

A hand holding a white chess piece (a king) over a black chess piece (a king) on a checkered board. The background is dark, and the lighting is dramatic, highlighting the pieces and the hand.

# Handling Litigations in GST

**CA Gopal Kedia**  
gopalkedia@gkaca.in

In this world nothing can be said certain except  
death & Taxes

*Benjamin Franklin*

Litigation is By product of Taxes

*Popatlal*

# Introduction

- Litigation start with establishment of facts and lets the other party to accept the same, rather than a process of finding the facts by adopting the process of litigation.
- Time-tested principle of natural justice *audi alteram partem* meaning 'let the other side be heard')
- No person can be adjudged guilty without being given an opportunity to answer charges against such person
- Any **other communication, letter, endorsement, suggestion** or advisory from tax Department cannot be considered to be a SCN
- Show cause has to be issued under specific sections of law with all the essential ingredients
- Final order know as OIO should be passed only after considering the reply submitted in response of SCN
- SCN is the one that 'sets the law in motion'.

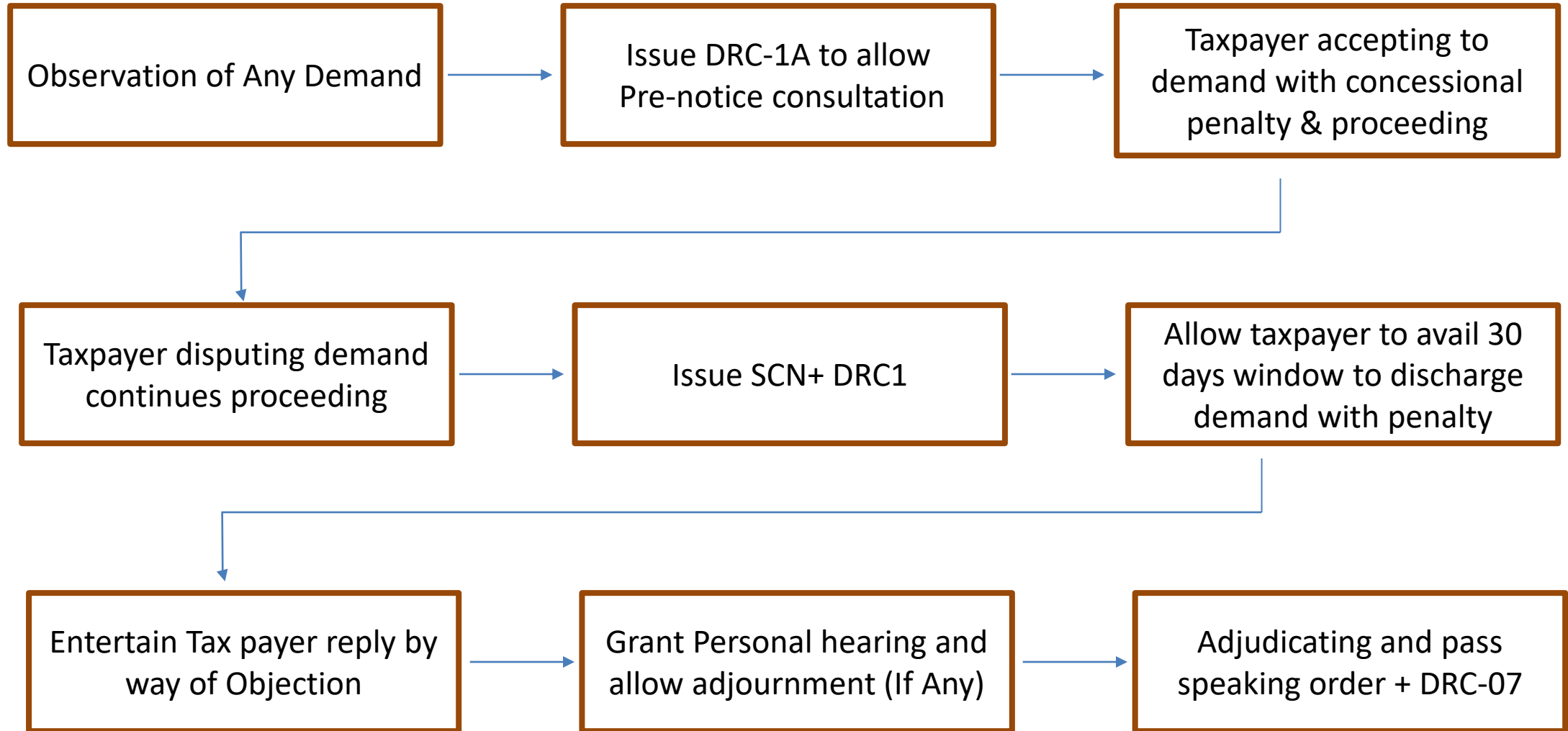
## Situation of SCN under GST Law

<b>S No</b>	<b>Situations</b>	<b>Form</b>
1	Denial of option to pay tax under Section 10	GST-CMP-05
2	For cancellation of regular registration	GST-REG-17
3	For rejection of application for revocation of cancellation of registration	GST-REG-23
4	For cancellation of provisional registration	GST-REG-27
5	For disqualification of GST Practitioner	GST-PCT-03
6	Rejection of refund claim	GST-REF-08
7	Assessment under Section 63	GST-ASMT-14
8	Show cause notice under Section 73	
9	Show cause notice under Section 74	
10	Show cause notice under Section 76	

---

# DUE PROCESS

---



---

# SCN U/S 73 & 74

---

# Trigger Point

## Section 73

determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason **other than** fraud or any wilful mis-statement or suppression of facts.

Hence, when a person has

- (a) not paid or
- (b) short paid or
- (c) erroneously received refund, or
- (d) wrongly availed or utilised input tax credit

the Proper Officer (being one who is authorized under section 5 to carry out this function under the law) shall serve notice on the said person requiring him to show cause as to why he should not pay the amount specified in the notice along with **interest payable thereon under section 50** and a penalty leviable as per the provisions of the Act.

## Section 74

determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised **by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax**

Hence, when a person has

- (a) not paid or
- (b) short paid or
- (c) erroneously received refund, or
- (d) wrongly availed or utilised input tax credit

the Proper Officer shall serve a notice on the said person requiring him to show cause as to why he should not be asked to pay the amount specified in the notice along with interest payable thereon under section 50 and with 100% of tax as penalty leviable as per the provisions of the Act



# Suppression of Fact

## Explanation 2 to Sec. 74

The term suppression shall mean

- (a) non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or
- (b) failure to furnish any information on being asked for, in writing, by the proper officer.

## Example

Amount recovered from the recipient through Accounting debit note, toward the expenses incurred as pure agent is not reported in GST return. It is not required to be reported, hence does not amount to suppression.

## Cases

- Smt. Shirishti Dhawan vs. Shaw Brothers – AIR 1992 SC 1555
- **Apex Electricals (Pvt) Ltd. vs. UOI – 1992 (61) ELT 413 (Guj.)**  
Information not required to be supplied under law if not supplied does not amount to suppression

# Fraud or any wilful-misstatement

Fraud or any wilful misstatement or suppression of facts **to evade tax**

## Example

SCN u/s 74 can not be issued to Public Sector Undertaking as the 'end objective' cannot be established because any saving in tax (By evasion) will eventually belong to Consolidated Fund.

## Cases

### **Cosmic Dye Chemical vs. CCE – 1995 (75) ELT 721 (SC)**

*“Now so far as fraud and collusion are concerned, it is evident that the requisite intent, i.e., intent to evade duty is built into these very words. **So far as mis-statement or suppression of facts are concerned, they are clearly qualified by the word “wilful” preceding the words “mis-statement or suppression of facts” which means with intent to evade duty.** The next set of words “contravention of any of the provisions of this Act or Rules” are again qualified by the immediately following words “with intent to evade payment of duty”. **It is, therefore, not correct to say that there can be a suppression or misstatement of fact, which is not wilful and yet constitutes a permissible ground for the purpose of the proviso to Section 11A. Mis-statement or suppression of fact must be wilful.**”*

# Fraud or any wilful-misstatement

Fraud or any wilful misstatement or suppression of facts **to evade tax**

## Example

Register dealer skip to provide the details in GST Returns the value recovered from the recipient toward reimbursement of expense as pure agent. Invoking the jurisdiction of sec 74 considering the said error as wilful attempt to evade tax, when no evasion is proved and remaining allegation shall be set aside

## Cases

**CCE vs. Chemphar Drugs & Liniments – 1989 (40) ELT 276 (SC)**

***Something positive is required before it is saddled with any liability, other than mere inaction or failure on the part of the manufacturer or producer or conscious or deliberate withholding of information when the manufacturer knew otherwise. Whether in a particular set of facts and circumstances there was any fraud or collusion or wilful misstatement or suppression or contravention of any provision of any Act, is a question of fact depending upon the facts and circumstances of a particular case.***

# Fraud or any wilful-misstatement

Act based on the opinion of an Expert.

## **Tamil Nadu Housing Board vs. CCE – 1991 (74) ELT 9 (SC)**

*The initial burden is on the Department to prove that the situations visualised by the proviso existed. But once the Department is able to bring on record material to show that the appellant was guilty of any of those situations which are visualised by the Section, the burden shifts and then applicability of the proviso has to be construed liberally. When the law requires an intention to evade payment of duty then **it is not mere failure to pay duty. It must be something more.** That is, the assessee must be aware that **the duty was leviable and it must deliberately avoid paying it.** The word 'evade' in the context means **defeating the provision of law of paying duty.** It is made more stringent by use of the word 'intent'. In other words the assessee must deliberately avoid payment of duty which is payable in accordance with law.*

## **CCE vs. Pepsi Foods Ltd. – 2010 (260) ELT 481 (SC)**

*It is well settled that when the statutes create an offence and an ingredient of the offence is a deliberate attempt to evade duty either by fraud or misrepresentation, **the statute requires 'mens rea' as a necessary constituent of such an offence.** But when factually no fraud or suppression or misstatement is alleged by the revenue against the respondent in the show cause notice the imposition of penalty under Section 11AC is wholly impermissible.*

# Fraud or any wilful-misstatement

## **Padmini Products vs. CCE – 1989 (43) ELT 195 (SC)**

Suppression of facts is not failure to disclose the legal consequences of a certain provision.

## **Virlon Textile Mills Ltd. vs. CCE – 2003 (158) ELT 469 (Tribunal) (Affirmed by SC)**

The Commissioner says that the appellants wrongly claimed the benefit of the said notification. **Wrongly claiming a benefit does not amount to suppression or misdeclaration with an intent to evade duty** unless such wrong claim is made by suppressing relevant facts which are germane to the claim.

# Time Limit to issue SCN – Sec 73

## Conjoint reading of Sec 73(2) & 73 (10)

### 73 (2)

It prescribes that the show cause notice **shall be** issued at least 3 months before the due date of passing of adjudication orders.

### 73(10)

the **adjudication order needs to be passed within three years** from the due date for furnishing of annual return for the financial year to which the tax relates to or within three years from the date of erroneous refund.

<i>Year</i>	<i>Due Date for Filing of Annual Return (AR) *</i>	<i>SCN can be issued upto (2Yrs &amp; 9M from DD of AR)</i>	<i>Order to be passed within (3Yrs from DD of AR)</i>
2017-18	07-Feb-2020	06-Nov-22	06-Feb-23
2018-19	30-Sep-2020	29-Jun-23	29-Sep-23
2019-20	31-Dec-2021	29-Sept-24	30-Dec-24

# Time Limit to issue SCN– Sec 74

## Conjoint reading of Sec 74(2) & 74 (10)

### **74(2)**

It prescribes that the show cause notice shall be issued at **least 6 months before** the due date of passing of adjudication orders.

### **74(10)**

the adjudication order needs to be passed within **five years** from the due date for furnishing of annual return for the financial year to which the tax relates to or within five years from the date of erroneous refund.

<i>Year</i>	<i>Due Date for Filing of Annual Return *</i>	<i>SCN can be issued upto (4Yrs &amp; 6M from the DD of AR)</i>	<i>Order to be passed within (3Yrs from the DD of AR)</i>
2017-18	07-Feb-2020	05-Aug-24	06-Feb-25
2018-19	30-Sep-2020	28-Mar-24	29-Sep-25
2019-20	31-Dec-2021	29-Jun-26	30-Dec-26

# Deemed conclusion of adjudication

## Sec. 75(10)

The adjudication proceedings shall be deemed to be concluded, if the order is not issued within three years as provided for in sub-section (10) of section 73 or within five years as provided for in sub-section (10) of section 74.

## Commissioner of Central Excise, Ahmedabad-I vs. M. Square Chemicals 2008 (231) ELT 194 (S.C.)

- The **show cause notice** for the period from January 1986 to 20th May 1987 is held to be beyond the extended period of limitation.
- Insofar as the period from 21st May 1987 to July 1987 is concerned, the finding recorded by the Tribunal on merits would be a finding of fact which does not call for interference. The appeals are accordingly dismissed.



# Time Limit for Remand Back Matters

## Sec. 75(3)

Where any order is required to be issued in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a court, such order shall be issued **within two years from the date of communication of the said direction.**

## Power to remand – Sec. 107(11)

- *The Appellate Authority shall, pass such order, as it thinks just and proper confirming / annulling the order appealed against, but shall not refer the case back to the adjudicating authority that passed the said decision or order:*

*Provided that an order enhancing any fee or penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund or input tax credit shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order :*

*Provided further that where the Appellate Authority is of the opinion that any tax has not been paid or short-paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised, no order requiring the appellant to pay such tax or input tax credit shall be passed unless the appellant is given notice to show cause against the proposed order and the order is passed within the time limit specified under section 73 or section 74.*

# Exclusions from calculation of limitation

## Sec. 75(1)

Where the service of notice or issuance of **order is stayed by an order of a court or Appellate Tribunal**, the period of **such stay shall be excluded in computing the period** specified in subsections (2) and (10) of section 73 or sub-sections (2) and (10) of section 74, as the case may be.

## Sec. 75(11)

An issue on which the Appellate Authority or the Appellate Tribunal or the High Court has given its decision which is prejudicial to the interest of revenue in some other proceedings and an appeal to the Appellate Tribunal or the High Court or the Supreme Court against such decision of the Appellate Authority or the Appellate Tribunal or the High Court is pending, the period spent between the date of the decision of the Appellate Authority and that of the Appellate Tribunal or the date of decision of the Appellate Tribunal and that of the High Court or the date of the decision of the High Court and that of the Supreme Court shall be excluded in computing the period referred to in sub-section (10) of section 73 or sub-section (10) of section 74 where proceedings are initiated by way of issue of a show cause notice under the said sections.

# Subsequent Period SCN

## Sec. 73(3)

Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for *such periods other than those covered* under sub-section (1), on the person chargeable with tax.

## Sec. 74(3)

Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.

## Sec. 74(4)

The service of statement under sub-section (3) shall be deemed to be service of notice under subsection (1) of section 73, subject to the condition that the grounds relied upon in the said statement, except the ground of fraud, or any wilful misstatement or suppression of facts to evade tax, for periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.

# Corrigendum to SCN

- No express provisions in law permitting the issuance of a corrigendum
- The amendments made in the SCN through a corrigendum dates back to the original SCN
- Corrigendum can cure errors in the SCN but cannot enlarge the scope or make a new case otherwise the statutory time limits will be given a go-by.

## Cases:

### **ESPI Industries Chemical vs. Commissioner of Central Excise, Hyderabad 2000 (115) ELT 81 (Tri.-Del)**

We find that the decision of the Hon'ble Calcutta High Court in Jiban Saha case (supra) relied by the appellants holding **that revised notice issued for enlarging the scope of first notice by taking advantage of the defence already disclosed, would be illegal and barred as analogous of res judicata would be clearly applicable in the facts of the case.**

# Corrigendum to SCN

## **Penguin Electronics (P) Ltd. vs. Commissioner of C. Ex., Mumbai-II 2005 (185) ELT 194 (Tri.-Bom)**

The issues of a **corrigendum after a personal hearing cannot upheld & order passed cannot be approved.**

## **S.T.L. Exports Ltd. vs. Commissioner of Customs, Indore 2004 (168) ELT 272 (Tri.-Del)**

**Duty raised under one Act cannot be transformed into demand of a different duty under the other Act** through a corrigendum to the show cause notice issued under the former Act, though it is open to the department to issue a corrigendum within reasonable time to amend a show cause notice under a given statute without enlarging the scope of, or otherwise changing the complexion of the case made out in, the original notice.

The fact that the authority for issuing show cause notices within both the statutes is the same officer - is irrelevant .

# NO SCN for Same Subject Matter

- ✓ Officer cannot repeatedly issue SCN for the same subject matter that has **already attained finality** (res judicata) for the given taxpayer.

## Cases:

**Associated Cement Companies Ltd. vs. Union Of India 1996 (88) ELT 348 (Kar.)**

*In the present case, **two show-cause notices were issued** by the authorities, first when the refund claim was made and after the replies were filed by the company in answer to the show-cause notice, **orders of adjudication were passed in favour of the company**. It is not in dispute that the two orders of adjudication had specifically examined the question as to whether Phase-II unit of the Company is a separate entity and entitled to the benefit. The **order had also examined whether the doctrine of unjust enrichment** is attracted to the claim for refund. The adjudicating authority had held in favour of the appellant Company and merely because, **some officer in the Department did not like the decision**, that cannot confer jurisdiction **to issue the third show-cause notice**. In our judgment, the issuance of **third show cause notice was without any jurisdiction and the exercise of powers was totally unjust and improper.***

# SCN on assumptions and presumptions

SCN issued on assumptions and presumptions where findings are not based on any evidence will be bad in law.

## Example

SCN demanding repayment of **ITC availed in respect of motor vehicle** determined based on its HSN 87. It doesn't establish whether its for transportation of Good / Passenger, having sitting capacity of 13 or more. Unless these inalienable facts are proved; allegation in SCN is mere assumption or opinion.

## Cases:

### **Union of India V. Garware Nylons Ltd. 1996 (87) E.L.T. 12 (S.C.),**

The burden of proof is on the taxing authorities to show that the particular case or item in question, is taxable in the manner claimed by them. Mere assertion in that regard is of no avail. It has been held by this Court that there should be material to enter appropriate finding in that regard and the material may be either oral or documentary. It is for the taxing authority to lay evidence in that behalf even before the first adjudicating authority. Especially in a case as this, where the claim of the assessee is borne out by the trade inquiries received by them and also the affidavits filed by persons dealing with the subject matter, a heavy burden lay upon the revenue to disprove the said materials by adducing proper evidence.”

# SCN on assumptions and presumptions

## **Oudh Sugar Mills Ltd. vs. Union of India 1978 (2) ELT 172 (S.C.)**

Allegations based only on calculations of raw material fed into the process or on working of the machinery as noticed during test inspection - No tangible evidence on record

Finding is based only on inferences involving unwarranted assumptions. The finding is thus vitiated by an error of law.



# SCN on assumptions and presumptions

## Example

1. Taxpayer (Recipient) received SCN for inadmissible credit due to **mismatched between GSTR-2A & 3B**. This demand is based on the presumption that mismatched of data from the common portal, necessarily means supplier has defaulted in payment of tax on supplies to recipient.
2. Taxpayer (Recipient) received **SCN for payment of RCM** on account of data reported by supplier in their GSTR-1 – as outward supply liable for RCM. This demand based on the presumption that supplier's interpretation of RCM is more accurate than that self assessed by the recipient – is inaccurate.
3. Taxpayer received SCN for payment of tax liability based on the **difference appearing between turnover reported in ST return and form 26AS**. This demand is based on the presumption that TO reported in form 26AS has factored all the principal required to ascertain the taxable turnover as per Finance Act.

# SCN on assumptions and presumptions

**Gupta Power Infrastructure Limited and Shri. S M Gupta V/s. Commissioner of CGST & C.Ex., Bhubaneshwar 2019 (12) TMI 526 CESTAT Kolkata**

- *On this front, we find that the **SCN has not placed any conclusive evidence in putting the fact that the service rendered by the Noticee is something other-than related to agriculture so as to inflict the levy of tax on Noticee. No revelation to this effect has been recorded in the findings of the Original Authority either. On the other hand, the Original Authority in its order has been heavily dependent on the Noticee to prove its claim of getting itself exempted from the payment of Service Tax.***
- *In the instant case, it is relevant to place here that first of all, there must be a 'levy of Tax' for anyone to claim the benefit of exemption from such 'levy of Tax'. **The Department could have come up with sufficient cause to inflict the levy of Tax on the activities undertaken by the Noticee- rather than seeking the Noticee to prove the cause of non-levy of Service tax. Moreover, the cause placed by the Department for the imposition of levy of Service tax cannot be a mere assertion based on the assumptions or presumptions envisaged in the SCN and instead, such assertions should be 'beyond reasonable doubt' to inflict the levy of Tax upon the Noticee herein. In the present case, the tax imposed on the activities undertaken by the Noticee ceases to have the essence of a Taxable Service, and therefore the rational connection between the Tax imposed and the person on whom it is imposed, ceases to exist. The Revenue Department cannot absolve of its responsibility of onus probandi to prove the activity undertaken by the Noticee is indeed a taxable service under the statute. This issue is no more res integra, as there are many judgements pronounced by various Court of Law wherein it is held the onus of proving the taxability in respect of any event/activity is solely incumbent upon the Statutory Authority.***

# SCN & Cross Examination

Degree of the reliability of the evidence in the form of a statement by the adjudicating authority will be based on the cross examination when sought by the accused.

- statements recorded on oath by third party witness – Sec 136
- statements recorded on oath by third party expert – sec 153
- Assertion in notice as to ingredients to demand
- Credit report or other reports secured from third party sources

## **Andaman Timber Industries v. Commissioner of C. Ex., Kolkata-II 2015 (324) E.L.T. 641 (S.C.)**

According to us, not allowing the assessee to cross-examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to **violation of principles of natural justice** because of which the assessee was adversely affected.

- **Shree Parvathi Metals Vs. Union of India (2018) 11 GSTL 137 (Raj.)**
- **D.Y. Beathel Enterprises v. The State Tax Officer 2021-VIL-308-MAD**

# SCN to Legal Heirs

Case laws:

**Shabina Abraham vs. Collector of Central Excise and Customs 2015 (322) ELT 372 (S.C.)**

*in the absence of machinery provisions for proceeding against dead person's legal heirs, duty and other sums do not become payable to apply recovery provisions under Section 11 of Central Excise Act, 1944 Hence Adjudication proceedings Sec. 11A under the Central Excises and Salt Act, 1944 cannot continue against the legal representatives/estate of a sole proprietor after his death.*

**Deputy Commissioner v. Service Care Pvt. Ltd 2019 (365) E.L.T. 225 (Mad.)**

**Azad Engineering Works v. Commissioner 2019 (24) G.S.T.L. 46 (Tri. - All.)**

Recovery of Service Tax dues of proprietorship firm cannot be recovered from the legal heirs of person after his death

# PRE -SCN Consultation

## Rule 142(1A)

The [proper officer may], 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

**‘Shall’ substituted for ‘may’ vide Notification No. 79/2020-CT dated 15.10.2020.**

How to consider the aspect of limitation if the department is relegated to undertake pre-SCN consultation and thereafter issue the SCN – ‘fresh SCN’ ?

**Amadeus India Pvt. Ltd.v. Pr.Comm [2019 (25) G.S.T.L. 486 (Del.)],**

*where for failure to comply with a similar pre-notice consultation procedure (issued under Master Circular 1053/2/2017-CX, dated 10.03.2017) the impugned SCN itself was set aside*

# Opportunity of Personal Hearing

## Sec. 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.

## Sec. 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.

- **Bindal Sponge Ltd. vs. UOI– 2015 (322) ELT 657**

transfer of adjudication officer - Official notice of hearing received by assessee after date of hearing violative of natural justice, and not sustainable

- **Afloat Textile (P) Ltd. vs. CCE – 2007 (215) ELT 198 (Tri-Ahmd).**

Giving choice of three dates for personal hearing in one letter would not amount to adjournments

# PENALTY

Section	Tax, Interest, and Penalty	Action that can be taken by the taxpayer	Action taken by the Authority
<b>Voluntary payment before issuance of SCN</b>			
<b>Under Section 73</b>	Tax + Interest	Intimate the Department about voluntary payment in Form DRC-03.	The proper officer shall issue an acknowledgement, accepting the payment made by the said person in FORM GST DRC-04, and if satisfied, no notice will be issue
<b>Under Section 74</b>	Tax + Interest + Penalty @ 15% of tax		
<b>Payment within 30 days of issue of SCN</b>			
<b>Under Section 73</b>	Tax + Interest	Intimate the Department about voluntary payment in Form DRC-03.	If the Authority is satisfied with the reply, it will drop the proceedings by the issue an order in Form DRC-05, or else Notice of a personal hearing will be issued.
<b>Under Section 74</b>	Tax + Interest + Penalty @ 25% of tax		
<b>Payment after 30 days of issue of SCN but within the stipulated time mentioned in SCN</b>			
<b>Under Section 73</b>	Tax + Interest + Penalty @ 10% of tax or Rs. 10,000 whichever is higher	Reply to the SCN in Form DRC-06 and submit documents.	If the Authority is satisfied with the reply, it will drop the proceedings by the issue of Form DRC-05, or else Notice of a personal hearing will be issued.
<b>Under Section 74</b>	Tax + Interest + Penalty @ 50% of tax		

---

# General Provisions

---



# General provisions relating to determination of tax

## Speaking Order

The proper officer shall set out the relevant facts and the basis of his decision and pass a speaking order with complete details. If it is not a speaking order, the order will be treated as invalid.

## Order cannot travel beyond SCN

The provision of this section restrict on the nature and extent of enquiry beyond the terms of SCN. The revenue is barred from expanding and adding any missing information (**Which is bought out from the reply made**) during adjudication.

### Example

Notice is served alleging the admissibility of ITC under rule 42 & 43 and during adjudication process certain non-payment of tax on account of RCM liability emerges. Demand in respect of such liability can not be confirmed in the said order.

### Sec 75 (7) of CGST Act

*(7) The amount of tax, interest and penalty demanded in the order shall not be in excess of the amount specified in the notice and no demand shall be confirmed on the grounds other than the grounds specified in the notice.*

---

# What Next After SCN

---

# General Checklist

## Date of Receipt

- The calculation of 30 days from the date of communication of notice will start only from the date when you receive the show cause notice.

## Quoting DIN on SCN

*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** - CIRCULAR NO. 122/41/2019-GST, DATED 5-11-2019*

- Whether the notice contains all the details that are ordinarily pre-requisite for the situation in question ?
- Whether the notice grants appropriate time to file the response ?
- Whether the notice provides the relied upon facts/documents to facilitate the filing of the response ?

# Manner of serving the SCN

**Rule 142(1)** : The proper officer shall serve, along with the

notice issued under section 52 /73 /74 /76 /122 /123 /124 /125 /127 /129 /130	a summary thereof in FORM GST DRC-01
statement under 73 (3) or 74 (3),	a summary in FORM GST DRC-02

specifying therein the details of the amount payable.

## **Akash Garg Vs State of M.P. (Madhya Pradesh High Court) (W.P. No. 16117/2020)**

Held in the context of aforesaid Rule 142 that the **proceedings have to be undertaken in the manner prescribed** and the proceedings undertaken **otherwise shall not be valid**.

## **Kashi Bartan Bhandar v. State of U.P 2018 (19) G.S.T.L. 403 (All.)**

Affixation of SCN at some conspicuous place of assessee's last known place of business or residence, to be resorted to only when all other previous modes prescribed under **Clauses (a) to (e) of Section 169 of CGST Act, 2017** found to be not practicable

Show cause notice by way of affixation directly, without resorting to previous prescribed modes, that too without disclosing time, date, place and manner of such affixation, cannot be said to have been served on the assessee

# Time Period to Reply SCN

No express time period is defined under the statute

## Case Law :

**Sheetal Dilip Jain v. State of Maharashtra - [2022] 143 taxmann.com 159 (Bombay)**

- The Honorable High Court noted that Section 73 allows a period of 30 days from issuance of the show-cause notice to make payment of such tax along with interest payable under Section 50. If he does not wish to make payment, then within the 30 day period he could file a reply to the show-cause notice.
- However, in the show-cause notice only 7 days was given to reply to the notice and on the 8th day the impugned order came to be passed. Therefore, the question of not paying within 30 days of the issue of the notice would not arise. **This statutory period can't be arbitrarily reduced to 7 days by assessing officer.**
- Therefore, the order was passed without application of mind and the Court directed Revenue to pay a sum of Rs.10,000/- as donation to PM Cares Fund and copy of this order shall be forwarded to the CBIC and to the Chief Commissioner of State Tax, Maharashtra, so that they could at least hold some kind of training and/or orientation session/course, etc. to apprise and educate its officers on the prevailing law and rules.

---

# Drafting A Response

---

# Understanding of SCN

## Issues

Factual  
Legal

## Legal

Selection of law  
Application of law

- Plain meaning
- Intent
- Golden Rule

## Factual

Disputed fact

- Material
- Immaterial

Undisputed facts

- Material
- Immaterial

# FATAL ERRORS IN RESPONSE TO NOTICE

- Submitting books and records in 'Unnamed' proceedings
- submitting pre-registration information in registration proceedings
- admitting valid 'service' of notice .
- filing 'nil' returns in a hurry or under compulsion
- multiple rounds of written replies to notice in ASMT-10
- detailed reply in respect of observations contained in ADT2
- Not Questioning the question before responding

## **Example**

SCN issued demanding tax on 'Other Income'. Taxpayer's reply asserts that 'other income' is excluded by schedule III, Now the revenue will relax and onus is on taxpayer to establish such exclusion with documentary evidence. Alternatively taxpayer object the demanding questioning the taxable element in 'other income'



## Drafting of Response

*A good and tasty food though prepared well, will not be attractive unless it is presented well.*



# Drafting the Reply

Particulars in Notice	Statement of Taxpayer's understanding or position with respect of each issue
Identity of Noticee	Distinct person
Issues	Quantum & Nature of Demand
Demand	Accepted (Supply DRC-03) Rejected
Objections	<p><b>Objection on Law :</b></p> <ul style="list-style-type: none"><li>• Jurisdiction of Proper office</li><li>• Pre- Notice consultation</li><li>• Due Process of underlying Proceedings</li><li>• Due process of Issues in Notice</li><li>• Limitation</li></ul> <p><b>Objection on Facts :</b></p> <ul style="list-style-type: none"><li>• Disclosure of Material Taken on Record</li><li>• Listing of Facts in issue</li><li>• Identification of irrelevant Facts</li><li>• <b>Contradiction of Facts</b></li></ul>

# Drafting the Reply

---

## Objections

### *Objection on Evidence adduced:*

- Validity and admissibility
- **Cross – Examination**

---

### Rebuttal / Countering on Facts

### Rebuttal / Countering on Law

---

### Rebuttal on application of law to facts

### *Relief Sought:*

Order Prayed

---

# Reply to be filed in the specified manner (DRC – 06)

## FORM GST DRC-6

[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	<<Text box>>	
6.	Documents uploaded	<<List of documents>>	
7.	Option for personal hearing	<input type="checkbox"/> Yes	<input type="checkbox"/> No

8. Verification-

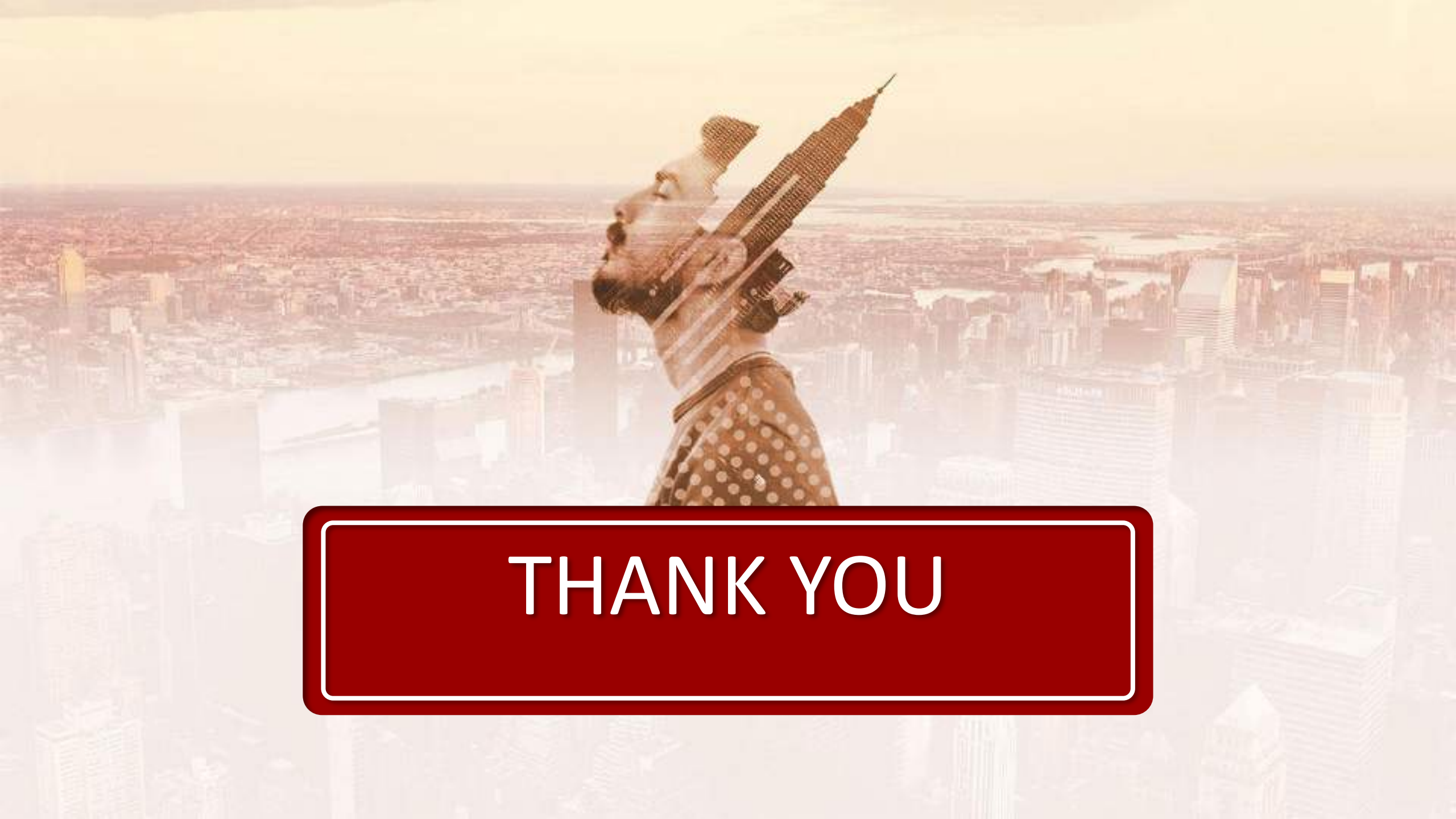
I hereby solemnly affirm and declare that the information given herein above is true and correct to the best of my knowledge and belief and nothing has been concealed therefrom.

*Signature of Authorized Signatory* .....

*Name* .....

*Designation/Status* .....

*Date* .....



THANK YOU

# Contact Us

[gopalkedia@gkaca.in](mailto:gopalkedia@gkaca.in)

