63 must be both 'issued' AND 'served' — issue ≠ service [*Arupa Nanda Dhal*, Orissa HC 2024].

Sec 64 — Summary Assessment: Three Mandatory Preconditions

- (a) Evidence of tax liability must be SELF-EVIDENT and readily available — not inferred or extrapolated.
- (b) Revenue risk must be SPECIFIC, IDENTIFIABLE AND IMMINENT — not speculative.
- (c) PRIOR written approval of Additional / Joint Commissioner — post-facto approval is insufficient.
- File curative application (ASMT-16) within 30 days — do this IMMEDIATELY; do not wait.
- Estimation / extrapolation / multiplication on a base figure = NOT self-evident evidence → Sec 64 order is invalid.

MODULE 06

Demand: Sec 73 · 74 74A · 76

Jurisdiction · Burden of proof · Penalty windows · Fraud classification · Payment strategy · Litigation approach

MODULE 06

Sec 73 / 74 / 74A / 76 — Comparative Framework

Parameter	Sec 73 (Non-Fraud ≤FY 23-24)	Sec 74 (Fraud ≤FY 23-24)	Sec 74A (FY 2024-25+)	Sec 76
Order by	3 yrs from GSTR-9 due date	5 yrs from GSTR-9 due date	12 months from SCN (+6 months)	1 yr from notice
SCN latest date	2 yrs 9 months from GSTR-9	4 yrs 6 months from GSTR-9	42 months from GSTR-9	—
Pay before SCN	No penalty [73(5)]	15% penalty [74(5)]	No / 15% per classification	N/A
Pay within 60d of SCN	No penalty [73(8)]	25% penalty [74(8)]	60-day window; 15% or 25%	N/A
Penalty on order	10% or ₹10,000 [73(9)]	100% of tax [74(9)]	Non-fraud 10% / Fraud 100%	= amount collected [76(2)]
Fraud classification	No fraud alleged	Frozen at SCN stage	PO classifies IN THE ORDER	N/A — absolute liability
Sec 75(2)	N/A	Fraud not proved → treated as Sec 73; penalty reduced	PO reclassifies to non-fraud limb in order	N/A

MODULE 06

Payment Strategy & Downgrading Sec 74 → Sec 73

Penalty Escalation — Payment Windows

Before SCN

Sec 73(5): **No penalty** | Sec 74(5): **15%**

Within 30d of SCN

Sec 73(8): **No penalty** | Sec 74(8): **25%**

Within 30d of OIO

Sec 73: **10%** | Sec 74(11): **50%**

After appeal / HC

Full 100% penalty + Interest 18–24% — the most expensive outcome

Arguments to Downgrade Sec 74 → Sec 73

- Fraud must be specifically alleged with particulars — SCN must read like a charge-sheet, not a spreadsheet [*GR Infra Projects*, SC — SLP 33594/2025]
- Incorrect GSTR-3B filing ≠ wilful misstatement / suppression — at best a bona fide error
- 'Suppression' = failure to disclose **WITH INTENT TO EVADE** — not mere omission [*Pushpam Pharmaceuticals*, SC (1995) 3 SCC 462]
- Revenue's full knowledge of all facts negates suppression [*NCS Pearson*, Karnataka HC, WP 7635/2024, dt. 16.07.2025]
- Sec 75(2): fraud not proved → demand **MUST** be treated as Sec 73; penalty is massively reduced
- Under Sec 74A: fraud vs. non-fraud is classified IN THE ORDER — persuade the PO at the PH stage before the order is passed

MODULE 06

Sec 76 — Tax Collected But Not Paid | Sec 128A — Amnesty Scheme

Sec 76 — Tax Collected But Not Paid

- **Absolute obligation** — notwithstanding clause — applies regardless of whether the underlying supply is taxable or not.
- No limitation defence available; no ITC set-off permitted against this liability.
- Penalty = amount collected but not deposited; interest u/s 50 applies additionally.
- **Key defence:** The amount was NOT collected 'as tax' — it was part of a composite price element or contractual adjustment, not a separately charged tax amount.
- Any excess after adjustment is refundable or credited to the Consumer Welfare Fund.

Sec 128A — Amnesty Scheme (Confirm Eligibility Immediately)

- Applicable only to **Sec 73 demands for FY 2017-18, 2018-19 and 2019-20**.
- Principal tax must have been paid in full by **31.03.2025**.
- Where eligible: **interest AND penalty are waived** — substantial saving for clients with legacy demands.
- File claim under Rule 164 with the adjudicating officer — the officer must pass a formal waiver order.
- Even if an OIO has already been passed and an appeal filed — check immediately if the Sec 128A waiver can be availed before pursuing the appeal further.

Sec 128A waiver = interest + penalty saved on three financial years of legacy Sec 73 demands. Evaluate this for every eligible client without delay.

MODULE 06

Key Judgments — Sec 73 / 74 / 74A

SC 2025 — M/s Sriba Nirman Company v. Commissioner, Guntur

Prolonged non-filing of GSTR-3B + non-payment = suppression of facts where intent to evade is inferable from conduct. Payment of tax before SCN without 15% penalty u/s 74(5) does not by itself bar Sec 74 proceedings from being maintained.

SC — SLP Pending — GR Infra Projects Ltd v. UOI (SLP (C) No. 33594/2025)

Sec 74 SCN containing only tax figures without allegations, factual bases or material particulars is prima facie unsustainable. **'Numbers are not allegations.'** The SCN must read like a charge-sheet — it must plead the who, what, when, and how of the alleged fraud.

Karnataka HC Jul 2025 — M/s NCS Pearson Inc. v. UOI (WP 7635/2024 dt. 16.07.2025)

SCN u/s 74 invalid where Revenue had full knowledge of all facts from AAR/AAAR proceedings. Revenue's full knowledge negates wilful suppression. Wilful suppression ≠ mere failure to pay tax.

Allahabad HC Sep 2025 — M/s Safecon Lifescience v. Addl. Commissioner Grade-2 (Writ Tax 389/2023 dt. 09.09.2025)

Sec 74 proceedings cannot sustain without evidence of fraud, wilful misstatement or suppression with intent to evade. Unverified intelligence reports + supplier registration cancellation are insufficient. Mens rea is required and must be established on evidence.

MODULE 07

Penalties: Sec 122 to 127

Nature of penalty provisions · Sec 126 checklist · Structuring penalty hearings · Mitigation arguments · Double imposition prohibition

MODULE 07

Penalty Provisions — Section-wise Snapshot

Section	Nature	Quantum	Key Argument at PH
Sec 122(1)	21 listed offences — no invoice, false invoice, non-payment, wrong ITC, etc.	Tax evaded or ₹10,000 (whichever higher)	Argue conduct does NOT fit any of 21 listed circumstances; mens rea required
Sec 122(1A)	Beneficiary of fake ITC chain (recipient)	= ITC availed	Show invoice was genuine; challenge supplier's cancellation as not binding on recipient
Sec 125	Catch-all — not covered by any specific provision	Up to ₹25,000	Cannot be invoked where a specific penalty provision applies — identify the specific provision
Sec 126	Disciplines all penalties — protects minor / procedural / first-time breaches	Nil to proportionate	Run the Sec 126 checklist at every penalty hearing — most powerful mitigation tool
Sec 127	Standalone penalty — NOT linked to demand	Per Sec 122/125 scale	Separate SCN required; limitation requirements and prescribed form apply

⚠ **Double Imposition:** Sec 73/74 penalty AND Sec 122 penalty — double imposition on the same breach is NOT permissible. Raise this explicitly where both are levied simultaneously.

MODULE 07

Structuring Penalty Hearings — Sec 126 Checklist & Mitigation

Sec 126 Checklist — Run at Every Penalty Hearing

1. Was opportunity given first? [Sec 126(3)]
2. Does SCN state nature of breach + relevant provision? [Sec 126(4)]
3. Minor / procedural breach? → No penalty [Sec 126(1)]
4. No mens rea established? → ₹10,000 minimum only [Sec 126(2)]
5. Is penalty proportionate to the gravity of breach? [Sec 126(2)]

Key Case Law

- *Dharmendra Textile Processors v. UOI*, (2008) 13 SCC 369 — penalty is not automatic; the default must be independently established on evidence.
- *Greenstar Fertilizers v. Jt. Commissioner* (Madras HC 2024) — Sec 74 penalty inappropriate where fraud is not proved beyond the allegation in the SCN.

Mitigation Arguments — Put Each in Writing at the Hearing

- **No loss of revenue to the government** — the most powerful mitigating factor available
- First-time contravention — no prior history of default or penalty
- Voluntary disclosure before detection by revenue
- Cooperative conduct during inquiry / audit proceedings
- Tax and interest already paid — no revenue impact remaining at the time of the order
- Genuine ambiguity in the statutory provision / bona fide interpretation followed in good faith
- CBIC Circular / Advance Ruling / industry-wide practice relied upon — good faith reliance

Sec 128A (FY 2017-18 to 2019-20): If principal tax paid by 31.03.2025 → interest AND penalty waived on Sec 73 demands. File claim under Rule 164 immediately.

MODULE 08

Personal & Virtual Hearing

Attendance protocol · Hearing flow · Professional conduct · Do's and Don'ts · CBIC virtual hearing instruction

MODULE 08

Personal Hearing — Attendance, Flow & Professional Conduct

Hearing Flow — Structure Your Presentation

- Open professionally; no confrontational language; present your strongest point first — first impressions set the tone
- Summarise the SCN — bring out the principal allegation only; NOT every sub-ground simultaneously
- Point-by-point rebuttal following synopsis order — cannot argue all grounds at PH; prioritise ruthlessly
- Cross-reference SCN to statutory provisions — prove no contravention on the plain language of the section

Responding to Questions from PO

- Give pointed replies — do not over-explain or volunteer admissions beyond what is asked
- Anticipate revenue-side questions; prepare answers in advance during file preparation
- If unsure — seek time in writing; do NOT guess or speculate on the record
- Don't repeat. Don't interrupt the PO. Don't argue after PO has decided to move on.

Professional Traits — Conduct That Wins

- **Present facts truthfully** — concede where there is a genuine mistake; contain the damage rather than deny the undeniable
- Argue for minimum penalty on the conceded point — frame every concession as a bona fide error without intent
- Never make statements on the record that contradict entries in returns or books of account
- Do not give payment undertakings without specific, written client instructions obtained in advance

The PO's order reflects what was argued before him. A well-structured PH record = a well-structured appeal. Every point you fail to raise at PH is a point lost at the first appeal stage.

MODULE 08

Personal & Virtual Hearing — Do's and Don'ts

Do's

- File written synopsis; obtain written acknowledgment before hearing commences
- Carry complete case file — SCN, replies, RUD, page-numbered annexure, chronology
- Establish Sec 116 authority at the very outset of the hearing
- Request PO to correctly record all submissions made during PH
- Object in writing if PO raises new points not covered in the SCN
- Seek written adjournment if time is needed — do not skip the hearing entirely
- Send email immediately after PH recording what transpired — full summary
- File 'Reply Pursuant to Hearing' where new points emerged during the hearing
- Virtual: upload synopsis on portal BEFORE the hearing date

❌ Don'ts

- Appear without filing a written reply to the SCN — unrepresented position is dangerous
- Concede points spontaneously without checking the legal position first
- Give payment undertakings without specific client instructions
- Make statements contradicting facts in returns or books of account
- Sign an inaccurate hearing note without objecting and recording disagreement
- Ignore or skip hearings — ex-parte orders are very hard to challenge
- Submit unsigned or unauthenticated documents
- Reveal case weaknesses not raised anywhere in the SCN
- Virtual: disconnect without confirming next steps; attend from noisy or public locations

MODULE 08

Virtual Hearing — CBIC Instruction & Checklist

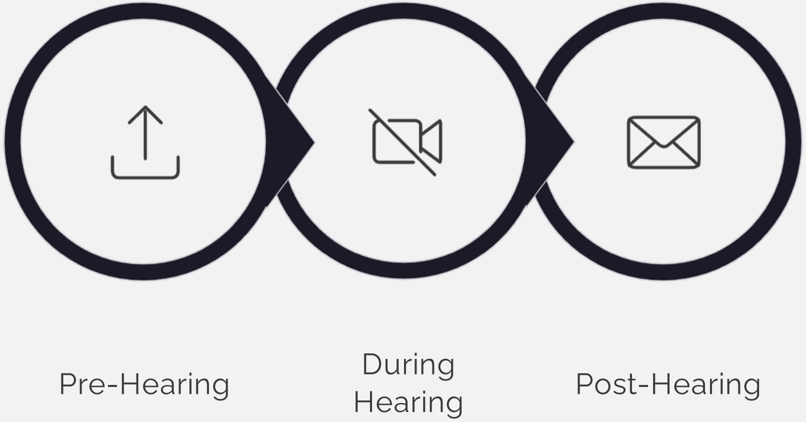
CBIC Instruction F.No. 390/Misc/3/2019-JC dt. 05.11.2024: Virtual hearing is now the **STANDARD MODE** for GST adjudication proceedings. Physical hearing may be requested — the Proper Officer must record reasons for any refusal of a virtual hearing.

Technical Preparation — Non-Negotiable

- Primary device + backup device + mobile hotspot — test ALL 24 hours before the hearing, not on the morning of the hearing
- Test hardware and video platform in advance; confirm the hearing link the day before — do not discover a broken link at the start of the hearing
- Join 5 minutes early; note meeting ID / reference number; record time in and time out in your file

Documentation — Pre-Upload Everything

- Upload written synopsis and all submissions on the GST portal **before** the hearing date
- Send simultaneously by email — creates an independent record outside the portal system
- If connectivity breaks during hearing — communicate immediately in writing; request a fresh date from the PO in writing
- Do **NOT** disconnect without confirming next steps, next date, and what was covered in that session



MODULE 08

Expectations from a CA Representative — The Golden Rules

Client Communication — Before & During

- Inform taxpayer about proceedings — not about outcome; set **realistic expectations** before the hearing commences
- Discuss process and timeline for further appeal — the client must know the road ahead before any decision is taken
- Make copies of all case records available to taxpayer: notices, replies, evidence, SCN, OIO, hearing notes — without exception

After Receiving OIO — Immediate Actions

- Does OIO go beyond scope of SCN? → Ground for challenge — compute this within 48 hours of receiving the order
- Compute appeal time limit — **3 months from date of OIO** to Commissioner (Appeals) u/s 107
- Sec 73(9) / Sec 74(11): payment within 30 days of OIO reduces penalty — evaluate the economics immediately

The Golden Rule of Adjudication Representation

> **Optimists lose every case; pessimists win every stage.**

- Every ground, every objection, every procedural point — record it in writing NOW, not after the order
- An unreasoned OIO dismissing all grounds without engaging with your arguments is itself a fully appellable order — and often the easiest to overturn
- The paper trail you build in adjudication is the foundation on which every appeal, writ, and tribunal challenge is constructed
- Your client's rights in the SCN stage, if not preserved, cannot be resurrected at the appellate stage

SUMMARY

Key Takeaways — Adjudication Representation at a Glance

Limitation First, Always

Check GSTR-9 due date, compute SCN and order deadlines, apply the 4-Step checklist. Time-barred SCN or order = First Ground. Sec 75(10) deemed conclusion is a statutory right.

Jurisdiction Before Merits

Administrative and subject-matter jurisdiction must be challenged in the first reply — belated objection is a waiver. Raise DGGI All India jurisdiction, monetary limit breaches, and dual-authority conflicts proactively.

Write Everything Down

Synopsis before PH. Email after PH. Reply Pursuant to Hearing where new points arose. Disagreement with hearing note in writing the same day. Your paper trail is your appeal.

Challenge Fraud Classification

Sec 74 requires specific fraud allegation with particulars — numbers alone are not allegations. Push for Sec 73 treatment; use Sec 75(2) where fraud is not proved. Under Sec 74A, persuade the PO at the PH stage before the order is passed.

Evaluate Payment Windows

Penalty escalates dramatically: 0% → 15% → 25% → 50% → 100%. Payment within 30 days of OIO is often the most economical option. Sec 128A amnesty for FY 2017-20 — check eligibility without delay.

Virtual Hearing is Standard

Pre-upload synopsis. Test technology 24 hours before. Send email confirmation post-hearing. Do not disconnect without confirming next steps. CBIC Instruction dt. 05.11.2024 governs.

Thank You

FCA ARCHANA JAIN,L.LB

Presented at.

Jointly organised by GST & Indirect Taxes Committee and Committee for Members in Practice, ICAI

⚠️ Sept 2026 Live Alert

Sec 73 FY 2022-23: SCN latest 30.09.2026 | Order deadline 31.12.2026. Sec 74 FY 2020-21: SCN latest 28.08.2026 | Order deadline 28.02.2027. Review every pending SCN NOW.

Sec 128A Amnesty

Sec 73 demands for FY 2017-18, 2018-19 and 2019-20. Principal paid by 31.03.2025 → interest and penalty waived. File claim under Rule 164 immediately.

The Golden Rule

Optimists lose every case; pessimists win every stage. Record every ground, every objection, every procedural point — in writing, at the time it arises.