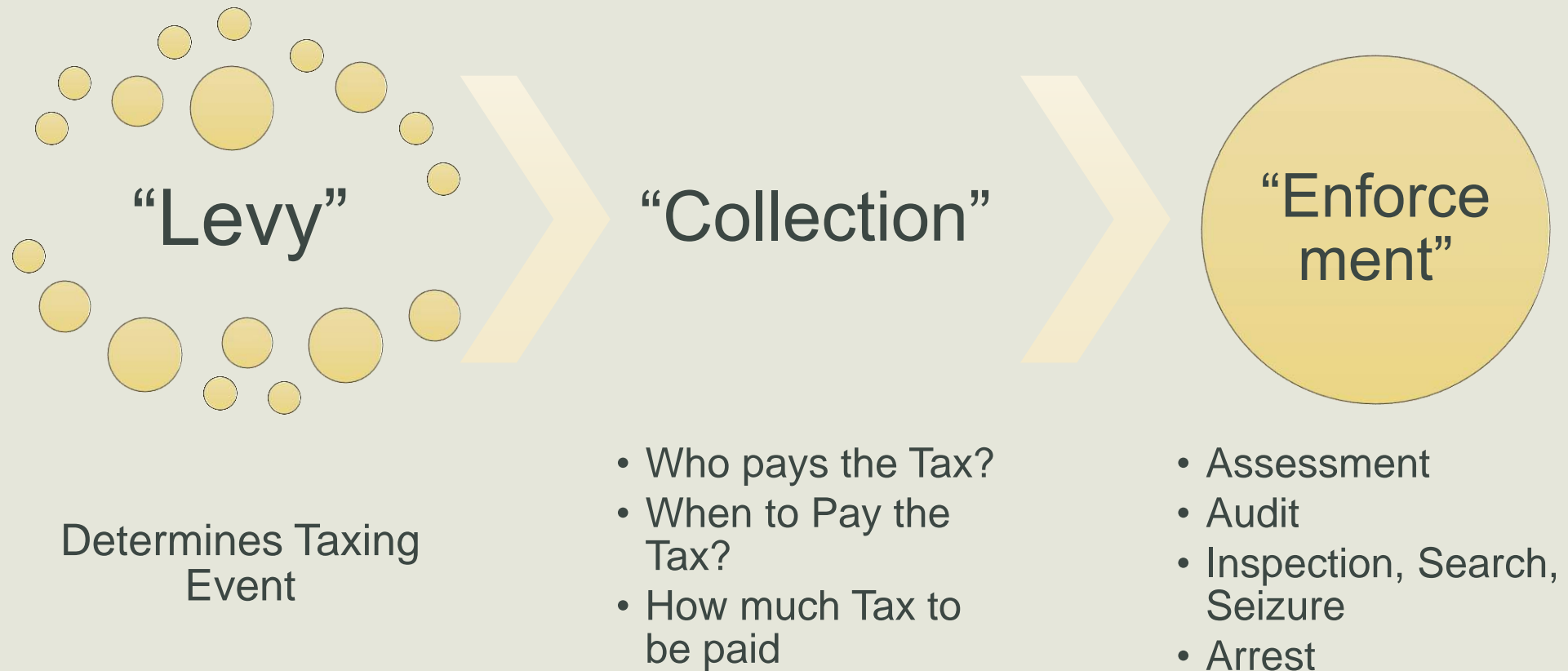




Workshop on GST Representation & Preparation

ADJUDICATION

Broad Structure of GST Law

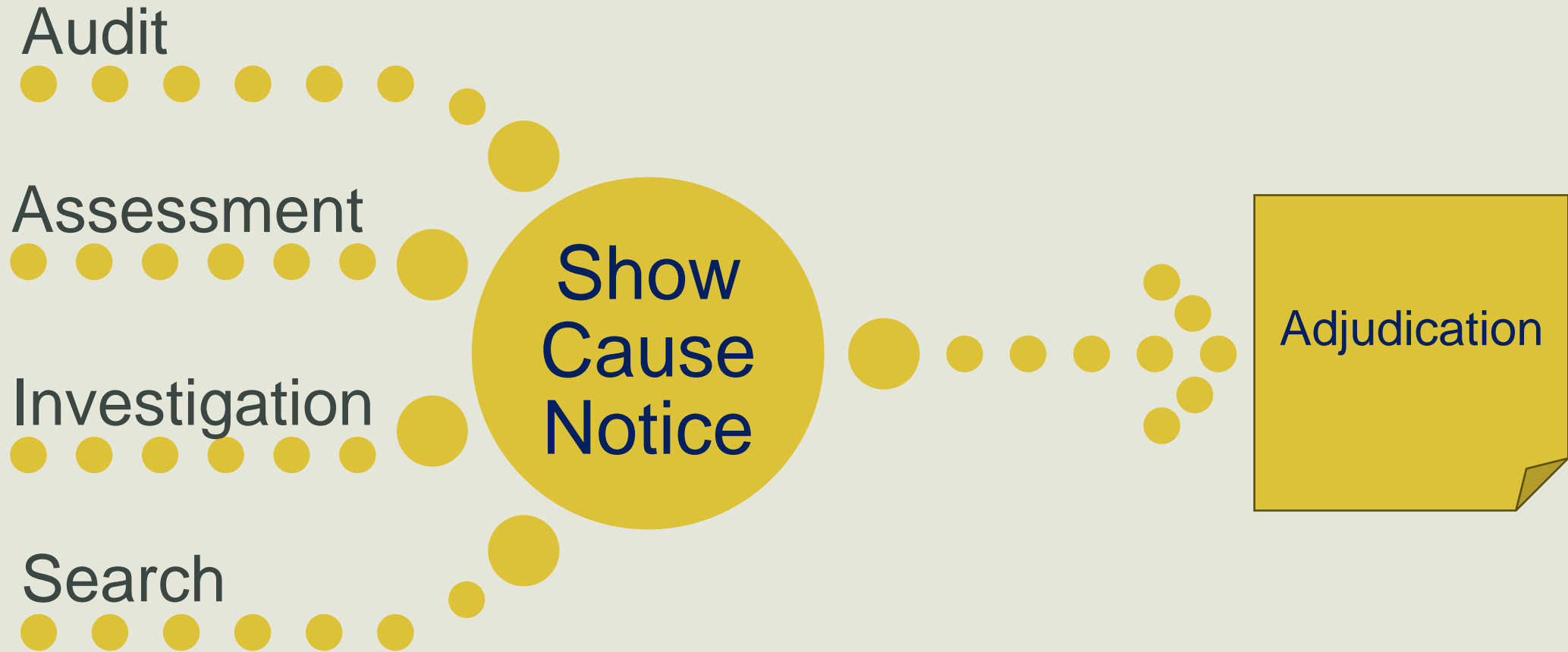


Relevance of Adjudication under the GST Law

- The term “**adjudication**” has not been defined under the GST Law.
- The term “**adjudicating authority**” has been defined under Section 2(4) of CGST Act, 2017 to mean any authority, appointed or authorised to pass any order or decision under the GST Law but shall not include:
 - Central Board of Indirect Taxes and Customs
 - Revisional Authority
 - Authority for Advance Ruling
 - Appellate Authority for Advance Ruling
 - National Appellate Authority for Advance Ruling
 - Appellate Authority
 - Appellate Tribunal
 - National Anti Profiteering Authority

- The term adjudication in general sense is the process of deciding an issue by the adjudicating authority.
 - Adjudication pre-supposes issuance of Show Cause Notice

Relevance of Adjudication under the GST Law



Relevance of SHOW CAUSE NOTICE

- Where it appears to the *Proper Officer* that ~
 - any tax has not been paid or short paid or
 - any tax has been erroneously refunded, or
 - where input tax credit has been wrongly availed or utilized
- The Proper Officer shall issue a notice requiring the assessee to **SHOW CAUSE** as to why he should not pay the amount specified in the notice.
- The GST Law provides for issuance of Show Cause Notice under Section 73 & 74 of CGST Act, 2017.

Section 73 Vs Section 74 ~ GST Law

Parameter	SCN under Section 73	SCN under Section 74
Applicability	Where tax is not paid on account of reasons other than FRAUD or any WILFUL-MISSTATEMENT or SUPPRESSION OF FACTS to evade tax	Where tax is not paid on account of reasons of FRAUD or any WILFUL-MISSTATEMENT or SUPPRESSION OF FACTS to evade tax
Time Limit for SCN	SCN needs to be issued at least 3 months prior to issuance of Adjudication Order	SCN needs to be issued at least 6 months prior to issuance of Adjudication Order
Time Limit for Order	Adjudication Order needs to be issued within three years from the due date of furnishing Annual Return	Adjudication Order needs to be issued within five years from the due date of furnishing Annual Return

Section 73 Vs Section 74 ~ Penalty

Parameter	SCN under Section 73	SCN under Section 74
Tax amount paid with interest before issuance of notice.	No penalty and no notice shall be issued.	15 % of tax amount and no notice shall be issued.
Tax amount paid with interest within 30 days of issuance of notice.	No penalty. All proceeding deemed to be closed.	25 % of tax amount. All proceeding deemed to be closed
Tax amount paid with interest within 30 days from service of order.	10 % of tax amount or Rs. 10,000/- whichever is higher	50 % of tax amount. All proceeding deemed to be closed.
Tax amount paid after 30 days of service of order.	10 % of tax amount or Rs. 10,000/- whichever is higher	100 % of tax amount.

Common Pointers in Section 73 & Section 74

- Follow up Show Cause Notices ~ merely issue a statement containing non-payment of taxes ~ Deemed to be a Show Cause Notice.
- “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

Requisites of SHOW CAUSE NOTICE

- Show Cause Notice is a pre-requisite, and it is an allegation/proposal to demand a tax from the assesseees.
- ***SCN is the foundation on the basis of which the entire case is build by the Departmental authorities.***
- The SCN must be well reasoned and speaking, it should provide for all documents which are relied upon.
- Adjudication cannot be done beyond the scope/allegations made in the Show Cause Notice.

Contents of SHOW CAUSE NOTICE

- Brief Facts of Case ~ Nature of Business of Assessee.
- Details of Enquiry/Investigation/Audit/Assessment undertaken.
- Legal Provisions of the GST Law.
- Allegations made against the assessee with supporting evidence.
- Amount of Tax demanded
- Interest demanded
- Penalty demanded
- Notice issued under Section 73 or Section 74

Validity and Legality of SHOW CAUSE NOTICE

- SCN can only be issued electronically on the common portal ~ ***Shri Shyam Baba Edible Oils Vs CCE (MP High Court)*** ~ 2020-TIOL-2016-HC-MP-GST
- DIN to be quoted on all communications: To be treated as invalid and deemed to have never been issued ~ ***Circular No. 122/2019 & Circular No. 128/2019***
- Adherence to time limits specified under CGST Act, 2017 ~ Audit to be concluded within 3 months.

“The show cause notice is the foundation on which the department has to build up its case. If the allegations in the show cause notice are not specific and are on the contrary vague, lack details and/or unintelligible that is sufficient to hold that the notice was not given proper opportunity to meet the allegations indicated in the show cause notice.”

Brindavan Beverages 2007 (213) E.L.T. 487 (S.C.)

Response to Show Cause Notice

- Effectively this is the last opportunity before confirmation of demand. Accordingly, the reply should be exhaustive and may contain alternative grounds.
- No Presumption should be made ~ Factual aspects should be made clear
- Legal Provisions should be analyzed completely ~ Substantive as well as Procedural provisions
- Crisp, Simple and clear drafting skills
- Analytical and Logical Reasoning
- Legal research Resources and Techniques – Knowledge and application

Service of Notice ~ Section 169

- By tendering the same directly to the person
- To any adult member residing with Taxable person
- By registered post or speed post or courier
- ***Sending a communication to registered email-address***
- ***By making it available on the common portal***
- By publishing in the newspaper circulating locally
- If none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence

The background is a dark grey, textured surface with faint, light-colored sketches of various scientific and mathematical concepts. These include a globe, a microscope, a test tube, a percentage sign, and other geometric shapes. A white rectangular box is centered on the page, containing the main title. Below the white box is a solid yellow horizontal bar.

Sample Reply to Show Cause Notice

Pointers to bear in mind while submitting a reply

- Acknowledging the receipt of Show Cause Notice with proposed demand including interest and penalty ~ Relevant for time limit for issuance
- Facts concerning the Assessee's ~ Factual position should be considered relevant to the case in hand
- History resulting into the issuance of Show Cause Notice
- Allegations in the Show Cause Notice ~ Specific
- Legal Submissions
 - Alternative grounds ~ may be with or without prejudice to each other
- Prayer

SAMPLE SCN 1: ITC as per GSTR – 2A vs GSTR – 3B

73	Excess ITC claimed in GSTR 3B/9 which is not confirmed in GSTR 2A or 8A of GSTR 9		Tax	Interest	Penalty	Total
		IGST	25017	25034	2502	52552
		CGST	82534	82589	8253	173376
		SGST	82534	82589	8253	173376
		Total	190085	190212	19009	399305

Issue in brief - During the course of scrutiny of GSTR-3B Return ,GSTR-2A & GSTR-9 Annual Return for the F.Y. 2018-19 (from April 18 - March 19), it was noticed that the ITC pertaining to GSTR-2A (Table 3 & 5 thereof) shown in GSTR-9 Pt.III at Sr. No. 8A does not match with the ITC pertaining to the GSTR-3B Return i.e. sum total of 6(B) and 6(H) shown in GSTR-9 Pt.III at Sr. No. 8B. The difference in ITC has shown in GSTR-9 Pt.III at Sr. No.8 (D) is excess ITC availed by the taxpayer and the same is to be recovered from the taxpayer under Section 73 of CGST Act, 2017.

Reply to Show Cause Notice

- Reply should be made in prescribed format
- Detailed reply should be annexed
- Option for personal hearing should be selected
- Reply needs to be filed online

FORM GST DRC - 06
[See rule 142(4)]
Reply to the Show Cause Notice

1	GSTIN		
2	Name		
3	Details of Show Cause Notice	Reference No.	Date of issue:
4	Financial Year		
5	Reply	As per annexed "Reply to Show Cause Notice"	
6	Documents uploaded	As per annexed "Reply to Show Cause Notice"	
7	Option for personal hearing	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

Reply to Show Cause Notice

- Acknowledging the SCN
- Jotting down the allegation
- Prima facie not accepting the allegation
- Reference to subsequent paras for Facts and Legal Submissions

REPLY TO SHOW CAUSE NOTICE

We acknowledge the receipt of the above-mentioned Show Cause Notice (hereinafter referred to as "SCN") issued to us, wherein your good self has alleged that the tax due has not been paid or short paid or input tax credit has been wrongly availed or utilized by us and thus, through the aforesaid SCN have requested us to show cause as to why: -

- a) Total tax amount payable at Rs. _____/- should not be demanded and recovered under section 73 of the GST Act, 2017.
- b) Interest charged thereon under section 50 shall not be demanded and recovered from you under section 73 of the CGST Act, 2017
- c) Penalty should not be imposed upon you under section 73 of the GST Act, 2017.

In response to the said allegations, we hereby strongly deny the allegations laid down in the SCN and submit that the SCN is not sustainable based on the facts of the case and the law applicable thereto. We also submit that proper ITC is claimed as against the allegations in aforesaid grounds raised in the SCN, based on the submissions made in detail in subsequent paragraphs. However, before presenting the above submissions in detail, we hereby proceed to provide the background facts of the case resulting in issuance of SCN.

Reply to Show Cause Notice

- Background Facts of business of assessee and claiming of Input Tax Credit ~ Highlight the process of claiming Input Tax Credit.
- History of initiation of present notice ~ Notice in ASMT – 10 [Check if due process is followed].
- Check Calculations ~ Prima facie, there are mismatches in figures
- Document the previous submissions and whether the SCN considers those submissions or not.
- Consider giving “Chronology of Events” ~ if relevant.
- Allegations in the Show Cause Notice ~ What is considered and What is not considered

Reply to Show Cause Notice

- Ground 1: The values appearing in GSTR – 2A has not been considered correctly ~ Reversal of ITC made in subsequent period not consider ~ Actual 2A reconciliation should be considered. [provide documents as annexure supporting your calculations]
- Ground 2: Credit cannot be denied on basis of GSTR – 2A ~
 - No provisions provide [period 2018-19] that credit should be claimed based on GSTR – 2A.
 - Importance of Section 16 should be emphasized
 - Rule 36(4) was introduced only from October 2019
 - High Court decisions stating that credit cannot be denied because of non-payment by vendor
 - Section 16(2)(aa) specifically introduced from Jan 2022

Reply to Show Cause Notice

- Ground 3: Without Prejudice to above legal submissions, Reference to Circular No 183/15/2022-GST provides for permitting of Input Tax Credit based on CA Certifications / Confirmations.
- Ground 4: If notice is not served online ~ Consider that the notice is not valid.
- Ground 5: Check if ITC is utilized ~ possibility of reversal without utilization ~ Without Prejudice, you may reverse under protest without interest
- Ground 6: Interest should not apply ~ since ITC is correctly claimed/reversed before utilization

Reply to Show Cause Notice

- Ground 7: Whether notice issued under Section 74 ~ Whether noticee has proved that there is suppression ~ Ground considering that the onus is not discharged.
- Ground 8: If notice is under Section 74 ~ Prove that there is no suppression [Extended period cannot be invoked]
- Ground 9: Penalties cannot be invoked since the intention to evade tax is not present.

Reply to Show Cause Notice

- Prayers in the Show Cause Notice:
 - The entire SCN is void and should be quashed/set aside.
 - Demand of ITC should be dropped.
 - Alternatively, the demand of ITC should be reduced to _____, based on ground _____.
 - Notwithstanding, the demand of ITC, Interest should be dropped [considering reversal of ITC without utilization]
 - Penalty should be dropped.
 - Personal Hearing should be granted.

The background is a dark grey, textured surface with faint, light-colored sketches of various scientific and mathematical concepts. On the left side, there is a detailed drawing of a microscope. Above it, a globe of the Earth is visible. In the bottom right corner, there are sketches of a percentage sign, an exclamation mark, and a right-angle symbol. Other faint sketches include a test tube, a book, and various geometric shapes.

Common Errors & Opportunities

Common Errors made while responding to SCN

- Rush in submitting the reply ~ Very important to analyze the implication based on facts. Facts play very important role.
- Partial reply is submitted ~ Focus on technical points.
- Not much emphasis is placed on penalties. The reply should stress on the fact that the non-payment is not with an intention to evade taxes.
- Consider all grounds at the adjudication level.
- Evaluate the possibility of Tax payment with Interest to avoid penal consequences.
- Additional replies can also be submitted ~ should not be considered as first choice.

Opportunities

- Need to consider a regular or a periodic diligence to avoid future issues as resulted in issuance of Show Cause Notice.
- Look at possibilities of structuring various transactions ~ win win situation
- Possibilities of Litigation ~ First Appeal ~ Second Appeal



Thank You.



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