

“HOW TO HANDLE SUMMONS & ASSESSMENTS”

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NATIONAL CONFERENCE ON GST

ORGANIZED BY

GST & INDIRECT TAX COMMITTEE –ICAI



Presented By



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“When One Teaches, two Learn.”



Proper Officer to issue Summons to **any person** whose attendance considered necessary.

Procedure similar to provisions of CPC, 1908.

POWER TO SUMMON
(**Sec. 70 OF THE
CGST ACT, 2017**)

To give evidence or produce document in any inquiry.

Inquiry deemed to be “judicial Proceeding”
u/s 193 & 228 of the IPC.

- Section 2 (91)— “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
- “Superintendent of Central Tax” is assigned functions as proper officer in relation to Section 70 (1) vide Circular no. 3/3/2017 dated 5th July, 2017

CBIC Instruction No. 03/2022-23 dated 17th August, 2022 on GUIDANCE ON ISSUANCE OF SUMMONS

Sr. No.	Particulars
1.	Power to issue summons generally exercised by Superintendents, even higher officers may issue summons. Superintendents should issue summons only after written permission of Officer not below rank of DC/AC with reasons , recorded in writing.
2.	In case written permission not obtained, telephonic permission must be obtained and same should reduced in writing at the earliest opportunity.
3.	For every summon issued, the appearance/non-appearance of the summoned must be recorded and placed in file.
4.	Summon should indicate the name of the offender, against whom the case is investigated, so that the recipient has understanding of whether he is summoned as accused, co-accused or witness.
5.	No summons should be issued for calling statutory documents which are available on the GST Portal.
6.	Summons should not be issued to senior management officials like MD/ CEO/CFO/ similar officers in the first instance. They should be summoned only when there is clear indication of their involvement in decision which has resulted in revenue leakage.

CBIC Instruction No. 03/2022-23 dated 17th August, 2022 on GUIDANCE ON ISSUANCE OF SUMMONS

Sr. No.	Particulars
7.	Board Circular No. 122/41/2019-GST dated 5 th November, 2019 warrants mandatory quoting of DIN on communication issued by CBIC officers. Summons Format is prescribed in Board Circular No. 128/47/2019-GST dated 23 rd December, 2019.
8.	The summoning officer must be present at time and date for which summon is issued. If not, then same must be informed in writing or orally.
9.	All summoned persons bound to appear. Exceptions are 'women who by tradition don't appear in public' or 'privileged persons'. The exemptions u/s 132 & 133 of CPC must be considered.
10.	Issuance of repeated summons without ensuring service of the same must be avoided.

Sec 136 : Relevancy of Statements under certain circumstances

- ❑ A statement signed by a person in response to the summons u/s 70 during enquiry/proceedings under the Act is relevant, for proving in prosecution of offence, the truth of facts which it contains in following situations:-
 - If person making statement is dead/untraceable, or is incapable of giving evidence, or kept out of the way by adverse party, or whose presence cannot be obtained without delay or expense which is considered unreasonable by the court;
 - When the person giving statement is examined as witness before the court, and the court is of opinion that the circumstances of the case warrant that such statement should be admitted as evidence.

YASHO INDUSTRIES LTD VS UOI – 2021 (6) TMI 918 GUJRAT HC

- Definition of '**proper officer**' -Section 2(91), 'proper officer' in relation to any function to be performed under CGST Act means the Commissioner or the officer of the Central Tax, who is assigned that function by the Commissioner in the Board –
- The respondent No.3 (DGGI) is a proper officer in relation to the function to be performed under CGST Act as contemplated under Section 2(91), and as such, was entitled to issue summons under Section 70 of the CGST Act in connection with the inquiry initiated against the petitioner.
- The Board has assigned the officers to perform the function as proper officers in relation to various Sections of CGST Act and Rules made thereunder by issuing the Circular.
- The question of issuing Notification for delegation of powers by the Commissioner as contemplated under Section 167 of the CGST Act does not arise.

SUMMONS

- Every inquiry shall be deemed to be a “judicial proceeding” within the meaning of Section 193 & 228 of IPC, 1860.
- Section 193 of IPC.....Punishment with imprisonment for a term up to 7 years & also fine for intentionally giving false evidence or fabrication of false evidence in any stage of judicial proceeding.
- Section 228 of IPC.....Punishment with simple imprisonment for a term up to 6 months or fine upto Rs.1,000/- or both on person intentionally offering any insult, or causing any interruption to any public servant while such public servant is sitting in any stage of a judicial proceeding.

SUMMONS

- Section 174 of IPC.....**Non attendance** in response to summons is an offence punishable with imprisonment **up to 6 months & fine up to Rs.1,000/-**
- Documents required to be produced must be specifically stated in the summons

FEW IMPORTANT DECISIONS..... SUMMONS



- Hon'ble Delhi HC.....K.T.Advani Vs State (1987) 30 ELT 390...The person **has no right to get copies** of his statement at the stage of investigation. However, he can keep note of his statement.
- Hon'ble SC.....Poolpandi etc. vs. Superintendent CE (1992) 60 ELT 24.....Person being interrogated is not an accused nor can he plead that there is possibility of his being made an accused in future hence he has **no right to ask for presence of lawyer during inquiry**. However, interrogating officer may permit, if he deems fit.

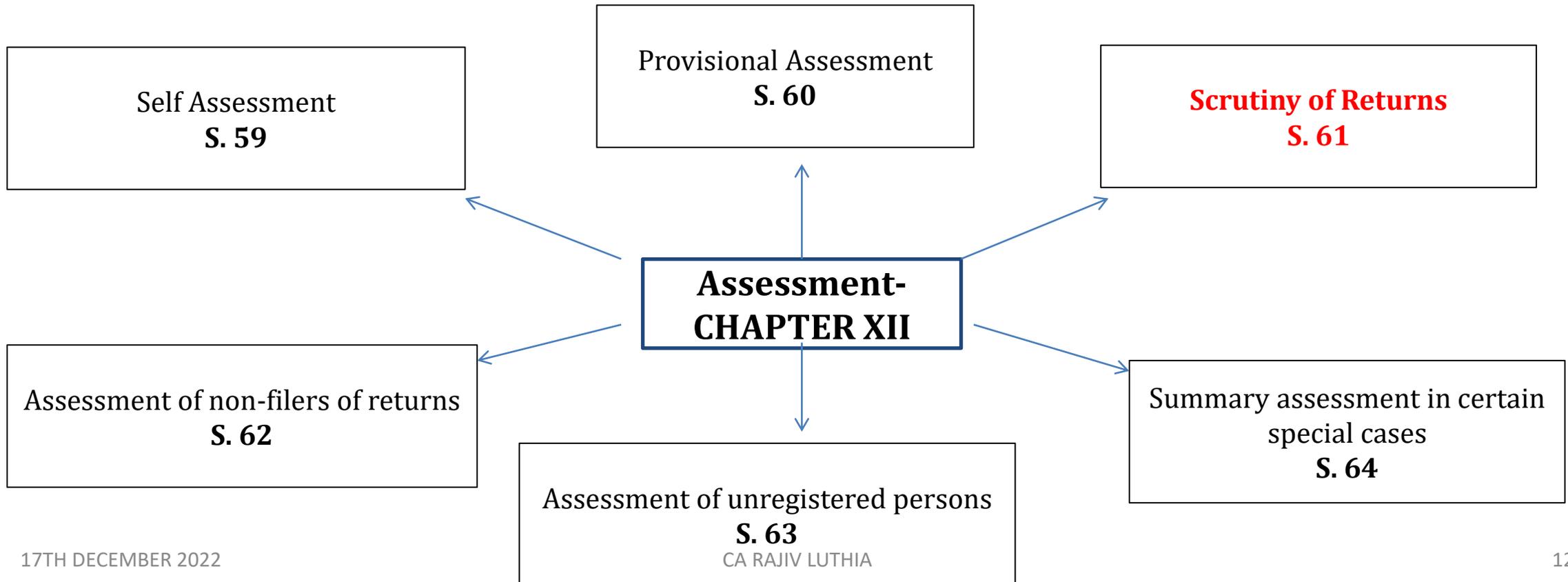
FEW IMPORTANT DECISIONS..... SUMMONS



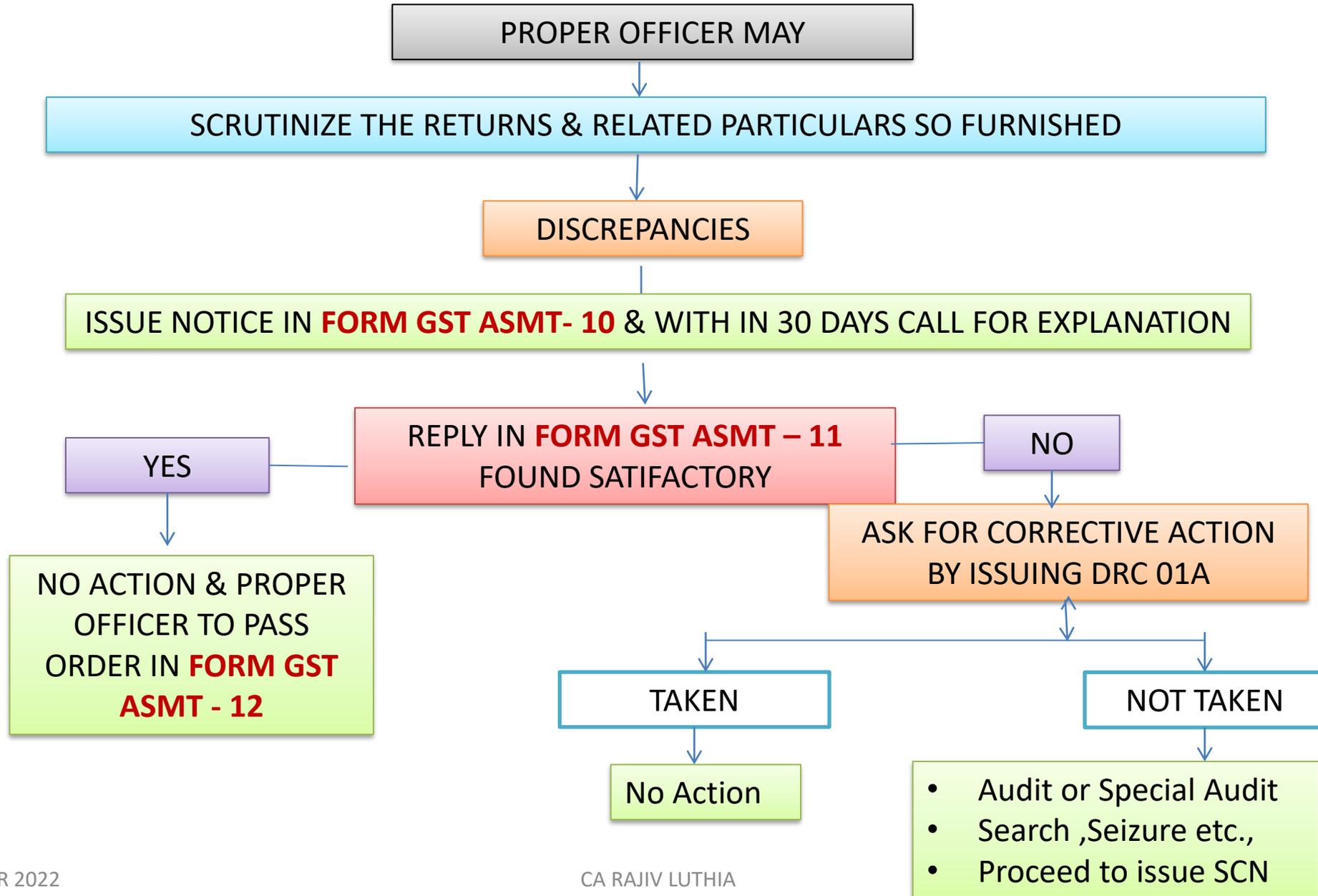
- Hon'ble Mumbai CESTAT....Dodsal Pvt. Ltd. Vs CCE (2006) 193 ELT 518....Disclosure of facts & information given while recording the statement & admitting liability can also be challenged at later date by the assessee. There can not be estoppels in the matters of taxation.

ASSESSMENT

Section 2(11) “Assessment” means determination of tax liability under this Act and includes self-assessment, re-assessment, provisional assessment, summary assessment and best judgment assessment;



SCRUTINY OF RETURNS- Sec. 61



PARAMETER ON WHICH GST NOTICE ARE ISSUED

Parameter No.	Particulars
69	In-eligible ITC claimed from non-genuine taxpayers (NGTPs) whose RC is canceled ab-initio
70	Excess outward tax in GSTR-1 compared to GSTR-9 /GSTR-3B
71	Excess Outward tax in E-Way Bills Compared to GSTR-3B
72	In-eligible ITC claimed from GSTR-3B Non-filers
73	Excess ITC claimed in GSTR-9/3B which is not confirmed in GSTR-2A or 8A of GSTR-9

PARAMETER ON WHICH GST NOTICE ARE ISSUED

Parameter No.	Particulars
74	In-eligible ITC claimed from RC is canceled suppliers
75	Less turnover is shown in GSTR-1 compared to GSTR-8 (TCS)
76	Less turnover is shown in GSTR-3B compared to GSTR-7 (TDS)
77	Less RCM liability disclosed in GSTR 9/3B/4 than shown by suppliers in GSTR-1
78	ITC claims after the last date of availing of ITC as per section 16(4) GSTR-3B

PARAMETER ON WHICH GST NOTICE ARE ISSUED

Parameter No.	Particulars
79	ITC on purchase invoices uploaded by the supplier in GSTR-1 filed after the last date of availing -section 16(4)
80	Interest on delayed payments made with GSTR 3B
81	Excess IGST on imports shown in GSTR_6E vs. ICEGATE data
82	Excess ISD ITC availed in GSTR9_6G Vs GSTR 2A_ISD
83	Excess RCM ITC GSTR9_6CDF than liability shown in GSTR 9_4G

Where to find notice in GST Form ASMT-10?

- If notice is received in form ASMT -10, the registered person will get SMS/email stating the notice has been issued.
- Registered person will have to download the said form from GST portal as follows:
 - Login to GST portal (<https://services.gst.gov.in/services/login>)
 - Go to “Services”
 - Go to “User Services”
 - Go to “View additional notices and orders”

How to file a reply against ASMT-10?

- Go to “View additional notices and orders”
- Select the notice for which reply is to be file (in case of more than one notices)
- Go to “Reply”
- Fill the details therein
- Attach the annexures (if any)
- File using DSC or EVC

Determination of tax not paid or short paid or erroneously refunded

<p>Section 73: Applicable in case of non-payment or short payment of tax without fraud or willful-misstatement.</p>	<p>Section 74: Applicable in case of non-payment or short payment of tax with fraud or willful-misstatement</p>
<p>Proper officer to issue a Show Cause Notice in both cases</p>	
<p>Mere statement containing the non-payment or short payment can be served for subsequent periods instead of detailed show cause notice, only if the grounds raised are identical to the ones raised in the previous year.</p>	
<p>Time limit for the proper officer to issue notice along with statement of computation– at least 3 months prior to issuance of order</p>	<p>Time limit for the proper officer to issue notice along with statement of computation – at least 6 months prior to issuance of order</p>
<p>Time limit for the proper officer to issue an order is within three years from the due date of filing of annual return or 3 years of date of erroneous refund .</p>	<p>Time limit for the proper officer to issue an order is within 5 years from the due date of filing of annual return or 5 years of date of erroneous refund .</p>

Determination of tax not paid or short paid or erroneously refunded

Section 73:	Section 74:
Show Cause Notice not to be issued where:-	
<p>Voluntary payment of Tax + Interest as per section 50 made before issue of notice either</p> <ul style="list-style-type: none">• As per own ascertainment or;• As per the ascertainment of the proper officer;	<p>Voluntary payment of Tax + Interest as per section 50 + Penalty (i.e 15% of tax) made before issue of notice either</p> <ul style="list-style-type: none">• As per own ascertainment or;• As per the ascertainment of the proper officer;
<p>However amount paid as per the ascertainment of the defaulter falls short, the Department can issue a notice for the tax still payable.</p>	

Determination of tax not paid or short paid or erroneously refunded

Section 73:	Section 74:
Case where all proceedings are deemed to be concluded after issue of SCN:	
On Payment of Tax + Interest as per section 50 made within 30 days of issue of notice. No penalty leviable /payable	Payment of Tax + Interest as per section 50 + penalty (i.e. 25% of tax) made within 30 days of issue of notice
Payment of Tax + Interest as per section 50 + Penalty (10% of tax or Rs.10,000 which ever is higher) made after 30 days of issue of notice	Payment of Tax + Interest as per section 50 + Penalty (i.e 50% of tax) made within 30 days of communication of order

Determination of tax not paid or short paid or erroneously refunded

Section 73:	Section 74:
Case where all proceedings are deemed to be concluded after issue of SCN:	
On Payment of Tax + Interest as per section 50 made within 30 days of issue of notice. No penalty leviable /payable	Payment of Tax + Interest as per section 50 + penalty (i.e. 25% of tax) made within 30 days of issue of notice
Payment of Tax + Interest as per section 50 + Penalty (10% of tax or Rs.10,000 which ever is higher) made after 30 days of issue of notice	Payment of Tax + Interest as per section 50 + Penalty (i.e 50% of tax) made within 30 days of communication of order

WITH KNOWLEDGE..... WE KNOW THE WORDS,
BUT WITH EXPERIENCE..... WE KNOW THE MEANING



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