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All India Federation of Tax Practitioners

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ALL INDIA FEDERATION OF TAX PRACTITIONERS

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Membership of All India Federation of Tax Practitioners as on 28th April, 2023					
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Zone Name	Associate	Individual	Association	Corporate	Total
Central	0	1432	25	0	1457
Eastern	6	2051	37	0	2094
Northern	0	1478	21	2	1501
Southern	1	2331	23	4	2359
Western	5	2911	38	3	2957
Total	12	10203	144	9	10368

FORTHCOMING PROGRAMMES		
Date & Month	Programme	Place
2nd to 10th June, 2023	International Study Tour to Vietnam	Vietnam
17th June, 2023	One Day Conference (Western, Northern, Eastern Zone)	Thane
23th June, 2023	National Executive Committee Meeting	Tirupathi
23th June, 2023	National Tax Conference (Southern Zone)	Tirupathi
25th June, 2023	Full Day Conference (Central Zone)	Kota
30th June, 2023	National Tax Conference (Central Zone)	Raipur
7th July, 2023	National Executive Committee Meeting	Chennai
7th July, 2023	National Tax Conference (Southern Zone)	Chennai

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President's Message

Friends,

The tremendous response being received from the Members of AIFTP throughout India through their participation in the Conference / Seminar / Webinar is unprecedented. Continuous programmes are being organised by all the Zones and the participation in all these programmes is all time high. This is for the reason also that the communication through social media and updation of records of the AIFTP is going on and because of it more and more Members are getting information of the programmes of AIFTP and joining them.



This year we had made the social media usage a priority with informing the Members about the programmes through the use of WhatsApp, Twitter, Facebook, etc. and also making the programmes like on the AIFTP page of face book. In addition, we are using mass mail and sending email to the Members about the programmes and asking them to join it.

We had also taken the task to update the records of AIFTP regarding Members data and are currently updating the records of the Members by sending the information through WhatsApp or using the good offices of the Senior Members of the city to verify and update the list of Members. Simultaneous amendments are being done in the AIFTP records also and we will be shortly sending the mail to each individual Member with the data available with us to verify the same and in case of changes / correction the same can be done by the Member through the link being provided by us. We request all the Members also to visit the website of the AIFTP at aiftponline.org and click on the Directory Icon to update their records directly also.

Friends, recently we had One Day Conference was organized at Vishakhapatnam on 22 April, 2023 in Association in Visakha Tax Practitioners and Consultants Association and other Associations and it was attended by over 350 participants. The said Conference was inaugurated by Hon'ble Mr. Justice R.Ragunandan Roy, Judge, A.P. High Court and Sh. M.R.R. Reddy, Principal Commissioner, Vishakhapatnam, CGST was the guest of Honour. The credit goes to Mr. M.V.J.K. Kumar, National Joint Secretary (SZ) and the team laid by Mr. C. SanjeevaRao, National Vice President (SZ). It was after a long time that any National event was being organized in Vishakhapatnam.

Thereafter, the much awaited event of the National Tax Conference and NEC Meeting was organized on 29th & 30th April, 2023 at Statue of Unity, Kevadia at Hotel Fern, Kevadia, it was attended by over 250 delegates and Hon'ble Mr.

Justice Rajesh Bindal, Judge, Supreme Court of India was the Chief Guest and Hon'ble Mr. Justice BhargavKaria, Judge, Gujrat High Court was the Guest of Honour. The technical deliberation to place in various Sessions and the NEC Meeting was also organized.

One Day Conference was organized at Ghaziabad by AIFTP (NZ) on 6th May, 2023 along with ICAI Ghaziabad Branch at the IMS Auditorium at Ghaziabad and it was attended by 200 Professionals.

Recently on 13th and 14th May, 2023 the National Tax Conference and NEC was organized at Indore. This programmes was organized along with the Darshan of Mahakaal at Ujjain. The attendance was of more then 500 Professionals and participants were from all over India. The technical sessions and the Speakers were Par excellence. The credit for the success of the programmes goes to Mr. Rajesh Mehta, Secretary General AIFTP and the Conference Chairman Mr. SumitNema. The programme was organized along with the ICAI Indore Branch and TPA Indore.

Friends, we are organizing many programmes in the remaining part of May, 2023 and in subsequent months. One Day Conference is Scheduled at Bhilwara on 20th May, 2023. Thereafter spiritual RRC is schedule from 27th – 29th May, 2023 at Brahma Kumari at Mount Abu. In the month of June, we are going to International Study Tour to Vietnam. Thereafter One Day Conference is scheduled at Thane on 17th June and One Day Conference is schedule at Tirupati on 22nd June. Many more programmes are also scheduled and the details are available on the website of AIFTP.

Continuous programmes success is only with the participation of the Members and we request you all to circulate the information regarding the AIFTP programmes to all Professionals groups and friends. We also request that subscription to the journals we made by you all and the information regarding the journal and its subscription be also circulated in all your Professionals groups. Ask your friends who are Tax Professionals to join AIFTP and I expect that each Member will get one more Member to the AIFTP Fraternity.

We look forward to active participation of the Members and also request Members to update their data on the website using the online facility. Individual mail is also being sent to Members to upload their data. In case Members are having suggestions then the same may kindly be informed by sending mail at aiftpho@gmail.com or WhatsApp to the undersigned.

Regards,

PANKAJ GHIYA

National President, 2023

9829013626

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CHIEF-EDITOR'S COMMUNIQUE

“विद्याशास्त्रञ्च शास्त्रञ्च द्वे विद्याप्रतिपत्त्ये।
आध्या हासाय वृद्धत्वे द्वितीयाद्रियते सदा।।”

" One has to learn both the art of fighting with weapons and with knowledge of various arts and sciences. One can win a physical fight only until certain age, but with knowledge one can always win disregarding age."



Our Esteemed Members,

As we bid farewell to the month of April, I am thrilled to welcome you to the latest edition of our Journal where we bring you the latest updates, development, changes, amendments and trends from the profession. I extend my heartfelt gratitude to everyone for all the love and support. The Journal has been applauded by the Professionals and it has received wide acceptance.

As change is law of nature, we have had to adept new ways of learning and communicating with coming time and despite these challenges, AIFTP has remained committed to upholding the highest standard of learning and knowledge sharing along with updating with the changes.

In this edition, we have also covered latest section wise case digest. Further, the Articles contained in the Journal are on the recent issues and controversies and amendments. In this journal, we have tried to cover all the timelines, amendments, judgments, recent changes and latest updates. I hope you find this edition informative and engaging and I would also like to thanks our readers for their continued support and feedback, which help us to improve and refine the journal. We welcome your feedback and suggestions for the future editions of the journal. Please feel free to reach out to us with your ideas and contributions. We rely on your participation and support.

I also request you all to renew your subscription, if due and circulate the information of subscription to all the professionals and friends in all the Whats app groups/

Facebook posts or twitter handler, so that we may get more subscription for this Journal.

We are grateful to the contributors to this journal who had been sending Articles, updates, judgments etc. We also look forward to hearing from you and working together to advance the profession. We also invite you to stay engaged with us and send your articles/editorials, important judgments or updates for publishing in the journal at the mail Idaiftjournal@gmail.com.

We remain committed to serving you with unwavering dedication, striving to create value and empower our members with the resources they need to thrive in their professional journeys.

Thank you for your continuous trust and confidence.

Regards,

Deepak Khandelwal

Chief Editor

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TIMELINE - GST

Adv. Abhay Singla

A. GOODS & SERVICE TAX

Sr. No.	Particulars	Form	Period	Due Date
(i)	Monthly Summary GST Return	GSTR-3B	May, 2023	20 th June 2023
	(a) Regular Taxpayers		June, 2023	20 th July 2023
(ii)	Detail of Outward Supplies: -	GSTR-1 (QUARTERLY)	May, 2023 (IFF)	13 th June 2023
	(a) QRMP		Apr-June, 2023	13 th July 2023
	(b) Monthly Filing	GSTR-1	May, 2023	11 th June 2023
			June, 2023	11 th July 2023
(iii)	Payment of Tax under QRMP	PMT-06	By 25 th of next month	
(iv)	Quarterly return for Composite taxable persons	CMP-08	April-June 2023	18 th July 2023
(v)	Return for Non-resident taxable person	GSTR-5	Non-resident taxpayers have to file GSTR-5 by 20th of next month.	
(vi)	Details of supplies of OIDAR Services by a person located outside India to Non-taxable person in India	GSTR-5A	Those non-resident taxpayers who provide OIDAR services have to file GSTR-5A by 20th of next month.	
(vii)	Details of ITC received by an Input Service Distributor and distribution of ITC.	GSTR-6	The input service distributors have to file GSTR-6 by 13th of next month.	
(viii)	Return to be filed by the persons who are required to deduct TDS (Tax deducted at source) under GST.	GSTR-7	May, 2023	10 th June 2023
			June, 2023	10 th July 2023
(ix)	Return to be filed by the e-commerce operators who are required to deduct TCS (Tax collected at source) under GST	GSTR-8	May, 2023	10 th June 2023
			June, 2023	10 th July 2023

RECENT NOTIFICATIONS & CIRCULARS UNDER CGST ACT

Adv. Deepak Garg

NOTIFICATIONS-CENTRAL TAX

DATE	NOTIFICATION NO.	REMARKS
24.05.2023	13/2023-Central Tax	Seeks to extend the due date for furnishing FORM GSTR-7 for April, 2023 for registered persons whose principal place of business is in the State of Manipur.
24.05.2023	12/2023-Central Tax	Seeks to extend the due date for furnishing FORM GSTR-3B for April, 2023 for registered persons whose principal place of business is in the State of Manipur.
24.05.2023	11/2023-Central Tax	Seeks to extend the due date for furnishing FORM GSTR-1 for April, 2023 for registered persons whose principal place of business is in the State of Manipur.
10.05.2023	10/2023-Central Tax	Seeks to implement e-invoicing for the taxpayers having aggregate turnover exceeding Rs. 5 Cr from 01 st August 2023.

NOTIFICATIONS-CENTRAL TAX (RATE)

DATE	NOTIFICATIONNO.	REMARKS
09.05.2023	05/2023-Central Tax (Rate)	Seeks to amend notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 so as to to extend last date for exercise of option by GTA to pay GST under forward charge.

INSTRUCTIONS

DATE	INSTRUCTION NO.	REMARKS
26.05.2023	02/2023-GST	Standard Operating Procedure for Scrutiny of Returns for FY 2019-20 onwards
04.05.2023	01/2023-GST	Guidelines for Special All-India Drive against fake registrations -regarding

INTRICACIES UNDER DEPARTMENTAL AUDIT AND ISSUANCE OF SCN U/S 73 OF GST LAWS – PART 1

CA Siddeshwar Yelamali

CA Mukesh Shah

Preamble

Audit, as a verb, means to make an official examination of accounts and documents to form an opinion. The term indicates an independent verification by a qualified person, called an Auditor. The audit opinion is issued by the Auditor depending on the objective and scope of audit. The Audit Report contains the opinion of the Auditor.

To begin, it is imperative to evaluate the key elements of the term ‘audit’ as defined under the CGST Act, 2017 (for brevity, ‘Act’).

Section 2(13) “audit” means the examination of records, returns and other documents maintained or furnished by the registered person under this Act or the rules made thereunder or under any other law for the time being in force to verify the correctness of turnover declared, taxes paid, refund claimed and input tax credit availed, and to assess his compliance with the provisions of this Act or the rules made thereunder;

The above definition makes the scope and objective very clear. The Scope is to examine:

- a. Records;
- b. Returns;
- c. Other Documents maintained or furnished

The objective is to verify:

- a. Correctness of turnover declared,
- b. Taxes paid,
- c. Refund claimed;
- d. Input tax credit availed; and
- e. Assess compliance with the provisions

Audit definition includes certain terms – ‘examine’, ‘verify’ and ‘assess’. Each has different meaning and scope/objective. Apart from these, there are many terms

used in the Act, of which one must know the meaning and context in order to assist interpretation:

Term	Definition	Objective
Examine	To test critically or to formally interrogate in order to form a judgement.	<i>to test the evidence to form a judgement/result.</i>
Verify	To assert,approve to be true; to ascertain, confirm or test the truth or accuracy of;	<i>to gain confirmation of truth from evidence.</i>
Assess	To assess means to fix the amount of tax or determine a value of something ¹ ;	<i>determination of amount</i>
Scrutiny	An official examination of documents or things to confirm the numbers or any other thing;	<i>an examination to confirm;</i>
Check	To verify or audit;	<i>to gain confirmation of truth from evidence</i>
Investigate	Code of Criminal Procedure, 1898 - Section 2(h) "investigation" includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf;	<i>Collection of evidence, it implies laborious or contested inquiry.</i>
Inquiry	Code of Criminal Procedure, 1898 - Section 2(g) "inquiry" means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court;	<i>to seek knowledge by putting a question to a person. It is not as laborious as investigation</i>
Inspect	To inspect is to look closely into; examine officially. To inspect doesn't include seize or search ² .	<i>To look or observe officially things, documents or person;</i>
Search	An examination or scrutiny for the purpose of finding a person or thing; to look into or over carefully or thoroughly in an effort to find or discover;	

¹ ITO Vs K N Guruswamy (1958) 34 ITR 60 (SC)

²RamkrishanSrikishanJhaver V CCT (1965) 57 ITR 664 (Mad)

From the above analysis, it can be construed that every activity has different levels of intensity. The objective or end results to be achieved are different and hence even the scope of work differs in each of these terminologies. Certainly, few of them have overlapping fields of operation. As the law has defined the phrase 'Audit', the current article is focused on the intensity, objective and scope of 'audit'.

Power to conduct audit u/s 65 of the Act

A question arises, as to whether a registered person will be audited by Central Tax Officers or State Tax officers. There is vast difference in the procedures followed to conduct an audit of registered person by CGST and SGST Commissionerate. Audit is incorporated under the law based on the Organisational Structure of Central Tax authorities as the concept of audit seems to be imported from Central Excise & Service Tax law. Under GST, few State Audit Commissionerates have devised their own methods of auditing registered persons and even adjudicating the same matter upon culmination of the audit by the officer conducting the audit.

The jurisdiction of registered persons is divided between the Central and State Tax Commissionerate and jurisdictional powers of the Executive Commissionerates includes power to conduct audit u/s 65. However, there is no bar in the law prohibiting initiation of any proceedings against a registered persons assigned to the Commissionerate of State jurisdiction, or vice versa.

Registered persons having multiple registrations in single or multiple states are audited by respective Jurisdictional Commissionerate' officers, as each registration is a distinct person. The reconciliation of turnover of each registration with Financial Statements and availment of ITC per registration is very crucial aspect (high-risk) in such scenarios.

The provisions of section 6 of the Act makes it clear that there cannot be any parallel audit proceedings for same period by both the Commissionerates. Once any proceeding is 'initiated' on a particular matter by a proper officer of the State Commissionerate, or vice versa, the officer of the Central Commissionerate cannot initiate proceeding on the same subject matter. Proceeding includes 'audit' as it involves predefined sequence of steps by the proper officers.

The honourable High Court of Calcutta held³ that where audit proceeding under Section 65 of CGST Act, 2017 has already commenced, said proceeding should be

³ R.P. Buildcon (P.) Ltd. 2023 (68) G.S.T.L. 114 (Cal.)

taken to logical end and proceedings initiated by Anti Evasion and Range Office for very same period should not be proceeded with any further.

On the other hand, the honourable High Court of Kerala held⁴ that when audit was in progress, simultaneous proceedings of investigation u/s 67 of the Act, can be initiated and there is no infirmity. Audit U/s 65 is a routine procedure, whereas, the procedure U/s 67 is onerous and is initiated only upon satisfaction of an officer not below the rank of Joint Commissioner. The SLP filed before the honourable SC against the order of Kerala High Court is dismissed.

Access to Business premises and access to computer system

Section 71(1) of the Act allows duly authorised proper officer access to the business premises of the registered person, to carry out any audit, scrutiny, verification and checks, as may be necessary to safeguard the interest of revenue. Sub Section (2) of section 71 mandates every registered person to make available to the “audit party”, such records, trial balance, financial statements, cost audit / tax audit reports, or any other documents, for the scrutiny of the ‘audit party’ within 15 days.

It is a pertinent question to decide whether Section 71 can be invoked only for the limited purposes of provisions of Section 65 and 66 or, otherwise also any officer can visit the premises of the registered person to audit, scrutinise, verify and check the records? If section 71 is to be interpreted independent of section 65 and 66, then what is the difference between the provisions of section 71 and section 67? The author’s view is that the Section 71 of the Act should have limited applicability for the purpose of conducting an audit already assigned under section 65 or 66, as the terms like ‘audit, scrutiny, verification and check’ are used (considering the principle of *ejusdem generis*). The operation of Section 67 of the Act is vast and onerous, with in built safeguards of ‘*reason to believe*’ and independent application of mind by an officer not below the rank of Joint Commissioner to authorise inspection or search, where the evasion of tax is presumed. Such opinion is supported by the considered view of Honourable High Court of Patna⁵ wherein it held that ‘the intent, purpose and scope of both the Sections are distinct, separate and independent and not subject to each other’.

Further, Section 71 of the Act is drafted in a way that the proper officer’s role is ‘passive’ and limited to seek information/records/access to computer system and

⁴ Suresh Kumar P.P. Vs DDGST, 2020 (41) G.S.T.L. 17 (Ker)

⁵ Maa Bhagwati Spongiron Pvt. Ltd. 2021 (52) G.S.T.L. 399 (Pat.)

duty is cast upon the registered person to supply information/records, within 15 days if not readily available. Unlike Section 67, there is no presumption of evasion of tax in Section 71.

It is observed that 'visit audits' are conducted by officers under GST FORM ADT-01, but the proceedings permitted only under GST FORM INS-01 are conducted. Government should address the overlapping operations of section 67 and 71 to avoid ambiguity in the minds of registered persons and departmental officers by issuing appropriate circulars / guidelines.

Initiation of Audit u/s 65 Act

Commissioner has power to undertake audit himself or authorise any officer by way of a general or specific order. Audit can be undertaken only of a registered person. Registered person is informed by way of a notice in FORM GST ADT-01 at least 15 working days in advance prior to conduct of audit.

Although the Audit is a routine procedure, audit can be initiated by a proper officer as an outcome of scrutiny of returns u/s 61. However, procedure prescribed u/s 65 must be followed. Standard Operating Procedure (SOP) for Scrutiny of returns for FYs 2017-18 and 2018-19, issued vide Instruction No. 2/2022-GST, dated 22-3-2022, prescribes that if the proper officer is of the opinion that the matter needs to be pursued further through audit or investigation to determine the correct liability of the said registered person, then he may refer the matter to the jurisdictional Principal Commissioner/Commissioner through the divisional Assistant/Deputy Commissioner, for the decision whether the matter needs to be referred to Audit Commissionerate or Anti-evasion Wing of the Commissionerate, as the case may be (reference para 6.8 (X) of the instruction).

Initiation of Special Audit u/s 66 of the Act

A special audit, by a chartered accountant or a cost accountant, can be instituted in limited circumstances where at any stage of scrutiny, inquiry, investigation or any other proceedings, any officer not below the rank of Assistant Commissioner, having regard to the nature and complexity of the case and the interest of revenue is of the opinion that

- i. the value has not been correctly declared or
- ii. the credit availed is not within the normal limits.

Prior approval of Commissioner is necessary before ordering special audit. The

chartered accountant or a cost accountant must be nominated by the Commissioner. The special audit can be conducted notwithstanding the fact that the registered person is audited under any other provision or any other law. Further, in special audit cases, the law mandates opportunity of being heard to the registered person, unlike section 65, where there is no mandate to give any opportunity of being heard. As per the Rule 101(4), the proper officer 'may' inform the discrepancies noticed to the registered person.

The proper officer u/s 66 of the Act is required to issue a direction in FORM GST ADT-03 to the registered person to get his records audited by a chartered accountant or a cost accountant specified in the said direction, and upon conclusion of the audit, the registered person shall be informed of the findings of special audit in FORM GST ADT-04.

At this stage, it is important to note one more provision of the CGST Act, 2017, which enables the officer not below the rank of Assistant Commissioner to seek assistance from an expert, having regard to nature and complexity of the case and the interest of revenue.

Taking assistance from an expert.

Section - 153. *Any officer not below the rank of Assistant Commissioner may, having regard to the nature and complexity of the case and the interest of revenue, take assistance of any expert at any stage of scrutiny, inquiry, investigation or any other proceedings before him.*

Section 153 is silent with regard to prior approval of commissioner, remuneration payable to expert, and the forms and procedure to be followed to take assistance from an expert. The Section is also silent as to whether the officer needs to inform the registered person of the fact that an expert opinion has been obtained and has relied on the same. The opinion of expert must be shared with the registered person and an opportunity of being heard must be provided before determination of tax and penalty, as mandated by Section 75(4) of the Act. The main difference between Section 66 and Section 153, is of scope and purpose of such exercise. Some unanswered issues on this Section

- What if the opinion of expert is favourable to the registered person? Is the registered person required to be informed?
- Is the officer bound by the expert opinion while concluding the proceedings?

- How will the registered person know that an expert assistance has been taken by the officer in his case?

Period of audit by tax authorities & timelines to conclude the audit

The Audit can be conducted for any financial year or multiple financial years. With effect from 31-DEC-2018, even a part of financial year can be audited.

There is no prescription to follow sequential order to conduct audit. Audit of preceding financial year may be conducted after completion of audit of a succeeding financial year.

As per the provisions of section 65(3) of the Act, the audit 'shall' be completed **within a period of three months from the date of commencement of audit.**

'Commencement of audit' means the date on which the records and other documents, called for by the tax authorities are made available by the registered person, or the actual institution of audit at the place of business, whichever is later.

Audit officer may seek additional documents or records for verification or to satisfy himself before forming any opinion, hence, the date of commencement keeps moving if the requirements keep changing. There is no prescribed form to seek the additional records or documents from the registered person. In case the audit is not completed within three months, the Commissioner may, after recording reasons in writing, extend the period by **a further period not exceeding six months.**

The Audit officer is mandated to inform the audit findings to the registered person within 30 days following the conclusion of the audit. However, before finalising the audit findings, the Rule 101 (4) allows the Audit Officer to inform the registered person about the discrepancies noticed during the audit and the registered person may file his reply against such discrepancies. The audit findings must be finalised after due consideration of the reply furnished by the registered person. Audit findings are issued to registered person in FORM GST ADT-02.

The special audit has to be completed within a period of ninety days, however, the Assistant Commissioner may extend the time limit by further ninety days. The term 'commencement of audit' is not mentioned in section 66; however, it can be presumed that the time limit starts to run only after documents and records are provided to the nominated chartered accountant or cost accountant.

The maximum time limit of any audit proceeding should be within the prescribed timelines of issuing show cause notice (in short, 'SCN') under section 73 or 74 of

the Act. Any adverse opinion / finding in audit against the registered persons should culminate in SCN as the FORM ADT-02 or ADT-04 as such cannot be equated with an SCN for the purpose of computing period of limitation.

Scope & objective of Audit

Sub Rule (3) of Rule 101, more or less draws the scope and objective of audit. The key aspects of verification to form an audit finding is:

- a. Verification of documents based on which books of accounts are maintained;
- b. Verification of documents based on which returns and statements are furnished;
- c. Verification of correctness of turnover;
- d. Verification of exemptions and deductions claimed;
- e. Verification of rate of tax applied in respect of supply;
- f. Verification of the input tax credit (ITC) availed and utilised;
- g. Verification of refund claimed.

The definition of the term 'audit' contains these key elements, which are broadly covered by the Rule 101 as scope of audit. The objective of audit is to form opinion, under GST it will be about correctness of taxes paid, entitlement of ITC / refund and compliance with the provisions of the act and rules made thereunder. Every applicable provision of the CGST Act gets covered to form audit finding (audit opinion).

'Correctness' doesn't leave any margin of error. 'True and fair' may allow some margin of error depending on the materiality. This difference decides the quantity and quality of sample size. Auditors normally employ professional judgement to spread the samples across various areas under audit, which is normally guided by the probability of misstatements. Likewise, the Audit officer under section 65 of the Act, may also pick up samples and spread the same across high-risk areas under audit. It is observed that, the officers have been seeking copy of every tax invoice, purchase invoice, financial statements, bank statements, all kinds of reconciliation statements i.e., Turnover to GSTR1, GSTR1 to GSTR3B, GSTR-2A to GSTR3B, printed copy of monthly returns, annual returns and all kind of forms prescribed under the law.

The Audit Manual (by CBIC) suggests that GST Administration should consider publishing a whitelist of documents already available with the department which should not be called for from the taxpayers. This list can be shared with the auditee to emphasise the collaborative and facilitatory nature of audit. The Audit Manual bifurcates the source of data as Primary – GST data and Secondary – Other data (VAT/Service Tax/Income Tax/Customs etc).

The Officers are provided predefined audit plan and checklist to conduct audit. The questionnaires are normally shared with the registered person to fill up and submit.

Audit Scope Limitations

The availment of Transitional Credit cannot be verified or audited under the provisions of Section 65 or 66 of the Act, as the officers appointed under Central or State Tax authorities lack the jurisdictional power to question the eligibility of transitional credit. Honourable High Court of Jharkhand⁶ quashing orders adjudicating Transitional Credit, has held that the initiation of proceedings by GST officer under Section 73(1) of the CGST Act, 2017 for alleged contravention of the CEA and Finance Act, read with CCR for transition of Cenvat Credit as being inadmissible under the existing law was beyond his jurisdiction.

In case of multiple registrations, the audit Commissionerate must restrict the scope of his audit to the registration under his jurisdiction and avoid getting into the verification of records of other registrations. The bifurcation of trial balance and reconciliation with overall turnover as well as GST liabilities can be verified to draw the boundaries, rather than seeking invoices, sales registers, purchase registers and return data of other registrations.

Conducting investigation or interrogation of registered person in the garb of audit will be beyond the scope of audit and violation of the provisions of section 65 or 66 of the Act.

Audit Manual

Model All India GST Audit Manual 2023, prepared by The Committee of Officers on GST Audit can be downloaded from the link below

<https://gstcouncil.gov.in/sites/default/files/news-ticker/MODEL-ALL-INDIA-GST-AUDIT-MANUAL-FINAL.pdf>

⁶ Usha Martin Ltd 2023 (68) GSTL 339

The manual provides the criteria for selection of audit based on certain 'risk-based parameters' and formation of audit teams to conduct audits. The manual contains detailed audit plan along with procedures, checklists and few scenarios.

Culmination of Audit or Special Audit

The audit culminates with providing audit findings to registered person in GST Form ADT-02. In absence of any audit finding, whether FORM ADT-02 can be issued or not is unanswered. If issued, it will serve as a 'clean chit'.

In circumstances listed below, Section 65(7) of the Act enables initiation of proceedings under section 73 or 74 of the Act

- Detection of tax not paid or short paid;
- Erroneous refund;
- Input tax credit wrongly availed or utilised.

The provisions of section 65 or 66 of the Act are silent with regard to findings in the nature of non-compliance with the provisions of CGST Act or Rule made there under. Section 73 or 74 proceedings are initiated if it appears to the proper officer that, any of these three instances have occurred in case of any tax payer.

Objective of Audit is to also verify the compliance with the law, however, the provisions are silent as to whether a proceeding under section 122 to 125 of the Act can be initiated against the registered person if there are adverse findings of non-compliance with the Act or rules. The author's view is that there is no bar in issuing notice under relevant provisions of the law as sufficient powers exist to recover the penalty even without referring to section 65 or 66 of the Act.

Power to Issue Show Cause Notice as a culmination of Audit u/s 65 or 66 of the Act

As per the Circular 3/3/2017-GST dated 05/07/2017, the audit findings, as mentioned in u/s 65(6) of the Act, are to be issued at the conclusion of the audit by officer not below the ranks of Deputy Commissioner or Assistant Commissioner of Central Tax. However, the proceedings under section 73 or 74 of the Act can be initiated as a culmination of Audit (u/s 65(7)) by Superintendent of Central Tax also.

At this juncture, it is pertinent to note that the circular 31/05/2018-GST dated 09-02-2018, as amended from time to time, prescribes monetary limits to issue show cause notices (SCN). Para 6 of the said circular makes it very clear that officer of the Audit Commissionerate can only issue SCN but not adjudicate the matter.

This is in line with the principles of '*NEMO JUDEX IN CAUSA SUA*', "No one should be a judge in his own case". Bias on the account of the obstinacy gets addressed by barring the Audit Commissionerate from adjudicating the same matter, audited by them. Otherwise, the adjudication proceedings will be merely a mechanical exercise.

Notice u/s S73 as a culmination of audit u/s 65/66 will be covered in Part 2 of the Article in the upcoming edition.

This article is written with a view to incite the thoughts of a reader who could have different views of interpretation. Disparity in views, would only result in better understanding of the underlying principles of law and lead to a healthy debate or discussion. The views written in this article is as on 15.05.2023.

'PRE-NOTICE CONSULTATION' IN GST AND CUSTOMS REALMS

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Purpose of Show Cause Notice

A Show Cause Notice (SCN), in general parlance, means a formal written request issued by a government regulatory body to an individual or business entity, asking them to provide an explanation or justification for certain actions or behaviour or omissions by them. This, as an inevitable part of the principles of natural justice, enabled in all types of legal proceedings with an aim to provide an opportunity for the accused to defend himself/herself, before proceeding on the charges framed. In the context of Indirect Taxation in India, i.e., in respect of GST and Customs Laws, a SCN shall necessarily be issued by the appropriate authorities to the registered/unregistered person (business or individual), before proceeding for any tax / duty demand or penal and related measures for violations of law and procedure. A SCN consists of the opinion by the tax department with respect to the offence made out against a registered/unregistered taxable person.

In view of the above legal practice, one can conclude that the SCN is a formal notice mandated to be issued by the tax authorities in India, to a taxpayer, requiring them to explain or justify a particular action or inaction that is in violation of the GST/ Customs laws. The purpose of a SCN is to give an opportunity to the taxpayers to explain their actions, and to provide evidence or arguments / defences that show that there is no violation or violation is not intentional or provide any relevant evidence or information or documents that may support that the taxpayer is not at fault. The offences could be non-compliance with GST / Customs laws and regulations, evasion of tax / customs duty, or other offenses mandated and listed under the respective laws.

The recipient of the notice (Noticee) is normally required to respond to the notice within the specified time frame, which is usually 30 days. If the noticee fails to respond or to provide a satisfactory explanation, the GST / Customs authorities may proceed to take further action, such as imposing a penalty or initiating legal proceedings in a court of law (prosecution) as the case may be, after providing an opportunity of being heard to the noticee. Issuance of SCN by the proper jurisdictional authorities is a pre-condition before initiating any demand by the department.

Notices issued without proper backing of law or based on fictional interpretations are leading to unwanted litigation and in such a situation, both the taxpayer and the department are made to spend their resources on undesirable litigations and disputes. With an objective to stop the pointless and avoidable litigation, the “Tax Administration Reforms Commission” (TARC) under the Chairmanship of Dr ParthasarathiShome, in the First Report, recommended a unique concept known as ‘**Pre-Notice Consultation**’ (PNC). The intention of the recommendation is to start a meaningful dialogue (consultation mechanism) with the proposed noticee, before issuing the formal SCN. This may lead to payment of tax with interest and mandatory penalty, if any, voluntarily by noticee agreeing the proposed charges without the need of formal SCN, thereby litigation could be avoided. Considering the importance of pre-dispute consultation and acting on the recommendation of TARC report, the Union Government made provisions relating to Pre-show cause consultation before issuance of formal SCN.

TARC recommendations

The Tax Administration Reform Commission (TARC) is a committee appointed by the Government of India for giving recommendations for reviewing the public Tax Administration system of India. The Union Finance Minister made an announcement in his Budget Speech 2013-14 for setting up of TARC to review the application of tax policies and tax laws in India in the context of global best practices, and to recommend measures for reforms required in tax administration. Accordingly, TARC was established vide the Government of India Notification dated 21 August 2013 and Dr. Parthasarathy Shome was appointed as the Chairman of the TARC. The mandates for TARC committee included among others, ‘To review the existing mechanism of dispute resolution, time involved for resolution, and compliance cost and recommend measures for strengthening the process. This included both domestic and international taxation (direct and indirect)’. The four-volume report submitted by TARC is a useful tool for understanding the taxation policy and system in India. TARC made a total of 385 recommendations (which includes, issues relating to both direct and indirect taxation¹), out of which 291 relating to income tax and 253 are pertains to Indirect taxation, are under various stages of implementation by CBDT and CBIC respectively.

The First Report of ‘TARC’ advised the department to avoid disputes in cases where a collaborative effort can render an effective solution. The present Indian

Tax Regime is filled with procedural complexities, ultimately leading to unreasonable delays and hefty expenses. Prolonged litigation in matters related to taxation and the overall hassle of reaching an amicable solution has created a perception that the current tax system is unfavourable to the taxpayers. This issue is placed on the centre stage when a substantial amount of revenue is blocked in disputes, which could benefit the Indian economy if it is settled amicably. In such a scenario it becomes imperative to introduce a system by which the dialogue approach to understand the legal position in a purposeful manner will help all the stake holders to minimise the litigation. It involved three precise steps namely, '*(i) effective case management; (ii) preventing procedural formalities and (iii) providing multiple opportunities for settlement and alternative dispute resolution to enable reaching of a rationalised solution*'.

The objectives behind TARC recommendations included: '*(i) To minimize the potential for disputes, clear and lucid interpretative statements on contentious issues should be issued regularly. These would be binding on the tax department. (Section V.4.b) (ii) The current practice of raising demands irrespective of merits should be discontinued. Call book in CBEC should be abolished. (Section V.4.b) (iii) **The process of pre-dispute consultation before issuing a tax demand notice should be put into practice. (Section V.4.b)** (iv) Disputes must get resolved in time as the timelines as mentioned for decisions in the respective enactments. The law should also prescribe the consequences of not adhering to the timelines, which would be that the case in question would lapse in favour of the taxpayer. (Section V.5)*'

The TARC further recommended that tax officers should not be permitted to fall back on coercive methods for facilitating recovery during the pre-consultation process. The report advises three essential guidelines for the department to follow for promoting the above-said forum for discussion and open communication: '*first, only the officer competent to issue a notice shall be allowed to take part in such consultation; second, the tax officer shall adopt a receptive and open vantage point; third, the tax officer shall provide full consideration to the views of the taxpayer before reaching to a conclusion*'. The Commission recommended the Prenotice Consultation to ensure that utterly frivolous, unnecessary, and completely avoidable disputes do not take birth at all.

The above-mentioned guidelines aim to narrow down the contentions made by any

party if a legal action arises thereof. The contentions on which an agreement has been reached shall not be contested further by either party. Therefore, the pre-show-cause consultation mechanism aims to achieve a more effective and efficient dispute resolution system. This, in turn, reduces the unwanted burden of litigation in the Indian indirect tax regime.

Implementation of PNC

As a trade-facilitation measure, the recommended concept of pre-show cause notice consultation in Customs, Central Excise and Service Tax was introduced vide Board's instruction dated December 21, 2015, issued vide F. No. 1080/09/ DLA/MIS/15. Vide the said Instruction, it was clarified that *"Pre-show cause notice consultation with the Principal Commissioner and Commissioner is being made mandatory prior to issue of show cause notice (SCN) in the case of demand of duty above Rs.50 Lakhs (except for preventive/offence related SCNs)"*.

Para 5.0 of the Master Circular No. 1053/02/2017-CX dated March 10, 2017, reiterated the principle of pre-show cause notice consultation enunciated vide aforementioned Instruction dated December 21, 2015. Further, vide Circular No.1076/02/2020-CX dated November 19, 2020, it was clarified that *"Pre-show cause notice consultation with assessee, prior to issuance of SCN in case of demand of duty is above Rs.50 Lakhs (except for preventive/offence related SCNs) is mandatory & shall be done by the Show cause notice issuing authority"*. This measure has been intended to provide big boost to the ease of doing business and as a trade facilitation measure aimed at bringing down litigation and attendant cost.

On 02/04/2018 CBIC for Customs law had published the Pre-notice consultation regulations 2018 vide notification no. 29/2018- Customs (NT). Further, the Consultation Regulations also provides the manner of conducting pre-notice consultation. CBIC, vide circular no.1079/03/2021-CX dated 11/11/2021 relating to high duty amount i.e above Rs.50 lakhs made it mandatory as per Clause 5 of the said Circular to issue pre-show-cause notice consultation. The idea of Pre-show cause consultation in Excise, Customs, Service Tax and now in Goods and Service Tax is to allow an open interaction between the department and taxpayer so that the dispute can be resolved at early stage itself. Further, it will also help the government to generate the revenue.

PCN in GST regime

In Goods and Service Tax Act a proper officer is empowered to issue a SCN normally under the provisions of Section 73(1) or Section 74(1) of the CGST Act, 2017. The procedure for issuance of SCN is prescribed in the relevant rules, more precisely, under Rule 142 of CGST Rules 2017. The relevant part of the rules ibid as follows:

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

- (a) notice issued under section 52 or section 73 or section 74 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130, a summary thereof electronically in **FORM GST DRC-01**,
- (b) statement under sub-section (3) of section 73 or sub-section (3) of section 74, a summary thereof electronically in **FORM GST DRC-02**, specifying therein the details of the amount payable.”

Vide Notification No. 49/2019-CT dated 09.10.2019, a sub-rule (1A) has been inserted in the said Rule 142 of the Rules. As per sub-rule (1A), before service of the show cause notice under Section 73 (1) or Section 74 (1) of the Act, the proper officer is required to communicate to the person concerned, the details of any tax, interest and penalty as ascertained by the said officer in Part-A of Form GST DRC-01A. GST DRC – 01A, is prescribed to remove burden on the GST officer to avoid going into unnecessary investigation. The Form DRC01A makes it clear to the taxpayer its tax liability, if any. The extract of the format may be referred at **Appendix A**.

The relevant extract of the rule reads as follows:

“CGST Rules, 2017 –Rule 142. Notice and order for demand of amounts payable under the Act”. -

- (A) From 09.10.2019: “*(1A) The proper officer shall, 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, shall communicate the details of any tax, interest and penalty as ascertained by the said officer, in Part A of FORM GST DRC-01A”;

*Inserted vide Notification No 49/2019- CT dated 09.10.2019

- (B) From 15.10.2020 : “(1A) The proper officer may**, (inserted for

*words 'proper officer shall') 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** (deleted word 'shall') the details of any tax, interest and penalty as ascertained by the said officer, in Part A of FORM GST DRC-01A”.*

**** Substituted vide Notification No 79/2020-CT dated 15.10.2020**

CGST Rules, 2017 – Rule 142. Contd.,

“(2) Where, before the service of notice or statement, the person chargeable with tax makes payment of the tax and interest in accordance with the provisions of sub-section (5) of section 73 or, as the case may be, tax, interest and penalty in accordance with the provisions of subsection (5) of section 74, or where any person makes payment of tax, interest, penalty or any other amount due in accordance with the provisions of the Act whether on his own ascertainment or, as communicated by the proper officer under sub-rule (1A), he shall inform the proper officer of such payment in FORM GST DRC-03 and the proper officer shall issue an acknowledgement, accepting the payment made by the said person in FORM GST DRC-04.

(2A) Where the person referred to in sub-rule (1A) has made partial payment of the amount communicated to him or desires to file any submissions against the proposed liability, he may make such submission in Part B of FORM GST DRC-01A.”

Even after making clear about the mandate of issuance of pre-show cause consultation before raising demand by issuing SCN, departmental officers are not taking the circulars seriously. It is fact on record that numerous SCNs have been issued by the department without considering the circulars cited above. The Hon’ble High Courts have passed judgments wherein they had categorically stated that department is bound by the circulars issued on pre-show cause consultation and they cannot ignore the same. Further, issuing SCN without issuing pre-show cause consultation will be tantamount to violation of principle of natural justice.

Case laws on PNC

Recently, in the case of *Gulati Enterprise vs CBIC&Ors*[2022 SCC OnLine Del

1501], the Delhi High Court emphasized the mandatory nature of the pre-notice consultation. In this case the applicant filed a writ petition against the SCN issued by the CBIC, alleging that they have not adhered to the mandatory requirement of issuing a pre-show cause notice as per the CGST Rules. The revenue authorities claimed that on account of a voluntary statement made by the applicant, the requirement of a pre-notice consultation was satisfied during the time of recording statement of the applicant. Revenue authorities also contended that the form for issuing pre-show cause notice was not activated on the GST portal and therefore, it could not be issued. The HC held that a voluntary statement cannot substitute a statutory notice and according to the CGST Rules, the proper officer should have issued a pre-show cause notice before the service of SCN. Hence, the impugned SCN was set aside. Section 74(1) of the CGST, 2017, read with rule 142(1)(a) of the CGST Rule, aims to establish the above-said principle by offering an opportunity to the assessee on a pre-show cause notice stage.

In an earlier case the Delhi High Court, in the case of Amadeus India Pvt. Ltd. vs. Pr. Commissioner, C.Ex, ST & CT – 2019- TIOL-1027-HC-DEL-ST, has set aside the SCN issued to the Petitioner, inter alia, observing that it was necessary in terms of para 5.0 of the Master Circular for the Respondent to have engaged with the Petitioner in a pre-SCN consultation, particularly, since in the considered view of the Court, neither of the exception specified in para 5.0 were attracted in the present case.

In the case of Nanhey Mal MunnaLal Vs State of U.P., the Allahabad High Court in Writ Tax No. 287 of 2022 vide decision dated 15/03/2022, held that Form GST DRC-01A is a pre-SCN intimation, and principles of natural justice must be followed. “Prima facie, perusal of Form GST DRC-01A under rule 142(1A) of the Rules indicates that it is a pre-show cause notice (Pre-SCN) intimation with reference to Section 73(1)/(5) or Section 74(1)/(5) to an assessee so that either he may deposit the amount of tax and interest or he may disagree to the ascertainment resulting in show cause notice under Section 73(1) or Section 74(1), as the case may be. Likewise, such an intimation in Form GST DRC-01A provides an opportunity to the dealer to resolve the dispute by depositing or in case of disagreement to face the adjudication proceedings under the Act. Thus, prima facie, it appears that Section 74(1) read with Rule 142(1A) intends to afford an opportunity to the dealer/ assessee on a pre-show cause notice stage which shall ultimately benefit both, i.e

the assessee and the department, and shall also reduce litigation. This also indicates to follow the principles of natural justice at a pre-show cause notice stage” the court observed.

The Hon’ble Allahabad High Court in *M/S Skyline Automation Industries Versus State of U.P. and another - 2023 (1) TMI 379 - Allahabad High Court* quashed the demand order passed in Form DRC-07, by the Revenue Department, on the grounds that a notice in Part A of FORM GST DRC-01A under Rule 142(1A) of Central Goods and Services Rules, 2017 (“the CGST Rules”) was not issued. Held that, subsequent reminder would not have cured inherent defect in proceedings initiated against the assessee as the initiation of proceedings itself are bad, thus, the order passed consequent thereto will also fall.

Earlier, as per the Board’s instruction, a concept of pre-show cause notice consultation in Excise and Service Tax was introduced wherein it had been clarified that pre-show cause notice consultation with the Principal Commissioner and Commissioner will be mandatory prior to issue of Show Cause Notice (‘SCN’) in the case of demand of duty above Rs. 50 Lakhs. Further, vide Circular No.1076/02/2020-CX dated 19 November 2020, it was clarified that pre-SCN consultation with assessee, prior to issuance of SCN in case of demand of duty is above Rs.50 Lakhs shall be mandatory and would be required to be adhered by the authority issuing SCN.

In connection thereto, the DGGI had sought clarification of relevance of Circulars and instructions for DGGI formations. In respect thereto, it has been clarified that pre-SCN consultation shall not be mandatory for those cases booked under the Central Excise Act or under Finance Act for recovery of duties or taxes not levied or paid or short levied or short paid or erroneously refunded by reason of fraud, collusion, wilful misstatement, suppression of facts, contravention of any specified provision.

The CBIC issued ***Circular No. 1079/03/2021-CX dated November 11, 2021***, clarified that issuance of pre-SCN consultation as case specific and rather than being formation specific. Subsequent to this, a reference has been received from the DGGI to clarify whether DGGI formations fall under the exception/ exclusion category of the CBIC’s instruction supra dated December 21, 2015, or otherwise. In this regard, it has been clarified that exclusion from pre-show cause notice consultation is case-specific and not formation specific.

It is, therefore, reiterated that pre-show cause notice consultation shall not be mandatory for those cases booked under the Central Excise Act, 1944 or Chapter V of the Finance Act, 1994 for recovery of duties or taxes not levied or paid or short levied or short paid or erroneously refunded by reason of: –(a) fraud: or(b) collusion: or(c) wilful mis-statement: or(d) suppression of facts: or(e) contravention of any of the provision of the Central Excise Act, 1944 or Chapter V of the Finance Act, 1994 or the rules made there under with the intent to evade payment of duties or taxes.

Author’s observations

The Concept of Pre-notice consultations are mandatory in all cases in view of the legal provisions viz., Sections 73(5) and Section 74(5) of CGST Act 2017. The relevant parts of the provisions are reproduced for ease of reference.

“CGST Section 73 (5)-The person chargeable with tax may, before service of notice under subsection (1) or, as the case may be, the statement under subsection (3), pay the amount of tax along with interest payable thereon under section 50 on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.”

“CGST Section 74 (5)- The person chargeable with tax may, before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 and a penalty equivalent to fifteen per cent. of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.”

In respect of ‘malafide’ cases such as issues involving fictitious supplies and credit racketeering, mandate in rule 142(1A) operates as a bar against proceeding with regular notice to persons involved in these cases. With the relaxation of the requirements in the rule, Revenue can proceed with issuing notices to such offenders, denying them the defence of omission to undertake pre-notice consultations. In all other cases, even when they qualify for notices to be issued under section 74, pre-notice consultations are mandatory as it flows from many decisions which recognized the Government’s position in the National Litigation Policy that efforts will be made to resolve potential disputes by engaging in such consultations.

The proper implementation of pre-show-cause consultation notice will alleviate

the tedious process that haunts the taxpayers. The concept of pre-show-cause consultation intends to promote consensus and harmonize the otherwise time-taking procedures. As the departmental officers, at times, are not able to initiate timely action, it appears that amendments have been carried out as mentioned above where the intention of the concept has been diluted. As the word 'shall' has been replaced by word 'may', the courts in future may treat it as not an essential and necessary requirement to meet the principles of natural justice also. In this regard the court's further decisions are to be awaited.

Pre-notice Consultation in Customs

Pre-notice Consultation in Customs matters was brought in under the Customs Act, 1962 by way of insertion of a Proviso to Section 28(1)(a) vide the Finance Act, 2018 with effect from 28.03.2018 followed by the issuance of the Pre-notice Consultation Regulations, 2018 notified vide Notification No 29/2018-Cus (NT) dated 02.04.2018. These Regulations prescribe the procedure for conducting the pre-notice consultations.

The relevant extracts of section 28 of Customs act 1962 are as follows:

“Section 28. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded. —

(1) Where any duty has not been levied or not paid or short-levied or short-paid or erroneously refunded, or any interest payable has not been paid, part-paid or erroneously refunded, for any reason other than the reasons of collusion or any wilful misstatement or suppression of facts, —

(a) the proper officer shall, within two years from the relevant date, serve notice on the person chargeable with the duty or interest which has not been so levied or paid or which has been short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice:

Provided that before issuing notice, the proper officer shall hold pre-notice consultation with the person chargeable with duty or interest **in such manner as may be prescribed.

*** Inserted by Act 13 of 2018, s. 63 (with effect from 28-3-2018)”*

The manner of PNC has been notified under Pre-notice Consultation Regulations, 2018 and the relevant part of the regulation are as under.

“Regulation 2. Definitions. -

In these regulations, unless the context otherwise requires, -

- (b) *“consultation” means communication of the grounds known to the proper officer for issuance of notice to the person chargeable with duty or interest in order to elicit the response of the person and consideration of the representation of the said person;*
- (c) *“notice” means a show cause notice referred to in sub-section (1) of section 28 of the Act.*

Regulation 3. Manner of conducting pre-notice consultation. -

Pre-notice consultation shall be made in the following manner: -

- (1) *Before the notice is issued, the proper officer shall inform, in writing, the person chargeable with duty or interest of the intention to issue the notice specifying the grounds known to the proper officer on which such notice is proposed to be issued and the process of pre-notice consultation shall be initiated as far as possible at least **two months before the expiry of the time limit mentioned in sub-section (3) of section 28 of the Act.***
- (2) *The person chargeable with duty or interest may, within fifteen days from the date of communication referred to in sub regulation (1), make his submissions in writing on the grounds so communicated:*

Provided *that if no response is received, from the person to whom the grounds on which notice is proposed to be issued, is received within the specified time, the proper officer shall proceed to issue the notice to the said person without any further communication:*

Provided *further that while making the submissions, the person chargeable with duty or interest shall clearly indicate whether he desires to be heard in person by the proper officer:*

- (3) *The Proper officer, may if requested, hear the person within ten days of receipt of the submissions referred to in sub regulation (2)*

and subject to the provisions of section 28, decide whether any notice is required to be issued or not:

Provided that no adjournment for any reason shall be granted in respect of the hearing allowed under this regulation.

(4) Where the proper officer, after consultation, decides not to proceed with the notice with reference to the grounds communicated under sub-regulation (1), he shall, by a simple letter, intimate the same to the person concerned.

(5) The consultation process provided in these regulations shall be concluded within sixty days from the date of communication of grounds as provided in sub-regulation (1).

(6) Where the proposed show cause notice is in respect of a person to whom a notice on the same issue but for a different period or documents has been issued after pre-notice consultation, the proper officer may proceed to issue the show cause notice for subsequent periods without any further consultation.”

Section 28 of the Customs Act prescribes the normal period of limitation for issuance of a show cause notice. As per these Regulations, an officer who proposes to issue such notice is required to inform such person, from whom the amount is proposed to be recovered, in writing, at least two months before the expiry of the time limit mentioned in Section 28 of the Act. It also provides that this intimation is required to be made before issuance of a demand notice. Further, where the concerned person intends to be heard in person, such intent would need to be clearly indicated in the reply filed. However, an important aspect to note is that the Regulations provide that no adjournment can be sought once the PH request has been granted. In cases ‘*where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of, (a) collusion; or (b) any wilful mis-statement; or (c) suppression of facts, by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not*

been so levied or not paid or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount' (demand for extended period- Section 28 (4) of customs Act 1962). In such cases the provisions relating to PNC are not invocable as a defence as the law do not provide such provision to the 'malafide' offences. The Regulations are largely a welcome move since it provides assesses an opportunity of being heard before issuance of a notice. The Regulations also contain other details regarding time limit for filing the response and time limit for granting of the PH and the attached document may be referred to for these details. There is use of term 'shall' which makes it mandatory to be followed in all customs cases except those cases where extended period of five years are invoked alleging fraud.

¹https://dor.gov.in/sites/default/files/Status%20Of%20TARC%20Recommendations_0.pdf visited on 24.04.2023

¹<https://taxguru.in/wp-content/uploads/2014/06/TARC-Report.pdf> visited on 24.04.2023

CASE DIGEST ON LATEST JUDGEMENTS IN GST REGIME

Compiled by- CA (Dr.) ArpitHaldia, CA AkhashPhophalia

Section 6

1. Transfer of Proceedings having common link initiated by Multiple Authorities to one single authority.

The investigations were initiated by various jurisdictional authorities against different entities. As contended by the respondents, as common thread were allegedly found in these investigations, the same have been transferred to DGGI, AZU to be brought under one umbrella. We also find that in the CGST Act there is no prohibition to such transfer. Section 6(2)(b) of the CGST Act has limited application and therefore, is not applicable to the facts of the present petitions. Similarly, the Circular dated 5-10-2018 also has no application to the facts of the present petitions.

Indo International Tobacco Ltd. v. Vivek Prasad, Additional Director General (DGGI) [2022] 134 taxmann.com 157 (Delhi)

2. Show Cause Notice issued on same subject matter by Central and State Authority

It was alleged that a similar show cause notice has already been issued by the Central Authority under CGST Act, 2017 on 29-7-2022 against the petitioner, involving the very same defects. It was submitted by the authority that a detailed reply has not been sent by the petitioner to the impugned show cause notice and for the similar defects for which notice has been issued by the Central Authority, such defects will be omitted and action shall be initiated in respect of the balance defects alone.

The High Court disposed of the petition stating that the limited relief that can be granted to the petitioner is to permit them to file a detailed reply to the impugned show cause notice, stating all their objections that have been raised in this Writ Petition including the objection with regard to section 6(2)(b) of the TNGST Act, 2017 and on receipt of the said reply, a direction can be issued to the respondents to consider the said reply on merits and in accordance with

law within a time frame to be fixed by this Court.

**[2023] 148 taxmann.com 83 (Madras) VGN Projects Estates (P.) Ltd.
v. Assistant Commissioner (State Taxes)**

Section 7

3. Treatment of subsidized food provided by the Taxpayer to its Employees and availability of ITC.

The subsidized deduction made by the applicant from the employees who are availing food in the factory/corporate office would not be considered as a 'supply' under the provisions of section 7 of the CGST Act, 2017 and the GGST Act, 2017.

ITC will be available to the applicant on GST charged by the service provider in respect of canteen facility provided to its direct employees working in their factory and the corporate office, in view of the provisions of Section 17(5b) as amended effective from 1.2.2019 and clarification issued by CBIC vide Circular No. 172- dated 6.7.2022 read with provisions of section 46 of the Factories Act, 1948 and read with provisions of Gujarat Factory Rules, 1963 and Gujarat Shops and Establishment (Regulation of Employment and Condition of Service) Act, 2019. ITC on the above is restricted to the extent of the cost borne by the applicant for providing canteen services to its direct employees, but disallowing proportionate credit to the extent embedded in the cost of goods recovered from such employees.

Cadila Pharmaceuticals Ltd [2023] 150 taxmann.com 32 (AAR - GUJARAT)

4. Taxability of Lease of commercial units on payment of one time lease premium and annual premium

The issue before the High Court regarding taxability of lease of commercial units paying lease rental as one-time or as annual premium.

Lease of plot for 90 years by the applicant is not "sale of land" but is a lease and therefore, does not fall within the ambit of clause 5 of Schedule III of CGST Act, 2017.

Lease of commercial units on payment of one time lease premium and annual premium is a 'supply' falling within the ambit of section 7(1) of CGST Act, 2017, read with clause 2 of Schedule II of CGST Act, 2017, which specifies that

lease of a land or building as a supply. Therefore, the supply of the applicant is classified under SAC 9972 and would be leviable to tax at the rate of 18% (i.e. 9% GGST and 9% SGST) in terms of notification No. 1 I O I 7-CT(Rate) dated 28.6.2017.

Kedaram Trade Centre [2023] 150 taxmann.com 34 (AAR - GUJARAT)

5. Taxability of club with the insertion of Section 7(1)(aa) and question of interference by High Court at the stage of Summon

The issue before High Court was that whether it could interfere at the stage of summon.

It was contended by the petitioner that club operates on the principles of agency and having its relationship with the individual members based on the principle of mutuality, the CGST Act was not applicable to it till the CGST Act was amended with the insertion of Clause (aa) to Section 7 of the CGST Act by Finance Act, 2021 with effect from 01.01.2022. Therefore, petitioner ought not to have been directed to produce any document for the transactions prior to 01.01.2022.

In view of the wide scope of Section 70 of the CGST Act regarding power to summon persons to give evidence and produce documents, the High Court was not inclined to interfere with the impugned summons.

Bankipore Club Ltd. v. Union of India [2023] 150 taxmann.com 76 (Patna)

6. Treatment of subsidized food provided by the Taxpayer to its Employees and availability of ITC

GST is not leviable on the amount representing the employee's portion of canteen charges recovered/collected by the applicant from its employees and paid to the canteen service provider on behalf of the employee since it would not be considered as a supply under the provisions of Section 7 of the CGST Act, 2017 and the GGST Act, 2017.

Input Tax Credit (ITC) will be available to the applicant on GST charged by the service provider in respect of canteen facility provided to its direct employees working in their factory to the extent of the cost borne by the applicant for providing canteen services to its direct employees, but disallowing proportionate credit to the extent embedded in the cost of goods recovered from such employees

AIA Engineering Ltd. [2023] 150 taxmann.com 73 (AAR - GUJARAT)

7. Whether supply of Pre-Fabricated Building is supply of goods or supply of completed building

The petitioner contended that since they have purchased a pre-fabricated building, which consisted of factory-made components or units that are transported and assembled on-site to form complete building, therefore the same shall not be liable to tax by virtue of Paragraph 5 of Schedule III i.e. Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.

Considering the following reasons recorded by the Appellate Authority in holding against the petitioners, the High Court declined to interfere with the impugned order of the Appellate Authority-”I find that the appellant has purchased a Prefabricated Building classifiable under GST HSN Code 9406 from M/s. Eveready Industries Ltd. Now a prefabricated building, informally a prefab, is a building that is manufactured and constructed using prefabrication. It consists of factory-made components or units that are transported and assembled on-site to form the complete building. Thus, it is evident from the invoice issued by M/s. Eveready Industries Ltd that they have supplied goods classifiable under GST HSN Code 9406 to the appellant which is not specified in Section 7(2)(a) of CGST Act, 2017 and probably used logistic services such as warehousing, flexi-storage by the appellant. Thus, it is evident that M/s. Eveready Industries Ltd have not provided any Construction services of commercial buildings classifiable under GST service code number 99414. Thus, the contention of the appellant cannot be sustainable.”

Radiant Enterprises P. Ltd. v. Joint Commissioner, Central Goods and Services Tax & Central Excise (Appeal I) [2023] 150 taxmann.com 225 (Calcutta)

Section 9

8. Classification of Wooden ice cream sticks and wooden ice cream spoons

The issue before the High Court was regarding the classification of ice cream sticks and wooden ice cream spoons.

The high court observed that Wooden ice cream sticks and wooden ice cream spoons are classifiable under Heading No. 44199090 as Tableware and Kitchenware of Wood and not under 44219190 as articles of wood.

Ragu Packaging [2023] 149 taxmann.com 446 (AAR-KARNATAKA)

9. Classification of Tax Rate on Mattresses

Mattresses classifiable under HSN 940429 are liable to Tax @ 18% vide serial number 438 under Schedule III of Notification No.01/2017 I.T (Rate) dated 28.06.2017, as amended.

Hosur Coir Foams (P.) Ltd [2023] 150 taxmann.com 74 (AAR - TAMILNADU)

10. Tax Rate on Renting of Warehouse.

Renting Warehouse to store Agricultural Produce is considered as supply of service, and the same is not classifiable as “loading, unloading packing, storage or warehousing of agricultural produce, under SI. No. 54(e) of SAC 9985 of the Notification-11/2017- C.T. (Rate) dated 28th June 2017. It would be classifiable under SAC 997212 and would attract GST @ 18% vide entry SI. No. 16 (iii) of Notification No. 11/2017 C.T (Rate) dated 28.06.2017.

Sudhakar Traders v. State of Andhra Pradesh [2023] 150 taxmann.com 174 (Andhra Pradesh)

Section 15

11. Taxability of amount received as Bonus from the service recipient as part of consideration for being distributed to Employees.

The applicant was receiving regular amounts on canteen services provided by them and annually they also received further amounts with the nomenclature of bonus. The bonus received from service recipient was meant to be paid to their employees and if the applicant retained a portion of the Lump Sum amount received for payment of bonus, then as per applicant he was liable to pay GST at the rate applicable to Intermediary services on the commission retained and for rest of the amount he was liable to pay GST at rate of 5%, which was arrived after excluding the commission from the entire bonus, as it would be included as value of supply of canteen services in accordance with Section 15(2) of the CGST Act, 2017.

It was held that the consideration received by the applicant as the value of supply including the amounts received in the name of bonus will be chargeable to tax at the rate of 2.5% under each of CGST and he is liable to pay GST at rate of 5% on the entire Lump Sum amount received for payment of bonus.

Foodsutra Art of Spices (P.) Ltd. [2023] 150 taxmann.com 259 (AAR-TELANGANA)

Section 16

12. Demand created against the petitioner even though Tax was already paid by the supplier.

It was contended by the petitioner that supplier has already paid GST on the supplied items, however, ignoring the same, order has been passed for return of Input Tax Credit. The Department counsel also submitted that the matter may be remanded for afresh adjudication after taking into consideration the fact that the GST on the supplied items has already been paid by the suppliers.

The High Court thereafter observing that the petitioner although initially raised but subsequently has not pressed for reliefs for declaring the provisions of Section 16(2)(aa), 16(2)(c) of the Act of 2017 and Rule 36(4) of the Rules of 2017 as unconstitutional quashed and set aside the order and directed the officer to pass a fresh order after providing opportunity of hearing to the petitioner.

Gajrar Singh Ranawat v. Union of India [2023] 150 taxmann.com 260 (Rajasthan)

Section 17

13. Eligibility of Main contractor to claim Input Tax credit of the Tax charged by Sub-contractor.

The petitioner is a construction company. They had a works contract agreement with the M/s Hotel Polo Pvt. Ltd. and to construct a hotel. In the process of construction they procured materials and also took the services of Sub-contractors. However, demand on the ground that such ITC availed on works contract service for supply of construction of an immovable property was in violation of Section 17(5) of CGST Act was created against the petitioners under Section 74.

It was held by the High Court that the petitioner has been providing work contract services to the owner of the hotel and not for it's own and thus they are entitled to take Input Tax Credit on the Goods and Services being utilized for providing the taxable work contract services. The demand raised and penalty imposed under Section 74(1) of the CGST Act, 2017 was held to be ultra vires.

SR Constructions v. Union of India [2023] 150 taxmann.com 75 (TRIPURA)

Section 18

14. Extension of time for filing of ITC-01 on changeover from composition scheme to normal

Petitioner has made a representation for extension of time for filing of ITC-01 before the first respondent and the first respondent instead of passing orders on the said representation, kept the matter pending for nearly a year and thereafter, the second respondent passed the order impugned in this writ petition stating that the petitioner's request was rejected by the first respondent and the said order has been issued with the approval of the first respondent.

The High Court set aside the order and remitted to the first respondent, who shall pass appropriate orders, after hearing the petitioner.

Alpha Polymers v. Commissioner, Central Commissionerate [2023] 150 taxmann.com 139 (Madras)

Section 29

15. Cancellation of Registration without proper opportunity being given and petitioners bonafide of business history

The issue before the High Court was whether cancellation of registration without proper opportunity of being heard was proper.

The High Court observing the lack of opportunity and petitioner's bonafidelike business history of over twenty-one years with good business practices, quashed the impugned order of cancellation of GST registration and restored the proceedings for reconsideration.

UmmerFarooqv. Superintendent of Central Tax [2023] 149 taxmann.com 443 (Karnataka)

16. Revocation of Cancelled Registration

The issue before the High Court was in regard to revocation of cancelled registration.

Referring the decision of apex court in the Commissioner of Income Tax-12 v. PherozaFramroze and Company-[2017] 11 SCC 730 it was observed that the order of the Appellate Authority was liable to be set aside as it failed to consider

orders passed by the Apex Court regarding cognizance for extension of limitation.

Further, it was for petitioner to comply with his statutory obligations of payment of taxes it would be necessary for the departmental authorities to re-consider the prayer of the petitioner for revocation of his cancellation of GST registration.

AmeshBasumataryv. Union of India [2023] 149 taxmann.com 420 (Gauhati)

17. Revocation of Cancellation of Registration & Appeal filed beyond limitation

The issue before the High Court was whether appeal against order of cancellation of registration was maintainable even if filed after the period of limitation.

The High Court observed that the appeal pending before the Appellate Authority seeking revocation of the cancellation filed beyond limitation period to be heard on merits by passing appropriate orders rather than dismissing the same on ground of limitation and requiring petitioner to approach this Court once again by filing a writ.

Redolence Tea Industriesv. UOI [2023] 149 taxmann.com 475 (Gauhati)

18. Revocation of Cancellation of Registration and Appeal filed beyond limitation

The issue before the High Court was whether appeal against order of cancellation of registration was maintainable even if filed after the period of limitation.

The High Court held that dismissal of the appeal by appellate Authority for appeal filed beyond limitation period aspetitioner had set out no explanation, let alone justifiable explanation, for the condonation of even the one month extension statutorily provided and thus the further delay of 6 months over and above the statutory limitation is fatal to its case.

Jony Electricity India Engineering (P.) Ltd. v. JC GST & Central Excise, Appeals-I [2023] 149 taxmann.com 474 (Madras)

19. Cancellation of Registration by a non-speaking order.

The High Court observed that with the passing of the said order, petitioner

was liable to both civil and penal consequences. To say the least, the authority ought to have at least referred to the contents of the show cause and the response thereto, which was not done. Not only the order is non-speaking, but cryptic in nature and the reason of cancellation not decipherable therefrom. Principles of natural justice stand violated and the order needs to be quashed as it entails penal and pecuniary consequences. Therefore, the order passed was quashed with the petitioner's registration restored.

Manoj Kumar Sahv.State of Bihar [2023] 150 taxmann.com 5 (Patna)

20. Entertaining writ petition beyond limitation period and Revocation of Cancellation of Registration

When the appeal of the petitioner against the cancellation of the GST registration was barred by limitation, by invoking the writ jurisdiction it would not be permissible for the petitioner to get away from the bar of limitation from the back door.

Notification No. 03/2023-Central Tax Dated 31st March 2023 has opened a window for the defaulting dealers who could now file return and pay the tax. In this view, it will be possible for the petitioner to seek prayer for revocation of the registration by taking advantage of the provisions of the notification.

KaelasbenMaganbhaiMakavana v. State of Gujarat [2023] 150 taxmann.com 100 (Gujarat)

21. Cancellation of Registration from Retrospective date wherein SCN did not provided any such fact

The High Court observed that the SCN issued to the petitioner did not mention that the proper officer proposed to cancel the registration with retrospective effect. Thus, the petitioner had no opportunity to address any proposed action of cancellation of registration ab initio.

The High Court disposed of the petition with the direction that the cancellation of the petitioner's GST registration would take effect from 11.12.2020 and not from 01.07.2017, since the petitioner submitted that they would have no objection if the registration is so cancelled from the date of SCN.

Aditya Polymers v. Commissioner of Delhi Goods and Services Tax [2023] 150 taxmann.com 223 (Delhi)

22. Cancellation of Registration without following principle of Natural Justice

Writ Petition was allowed considering the fact that the order impugned cancelling the registration was prima facie without application of mind and the case was thus squarely covered by the judgment in the case of M/s Chandra Sain (Supra) and the issue of non-fixation of time and date is squarely covered by the judgment rendered in the case of M/s JaiprakashT hekedar v. Commissioner, Commercial Taxes and another; [(2023 U.P.T.C. (VOL.113) - 162], the writ petition deserves to be allowed on both the counts.

Precitech Engineers v. State of U.P.[2023] 150 taxmann.com 214 (Allahabad)

23. Notification No. 3/2023-Central Tax dated 31.03.2023 also applies to cases wherein appeal has been rejected by the Appellate Authority.

Notification No. 3/2023-Central Tax dated 31.03.2023 is beneficial in nature. The Explanation to the notification indicates that the notification shall cover not only those persons who failed to apply for revocation of cancellation of registration within the time specified in Section 30 of the Act, but also those whose appeal against the order of cancellation of registration under Section 107 of the Act stood rejected or they failed to adhere to the time limit specified under sub-section (1) of Section 30 of the said Act to approach the Appellate Authority against the order rejecting application for revocation of cancellation of registration under section 107 of the Act.

The High Court observed that petitioner falls in the category of cases where the appeal preferred against the cancellation of GST registration has been rejected under Section 107(1) and (4) of CGST Act as time barred, thus the writ petition was disposed of with a direction to the petitioner to approach the proper officer with an application for revocation of cancellation of registration by 30th June 2023.

Vijay Kumar Jain v. Central Goods & Service Tax and Central Excise [2023] 150 taxmann.com 251 (Jharkhand)

24. Cancellation of Registration by considering the reply which was never submitted.

The petitioner contended that the proper officer for cancellation of the GST

registration, has recorded his opinion that the petitioner's registration must be cancelled, and his opinion is ostensibly on examination of the petitioner's reply and the submissions at the time of hearing. Irrefutably, the petitioner has neither filed response nor participated in any personal hearing. This demonstrates that there is complete lack of application of mind and hence arbitrary exercise of jurisdiction.

The High Court in view of the above observations, held that there is complete lack of application of mind in cancelling the petitioner's registration and the petitioner has made out grounds that would justify interference.

VijayakumarzhimasandraMahadevappa v. Commissioner of Goods and Services Tax [2023] 150 taxmann.com 250 (Karnataka)

25. Benefit of Notification No. 3/2023-Central Tax.

Order of cancellation was dated 14.09.2022 and the scheme as provided in Notification No. 3/2023-Central Tax dated 31.03.2023 was applicable subject to satisfaction of all conditions set out thereunder, thus petitioner was allowed to prefer to approach authority.

Natarajan Satheesh Kumar v. Superintendent, Pollachi Range II(Center) [2023] 150 taxmann.com 249 (Madras)

26. Penalty/Late Fee for delay in filing of Return cannot be levied upon Taxpayer when the application for revocation of cancellation of registration was rejected without any valid Show cause notice and reason

The High Court observed that the order dated 14.12.2020, rejecting the petitioner's application for revocation of cancellation of GSTIN registration was unsustainable. It provided no reason as to why the petitioner's application was rejected. The only reason was that the petitioner had not responded to the Show Cause Notice dated 27.10.2020. It was hard to accept that there could be any meaningful response to the said Show Cause Notice. It provided no reason at all for proposing to reject the petitioner's application for revocation of cancellation.

The petitioner's principal contention was that it had already complied with the requirement of filing the returns on the date when the order cancelling its registration was passed and, therefore, the said order was unsustainable.

The High Court was thus of the view that from the date of the petitioner filing an application for revocation of its cancellation, that is, 16.10.2020, the petitioner cannot be held responsible for not filing its returns during the period when the registration stood cancelled. Thus, for the purpose of calculating any penalty for the late filing of the returns, the period, 16.10.2020 to 22.04.2022, is liable to be excluded.

Ishwar Chand Proprietor of Bhagwati Trading Co. v. Union of India [2023] 150 taxmann.com 294 (Delhi)

Section 37

27. Amendment in GSTR-1 allowed for the year 2017-18 considering error being an inadvertent human error and absence of an effective, enabling mechanism under statute for correction.

The petitioner had filed the writ petition challenging the decision of the GSTN Authorities rejecting the request for amendment of the GSTR-1 Form for the financial year 2017-2018 on the ground that such amendment can be done only on the due date of filing of Form GSTR-1 of March 2019 (30th April, 2019). The Single Bench had dismissed the writ petition stating that the period of limitation for rectification has since been expired, no direction can be issued.

The High Court allowed the errors to be rectified relying upon the decisions by the Jharkhand High Court, the Orissa High Court and the Madras High Court wherein such errors were allowed to be rectified primarily on the basis of the error committed by the petitioner being an inadvertent human error and the petitioner be allowed in a position to rectify the same, particularly in the absence of an effective, enabling mechanism under statute.

Abdul Mannan Khan v. Goods and Services Tax Council [2023] 150 taxmann.com 203 (Calcutta)

Section 50

28. No Interest on Input Tax Credit availed but not utilized.

The liability to pay interest under Section 50(3) of the CGST on account of the Amendment in 2022 that has retrospective effect from 2017 is only when ITC has been wrongly availed and utilized.

In the present case, the original error of non-maintenance of ECL is admittedly attributable to the department. Moreover, the petitioner has not utilized the credit.

Grundfos Pumps India (P.) Ltd. v. Joint Commissioner of GST & Central Excise [2023] 150 taxmann.com 176 (Madras)

Section 54

29. Whether order of Apex Court for Suo Motu Extension applies for Refund Application

It was contended by the petitioner that though it is correct that for part of the claim which has been rejected refund was sought after a period of two years, however, the period was extended by the orders passed by the Hon'ble Supreme Court in Suo Motu Writ Petition No. 3 of 2020 extending the period of limitation.

The High Court held that implications of the orders passed by the Hon'ble Supreme Court was not considered while calculating the limitation period. The appropriate course of action therefore as decided by the High Court was to set aside the impugned order, restore the appeal filed by the Petitioner in respect of the refund which has not been granted and direct the Appellate Authority to examine the aspect of limitation on merits afresh in the light of the decision/order passed by the Hon'ble Supreme Court in the Suo Motu Writ Petition.

44 EMB Studio (P.) Ltd. v. Union of India [2023] 150 taxmann.com 4 (Bombay)

30. Can the Proper officer call for documents in addition to what have been prescribed under Circular No. 125/44/2019 Dated 18th November 2019.

If an application for refund is accompanied by all relevant documents as prescribed under Rule 89 of the Rules and Circular No. 125/44/2019 Dated 18th November 2019, the said application cannot be rejected as incomplete and is required to be processed.

However, that does not preclude the concerned officer from calling upon the applicant to furnish any other relevant documents that he considers necessary for processing the application for refund. The High Court thus held that it was incorrect on the part of petitioner to state that he was not required to submit the documents as sought for by the Proper Officer.

Since the petitioner had provided most of the relevant documents as also the fact that if the Appellate Tribunal was constituted, the petitioner would be entitled to seek an opportunity to furnish the relevant documents before the

Tribunal; thus the High Court set aside the impugned order and remanded the matter to the Proper Officer.

SRG Plastic Company v. Commissioner Delhi Goods and Services Tax Trade and Tax Department [2023] 150 taxmann.com 261 (Delhi)

Section 56

31. Interest on Refund granted in pursuance of appeal order

The petitioner had filed refund applications against the export made which were rejected by the revenue. The refund was initially rejected by subsequently granted in pursuance of the Court Order.

The issue before the High Court was the date from which statutory interest under Section 56 of CGST Act would get triggered. The petitioner claims that interest should be triggered from the date when the initial application for refund was filed and the revenue asserts that in terms of the proviso appended to Section 56 of the CGST Act, interest will get triggered 60 days after the date when this court passed an order directing consideration of the application.

The High Court held that the proviso to Section 56, as indicated above, is an exception to the main part of the Section 56 of the CGST Act. The proviso is triggered only when the facts of a case do not fall in the main part. The proviso envisages a situation where, while processing an application for refund, the respondents/revenue are required to deal with a lis and the refund is a consequence of that lis. Where there is no lis with regard to either the quantum or the value, then in our view, the proviso will have no application. The wordings of the proviso in that context are revealing. The proviso begins with the following sentence “Provided that where any claim of refund arises from an order passed by an adjudicating authority or Appellate Authority or Appellate Tribunal or court which has attained finality...”.

Thus, petitioner was held to be right in its contention that interest should trigger in accordance with the main part of Section 56 of the CGST Act, i.e., from 18.04.2018, and that interest should run, both on CGST and DGST, up until the date when the amount was remitted to the petitioner.

AC Impex v. Union of India [2023] 150 taxmann.com 175 (Delhi)

Section 65

32. Concurrent Proceedings of investigation and Audit

In the present matter, Inspection and seizure of documents was on 16-3-2020, the first impugned notice under Section 65 is dated 30-8-2022, 'show cause notice' based on inspection was issued on dated 18-10-2022, reply to the SCN is dated 22-11-2022, second and third impugned notices are dated 23-11-2022 and 27-12-2022.

The High Court held that here is nothing to demonstrate that when the audit under section 65 has been kick started by way of a notice, thereafter show cause notice under section 74 is impermissible

Om Sakthi Construction v. Assistant Commissioner [2023] 147 taxmann.com 434 (Madras)

33. Proceedings initiated by Audit, Investigation and Jurisdictional Officer simultaneously for same years.

In the present matter, three wings of the same department are proceeding against the appellants for the very same period, i.e. financial years 2017- 2018, 2018-2019 and 2019-2020. The first of the department which had taken action was the Audit Commissionerate, which had issued notice under section 65 of the CGST Act, 2017 dated 9th November, 2021. It is submitted that the appellants had furnished the details as called for in the said notice and also responded to the intimation dated 5th January, 2022/6th January, 2022 for conducting GST audit. In the meantime, the other two wings of the department, viz. Anti Evasion wing as well as the Range Office have also proceeded against the appellants by issuing notices for the very same period for which audit proceedings under section 65 of the Act has already commenced. Revenue in its reply stated that the three wings of the department are proceeding against the appellants because the Range office was not aware about the proceedings initiated by the Audit Commissionerate and the Anti Evasion also was not aware of the same.

The High Court observed that it is not clear as to why in the present days of electronic communications available in the department, such parallel proceedings can be conducted by three wings of the same department for the very same period. Thus, it held that since the audit proceedings under section 65 of the Act has already commenced, it is but appropriate that the proceedings should be taken to the logical end. The proceedings initiated by the Anti Evasion and Range Office for the very same period shall not be proceeded with any further.

R. P. Buildcon (P.) Ltd. v. Superintendent, CGST & Central Excise

[2022] 144 taxmann.com 108 (Calcutta)

Section 69

34. Pre-condition of deposit of an amount or furnishing a bank guarantee for grant of bail

The issue before the High Court was whether furnishing of bank guarantee as pre-condition for grant of bail was tenable.

Hon'ble Apex Court observed that pre-condition of deposit of an amount or furnishing a bank guarantee for grant of bail has been held to be bad in number of cases. The Court was of the considered opinion that pre-condition of furnishing bank guarantee imposed by the High Court is not liable to be sustained and thus set aside.

Makhijani Pushpak Harish v. State of Gujarat [2023] 149 taxmann.com 445 (SC)

35. Release on Regular Bail

The issue before the High Court was whether assessee could be released on bail if investigation is complete.

The High Court considered the case to be a fit one in which the petitioner be directed to be released on regular bail as primarily-

- Evidence collected by the State against the petitioner were documentary;
- Investigation in this case was complete;
- It was not the case of the State that during the course of investigation the petitioner did not cooperate;
- Petitioner had already undergone actual custody of nearly 01 year and 05 months; even if convicted, the maximum sentence which can be imposed on him is 05 years;
- Most of the material witnesses for the prosecution, at the pre-charge stage, stand examined; the proceedings that the petitioner faces are presently at the pre-charge stage in which 37 prosecution witnesses still remain to be examined and that in case the petitioner is even put to trial, the same is likely to take a long time to conclude.

Vijay Garg v. State of Haryana [2023] 150 taxmann.com 35 (Punjab & Haryana)

36. Condition directing the appellant to deposit a sum of Rs.2 crores for grant of bail was not liable to be sustained

The Apex Court observed that since the facts are almost identical to the case referred viz Subhash Chouhan v. UOI [2023] 147 taxmann.com 211 (SC), there was no reason to deviate from the view taken in the said case vide judgment and order dated 20.01.2023. Following the reasons given in the said judgment and order, it was held that the condition directing the appellant to deposit a sum of Rs.2 crores was not liable to be sustained and was hereby set aside. The rest of the conditions in the impugned order were sustained. The appeal accordingly, was allowed to that extent.

AnatbhaiAshokbhai Shah v. State of Gujarat [2023] 150 taxmann.com 46 (SC)

37. Grant of Pre-arrest bail

The High Court observed that sufficient incriminating materials has already been collected by the I.O. against the petitioner and the investigation is still in progress. However, it was also observed that the accused/petitioner appeared before the I.O. on 3-4 occasions and co-operated in the investigation of this case and he also produced the documents which was asked to produce before the I.O. The entire case is mainly based on documentary evidence. Thus, considering all these aspects of the case, the high court found it a fit case to extend the privilege of pre-arrest bail to the petitioner.

Kapil Dev Singhal v. State of Assam [2023] 150 taxmann.com 156 (Gauhati)

38. Release on Bail

It was submitted by the petitioner that he is neither owner of Ayodhya Food Products or nor partner of the firm and the petitioner and other co-accused had retracted the statement given by under Section 70 of GST Act. It was further submitted that maximum punishment in this case is five years and conclusion of trial may take long time and that similarly situated co-accused were enlarged on bail by the Court and by Co-ordinate Bench of the Court.

The High Court considering the contentions put-forth and taking into account the facts and circumstances of the case and without expressing any opinion on the merits of the case deemed it just and proper to enlarge the petitioner on bail.

Suresh Jajrav. Union of India[2023] 150 taxmann.com 213 (Rajasthan)

Section 70

39. Summon Issued on same subject matter by Central and State Authority

The issue before the High Court was whether central and state both can initiate proceedings on the same matter against the same assessee for the same period.

It was alleged that Central Authority has issued summon on the same subject matter on which summon has already been issued by the State Authority, which is impermissible under law as per the provisions of section 6(2)(b) of the GST Act 2017.

The High Court directed the Central Authority to consider the reply submitted by the petitioner and in case it is decided that the subject matter is one and the same, they will have to necessarily drop the proposed initiation of proceedings against the petitioner as per the provisions of section 6(2)(b) of the GST Act 2017.

Tvl. Al-Madhina Steel Traders v. Superintendent/Intelligence Officer (ECM) [2023] 148 taxmann.com 86 (Madras)

40. Summon issued by State Authority and by DGGSTI

The issue before the High Court was whether simultaneous proceedings by State and Central authority could be undertaken.

State authority had conducted the search and seizure operations and summons had been issued, order of provisional attachment had been passed and in such situation it was alleged by the petitioner that Directorate General of GST Intelligence cannot initiate any action and issue summons under section 70 of the CGST Act and the summons is barred as per the provisions of Section 6(2)(b) of the CGST Act.

It was held that the scope of section 6(2)(b) and section 70 is different and distinct, as the former deals with any “proceedings on a subject matter/same subject matter” whereas, section 70 deals with power to summon in an inquiry and therefore, the words “proceedings” and “inquiry” cannot be mixed up to read as if there is a bar for the respondent to invoke the power under section 70 of the CGST Act.

KuppanGounder P.G. Natarajan v. Directorate General of GST

Intelligence [2022] 143 taxmann.com 289 (Madras)

41. Summon issued by State Authority and by DGGSTI

It was contended by the petitioner that once Deputy Commissioner (SIB), Ghaziabad, has conducted a survey of the business premises of the petitioner on 30-5-2018 and is investigating in the matter pursuant to the aforesaid survey, no inquiry can be initiated or summon can be issued by the DGGSTI Meerut Zonal Unit, Meerut under section 70 of the C.G.S.T. Act against the petitioner even if basis of material of inquiry/investigation by them may be different. In other words, the State Authority may investigate/inquire in all the matters pertaining to the business of the petitioner and, therefore, the summons in the matter of inquiry issued by the Central Authority is barred by the provisions of section 6(2)(b) of the C.G.S.T. Act.

It was held by the High Court that the word “proceedings” used in Section 6(2)(b) is qualified by the words “subject-matter” which indicate an adjudication process/proceedings on the same cause of action and for the same dispute, which may be proceedings relating to assessment, audit, demands and recovery and offences and penalties etc. It was further pointed out that these proceedings are subsequent to inquiry under section 70 of the CGST Act and the words “in any inquiry” are referable to the provisions under Chapter XIV viz., sections 67, 68, 69, 71 and 72. Thus, it was held that the proper officer may invoke power under section 70 in any inquiry and the prohibition under section 6(2)(b) shall come into play when any proceeding on the same subject-matter had already been initiated by a proper officer under the State Act. Therefore, the contention raised by the appellant stating that in issuance of summons for conducting an inquiry and to obtain a statement from the appellant cannot be construed to be bar under section 6(2)(b) of the CGST Act. Thus, the key words occurring in both the provisions viz., “in any inquiry” and “proceedings on the same-subject matter” indicate the crucial difference between these two provisions.

G.K. Trading Co. v. Union of India [2021] 126 taxmann.com 211/51 GSTL 288 (All.)

42. Summon issued by State Authorities stayed pending the proceedings before Central Authorities

The High Court stayed the proceedings initiated by summons issued on October 19, 2020 by the State GST which prima facie, in the opinion of the High Court were in violation of Section 6(2)(b) of the WBGST Act since the proceedings were pending before the Central GST Authorities.

Raj Metal Industries v. Union of India [2021] 127 taxmann.com 546 (Calcutta)

43. Simultaneous Existence of Audit and Summons.

GST Authorities initiated the search and seizure proceedings against Managing Director and Director of Media Company. Pursuant to such proceedings summons u/s 70 were issued. Thereafter, notice for audit under section 65 of CGST Act was also issued. Various documents were seized vide Order of Seizure dated 09.06.2020. The petitioner prayed for relief from such enquiry proceedings.

Petition was dismissed by holding that auditing of books as well as order of seizure of documents would help the department in co-relating the entries in the documents and at the time of auditing of the account. The procedure for further actions is contained in Chapter 15 of CGST Act. Therefore, it would be too premature to comment upon the act of the respondents and cannot be said to be against the provisions of the statute or misuse, warranting interference under Article 226 of the Constitution of India.

SLP Filed before Supreme Court in the matter has been dismissed. Suresh Kumar P. P. v. Deputy Director, Directorate General Of GST Intelligence (DGGI) [2021] 125 taxmann.com 61 (SC).

Suresh Kumar P.P. v. Deputy Director, Directorate General of GST Intelligence (DGGI) [2020] 120 taxmann.com 173 (Kerala)

Section 73

44. High Court directed the Petitioner to file reply before the Officer to ensure completion of assessment

The issue before the High Court was whether assessment could be completed in absence of replies, details and document required to be submitted by assessee.

The High Court did not find any fault with the impugned order as the order itself indicated along with the books of accounts, the petitioner did not enclose any reply as required and the petitioner has also stated that he has not submitted

any suitable explanation to the show-cause notice. Therefore, writ petition was disposed of directing the petitioner to submit suitable reply and any other document and assist the respondent authorities in order to complete the assessment as required under law.

[2023] 149 taxmann.com 433 (TRIPURA) Kamrul Nahar v. Union of India

45. Summary issued with DRC-01 with no proper SCN, Violation of principles of natural justice

The issue before the High Court is that whether summary issued with DRC-01 without any show cause notice is sufficient compliance in regard to issue of show cause notice and non-submission of relied upon documents and no-provision of opportunity of being heard could invalidate the proceedings.

High Court observed that a summary of a show cause notice cannot be a substitute of a proper show cause notice and would entail violation of principles of natural justice. In the absence of clear charges upon which the person so alleged is required to answer, proper opportunity to defend itself stands denied. No opportunity of hearing was granted to the petitioners contrary to the mandate of Section 75(4) and (5). Relied upon documents, which were basis for passing summary order were not supplied to petitioner. In the aforesaid circumstances, the impugned summary of show cause and impugned summary of order contained were quashed.

Vishkarma Industries v. State of Jharkhand [2023] 150 taxmann.com 140 (Jharkhand)

46. Interference of High Court at Show Cause Notice Stage

When Show cause notice is an order by itself and it pre-meditates the issue

If a show cause notice suffers from the vice of lack of jurisdiction, Courts are entitled to interfere with the same. In the present matter, once inspection of the business premises was completed, a query was raised by the officer. The appellants had submitted an elaborate reply for such a query and the authority while issuing the show cause notice has dealt with the reply under the heading "Rebuttal on the factual points".

The High Court observed that prima facie SCN appears to be an order and the manner of issuing show cause notice has not been rightly understood by

the authority. Partly the appellants have to be blamed because the appellants for the query raised by the authority had misconstrued the scope of the query and proceeded to make elaborate factual submissions. If appellants had restricted their reply only to the extent query raised, this problem could have been averted. Thus, not only the authority committed a mistake in proceeding to reject all the contentions and then issued the show cause notice, equally the appellants also committed a mistake in mentioning facts which were not required to be done pursuant the query raised by the authority. For the above reasons the appeal was allowed and the order passed was set aside with a direction to issue a fresh show cause notice with an open mind without pre-deciding any issue

Joyous Blocks & Panels (P.) Ltd.v. Assistant Commissioner, Commercial Taxes [2023] 150 taxmann.com 138 (Calcutta)

47. Multiple issues involved in this case

Assessment/ Determination of tax under Section 130

Levy of Penalty only on the allegations the excess goods were found at the premises

Service of Notice on Accountant

Valuation of Goods by Eye Estimation or production capacity or consumption of electricity

In the course of proceedings under Section 67, quantification was done by eye estimation and goods were held to be in excess of recorded goods. It was contended by petitioner that while proceeding to pass an order under Section 130 of the GST Act, no power is vested in the authority to undertake determination of liability of tax, which can only be done by taking recourse to Section 73 or Section 74 of the Act, as the case may be. Relying upon the decision in the matter of M/s Metenere Limited vs Union of India and another; Writ Tax No.360 of 2020 wherein it was held that demand for tax can be quantified and raised only in the manner prescribed in Section 73 or Section 74 of the Act, as the case may be, the High Court observed that entire exercise resorted to under Section 130 of GST Act for assessment/ determination of the tax and penalty is neither stipulated under the Act, nor can be done in the manner in which it has been done, more so, in view of the fact that department

itself has undertaken the exercise of quantifying the tax due, by taking recourse under Section 74.

Scope of proceedings under Section 130(1)(ii) for not accounting for any goods on which taxpayer is liable to pay tax is only available when an assessee who is liable to pay tax but does not account for such goods, after the time of supply has occasioned. Scope of Proceedings under Section 130(1)(iv) for contravention of any of the provisions of the Act or the rules made thereunder with intent to evade payment of tax is only available when the department establishes that there were a contravention of the Act and Rules coupled with the 'intent to make payment of tax'.

Service of Notice on the Accountant of the firm is neither contemplated nor provided for under Section 169(1)(a) and thus, service cannot be held to be a valid service and entire proceedings are liable to be quashed.

There is no prescriptions for valuation of goods on the basis of eye estimation under Section 15 of CGST Act, 2017 as has been done by department or the manner in which has been carried out by appellate authority, thus the impugned order was held to be not sustainable.

MaaMahamaya Alloys (P.) Ltd. v. State of U.P [2023] 150 taxmann.com 158 (Allahabad)

48. Ex-Parte Assessment order without following Principle of Natural Justice

The issue before the High Court was whether ex parte assessment was appropriate.

Notwithstanding the statutory remedy, the high court is not precluded from interfering where, ex facie, an opinion is formed that the order is bad in law on account of following reasons-

- (a) violation of principles of natural justice, i.e. Fair opportunity of hearing. No sufficient time was afforded to the petitioner to represent his case;
- (b) order passed ex parte in nature, does not assign any sufficient reasons even decipherable from the record, as to how the officer could determine the amount due and payable by the assessee. The order, ex parte in nature, passed in violation of the principles of natural justice, entails civil consequences;

(c) The authorities not to have adjudicated the matter on the attending facts and circumstances

CICO Patel JV v. Union of India [2023] 150 taxmann.com 226 (Patna)

Section 74

49. Refund of amount paid under Protest and non-issuance of receipt in DRC-04

The issue before the High Court that the assessee was enforced to deposit amount during search proceedings through DRC-03 but DRC-04 was not issued to it.

No receipt was given by the Proper Officer after accepting the impugned amount deposited after the search proceedings under protest by DRC-03. Thus, High Court referring to Article 265 i.e. collection of tax by the authority of law and Article 300A of the constitution held that the amount deposited by the petitioner was liable to be refunded as the petitioner has been deprived of his right.

Diwakar Enterprises (P.) Ltd.v.Commissioner of CGST[2023]149 taxmann.com 419 (Punjab & Haryana)

50. Non-submission of reply even after multiple opportunities and personal hearing

Approaching the High Court on violation of principle of Natural Justice when time limit to file appeal has expired

There were two issues before the High Court in regard to violation of principle of natural justice – non-submission of reply even after multiple opportunities and belated filing of appeal.

The High court decided as under –

Petitioner never submitted any reply but only sought personal hearing. High Court observed that they would have interfered if reply was submitted by the petitioner and in such reply the petitioner took the plea about non-furnishing of certain documents and at the same time exercised his option for personal hearing.

It was further held that since the period for preferring appeal had expired much prior to filing of petition, therefore attempt of the petitioner that petition

should be entertained on alleged grounds of violation of principles of natural justice instead of being relegated to the remedy of appeal is nothing but an abuse of process of Court.

Jagjit Enterprises (P.) Ltd.v.State of U.P.[2023] 149 taxmann.com 432 (Allahabad)

51. Show Cause Notice issued by State Authority for Illegal availment of ITC and subsequent commencement of proceedings by DGGSTI on same matter

It was alleged that once a show cause notice proceeding have been initiated and are pending before the concerned authorities under the SGST, then DGGSTI could not have issued or initiated another investigation or proceeding in-respect of the same subject matter, which otherwise is not permissible under the provisions of Section 6(2)(1)(b).

The High Court held that the initial issuance of the show cause notice and the proceedings drawn were in respect of the intrastate transactions made by the petitioner, whereas subsequent to a secret information being received and further investigation being made, particularly in the course of a raid, which was conducted at the premises of the petitioner-establishment and other related premises, it was revealed that the magnitude of the offence committed by the petitioner-establishment was far more grave and serious. It was in the course of raid found that the petitioner had been making false and bogus transactions and has illegally availed ineligible ITC credits. The magnitude of which detected by now is approximately Rs. 60 crores and with further investigation the amount is likely to increase manifold. The High Court thus did not find any substance in the arguments of the petitioner, when petitioner contended that the investigation and the proceedings now initiated is one, which hit by section 6(2)(1)(b) of the CGST Act of 2017.

Dadhichi Iron and Steel (P.) Ltd. v. Chhattisgarh GST [2020] 116 taxmann.com 334 (Chhattisgarh)

52. SCN issued by DGGSTI and investigation commenced by State Authority.

The Primary ground of contention by the Petitioner was of parallel investigation and the contention is borne out of the notice dated 30th September, 2020,

whereby the documents for the period of 2017-18 to 2020-21 were requisitioned by State GST Authority. It was contended by the Petitioner that since DGGI has issued a show-cause notice under section 74 of the CGST Act, for the years 2017-18 and 2018-19, then by virtue of Section 6 of CGST Act, State GST authorities cannot carry out the investigation for the said period.

The High Court observed that the request in the notice dated 30th September, 2020 cannot ipso facto lead to the conclusion that there is a parallel investigation for the same period by both the Central and State Authorities. The High Court also observed that in the event the notice issued by the State authorities pertains to a period which is covered by the investigation carried out by the Central GST authorities, the Petitioner can take recourse to the appropriate remedies in that regard.

The High Court held that if an officer of the Central GST initiates intelligence-based enforcement action against a taxpayer administratively assigned to State GST, the officers of the former would not transfer the said case to their counterparts in the latter department and they would themselves take the case to its logical conclusion. The revenue would be bound by Letter Dated 5-10-2018 and letter issued by the Central Board of Indirect Taxes and Customs being No. CBEC-20/10/07/2019-GST dated 22th June, 2020 and high court reiterated that in case the action of the State and Central Authorities is overlapping, the Petitioner would be at liberty to take action to impugn the same in accordance with law.

RCI Industries and Technologies Ltd. v. Commissioner DGST, Delhi [2021] 123 taxmann.com 342 (Delhi)

53. Simultaneous Proceedings by State and Central Authorities.

Petitioner's business premises was impounded by the DGGSTI and a search was undertaken thereof. During the course of search records, documents were seized and summons were issued under Section 70 of the CGST Act on various dates by DGGSTI. Thereafter, show cause notice was issued by the Additional CT and GST Officer, Sambalpur- I Circle (SGST) wherein Petitioner was asked to pay OGST, CGST, interest, penalty to the tune of Rs.3,78,68,262.08 on ITC wrongly availed. The petitioner submitted that since the Senior Intelligence Officer of the DGGSTI, Bhubaneswar has seized all the documents and issued summons pursuant to which the Petitioner was appearing there

from time to time, the proceedings initiated by State GST should be kept in abeyance till such time of proceedings before the DGGSTI concluded. Despite the above request, State GST Officer proceeded to pass an order under Section 74 of the OGST Act requiring the Petitioner to pay a sum of Rs.3,74,74,953.98 towards OGST, CGST, interest, penalty. The State Authorities in their reply did not dispute the circular dated 5th October, 2018 but claim not to have known that the Central tax authority was seized of the matter.

The High Court observed that period of enquiry as far as Central tax authority is concerned is from July, 2017 to September, 2018 whereas State Authority has issued a show cause notice specific for April, 2018 and, therefore, there is also an overlapping of the periods. Therefore, the High Court quashed the show cause notice and the impugned order issued by the State Authority and directed that till the conclusion of the proceedings initiated against the Petitioner by the DGGSTI, no coercive action be taken against the Petitioner by State GST Authority..

SonamBerlia v. State of Odisha MANU/OR/0306/2021

54. Writ Petition not maintainable as matter pending before the assessing officer

The petitioner was directed that all issues raised were still open to be agitated before the Assessing Officer and therefore the High Court do not find any good ground to entertain the writ petition. The writ petition was disposed of with the observation that all the issues raised by the petitioner, especially the issue with regard to the jurisdiction of the Assessing Officer to proceed under Section 74, shall be raised before the Assessing Officer in reply to the show cause notice, the subject matter of challenge herein.

North End Foods Marketing (P.) Ltd. v.State of U.P[2023] 150 taxmann.com 212 (Allahabad)

Section 75

55. Relied upon documents to be provided, might not be asked by the Taxpayer

**Report of Inspection not sufficient in absence to corroborative evidence
Section 75(4) mandatorily to be followed**

The issue before the High Court was non-submission of relied upon documents

to assessee and passing of order in absence of corroborative evidence.

Regarding various issues embedded in this case the high court observed as under –

- No error in appellate order, whereby appeal was dismissed on ground of limitation. However, Court considered validity of the order of proper officer on the limited grounds which are available for judicial review under Article 226 of the Constitution of India as the order of proper officer has not merged in the order of Appellate Authority.
- Sections 61 and 67, are step towards the initiation of the proceedings either under Section 73 or Section 74 of the Act, and they do not form any basis for concluding the evasion of tax and thus irrespective of the outcome under section 61 or section 67, burden of assessing short payment of tax or wrong availment of ITC lies on the department which is to be discharged by them.
- Mere report of inspection and discrepancy in the scrutiny of returns is not enough to assess and levy the tax, the said discrepancies, even if noticed by the department should be corroborated with materials in the form of either the evidence or in any other form as the department may deem fit.
- Opportunity of hearing as per Section 75(4) mandatorily to be given by department.
- Any document proposed to be relied upon should be provided to the assessee prior to conclusion of the proceedings although department contended that petitioner never demanded copy of relied upon documents and in any case, all important points mentioned in the report were mention in the show cause notice itself.

Lari Almira House v. State of U.P [2023] 149 taxmann.com 476 (Allahabad)

Section 83

56. Attachment of Bank Account of other persons not being taxable person or covered under Section 122(1A) of CGST Act, 2017

It is not open for the respondent to attach the bank accounts of other persons on a mere assumption that the funds therein are owned by any taxable person and the fact is that the petitioners are not taxable persons. The power under

Section 83 of the Act, to provisionally attach assets or bank accounts is limited to attaching the bank accounts and assets of taxable persons and persons specified under Section 122(1A) of the Act. In view of the above, the impugned order was not sustained.

Sakshi Bahl v. Principal Additional Director General [2023] 150 taxmann.com 47 (Delhi)

57. Issuance of Fresh Provisional Attachment after completion of one Year.

The petitioner contended that there was no power with the authorities to extend the provisional attachment beyond one year with a fresh order.

The High Court observed that the proceedings for adjudication have already commenced with issuance of SCN under Section 74, therefore it would be rather a proper course to be adopted to direct the authorities to complete the adjudication proceedings time-bound. Once the proceedings are over, the rights of the parties shall stand crystallized leaving the order of provisional attachment to its own fate.

Madhav Copper Ltd.v. State of Gujarat [2023] 150 taxmann.com 224 (Gujarat)

Section 95

58. Can a recipient file an application before AAR

AAR in the order impugned in the writ petition concluded that appellants being recipients of service is not entitled to maintain an application before the AAR. The High Court held that Section 95(c) of the CGST Act defines “applicant” to mean any person registered or desirous of obtaining registration under the Act and in the said case, the appellants being registered dealers under the provisions of the Act would fall within the definition of “applicant” as defined under Section 95(c) of the Act.

Anmol Industries Ltd. v. West Bengal Authority for Advance Ruling, Goods and Services Tax [2023] 150 taxmann.com 3 (Calcutta)

Section 98

59. Decision of AAR is void-abinitio when the fact regarding pendency of proceedings was not brought before the AAR

Section 98(2) of the CGST/TGST Act, 2017 states that Authority for Advance

Ruling shall not admit the application where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act. Therefore the application was liable to be rejected under Section 98(2) of the CGST/TGST Act, 2017. Taxpayer has not brought the issue to the notice of the Authority for Advance Ruling at any stage of the Advance Ruling proceedings including at the time of the personal hearing dated 28.06.2022. Therefore the applicant has obtained the Advance Ruling by suppressing the facts and hence the Order issued in the reference 5th cited is liable to be declared as void ab initio.

Srico Projects (P.) Ltd. [2023] 150 taxmann.com 295 (AAR-TELANGANA)

Section 99

60. Architectural Services provided to Local Authority for purposes referred in 2th Schedule of Article 243W of Constitution of India

- 'Architectural Consultancy Service' provided by the applicant to Surat Municipal Corporation [SMC] for construction of SMIMER Hospital & College Campus is covered under entry no. 3 of notification No. 1212017-Central (Rate) dated 28.6.2017 & thus is exempt from GST.

If the applicant provides sub contract of pure services to another contractor of the SMC the supply would not fall within the ambit of entry no. 3 of the notification No. 1212017-Central (Rate) dated 28.6.2017 and would be liable to GST.

Ajit Babubhai Jariwala [2023] 150 taxmann.com 292 (AAR - GUJARAT)

Section 107

61. Entertaining writ petition beyond limitation period and Non-Constitution of Appellate Tribunal

The appeal before the first appellate authority was preferred beyond four months period. It was contended by the revenue that since there is delay in preferring the appeal, the Court may not be in a position to condone the delay beyond four months, particularly when appellate authority has not been vested with discretion to condone the delay beyond one month after lapse of three months from the date of communication of order impugned therewith.

The High Court held that since the petitioner wants to avail the remedy under the provisions of law by approaching 2nd appellate tribunal, which has not yet been constituted, as an interim measure subject to the Petitioner depositing entire tax demand within a period of four weeks from today, the rest of the demand shall remain stayed during the pendency of the writ petition.

Pratap Kumar Pradhan v. Commissioner of Central Tax & Goods and Services Tax [2023] 150 taxmann.com 101 (Orissa)

Section 112

62. Status of Recovery of demand on account of non-constitution of Tribunal

The issue before the High Court was whether demand could be stayed if tribunal is not constituted.

The High Court held that subject to verification of the fact of deposit of a sum equal to 20 percent of the remaining amount of tax in dispute, or deposit of the same, if not already deposited, in addition to the amount deposited earlier under Sub-Section (6) of Section 107 of the B.G.S.T. Act, the petitioner must be extended the statutory benefit of stay under Sub-Section (9) of Section 112 of the B.G.S.T. Act, for he cannot be deprived of the benefit, due to non-constitution of the Tribunal by the respondents themselves. The recovery of balance amount, and any steps that may have been taken in this regard will thus be deemed to be stayed.

Shapoorji Pallonji and Co. (P.) Ltd. v. State of Bihar [2023] 150 taxmann.com 33 (Patna)

Section 129

63. Onus of the seizing authority to establish reuse of Eway bill

The issue before the High Court was whether onus of re-use of way bill is on assessee or on department.

The High Court held that in cases wherein the allegation is regarding reuse of Eway Bill, it is for the seizing authority to establish by evidence that e-way bill was being reused. In the present case, there was no evidence produced by the seizing authority that there was a reuse of the e-way bill by the petitioner and thus the order was set aside.

[2023] 149 taxmann.com 434 (Allahabad)BI Agro Oils Ltd.v.State of U.P

64. Detention of Goods on valuation and identification of owner in case goods are accompanied with invoice in the movement

The High Court held that value of the supply of goods is clear from the transaction value as indicated in the tax invoice which is on record and there being nothing on record to demonstrate that the said tax invoice was not acceptable to the respondents for any reason, therefore in view of Explanation 2, Rule 138 read with Section 15(1), the transaction value was the value which is indicated in the invoice.

The High Court directed to release the goods holding that petitioner be treated as the owner of the goods. It relied upon the decision in the matter of Margo Brush India and Others v. State of U.P. & Anr, whereby it was held that if goods are accompanied with invoices, then consignor/consignee should be deemed to be the owner.

S.K. Trading Co. v. Additional Commissioner Grade 2 (Appeal) [2023] 150 taxmann.com 102 (Allahabad)

Section 130

65. Order Passed on the same date of hearing

The issue before the High Court was whether the order passed on the date of hearing tantamount to violation of principle of natural justice.

The High Court held that the order passed under section 130 of the CGST ACT was liable to be set aside as it came to be passed on the same date when the petitioner was asked to be remain present. It amounted to breach of principles of natural justice resulting into denial of reasonable opportunity to the petitioner to defend in the proceedings.

Ashok Singh v. State of Gujarat [2023] 149 taxmann.com 398 (Gujarat)

Section 169

66. Posting of Order with incorrect and incomplete address is not a valid delivery.

The High Court observed that firstly certified copy of impugned order was provided to the appellant on 19th December 2020 which means that by that time the relaxation of limitation period as per the directions of the Apex Court in *Suo Motu Writ Petition (Civil) No. 03/2020* had commenced due to the COVID lockdown and secondly, the booking journal or the track consignment

report of the speed post does not contain the complete address of the petitioner. The High Court observed that it is apparent that notices were issued on incorrect or inadequate address. The presumption of proof of service of notice is a rebuttable piece of evidence and the track consignment report having an incomplete address of the petitioner, valid service of notice of the order in original cannot be presumed. Section 27 of the General Clauses Act as quoted at paragraph-6 of the impugned appellate order also provides that service shall be deemed to be effected by properly addressing, prepaying and posting it be registered post. Thus, it was held that petitioners have therefore rightly contended that it could not have approached the appellate authority earlier and thus the grounds of rejection of the memo of appeal was held to be not tenable on facts.

Global Construction v. Union of India [2023] 150 taxmann.com 204 (Jharkhand)

Section 171

67. Constitutional Validity of Anti Profiteering Provisions Challenged.

The High Court was of the view that there could not be any urgency for granting any interim order since the petitioner was sitting over the aforesaid impugned adjudication order for the last six months.

It is a well-established principle of law that every piece of legislation should be treated as a valid piece of legislation till the same is declared unconstitutional by any court of law and every action taken under such law should be deemed to be valid by an authority so long it is not declared unconstitutional. Since the constitutional validity of Section 171 of CGST Act has been challenged, writ petition being WPA 7189 of 2023 was entertained however, the court was not inclined to grant any interim order of stay of the aforesaid impugned adjudication order dated 30th September, 2022 in view of the facts and circumstances of this case as appears from record and by considering the submission of the parties.

Siddha Real Estate Development (P.) Ltd. v. National Anti-Profiteering Authority [2023] 150 taxmann.com 48 (Calcutta)

**STANDARD OPERATING PROCEDURE
FOR SCRUTINY OF RETURNS FOR
FY 2019-20 ONWARDS**

Government of India Ministry of Finance Department of Revenue
Central Board Indirect Taxes & Customs GST Policy Wing

To,

All the Principal Chief Commissioners/ Chief Commissioners/

Principal Commissioners/Commissioners of Central Tax

All the Principal Directors General/ Directors General of Central Tax

Madam/Sir,

**Subject: Standard Operating Procedure for Scrutiny of Returns
for FY 2019-20 onwards– reg.**

Attention is invited to the Instruction No. 02/2022-GST dated 22nd March, 2022, wherein a Standard Operating Procedure (SOP) was provided for scrutiny of returns under section 61 of Central Goods and Services Tax Act, 2017 (hereinafter referred to as “the CGST Act) read with rule 99 of Central Goods and Service Tax Rules, 2017 (hereinafter referred to as “the CGST Rules”) for FY 2017-18 and 2018-19. It was mentioned in the said instruction that the said SOP was issued as an interim measure till the time a Scrutiny Module for online scrutiny of returns is made available on the ACES-GST application.

1.2 In this regard, it is to inform that DG Systems has developed functionality “Scrutiny of Returns”, containing the online workflow for scrutiny of returns in the CBIC ACES-GST application. Advisory No. 22/2023- Returns dated 16.05.2023 has also been issued by DG Systems in this regard, along with a User Manual providing for the detailed workflow of the said functionality. The GSTINs selected for scrutiny for the Financial Year 2019-20 have also been made available on the scrutiny dashboard of the proper officers on ACES-GST application.

1.3 The functionality provides for the detailed workflow for communication of discrepancies noticed, in relation to the details furnished in the returns, by the proper officer in **FORM GST ASMT-10** to the registered person, receipt of reply from the registered person in **FORM GST ASMT-11**, issuance of order

in **FORM GST ASMT-12** or taking further action for issuance of show cause notice under Section 73 or 74 of CGST Act, 2017 or for referring the matter for Audit or investigation, as the case may be.

2. In view of this, the SOP for scrutiny of returns provided in the Instruction No. 02/2022- GST dated 22nd March 2022 stands modified to the following extent in respect of scrutiny of returns for financial years 2019-20 onwards:

3. **Selection of returns for scrutiny and communication of the same to the field formations:**

3.1 Selection of returns for scrutiny will be done by the Directorate General of Analytics and Risk Management (DGARM) based on various risk parameters identified by them. DGARM will select the GSTINs registered with the Central Tax authorities, whose returns are to be scrutinized for a financial year, based on identified risk parameters. The details of GSTINs selected for scrutiny for a financial year will be made available by DGARM through DG Systems on the scrutiny dashboard of the concerned proper officer of Central Tax on ACES-GST application.

3.2 The details of the risk parameters, in respect of which risk has been identified for a particular GSTIN, and the amount of tax/ discrepancy involved in respect of the concerned risk parameters (i.e. likely revenue implication), will also be shown on the scrutiny dashboard of the proper officer for their convenience. It is re-emphasized that as the data made available on the dashboard has been generated at a particular point of time for calculation of risk parameters, this data may undergo change at the time of scrutiny of returns, due to subsequent compliances carried out by the taxpayer or by the suppliers of the taxpayer. The proper officer shall, therefore, rely upon the latest available data.

4. **Scrutiny Schedule:**

4.1 Once the details of GSTINs selected for scrutiny for a financial year are made available on the scrutiny dashboard of the concerned proper officer of Central Tax on ACES-GST application, the proper officer, with the approval of the divisional Assistant/ Deputy Commissioner, shall finalize a scrutiny schedule in the format specified in **Annexure A of Instruction 02/2022-GST dated 22nd March 2022**. Such scrutiny schedule will specify month-wise schedule for scrutiny in respect of all the GSTINs selected for scrutiny. While preparing the scrutiny schedule, the scrutiny of the GSTINs, which

appear to be riskier based on the likely higher revenue implication indicated on the dashboard, may be prioritized. The Principal Commissioner/ Commissioner of the concerned Commissionerate will monitor and ensure that the schedule identified in Scrutiny Schedule is adhered to by the officers under his jurisdiction.

The proper officer shall conduct scrutiny of returns pertaining to minimum of **4 GSTINs** per month. Scrutiny of returns of one GSTIN shall mean scrutiny of all returns pertaining to a financial year for which the said GSTIN has been selected for scrutiny.

5. Process of scrutiny by the Proper Officer:

- 5.1 The Proper Officer shall scrutinize the returns and related particulars furnished by the registered persons to verify the correctness of the returns. Information available with the proper officer on the system in the form of various returns and statements furnished by the registered person and the data/ details made available through various sources like DGARM, ADVAIT, GSTN, E-Way Bill Portal etc. may be relied upon for this purpose.
- 5.2 As mentioned in Para 3.2 above, for the convenience of proper officers, details of the risk parameters involving risk/ discrepancies in respect of the GSTIN, along with the amount of tax/ discrepancy involved in respect of the concerned risk parameters (i.e. likely revenue implication), will be made available in the scrutiny dashboard of the proper officer. Besides, DGARM will also make available to the field formations the details of all the risk parameters taken into consideration by them for the selection of GSTINs for scrutiny of returns for the particular financial year. In addition to these parameters, proper officer may also consider any other relevant parameter, as he may deem fit, for the purpose of scrutiny.
- 5.3 It may be noted that at this stage, the proper officer is expected to rely upon the information available with him on records. As far as possible, scrutiny of return should have minimal interface between the proper officer and the registered person and, there should normally not be any need for seeking documents/ records from the registered persons before issuance of **FORM GST ASMT-10**.
- 5.4 The proper officer shall issue a notice to the registered person in **FORM GST ASMT-10** through the scrutiny functionality on ACES-GST application, informing him of the discrepancies noticed and seeking his explanation thereto.

There may be cases where the registered person may already have made additional payment of tax, cess, interest, etc. after filing of the returns for the relevant tax period, through **FORM DRC-03**. The payments thus made through **FORM DRC-03** may also be taken into consideration while communicating discrepancies to the taxpayer in **FORM GST ASMT-10**. The notice in **FORM GST ASMT-10**, issued by the proper officer through scrutiny functionality on ACES-GST application, shall be communicated by the system to the concerned registered person on the common portal and therefore, there will be no need for sending any manual communication of notice in **FORM GST ASMT-10** by the proper officer to the registered person separately. While issuing such notice, the proper officer may, as far as possible, quantify the amount of tax, interest and any other amount payable in relation to such discrepancies. It may also be ensured that the discrepancies so communicated should, as far as possible, be specific in nature and not vague or general. In this regard, the user manual issued by DG Systems may be referred to regarding the detailed procedure for issuance of **FORM GST ASMT-10** on scrutiny functionality on ACES-GST application. The proper officer shall mention the parameter-wise details of the discrepancies noticed by him in **FORM GST ASMT-10** and shall also upload the worksheets and supporting document(s)/ annexures, if any.

- 5.5 For each GSTIN identified for scrutiny, the proper officer is required to scrutinize all the returns pertaining to the corresponding Financial Year under consideration and a single compiled notice in **FORM GST ASMT-10** may be issued to the registered person for that financial year.
- 5.6 On receipt of such notice in **FORM GST ASMT-10** on common portal, the registered person may accept the discrepancy mentioned in the said notice, and pay the tax, interest and any other amount arising from such discrepancy and inform the same or may furnish an explanation for the discrepancy in **FORM GST ASMT-11**, through the common portal, to the proper officer within the time period prescribed under rule 99 of CGST Rules.
- 5.7 The reply furnished by the registered person in **FORM GST ASMT-11** on the common portal shall be made available to the concerned proper officer in the scrutiny dashboard on ACES-GST application. Where the explanation furnished by the registered person or the information submitted in respect of acceptance of discrepancy and payment of dues is found to be acceptable by

the proper officer, he shall conclude the proceedings by informing the registered person in **FORM GST ASMT-12** through the scrutiny functionality on ACES-GST application.

5.8 In case no satisfactory explanation is furnished by the registered person in **FORM GST ASMT-11** within a period of thirty days of being informed by the proper officer or such further period as may be permitted by him or where the registered person, after accepting the discrepancies, fails to pay the tax, interest and any other amount arising from such discrepancies, the proper officer, may proceed to determine the tax and other dues under section 73 or section 74 of CGST Act. Needless to mention, for proceedings under section 73 or section 74 of CGST Act, monetary limits as specified in **Circular No. 31/05/2018-GST dated 9th February 2018** shall be adhered to. The user manual issued by DG Systems may be referred to for the procedure for initiating proceedings under section 73 or 74 of the CGST Act on the scrutiny functionality on ACES-GST application.

5.9 However, if the proper officer is of the opinion that the matter needs to be pursued further through audit or investigation to determine the correct liability of the said registered person, then he may take the approval of the jurisdictional Principal Commissioner / Commissioner through the divisional Assistant/ Deputy Commissioner, through e-file or other suitable mode, for referring the matter to the Audit Commissionerate or anti-evasion wing of the Commissionerate, as the case may be. The copy of the said approval needs to be uploaded while referring the matter to the concerned formation through the scrutiny functionality, as per the procedure detailed in the user manual issued by DG Systems.

6. Timelines for scrutiny of returns:

6.1 Scrutiny of returns is to be conducted in a time bound manner, so that the cases may be taken to their logical conclusion and that too expeditiously. In this regard, the following timelines may be observed by all concerned:

S. no.	Process/Event	Timeline/ Frequency
(i)	Communication of GSTINs selected for scrutiny by DGARM on ACES GST Application for a financial year	From time to time.

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(ii)	Finalization of scrutiny schedule with the approval of the concerned Assistant/ Deputy Commissioner	Within seven working days of receipt of the details of the concerned GSTINs on ACES- GST application
(iii)	Issuance of notice by the proper officer for intimating discrepancies in FORM GST ASMT-10 , where required	Within the month, as mentioned in scrutiny schedule for scrutiny for the said GSTIN.
(iv)	Reply by the registered person in FORM GST ASMT-11	Within a period of thirty days of being informed by the proper officer in FORM GST ASMT-10 or such further period as may be permitted by the proper officer
(v)	Issuance of order in FORM GST ASMT-12 for acceptance of reply furnished by the registered person, where applicable	Within thirty days from receipt of reply from the registered person in FORM GST ASMT-11
(vi)	Initiation of appropriate action for determination of the tax and other dues under section 73 or section 74, in cases where no reply is furnished by the registered person	Within a period of fifteen days after completion of the period of thirty days of issuance of notice in FORM GST ASMT-10 or such further period as permitted by the proper officer
(vii)	Initiation of appropriate action for determination of the tax and other dues under section 73 or section 74, in cases where reply is furnished by the registered person, but the same is not found acceptable by the proper officer	Within thirty days from receipt of reply from the registered person in FORM GST ASMT-11
(viii)	Reference, if any, to the Audit Commissionerate or the anti-evasion wing of the Commissionerate for action, under section 65 or section 66 or section 67, as the case may be.	Within thirty days from receipt of reply from the registered person in FORM GST ASMT-11 or within a period of forty-five days of issuance of FORM GST ASMT-10 , in case no explanation is furnished by the registered person.

6.2 It may also be ensured that the requisite actions must be initiated well ahead of the time limits as specified in section 73 or section 74 of the CGST Act, as the case may be, in respect of a return identified for scrutiny for a financial year.

7. Reporting and Monitoring:

7.1 The details of action taken by the proper officer in respect of GSTINs allocated to him for scrutiny will be available in the form of two MIS reports in the scrutiny dashboard on the ACES- GST application. MIS report ‘**Monthly Scrutiny Progress Report**’ (in the format specified in **Annexure-D of Instruction No.02/2022 dated 22.03.2022**) displays summary information of the status of scrutiny of returns for the selected month of a financial year for the selected formation. Besides, the GSTIN-wise details of action taken in respect of scrutiny of returns in respect of allotted GSTINs is made available in the MIS report ‘**Scrutiny Register**’ (in the format specified in **Annexure-C of Instruction No.02/2022 dated 22.03.2022**) on the scrutiny dashboard. In view of this, the requirement of compiling and sending the Monthly Scrutiny Progress Report by the CGST zones to DGGST is hereby dispensed with for the Financial Year 2019-20 onwards. However, the CGST zones will continue to send Monthly Scrutiny Progress Reports to DGGST in respect of the Financial Years 2017-18 and FY 2018-19 till the completion of scrutiny of returns for these financial years, as per the timelines mentioned in Instruction No. 02/2022- GST dated 22nd March, 2022.

It is also added that the progress of the scrutiny exercise as per the scrutiny schedule shall be monitored by the jurisdictional Principal Commissioner/ Commissioner on regular basis.

8. It is clarified that since the scrutiny functionality has been provided on ACES- GST application only for the Financial Year 2019-20 onwards, the procedure specified in **Instruction No. 02/2022 dated 22.03.2022** shall continue to be followed for the scrutiny of returns for the financial years 2017-18 and 2018-19.
9. The online scrutiny functionality on ACES-GST application will further boost the efforts of the department to leverage technology and risk-based tools to encourage self-compliance and to conduct scrutiny of returns with minimal interaction with the registered person. All Principal Chief Commissioners (PCCs)/ Chief Commissioners (CCs) of CGST Zones are requested to closely monitor timely scrutiny of returns of the selected GSTINs within their jurisdictions.
10. Difficulties, if any, in implementation of these instructions may be informed to the Board (gst-cbec@gov.in).

GUIDELINES FOR SPECIAL ALL-INDIA DRIVE AGAINST FAKE REGISTRATIONS

**F. No. CBIC- 20/16/05/2023-GST Government of India Ministry of
Finance Department of Revenue Central Board Indirect Taxes &
Customs, GST Policy Wing**

To,

All the Principal Chief Commissioners / Chief Commissioners / Principal
Commissioners / Commissioners of Central Tax

All the Principal Directors General/ Directors General of Central Tax

Madam/Sir,

**Subject: Guidelines for Special All-India Drive against fake
registrations-regarding.**

During the National Co-ordination Meeting of the State and Central GST officers held at New Delhi on 24th April 2023, the issue of unscrupulous elements misusing the identity of other persons to obtain fake/ bogus registration under GST, with an intention to defraud the Government exchequer, was deliberated. Such fake/ non-genuine registrations are being used to fraudulently pass on input tax credit to unscrupulous recipients by issuing invoices without any underlying supply of goods or services or both. This menace of fake registrations and issuance of bogus invoices for passing of fake ITC has become a serious problem, wherein fraudulent people engage in dubious and complex transactions, causing revenue loss to the government.

2. Various modus operandi of obtaining such fake registrations have been detected by Central and State Tax administrations. In some cases, forged documents, such as forged electricity bills, property tax receipts, rent agreements, etc. are being used as proof of principal place of business to obtain GST registration. In one of such recent cases detected by Gujarat State Tax authorities, it has been found that a few fraudsters have obtained fake GST registrations on the basis of PAN and Aadhaar number of persons from economically weaker sections without their knowledge. It was revealed that phone number on the Aadhaar cards of these persons were got fraudulently modified at the nearest Aadhaar Seva Centre, by taking these persons to the said Aadhaar Seva Centre by giving a nominal cash

amount under guise of a government scheme and getting their Aadhaar Cards linked to a dummy mobile number by using their thumb impression.

3. In the National Co-ordination Meeting on 24th April 2023, it was discussed that while various system based and policy measures are being taken to address this problem of fake registration and fake input tax credit, there is a need of concerted and coordinated action on a mission mode by Central and State tax authorities to tackle this menace in a more systematic manner. It was agreed that a nation-wide effort in the form of a Special Drive should be launched on All-India basis to detect such suspicious/ fake registrations and to conduct requisite verification for timely remedial action to prevent any further revenue loss to the Government. It was decided that common guidelines may be issued to ensure uniformity in the action by the field formations and for effective coordination and monitoring of the action taken during this Special Drive. Accordingly, the following guidelines are issued for such concerted action on fake dealers/ fake billers in a mission mode:

- (i) **Period of Special Drive:** A Special All-India Drive may be launched by all Central and State Tax administrations during the period 16th May 2023 to 15th July 2023 to detect suspicious / fake GSTINs and to conduct requisite verification and further remedial action to weed out these fake billers from the GST eco-system and to safeguard Government revenue.
- (ii) **Identification of fraudulent GSTINs:** Based on detailed data analytics and risk parameters, GSTN will identify such fraudulent GSTINs for State and Central Tax authorities. GSTN will share the details of such identified suspicious GSTINs, jurisdiction wise, with the concerned State/ Central Tax administration (through DGARM in case of Central Tax authorities) for initiating verification drive and conducting necessary action subsequently.

Besides, field formations may also supplement this list by data analysis at their own end using various available analytical tools like BIFA, ADVAIT, NIC Prime, E-Way analytics, etc, as well as through human intelligence, Aadhar database, other local learnings and the experience gained through the past detections and modus operandi alerts. GSTN may separately provide a note to the field formations, regarding the tools available in BIFA which may be useful during this drive.

(iii) Information Sharing Mechanism: Successful implementation of the Special Drive would require close coordination amongst the State Tax administrations, and between State and Central tax administrations. For this purpose, a nodal officer shall be appointed immediately by each of the Zonal CGST Zone and State to ensure seamless flow of data and for coordination with GSTN/ DGARM and other Tax administrations. The name, designation, phone number/ mobile number and E-mail Id of such Nodal officer(s) appointed by CGST Zones and States must be shared by the concerned tax authority with GST Council Secretariat within three days of issuance of this letter. GST Council Secretariat will compile the list of the Nodal officers after procuring the details from all the tax administrations and will make the compiled list available to all the tax administrations, as well as GSTN and DGARM immediately.

The Nodal officer of the State/ CGST Zone will ensure that the data received from GSTN/ DGARM/ other tax administrations is made available to the concerned jurisdictional formation within two days positively. The Nodal officer shall also ensure that any cooperation required by other jurisdictions under his control is promptly provided.

(iv) Action to be taken by field formations: On receipt of data from GSTN/DGARM through the Nodal Officer, a time bound exercise of verification of the suspicious GSTINs shall be undertaken by the concerned jurisdictional tax officer(s). If, after detailed verification, it is found that the taxpayer is non-existent and fictitious, then the tax officer may immediately initiate action for suspension and cancellation of the registration of the said taxpayer in accordance with the provisions of section 29 of CGST Act, read with the rules thereof.

Further, the matter may also be examined for blocking of input tax credit in Electronic Credit Ledger as per the provisions of Rule 86A of CGST Rules without any delay. Additionally, the details of the recipients to whom the input tax credit has been passed by such non-existing taxpayer may be identified through the details furnished in FORM GSTR-1 by the said taxpayer. Where the recipient GSTIN pertains to the jurisdiction of the said tax authority itself, suitable action may be initiated for demand

and recovery of the input tax credit wrongly availed by such recipient on the basis of invoice issued by the said non-existing supplier, without underlying supply of goods or services or both. In cases, where the recipient GSTIN pertains to a different tax jurisdiction, the details of the case along with the relevant documents/ evidences, may be sent to the concerned tax authority, as early as possible, in the format enclosed as **Annexure-B**, through the Nodal Officer referred in para (ii) above.

Action may also be taken to identify the masterminds/ beneficiaries behind such fake GSTIN for further action, where ever required, and also for recovery of Government dues and/ or provisional attachment of property/ bank accounts, etc. as per provisions of section 83 of CGST Act. Further, during the investigation/ verification, if any linked suspicious GSTIN is detected, similar action may be taken/ initiated in respect of the same.

- (v) **Feedback and Reporting Mechanism:** An action taken report will be provided by each of the State as well as CGST Zones to GST Council Secretariat on weekly basis on the first working day after completion of the week in the format enclosed as **Annexure-A**. If any novel modus operandi is detected during the verification/ investigation, the same may also be indicated in the said action taken report. On conclusion of the drive, GSTIN-wise feedback on the result of verification of the shared suspicious GSTINs, will be provided by the field formations to GSTN/ DGARM, as per the format enclosed in **Annexure-C**.
- (vi) **National Coordination Committee:** A National Coordination Committee headed by Member [GST], CBIC and including Principal Chief Commissioners/ Chief Commissioners Delhi and Bhopal CGST Zones and Chief Commissioners/ Commissioners of State Tax of Gujarat, West Bengal and Telangana shall monitor the progress of this special drive. National Coordination Committee will meet periodically for this purpose. GST Council Secretariat will act as the secretariat of this National Coordination Committee. The Committee will also be assisted by GSTN and Principal Commissioner, GST Policy Wing, CBIC.

4. GST Council Secretariat will compile the reports received from various formations and make it available to the National Coordination Committee

immediately. The unique modus operandi found during this special drive will be compiled by GST Council Secretariat and presented before National Coordination Committee, which will be subsequently shared with Central and State Tax administrations across the country.

5. These guidelines are being issued as per the decision of the National Coordination Committee.

6. Difficulties, if any, in implementation of these instructions may be informed to the Board (gst-cbec@gov.in).

Sanjay Mangal
Principal Commissioner (GST)

Enclosure: As above

Copy to:

1. The Joint Secretary, GST Council Secretariat, New Delhi for information and necessary action. She is also requested to for immediately take up with the Chief Commissioners/ Commissioners of State Tax of various States/ UTs for similar action at their end.

Copy for information and necessary action to:

1. The CEO, GSTN, New Delhi
2. The Additional Director General, DGARM, New Delhi

Weekly Report on Action taken in Special All-India Drive against Fake Registrations

Annexure-A

Name of the State/ CGST Zone:

Week ending:

(Amount in Rs Lakhs)

S. No	No. of GSTINs shared by GSTN/DGAR/M	No. of GSTINs identified locally	Total no. of GSTINs to be verified	No. of GSTINs for whom verification conducted	No. of Non-existing GSTINs found	Action taken				Total Amount of tax/ITC detected	Total Amount recovered from GSTINs in the jurisdiction of tax authority	No. of recipients (GSTINs) of such non-existing GSTINs to whom credit has been passed on		Number of recipient GSTINs located outside jurisdiction, on, which have been shared with the concerned jurisdictional tax authority	Remarks
						No of GSTINs suspended	No of GSTIN cancelled	ITC blocked under Rule 86 A	No of GSTINs where Provisional attachment made under section 83 of CGST Act			Within jurisdiction	Outside Jurisdiction		
	7a	7b	7c	7d	7e	8	9	10a	10b	11	12				
1	2	3	4(2+3)	5	6										

Note:

1. The report is to be given for action taken up to week, i.e. for the period from start of the drive up to the end of the week, for which report is being sent.
2. A separate note may be enclosed in respect of any special modus operandi noticed during the week.

Annexure-B

Intimation about details of the recipients of the non-existent suppliers detected during the special All-India drive against fake registrations

- A. Tax administration of the non-existent supplier:
- B. Tax administration of the recipient:
- C. Details of the supplier, recipients and the tax amount involved:

GSTIN of the non-existent supplier, along with Name & Address	GSTIN of the recipient	Name & Address of the recipient(s)	Tax amount/ ITC involved (in Rs Lakhs)				Total (4+5+6+7)
			CGST	SGST	IGST	Cess	
1	2	3	4	5	6	7	8

- D. Other relevant details, if any:
- E. Details of enclosures (Panchnama/ Inspection report/ PV report/ Other relevant documents or evidences):

Place:

Date:

(Signature) Name:

Designation: Email address:

Enclosures: As above

Annexure – C

GSTIN-wise feedback regarding the outcome of the action against the suspicious GSTINs

Name of the State/ CGST Zone:

Date of submission:

S. No.	GSTIN	Legal Name/ Trade Name	Tax involved as estimated by GSTN/ DGARM/ tax administration (Rs. In Lakhs)	Was the lead correct? (Y/N)	If lead not correct, reason. (Choose one from - a/ b/ c/d) #	Action on GSTIN Registration (Suspended/ Cancelled/ No Action)	Detected tax amount (Rs. In Lakhs)	Recoveries made till date (Rs.)	Remarks
1	2	3	4	5	6	7	8	9	10

Note- Details are to be provided for each GSTIN covered in the drive, whether in the initial list or added subsequently

For Column 6 - Reason for lead not correct - Please choose one of the following-

- a. Data incorrect
- b. Data correct but taxpayer had reasonable explanation
- c. Data correct but taxpayer had complied before enforcement action
- d. Case already investigated before enforcement action

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