

*For Departmental use only*

# **e-Book on Demand & Adjudication** *(GST & Legacy)*

***Compilation of provisions & Instructions  
relating to Demand & Adjudication in CBIC***

***National Academy of Customs, Indirect Taxes & Narcotics  
Andhra Pradesh Zonal Institute, Visakhapatnam***

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*(GST & Legacy)*

**(December, 2024)**

*Compiled by*

**National Academy of Customs, Indirect Taxes and Narcotics  
Andhra Pradesh Zonal Institute, Visakhapatnam**

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**Your valuable suggestions and feedback may kindly be sent to  
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**Disclaimer:** *This handbook is a compilation of certain provisions of GST law meant for Departmental training and reference purposes. For ease of understanding, the provisions are tabulated and explained in simple terms. The publication is strictly for internal use within NACIN/CBIC and no portion of the publication can be quoted for legal purposes.*

## **Foreword**

At NACIN, Visakhapatnam, we are striving, *inter alia*, to create concise and practical compilations and guidebooks to provide Departmental officers with essential knowledge and resources.

In the past, this Institute released two editions of the “*Handbook for GST Officers*”, both of which received an overwhelming response from trainees and departmental officers. In September 2024, we further expanded our publications with the launch of the “*E-Book on E-Commerce Operators (ECOs)*”.

Building on this momentum, I am delighted to present the *E-Book on Demand & Adjudication (GST & Legacy)*. This comprehensive compilation brings together all the adjudication-related information at one place, viz., *Monetary powers of Adjudicating authorities; Dealing with demands involving suppression, no suppression, notices in case of fake invoice chains; C&AG audit paras; proposed amendments in CGST Act through Finance Bill, 2024, useful extracts from GST Back Office (BO) User Manuals etc.* I trust this resource will be invaluable in the daily work of officers involved in adjudication.

We warmly welcome your feedback and suggestions to enhance future editions of this e-book. Your valuable inputs on corrections, additions, or deletions can be shared via e-mail at [psadg.nacinvsp-cbec@gov.in](mailto:psadg.nacinvsp-cbec@gov.in).

I extend my heartfelt gratitude to the Director General, NACIN, for his continuous encouragement and support for these initiatives. I also wish to acknowledge the commendable efforts of Shri Panchagnula S. Madhav, Additional Assistant Director, NACIN, Visakhapatnam, whose dedication was instrumental in bringing this compilation to fruition.



**(Ravi Kiran Edara)**  
**Additional Director General**  
**NACIN, Visakhapatnam**

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## A. ADJUDICATION PROVISIONS – AT A GLANCE

### 1. MONETARY POWERS of ADJUDICATION (GST)

Sl.No.	Officer of Central Tax	Tax not paid or short paid or erroneously refunded or input tax credit of tax wrongly availed or utilized for issuance of show cause notices and passing of orders under sections 73 and 74 of CGST Act made applicable to Integrated Tax vide section 20 of the IGST Act		
		Central tax (Including cess)	Integrated tax (Including cess)	Central tax and Integrated tax (including cess)
(1)	(2)	(3)	(4)	(5)
1	Superintendent of Central Tax	<b>Not exceeding Rupees 10 lakhs</b>	Not exceeding Rupees 20 lakhs	Not exceeding Rupees 20 lakhs
2	Deputy or Assistant Commissioner of Central Tax	<b>Above Rupees 10 lakhs and not exceeding Rupees 1 crore</b>	Above Rupees 20 lakhs and not exceeding Rupees 2 crore	Above Rupees 20 lakhs and not exceeding Rupees 2 crore
3	Additional or Joint Commissioner of Central Tax	<b>Above Rupees 1 crore without any limit</b>	Above Rupees 2 crore without any limit	Above Rupees 2 crore without any limit



## 2. TIMELINES OF ADJUDICATION (GST):

F.Y/Tax Period	Annual Return filing Due Date	SCN u/s 73 to be issued before*	Order u/s 73 to be issued before*	SCN u/s 74 to be issued before*	Order u/s 74 to be issued before*
2017-18	05/07.02.2020	30.09.2023	31.12.2023	03.08.2024	04.02.2025
2018-19	31.12.2020	31.01.2024	30.04.2024	29.06.2025	30.12.2025
2019-20	31.03.2021	31.05.2024	30.08.2024	29.09.2025	30.03.2026
2020-21	28.02.2022	26.11.2024	27.02.2025	26.08.2026	27.02.2027
2021-22	31.12.2022	30.09.2025	30.12.2025	30.06.2027	30.12.2027
2022-23	31.12.2023	30.09.2026	30.12.2026	30.06.2028	30.12.2028
2023-24	31.12.2024	30.09.2027	30.12.2027	30.06.2029	30.12.2029
2024-25* Proposed FB 2024	31.12.2025	30.06.2029 *New Section 74A	30.06.2030 / Extendable 30.12.2030	30.06.2029 *New Section 74A	30.06.2030 / Extendable 30.12.2030

**NOTE: CGST Section 76 : NO TIME LIMIT for SCN but ORDER to be PASSED within ONE year of SCN date.**

## 3. TAXPAYER RIGHTS

1. The taxpayer/noticee/assessee has a right to file written reply supporting their claim with relevant documents.
2. They have right to be heard in person, as per judicial principles.
3. They have a right to receive a speaking order.
4. They have a right to appeal, if aggrieved by the Order

## 4. STEPS INVOLVED IN ISSUANCE OF SCN & ADJUDICATION (GST)

Sl. No.	Rule	Particulars	Form
1	142(1A)	The Proper Officer may communicate the details of tax, etc., before issue of notice	GST DRC-01A (Part-A)
2	142(2)	The person may make full payment of the demand voluntarily after issue of DRC-01A and intimate the Proper Officer	GST DRC-03
3	142(2A)	Where partial payment is made after issue of DRC-01A, the person will intimate and make submissions/justification to the Proper Officer for remaining amount.	GST DRC-03 & GST DRC-01A (Part B)

4	142(2)	Where full payment is made in Step-2, the Proper Officer shall issue an acknowledgement, accepting the payment made.	GST DRC-04
5	142(3)	If total payment is made by the person, the Proper Officer shall issue the order concluding the proceedings.	GST DRC-05
6	142(1)(a)	The Proper Officer shall issue SCN (along with summary of Notice in DRC-01) for demand of amounts payable under the Act	GST DRC-01
7	142(1)(b)	The Proper Officer to issue summary or Statement for additional tax periods on the same ground, if any.	GST DRC-02
8	142(4)	Where the SCN is issued and payment is not made, the person shall furnish the reply electronically.	GST DRC-06
9	142(5) & (6)	On adjudication of SCN, the Proper Officer shall issue Order along with summary of order in DRC-07 (The Order shall be treated as the notice for recovery).	GST DRC-07

## 5. KEY PROVISIONS RELATING TO GST

Sl.No.	Section / Rules	Provisions pertaining to
1	Section 73	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for any reason other than fraud or any willful-misstatement or suppression of facts
2	Section 74	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any willful-misstatement or suppression of facts
3	Section 75	General provisions relating to determination of tax
4	Section 76	Tax collected but not paid to government
5	Section 79	Recovery of tax
6	Section 129	Detention, seizure and release of goods and conveyances in transit
7	Section 161	Rectification of errors apparent on the face of record
8	Rule 142	Notice and order for demand of amounts payable under the Act.
9	Rule 152	Attachment of property in custody of courts or Public Officer

*\*\*Please refer to Finance Bill 2024 for CGSTA'17 Section 73;74;74A & Section 75.*

## 6. MONETARY LIMITS FOR ADJUDICATION (C.E & S.T)

Sl. No.	Central Excise Officer	Monetary Limits of duty/ tax/ credit demand for Central Excise and Service Tax (normal)
1	Superintendent*	Not exceeding rupees ten lakh
2	Deputy/ Assistant Commissioner	Above ten lakh but not exceeding rupees fifty lakh
3	Additional/ Joint Commissioner	Above fifty lakh but not exceeding rupees two crore
4	Commissioner	Without limit i.e. cases exceeding rupees two crores

Note : \* Cases involving taxability, classification, valuation and extended period of limitation shall be kept **out of the purview** of adjudication by Superintendents.

*Note: Also Refer CBIC circular no: 1086/01/2024-CX dated 03.07.2024 for Revised monetary powers for Adjudication of SCNs issued for Chapter 24 commodities, demanding Central Excise duty and GST.*

## 7. CALL BOOK (LEGACY)

The following categories of cases can be transferred to call book:-

- i. Cases in which the Department has gone in appeal to the appropriate authority.
- ii. Cases where injunction has been issued by Supreme Court/ High Court/ CEGAT, etc.
- iii. Cases where the Board has specifically ordered the same to be kept pending and to be entered into the call book.
- iv. Cases admitted by the Settlement Commission ...(Cases shall be taken out of the Call-Book after Settlement Order has been issued or where the case has been reverted back for adjudication.)

## 8. COMPONENTS of a TYPICAL ADJUDICATION ORDER:

- a. Normally, an adjudication order has following distinct Parts:
  - i. Brief Facts of the Case, charges against the noticee, action proposed against him etc. with respect to specific nature of contravention of statute & specific penalties thereof.
  - ii. Written Submission by the noticee

- iii. Personal Hearing and submission made during personal Hearing
  - iv. Discussion and Findings [by the Adjudicating Authority]
  - v. Order Portion containing final decision/quantification
- b.** Guidelines of Hon'ble Supreme Court direction in the case of JCIT Surat vs. Saheli Leasing & Industries Ltd. [Citation :- 2010 (253) ELT 705 (SC)] are as below. These are only illustrative in nature, not exhaustive and one needs to look into the need and requirement of a given case:-
- i. It should always be kept in mind that nothing should be written in the judgment/order, which may not be germane to the facts of the case; it should have a co-relation with the applicable law and facts. The *ratio decidendi* should be clearly spelt out from the judgment/order.
  - ii. After preparing the draft, it is necessary to go through the same to find out, if anything, essential to be mentioned, has escaped discussion.
  - iii. The ultimate finished judgment/order should have sustained chronology; regard being had to the concept that it has readable, continued interest and one does not feel like parting or leaving it in the midway. To elaborate, it should have flow and perfect sequence of events, which would continue to generate interest in the reader.
  - iv. Appropriate care should be taken not to load it with all legal knowledge on the subject as citation of too many judgments creates more confusion rather than clarity. The foremost requirement is that leading judgments should be mentioned and the evolution that has taken place ever since the same were pronounced and thereafter, latest judgment, in which all previous judgments has been considered should be mentioned.
- c.** In case of *Assistant Commissioner, Commercial Tax Department Vs Shukla & Brothers - 2010(254) E.L.T 6(S.C)*, Hon'ble Supreme Court held that principle of natural justice has twin ingredients namely:
- (i) person likely to be adversely affected by action of authorities to be given notice to show cause *and*
  - (ii) opportunity of hearing. dependently in exercise of his quasi-judicial powers.

\*\*\*

## B. Adjudication – Basic Principles

### 1. Key Tenets of Adjudication:

The primary objective of adjudication is to prevent economic losses resulting from violations by ordering recovery of duty/tax short paid or not paid and also imposing appropriate penalties. It aims to strike a balance, ensuring that penalties are commensurate with the nature of the offence.

The first and foremost principle for adjudication, is what is commonly known as *audi alteram partem*. It says that no one should be condemned unheard. The Show cause Notice is the first limb in adjudication process. It must be precise and unambiguous. It should appraise the taxpayer determinatively the case he has to meet. The order should not travel beyond the SCN. However, if a new ground is required to be considered, the same could be done by way of putting the party to notice subject to law of limitation. [*SURESH SYNTHETICS 2007 (216) E.L.T. 662 (S.C.)*].

Further, time given for the purpose should be adequate so as to enable the assessee to make their representation. In the absence of a notice and reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that an assessee should be put to notice of the case before any adverse order is passed against him.

The word ‘quasi’ is of Latin origin and means ‘similar but not exactly.’ The quasi-judicial acts are not exactly court proceedings. They may seem to derive the powers and functions of some laws, but they are still not considered as decisions of courts. The quasi-judicial bodies follow the rules of natural justice and have to interpret with their independent mind, impartially considering evidence before them including CBIC circulars which are also to be considered as evidence. *Nemo judex in causa sua* : No one should be a judge in his own case.

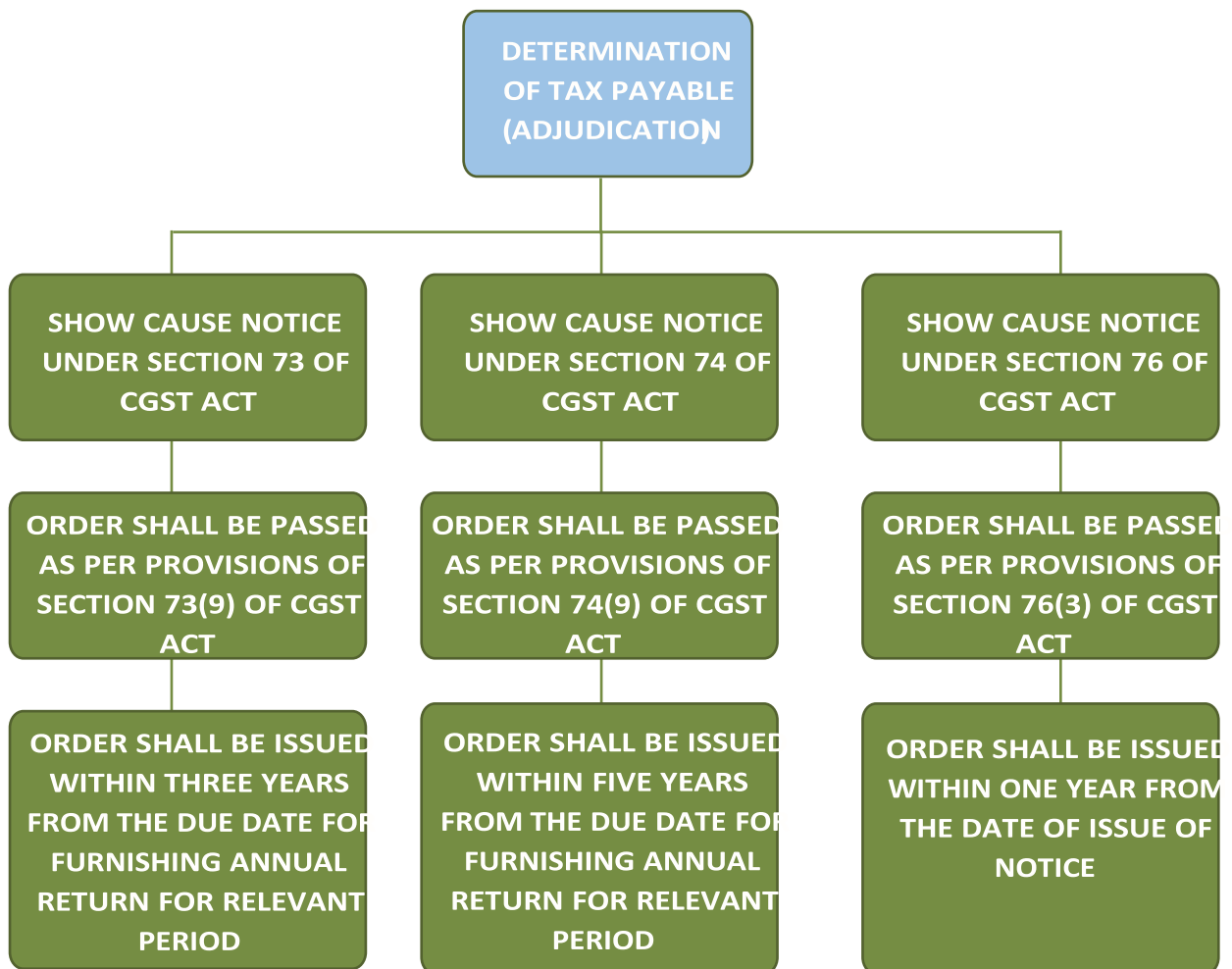
Hon’ble Supreme Court of India in the case of *Dharampal Satyapal Ltd. - 2015 (320) E.L.T. 3 (S.C.)* deliberated upon the principles of natural justice.

Head Notes pertaining to some of the relevant paras are reproduced below:

*Natural justice - Principles of - They are grounded in procedural fairness which ensures correct decision, and accurate/appropriate outcomes - It is on these jurisprudential premise fundamental principles of natural justice, including audi alteram partem, have developed - Courts have consistently insisted that such procedural fairness has to be adhered to before a decision is made and infraction thereof has led to quashing of decisions taken - These principle have to be mandatorily applied irrespective of whether there is any such statutory provision or not. [paras 24, 25].*

In the case of *Zenith Computers Ltd. Vs CCE-2014 (303) E.L.T. 336 (Bom.)*, the Hon'ble High Court of Bombay, explained the meaning of Adjudication. The Hon'ble court has noted that 'Adjudication' ordinarily means to act and decide judicially. The Court further observed that 'Acting judicially' is not performing some rituals or completing somehow the assigned work, but is serious business and it requires continued application of mind and alertness. Court thus observed that it should not be undertaken casually and no one can approach judicial proceedings in a light-hearted manner. [para 17].

### Typical Adjudication - Flow chart:



## 2. DIFFERENCE: JUDICIAL vs QUASI- JUDICIAL FUNCTIONS

Sl. No.	JUDICIAL ACT/BODIES	QUASI-JUDICIAL ACT/BODIES
1	Judicial acts require a proper proceeding of the court and the judge is duty-bound.	The quasi-judicial acts don't require the courts and decisions taken under them are by the person, who is not a judge.
2	The judicial acts are bound by the common law precedents to give decisions	The quasi-judicial acts are not usually bound by common law.
3	In absence of any common law precedent, judicial decisions may invent new law through interpretations	The quasi-judicial is based on the decisions of the existing laws.
4	A Judicial Act is an act that bounds the judiciary of any system to take decision with the proper proceedings of the court	Quasi-Judicial Acts don't bound anybody but give decisions without the proceedings of the court.
5	They have the authority to interpret and apply the law to make decisions that have the force of law.	They also have the authority to make decisions, but they do not have the same level of legal authority as judicial bodies.
6	Judicial bodies typically consist of <u>judges or appointed magistrates</u> by government or elected by the people	Quasi-judicial bodies may consist of a combination of judges and experts appointed by the government or by a specialised agency.
7	Judicial proceedings <u>are usually more formal and follow strict rules of procedure.</u>	The proceedings <u>may be less formal, but they still follow set procedures and rules of evidence.</u>

**The process of adjudication and issuance of adjudication order may be summarized in the following steps.**

### 3. Careful Consideration of the Material on Record

Adjudicating authority should give careful consideration of all the material on record as mentioned below:

- i. Facts of the case;
- ii. Evidence on the record against each noticee with respect to specific provisions of Statute;
- iii. Charges against each noticee;

- iv. Reply furnished by each noticee;
- v. Case laws relied upon by each noticee in his/her defence (issue-wise);
- vi. Record of personal hearing - any fresh documents submitted by noticee at the hearing stage which is not known or not in the knowledge of the Department;
- vii. Carefully read the legal provisions relevant to the case. If the legal provisions have gone through the amendment over a period of time, consider the legal provision which existed at the material time i.e. at the time of booking of case.

In this regard, Hon'ble Supreme Court's direction in the case of *Kranti Associates Pvt. Ltd. Vs. Masood Ahmed Khan [Citation:- 2011 (273) ELT 345 (SC)]* must be kept in mind wherein the Hon'ble Supreme Court held as under: \_

- (a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially;
- (b) A quasi-judicial authority must record reasons in support of its conclusions;
- (c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well;
- (d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power;
- (e) Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations;
- (f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies;
- (g) Reasons facilitate the process of judicial review by superior Courts;
- (h) The ongoing judicial trend in all Countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice;
- (i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered;

**4. This is important for sustaining the litigant's faith in the justice delivery system.**

- (a) Insistence on reason is a requirement for both judicial accountability and transparency.
- (b) If a Judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.



- (c) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or ‘rubber-stamp reasons’, is not to be equated with a valid decision-making process.
- (d) It cannot be doubted that transparency is the *sine qua non* of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harvard Law Review 731-737).
- (e) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya v. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, “adequate and intelligent reasons must be given for judicial decisions”.
- (f) In all common law jurisdictions, judgements play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of “Due Process”.

#### **5. The adjudication order must be a speaking order.**

A speaking order is an order that speaks for itself. A good adjudication order is expected to stand the test of legality, fairness and reason at higher appellate fora. Such order should contain all the details of the issue, clear findings and a reasoned order. The Adjudicating Authority is expected to examine all evidences, issues and material on record, analyse those in the context of alleged charges in the show cause notice. He is also expected to examine each of the points raised in the reply to the SCN and accept or reject them with cogent reasoning. After due analysis of facts and law, adjudicating authority is expected to record his observations and findings in the adjudication order. The adjudication order should generally contain brief facts of the case, written and oral submissions by the party, observation of the adjudicating authority on the evidences on record and facts of omission and commission during personal hearing and finally the operating order. At any cost, the findings and discussions should not go beyond the scope and ground of the show cause notice. The duty demanded and confirmed should be clearly quantified and the order portion must contain the provisions of law under which duty is confirmed and penalty is imposed. The duty demanded in an adjudication order cannot exceed the amount proposed in the Show Cause notice. They ensure accountability, transparency, and fairness in decision-making processes. It is important to discuss as to why and how the case laws relied upon by the noticee are not applicable to the impugned case. It is MUST for every adjudicating authority.

- ❖ State of W.B. vs. Atul Krishna Shaw – AIR 1990 SC 2205: In this case, the Supreme Court emphasized that stating reasons is essential for justice. Reasoned decisions, not only assure citizens that they are receiving justice but also serve as a disciplinary measure for the tribunal itself.

#### **6. It is settled legal principle that orders travelling beyond show cause notice are non est.**

- ❖ This has been so held in Commissioner Vs Carborundum Universal Ltd 2007 (211) ELT 105 (Tri. Chennai) and (affirmed by SC 2008 (223) ELT A94 (S.C.)) and Asha Celluloid Vs CCE, Surat - 1998 (98) E.L.T. 769 (T). The fundamental is that the adjudication authority is not to assume upon itself the role of investigating agency and go on to investigate something which has not been alleged in the SCN. It has been held by the Hon'ble Supreme Court in the case of State of U.P. v. Manbodhan Lal Srivastava as reported in AIR 1957 SC 922, that a lacuna which was there on the show cause notice cannot be availed by the department to carry out an investigation and then commence fresh proceedings. This has been the well settled position and further relied upon in the case of M/s SRF Ltd. Vs CCE Trichy- [2004(176)E.L.T 0853 (TriBom.)]. The Tribunal in similar circumstances relied on several Supreme Court judgments to hold that the department cannot produce documents not confined to charges in the show cause notice as that would amount to making out a fresh case, as held in the case of CCE v. Bhupendra Steels Pvt. Ltd. reported in 1989 (44) E.L.T. 760.
- ❖ The Hon'ble Supreme Court in the case of AC, CE, Calcutta vs National Tobacco Co of India Ltd- 1978 (2) E.L.T. (J 416) (S.C.) has held the following: *“Assessment of a tax on a person or property is of a quasi-judicial character, therefore rules of natural justice have to be followed. If a company had not been given an opportunity of being heard so as to be able to explain the material collected behind its back which had formed the basis of demand notice such were liable to be quashed by the court on the ground of nonobservance of natural justice”.*
- ❖ The Hon'ble Supreme Court in the case of Union of India v. Kamlakshi Finance Corporation Ltd, reported in 1991(35) E.L.T.433(S.C.), has held that, *“The adjudicating Officer acts as a quasi-judicial authority. He is bound by the law of precedent and binding effect of the order passed by the higher authority or Tribunal of superior jurisdiction. If his order is thought to be erroneous by the Department, the Department can as well prefer appeal in terms of the statutory provisions contained in the Central Excise Act, 1944.*

#### **7. ADJUDICATION OF ONE AND THE SAME CASE TWICE: -**

Adjudicating officers should guard against passing two formal adjudication orders on one and the same case. The legal position in this respect is that, where a matter has already been adjudicated by the competent authority and another order of adjudication is passed relating to the same transaction subsequently, the second order is a nullity. The authority who undertakes the enquiry resulting in the second

adjudication acts without jurisdiction. The second order being a nullity, should be taken as not to exist.

When the fact of such an order having been passed is brought to light, the records should be corrected, the order deleted from the record and the party affected informed accordingly. (Board's F.No, 18/18/65-CXIV dt. 29.4.65).

#### **8. RECOMMENDATIONS BY THE OFFICE ASSISTANTS & OTHERS: -**

An officer when adjudicating acts in a quasi-judicial capacity and that he should, after the enquiry, take an unbiased decision in each case applying his own mind to the materials disclosed in enquiry independently. From this point of view, any positive suggestion in regard to the penalty etc. whether in an office note or elsewhere is liable to be regarded as an interference with the functions of the Adjudicating Officer thereby vitiating the decision. Office notes should not, therefore, go to the extent of recommending the final decision or the actual penalty, in the adjudication of offence cases.

#### **9. TRANSFER of ADJUDICATING AUTHORITY DURING PROCESS:**

When an adjudicating officer is likely to be transferred or promoted, it should be ensured that in all cases, where a hearing has been given on request, but formal orders have not been issued, the drafting of these orders is also on a top priority basis so that formal orders in all such cases are issued by the outgoing officer before relinquishing charge. If despite this precaution, odd cases remain undisposed the successor in office should offer a fresh hearing to the party as mentioned before issuing the formal order.

#### **10. CORRIGENDUM**

The underlying principle in this regard is that the adjudicating authority is no doubt a quasi-judicial body required to work within the provisions of law but neither the powers of review nor correction to the order is available to exercise such powers. He becomes *functus officio* after signing the adjudication order and, therefore, he cannot lay his hands again on the order. The corrigendum, tantamount to review of the decision which is not provided under Law, and therefore not allowed.

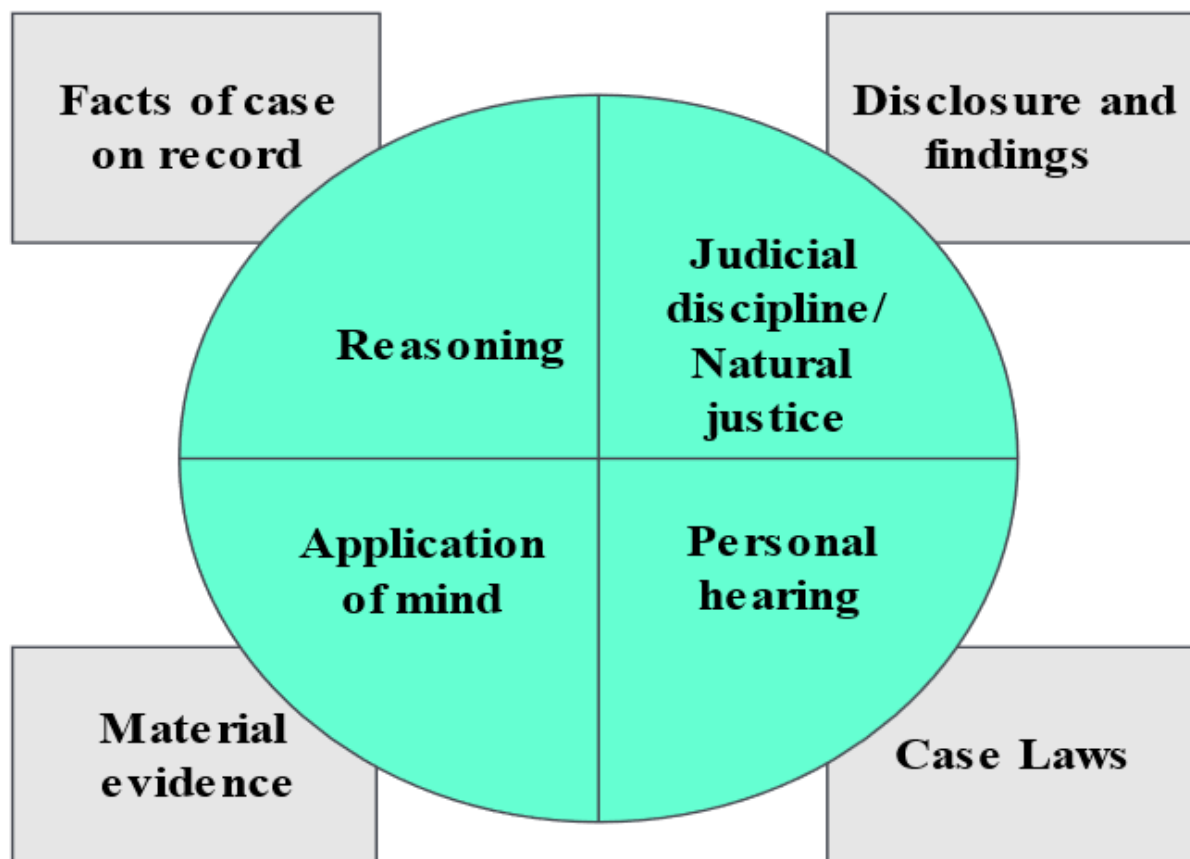
#### **11. RECTIFICATION OF ERRORS APPARENT ON THE FACE OF RECORD:**

Section 161 of CGST Act, 2017 provides that any authority, who has passed or issued any decision or order or notice may rectify any error which is apparent on the face of record in such decision or order or notice either on its own motion or where such error is brought to its notice by any officer appointed under this Act or an officer appointed under the State Goods and Services Tax Act or an officer appointed under the Union Territory Goods and Services Tax Act or by the affected person within a period of three months from the date of issue of such decision or order or notice, as the case may be.

## 12. Some Basics of Adjudication Process:

- a) Language should not be rhetoric and should not reflect a contrived effort on the part of the author.
- b) After arguments are concluded, an endeavour should be made to pronounce the judgement at the earliest and in any case not beyond a period of three months. Keeping it pending for long time sends a wrong signal to the litigants and the society.
- c) It should be avoided to give instances, which are likely to cause public agitation or to a particular society. Nothing should be reflected in the same which may hurt the feelings or emotions of any individual or society. Aforesaid are some of the guidelines which are required to be kept in mind while writing judgments.

### FLOW CHART FOR ADJUDICATION PROCESS



*Courtesy : NACIN, Kanpur*

Conducting of personal hearings through video mode is mandatory, unless the Taxpayer requests for physical mode narrating the reasons vide Board's instruction in File F.No.390/Misc/3/2019-JC, dt.05.11.2024

## C. STATUTE & PROCEDURES

### 1. Relevant Definitions from the Central Goods & Services Act 2017.

Section 2(4) "adjudicating authority"

Section 2(48) "existing law"

Section 3. Officers under this Act.-

*Provided that the officers appointed under the Central Excise Act, 1944 (1 of 1944) shall be deemed to be the officers appointed under the provisions of this Act.*

### 2. Section 73.

Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any willful-misstatement or suppression of facts.-

- (1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder.
- (2) ...
- (3) ...
- (4) ...
- (10) The proper officer shall issue the order under sub-section (9) within three years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within three years from the date of erroneous refund.

### 3. PROPOSED FINANCE BILL 2024 :

132. In Section 73 of the Central Goods and Services Tax Act,—

(i) in the marginal heading, after the words "Determination of tax", the words and figures " , pertaining to the **period upto Financial Year 2023-24,**" shall be **inserted**;

(ii) after sub-section (11), the following sub-section shall be inserted, namely:—

"(12) The provisions of this section shall be applicable for determination of tax pertaining to the **period upto Financial Year 2023-24.**"

#### 4. Section 74.

Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any willful mis-statement or suppression of facts.-

(1) Where it appears to the proper officer that **any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on** the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.

.....

(10) The proper officer shall issue the order under sub-section (9) within a period of five years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within five years from the date of erroneous refund.

**Explanation 1.**- For the purposes of section 73 and this section,-

- i. the expression "all proceedings in respect of the said notice" shall not include proceedings under section 132;
- ii. where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the persons liable to pay penalty under 2[sections 122 and 125] are deemed to be concluded.

**Explanation 2.**- *For the purposes of this Act, the expression "suppression" shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer.*

#### 5. PROPOSED FINANCE BILL 2024 :

133. In Section 74 of the Central Goods and Services Tax Act, –

(i) in the marginal heading, after the words “Determination of tax”, the words and figures “, pertaining to the period upto Financial Year 2023-24,” shall be inserted;

(ii) after sub-section (11) and before Explanation 1, the following sub-section shall be inserted, namely:—

“(12) The provisions of this section shall be applicable for determination of tax pertaining to the period upto Financial Year 2023-24.”;

(iii) the Explanation 2 shall be omitted.

**6. PROPOSED FINANCE BILL 2024 : New Section 74A inserted:**

“**74A.** (1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder: Provided that no notice shall be issued, if the tax which has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilized in a financial year is less than one thousand rupees.

(2) The proper officer shall issue the notice under sub-section (1) within forty-two months from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within forty-two months from the date of erroneous refund.

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

(4) The service of such statement shall be deemed to be service of notice on such person under sub-section (1), subject to the condition that the grounds relied upon for such tax periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.

(5) The penalty in case where any tax which has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilized —

(i) for any reason, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax, shall be equivalent to ten per cent. of tax due from such person or ten thousand rupees, whichever is higher;

(ii) for the reason of fraud or any wilful-misstatement or suppression of facts to evade tax shall be equivalent to the tax due from such person.



(6) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order.

(7) The proper officer shall issue the order under sub-section (6) within twelve months from the date of issuance of notice specified in sub-section (2):

Provided that where the proper officer is not able to issue the order within the specified period, the Commissioner, or an officer authorised by the Commissioner senior in rank to the proper officer but not below the rank of Joint Commissioner of Central Tax, may, having regard to the reasons for delay in issuance of the order under sub-section (6), to be recorded in writing, before the expiry of the specified period, extend the said period further by a maximum of six months.

(8) The person chargeable with tax where any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any willful-misstatement or suppression of facts to evade tax, may, —

- i. before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 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, and the proper officer, on receipt of such information shall not serve any notice under sub-section (1) or the statement under sub-section (3), as the case may be, in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder;
- ii. pay the said tax along with interest payable under section 50 within sixty days of issue of show cause notice, and on doing so, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.

(9) The person chargeable with tax, where any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any willful-misstatement or suppression of facts to evade tax, may —

- i. 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, and the proper officer, on receipt of such information, shall not serve any notice under sub-section (1), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder;



- ii. pay the said tax along with interest payable under section 50 and a penalty equivalent to twenty-five percent. of such tax within sixty days of issue of the notice, and on doing so, all proceedings in respect of the said notice shall be deemed to be concluded;
- iii. pay the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty per cent. of such tax within sixty days of communication of the order, and on doing so, all proceedings in respect of the said notice shall be deemed to be concluded.

(10) Where the proper officer is of the opinion that the amount paid under clause (i) of sub-section (8) or clause (i) of sub-section (9) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.

(11) Notwithstanding anything contained in clause (i) or clause (ii) of sub-section (8), penalty under clause (i) of sub-section (5) shall be payable where any amount of self-assessed tax or any amount collected as tax has not been paid within a period of thirty days from the due date of payment of such tax.

(12) The provisions of this section shall be applicable for determination of tax pertaining to the Financial Year 2024-25 onwards.

Explanation 1.—For the purposes of this section,—

- i. the expression “all proceedings in respect of the said notice” shall not include proceedings under section 132;
- ii. where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under this section, the proceedings against all the persons liable to pay penalty under sections 122 and 125 are deemed to be concluded.

Explanation 2.—For the purposes of this Act, the expression “suppression” shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer.

## **7. Section 75. General provisions relating to determination of tax.-**

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

FB 2024 insertion : in sub-section (1), after the word and figures “section 74”, the words, brackets, figures and letter “or sub-sections (2) and (7) of section 74A” shall be inserted;

- (2) Where any Appellate Authority or Appellate Tribunal or court concludes that the notice issued under sub-section (1) of section 74 is not sustainable for the reason that the charges of fraud or any wilful-misstatement or suppression of facts to evade tax has not been established against the person to whom the notice was issued, the proper officer shall determine the tax payable by such person, deeming as if the notice were issued under sub-section (1) of section 73.

***Finance Bill 2024 insertion*** : after sub-section (2), the following sub-section shall be inserted, namely: —

*“(2A) Where any Appellate Authority or Appellate Tribunal or court concludes that the penalty under clause (ii) of sub-section (5) of section 74A is not sustainable for the reason that the charges of fraud or any willful-misstatement or suppression of facts to evade tax has not been established against the person to whom the notice was issued, the penalty shall be payable by such person, under clause (i) of sub-section (5) of section 74A.”;*

- (3) ...
- (4) An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person.
- (5) The proper officer shall, if sufficient cause is shown by the person chargeable with tax, grant time to the said person and adjourn the hearing for reasons to be recorded in writing:
- Provided that no such adjournment shall be granted for more than three times to a person during the proceedings.
- (6) The proper officer, in his order, shall set out the relevant facts and the basis of his decision.
- (7) The amount of tax, interest and penalty demanded in the order shall not be in excess of the amount specified in the notice and no demand shall be confirmed on the grounds other than the grounds specified in the notice.
- (8)...
- (9)...
- (10)**The adjudication proceedings shall be deemed to be concluded, if the order is not issued within three years as provided for in sub-section (10) of section 73 or within five years as provided for in sub-section (10) of section 74.

**FB 2024 insertion** : the following sub-section shall be substituted, namely:—

“(10) The adjudication proceedings shall be deemed to be concluded, if the order is not issued within the period specified in sub-section (10) of section 73 or in sub-section (10) of section 74 or in sub-section (7) of section 74A.”;

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

12)...

(13) Where any penalty is imposed under section 73 or section 74, no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act.

**8. Sections 76 and other related sections:**

- ❖ Section 76. Tax collected but not paid to Government;
- ❖ Section 122. Penalty for certain offences;
- ❖ Section 123. Penalty for failure to furnish information return;
- ❖ Section 124. Fine for failure to furnish statistics;
- ❖ Section 125. General penalty;
- ❖ Section 126. General disciplines related to penalty;
- ❖ Section 127. Power to impose penalty in certain cases;
- ❖ Section 128. Power to waive penalty or fee or both;

**9. FB 2024 insertion of new Section 128A:**

“128A. (1) Notwithstanding anything to the contrary contained in this Act, where any amount of tax is payable by a person chargeable with tax in accordance with,—

- a) a notice issued under sub-section (1) of section 73 or a statement issued under sub-section (3) of section 73, and where no order under sub-section (9) of section 73 has been issued; or
- b) an order passed under sub-section (9) of section 73, and where no order under sub-section (11) of section 107 or sub-section (1) of section 108 has been passed; or
- c) an order passed under sub-section (11) of section 107 or sub-section (1) of section 108, and where no order under sub-section (1) of section 113 has been passed,

pertaining to the period from 1st July, 2017 to 31st March, 2020, or a part thereof, and the said person pays the full amount of tax payable as per the notice or statement or the order referred to in clause (a), clause (b) or clause (c), as the case may be, on or before the date, as may be notified by the Government on the recommendations of the Council, no interest under section 50 and penalty under this Act, shall be payable and all the proceedings in respect of the said notice or order or statement, as the case may be, shall be deemed to be concluded, subject to such conditions as may be prescribed:

Provided that where a notice has been issued under sub-section (1) of section 74, and an order is passed or required to be passed by the proper officer in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a court in accordance with the provisions of sub-section (2) of section 75, the said notice or order shall be considered to be a notice or order, as the case may be, referred to in clause (a) or clause (b) of this sub-section:

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#### **10. Sections related to detention, seizure, confiscation, punishment, rectification of errors, service of noticed, burden of proof, repeal and saving.**

- ❖ Section 129. Detention, seizure and release of goods and conveyances in transit;
- ❖ Section 130. Confiscation of goods or conveyances and levy of penalty;
- ❖ Section 131. Confiscation or penalty not to interfere with other punishments;
- ❖ Section 132. Punishment for certain offence;
- ❖ Section 161. Rectification of errors apparent on the face of record;
- ❖ Section 169. Service of notice in certain circumstances;
- ❖ Section 155. Burden of proof;

- ❖ Section 174. Repeal and saving;
- ❖ Rule 139. Inspection, search and seizure;
- ❖ Rule 140. Bond and security for release of seized goods;
- ❖ Rule 141. Procedure in respect of seized goods;
- ❖ Rule 142. Notice and order for demand of amounts payable under the Act -  
*(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;

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## D. Legacy provisions:

### 1. Central Excise

#### Section 33 of Central Excise Act 1944. Power of adjudication. -

Where under this Act or by the rules made thereunder] anything is liable to confiscation or any person is liable to a penalty, such confiscation or penalty may be adjudged -

- a) *without limit, by a* <sup>2</sup>*[Principal Commissioner of Central Excise or Commissioner of Central Excise];*
- b) *up to confiscation of goods not exceeding five hundred rupees in value and imposition of penalty not exceeding two hundred and fifty rupees, by an* <sup>3</sup>*[Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise];*

**Provided** that the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963), may, in the case of any officer performing the duties of an Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, reduce the limits indicated in Clause (b) of this section and may confer on any officer the powers indicated in Clause (a) or (b) of this section.

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### 2. Service Tax:

#### SECTION 83A of the Chapter V of the FINANCE ACT 1994:

Power of adjudication. — Where under this Chapter or the rules made there under any person is liable to a penalty, such penalty may be adjudged by the Central Excise Officer conferred with such power as the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963), may, by notification in the Official Gazette, specify.

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#### REGISTERS/ RECORDS in Adjudication wing/section :

1. Unconfirmed Demands Register (SCN issued) CE/ST/CUS/GST
2. Confirmed Demands Register (OIO issued) CE/ST/CUS/GST
3. Call Book Register CE/ST/CUS/GST
4. *De novo* Adjn Register
5. MPR (Adjudication) CE/ST/CUS/GST.

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## **CALL BOOK**

### **List of Important Board's Circular /Instruction on Call Book**

1. Circular No. 162/73/95-CX, dated 14/12/1995 Specified categories of cases to be included in Call book;
2. Circular No. 385/18/98-CX, dated 30/3/1998 Direction to review of all the cases of provisional assessment transferred to call book and directions to comply with Board's Directions ;
3. Circular No. 909/29/09-CX, dated 11.12.2009 Direction to field formation to transfer SCN issued on the issue of inclusion of After Sales Service and Pre-delivery Charges in the assessable value;
4. Circular No. 936/26/2010-CX, dated 27/10/2010 Direction to field formation to decide the cases pending in the call book on the issue of inclusion of after sale service and pre-delivery inspection charges in the Assessable value in the light of CESTAT order 13.8.2010;
5. Chairman, CBEC, D.O. letter F. No. 233/2/2010-CX. 7, dated 24/5/2010 Action to be taken by Chief Commissioners on Receipt of Audit Report;
6. Chairman, CBEC D.O. letter F. No. 233/2/2010-CX. 7, dated 24/5/2010 Procedure to be followed on receipt of Audit Objections.;
7. Board's Instruction F. No. 232/160/2008-CX 7, dated 11.8.2011 Direction issued to field formation to ensure that protective SCN issued in relation to contested audit objections are not inadvertently adjudicated;
8. Notification no: 14/2017-C.E(N.T) PCC or CC can re-assign CE & ST SCNs for Adjudication to sub-ordinate officers under his/her jurisdiction;

Please also refer DG Systems Advisory DSR Call Book no: 032/2021

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**MPR-GST -ADJN**

**MPR ADJ-1**

**GST ADJUDICATION**

**Amount in Lakh**

ADJUDICATING AUTHORITY	CASE ORIGINATED BY	O.B		RECEIPT DURING THE MONTH	DISPOSAL DURING THE MONTH	DISPOSAL UPTO THE MONTH	No. where order <u>not issued</u> within 30 days of PH	CLOSING BALANCE				
		No / Amt	No / Amt	BY ISSUE OF OIO	TRFRD CALL BOOK	TIME LEFT TO ADJUDICATION						
						No / Amt		C.B	< 6 months	6 to 12 months	1 to 2 Yrs	>2 Yrs
		No / Amt										
ADC/JC	CGST COMMTE											
	AUDIT COMMTE											
	OTHER INVESTN AGENCY											
	REMAND CASES											
DC/AC	CGST											
	AUDIT											
	OTHER INVESTN											
	REMAND CASES											
Supdt.	CGST											
	AUDIT											
	OTHER INV											
	REMAND CASES											

- NOTE : 1 .Time left for adjudication in cases received from call book to be calculated in terms of Sections 75(1) or 75(11) of the CGST Act, 2017.**  
**2. Time left for adjudication in remand cases to be calculated in terms of Section 75(3) of the CGST Act, 2017.**  
**3. In remaining cases, time left for adjudication to be calculated in terms of Section 73 (10) or Section 74(10) or Section 76(6) of the CGST Act, 2017.**



**Circular No. 31/05/2018 - GST**

**F. No. 349/75/2017-GST**  
**Government of India , Ministry of Finance,**  
**Department of Revenue**  
**Central Board of Excise and Customs , GST Policy Wing**

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**New Delhi, 9<sup>th</sup> February 2018**

To,

The Principal Chief Commissioners/Chief Commissioners/Principal Commissioners/ Commissioners of Central Tax / Commissioners of Central Tax (Audit)/ Principal Director General of Goods and Services Tax Investigation/ Director General of Systems

Madam/Sir,

**Subject: Proper officer under sections 73 and 74 of the Central Goods and Services Tax Act, 2017 and under the Integrated Goods and Services Tax Act, 2017-reg.**

The Board, vide Circular No. 1/1/2017-GST dated 26<sup>th</sup> June, 2017, assigned proper officers for provisions relating to registration and composition levy under the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the “CGST Act”) and the rules made thereunder. Further, vide Circular No. 3/3/2017 - GST dated 5<sup>th</sup> July, 2017, the proper officers for provisions other than registration and composition under the CGST Act were assigned. In the latter Circular, the Deputy or Assistant Commissioner of Central Tax was assigned as the proper officer under subsections (1), (2), (3), (5), (6), (7), (9) and (10) of section 74 while the Superintendent of Central Tax was assigned as the proper officer under sub-sections (1), (2), (3), (5), (6), (7), (9) and (10) of section 73 of the CGST Act.

2. It has now been decided by the Board that Superintendents of Central Tax shall also be empowered to issue show cause notices and orders under section 74 of the CGST Act. Accordingly, the following entry is hereby being added to the item at Sl. No. 4 of the Table on page number 3 of Circular No. 3/3/2017-GST dated 5<sup>th</sup> July, 2017, namely:-

<b>Sl.No.</b>	<b>Designation of the officer</b>	<b>Functions under Section of the Central Goods and Services Tax Act, 2017 or the rules made thereunder</b>
(1)	(2)	(3)
4	Superintendent of Central Tax	viii(a). Sub-sections (1), (2), (3), (5), (6), (7), (9) and (10) of Section 74

3. Further, in light of sub-section (2) of section 5 of the CGST Act, whereby an officer of central tax may exercise the powers and discharge the duties conferred or imposed under the CGST Act on any other officer of central tax who is subordinate to him, the following entry is hereby removed from the Table on page number 2 of Circular No. 3/3/2017-GST dated 5<sup>th</sup> July, 2017:-

<b>Sl. No.</b>	<b>Designation of the officer</b>	<b>Functions under Section of the Central Goods and Services Tax Act, 2017 or the rules made thereunder</b>
(1)	(2)	(3)
3.	Deputy or Assistant Commissioner of Central Tax	vi. Sub-sections (1), (2), (3), (5), (6), (7), (9) and (10) of Section 74

2. In other words, all officers up to the rank of Additional/Joint Commissioner of Central Tax are assigned as the proper officer for issuance of show cause notices and orders under subsections (1), (2), (3), (5), (6), (7), (9) and (10) of sections 73 and 74 of the CGST Act. Further, they are so assigned under the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as the “IGST Act”) as well, as per section 3 read with section 20 of the said Act.

3. Whereas, for optimal distribution of work relating to the issuance of show cause notices and orders under sections 73 and 74 of the CGST Act and also under the IGST Act, monetary limits for different levels of officers of central tax need to be prescribed. Therefore, in pursuance of clause (91) of section 2 of the CGST Act read with section 20 of the IGST Act, the Board hereby assigns the officers mentioned in Column (2) of the Table below, the functions as the proper officers in relation to issue of show cause notices and orders under sections 73 and 74 of the CGST Act and section 20 of the IGST Act (read with sections 73 and 74 of the CGST Act), up to the monetary limits as mentioned in columns (3), (4) and (5) respectively of the Table below:-

**Table**

<b>Sl. No.</b>	<b>Officer of Central Tax</b>	<b>Monetary limit of the amount of central tax (including cess) not paid or short paid or erroneously refunded or input tax credit of central tax wrongly availed or utilized for issuance of show cause notices and passing of orders under sections 73 and 74 of CGST Act</b>	<b>Monetary limit of the amount of integrated tax (including cess) not paid or short paid or erroneously refunded or input tax credit of integrated tax wrongly availed or utilized for issuance of show cause notices and passing of orders under sections 73 and 74 of CGST Act made applicable to matters in relation to integrated tax vide section 20 of the IGST Act</b>	<b>Monetary limit of the amount of central tax and integrated tax (including cess) not paid or short paid or erroneously refunded or input tax credit of central tax and integrated tax wrongly availed or utilized for issuance of show cause notices and passing of orders under sections 73 and 74 of CGST Act made applicable to integrated tax vide section 20 of the IGST Act</b>
<b>(1)</b>	<b>(2)</b>	<b>(3)</b>	<b>(4)</b>	<b>(5)</b>
1.	Superintendent of Central Tax	Not exceeding Rupees 10 lakhs	Not exceeding Rupees 20 lakhs	Not exceeding Rupees 20 lakhs
2.	Deputy or Assistant Commissioner of Central Tax	Above Rupees 10 lakhs and not exceeding Rupees 1 crore	Above Rupees 20 lakhs and not exceeding Rupees 2 crores	Above Rupees 20 lakhs and not exceeding Rupees 2 crores
3.	Additional or Joint Commissioner of Central Tax	Above Rupees 1 crore without any limit	Above Rupees 2 crores without any limit	Above Rupees 2 crores without any limit

4. The central tax officers of Audit Commissionerates and Directorate General of Goods and Services Tax Intelligence (hereinafter referred to as “DGGSTI”) shall exercise the powers only to issue show cause notices. A show cause notice issued by them shall be adjudicated by the competent central tax officer of the Executive Commissionerate in whose jurisdiction the noticee is registered. In case there are more than one noticees mentioned in the show cause notice having their principal places of business falling in multiple Commissionerates, the show cause notice shall be

adjudicated by the competent central tax officer in whose jurisdiction, the principal place of business of the noticee from whom the highest demand of central tax and/or integrated tax (including cess) has been made falls.

5. Notwithstanding anything contained in para 6 above, a show cause notice issued by DGGSTI in which the principal places of business of the noticees fall in multiple Commissionerates and where the central tax and/or integrated tax (including cess) involved is more than Rs. 5 crores shall be adjudicated by an officer of the rank of Additional Director/Additional Commissioner (as assigned by the Board), who shall not be on the strength of DGGSTI and working there at the time of adjudication. Cases of similar nature may also be assigned to such an officer.

6. In case show cause notices have been issued on similar issues to a noticee(s) and made answerable to different levels of adjudicating authorities within a Commissionerate, such show cause notices should be adjudicated by the adjudicating authority competent to decide the case involving the highest amount of central tax and/or integrated tax (including cess).

7. It is requested that suitable trade notices may be issued to publicize the contents of this circular.

8. Difficulty, if any, in implementation of the above instructions may please be brought to the notice of the Board. Hindi version would follow.

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**Circular No.169/01/2022-GST**

**F. No. CBIC-20016/2/2022-GST**

**Government of India**

**Ministry of Finance (Department of Revenue)**

**Central Board of Indirect Taxes & Customs, GST Policy Wing**

New Delhi, dated the 12<sup>th</sup> March, 2022

To, ALL

Madam/Sir,

Subject: Amendment to Circular No. 31/05/2018-GST, dated 9<sup>th</sup> February, 2018 on 'Proper officer under sections 73 and 74 of the Central Goods and Services Tax Act, 2017 and under the Integrated Goods and Services Tax Act, 2017'-reg.

6. The Central Tax officers of Audit Commissionerates and Directorate General of Goods and Services Tax Intelligence (hereinafter referred to as "DGGI") shall exercise the powers only to issue show cause notices. A show cause notice issued by them shall be adjudicated by the competent Central Tax officer of the executive Commissionerate in whose jurisdiction the noticee is registered when such cases pertain to jurisdiction of one executive Commissionerate of Central Tax only.

7.1. Where the location of principal place of business of the noticee, having the highest amount of demand of tax in the said show cause notice(s), falls under the jurisdiction of a Central Tax Zone mentioned in column 2 of the table below, the show cause notice(s) may be adjudicated by the Additional Commissioner/ Joint Commissioner of Central Tax, holding the charge of Adjudication (DGGI cases), of the Central Tax Commissionerate mentioned in column 3 of the said table corresponding to the said Central Tax Zone. Such show cause notice(s) may, accordingly, be made answerable by the officers of DGGI to the concerned Additional/ Joint Commissioners of Central Tax.

7.2 In respect of a show cause notice issued by the Central Tax officers of Audit Commissionerate, where the principal place of business of noticees fall under the jurisdiction of multiple Central Tax Commissionerates, a proposal for appointment of common adjudicating authority may be sent to the Board.

7.3 In respect of show cause notices issued by the officers of DGGI prior to issuance of Notification No. 02/2022-Central Tax dated 11<sup>th</sup> March, 2022, involving cases mentioned in para 7.1 above and where no adjudication order has been issued till date, the same may be made answerable to the Additional/Joint Commissioners of Central Tax, having All India jurisdiction, in accordance with the criteria mentioned in para

7.1 above, by issuing corrigendum to such show cause notices."

\*\*\*

**FORM GST DRC - 01**

[See rule 100 (2) & 142(1)(a)]

Reference No:

Date:

To

\_\_\_\_\_ GSTIN/Temp. ID

----- Name

\_\_\_\_\_ Address

Tax Period -----

F.Y. -----

Act - Section / sub-section under which SCN is being issued -

SCN Reference No. ----

Date ----

**Summary of Show Cause Notice**

- (a) Brief facts of the case :
- (b) Grounds :
- (c) Tax and other dues :

Sr.No.	Tax rate	Turnover	Tax Period		Act	POS (Place of supply)	Tax	Interest	Penalty	Fee	Others	Total
			From	To								
1	2	3	4	5	6	7	8	9	10	11	12	13
Total												

Signature

Name

Designation

Jurisdiction

Address

Note - Only applicable fields may be filled up. Column nos. 2, 3, 4 and 5 of the above Table i.e. tax rate, turnover and tax period are not mandatory. 3.Place of Supply (POS) details shall be required only if the demand is created under the IGST Act.]<sup>1</sup>

\*\*\*

<sup>1</sup> Substituted vide Notf No. 16/2019-CT dt. 29.03.2019wef 01.04.2019

**FORM GST DRC-01A**

**Intimation of tax ascertained as being payable under section 73(5)/74(5)  
[See Rule 142 (1A)]**

**Part A**

No.:

Date:

Case ID No.

To

GSTIN.....Na me.....

Address.....

***Sub.: Case Proceeding Reference No.....- Intimation of liability under section 73(5)/section 74(5) – reg.***

Please refer to the above proceedings. In this regard, the amount of tax/interest/penalty payable by you under section 73(5) / 74(5) with reference to the said case as ascertained by the undersigned in terms of the available information, as is given below:

<b>Act</b>	<b>Period</b>	<b>Tax</b>	<b>Interest</b>	<b>Penalty</b>	<b>Total</b>
<b>CGST Act</b>					
<b>SGST/UTGST Act / IGST Act</b>					
<b>Cess</b>					
<b>Total</b>					

The grounds and quantification are attached / given below:

You are hereby advised to pay the amount of tax as ascertained above along with the amount of applicable interest in full by .....,failing which Show Cause Notice will be issued under section 73(1).

You are hereby advised to pay the amount of tax as ascertained above along with the amount of applicable interest and penalty under section 74(5) by .....,failing which Show Cause Notice will be issued under section 74(1).

In case you wish to file any submissions against the above ascertainment, the same may be furnished by..... in Part B of this Form.

**Proper Officer.**

Signature..... Name..... Designation .....

**Upload Attachment**

**Part B**

**Reply to the communication for payment before issue of Show Cause Notice**

**[See Rule 142 (2A)]**

No.:

Date:

To

Proper Officer,

Wing / Jurisdiction.

**Sub.: Case Proceeding Reference No.....- Payment/Submissions in response to liability intimated under Section 73(5)/74(5) – reg.**

Please refer to Intimation ID..... in respect of Case ID.....vide which the liability of tax payable as ascertained under section 73(5) / 74(5) was intimated.

In this regard,

A. this is to inform that the said liability is discharged partially to the extent of Rs.

..... through .....and the submissions regarding remaining liability are attached / given below:

**OR**

B. the said liability is not acceptable and the submissions in this regard are attached / given below:

Authorised Signatory,

Name.....,

GSTIN.....,

Address.....

**[Upload attachment]**

\*\*\*



**FORM GST DRC-07**

[See rule 100(1), 100(2), 100(3) & 142(5)]

**Summary of the order**

Reference No. -

Date -

1. Details of order :

(a) Order No. :

(b) Order date :

(c) Financial year :

(d) Tax period: From --- To -----

2. Issues involved :

3. Description of goods / services (if applicable):

Sr. No.	HSN code	Description

4. Section(s) of the Act under which demand is created:

5. Details of demand :

Sr. No.	Tax Rate	Turn over	Tax Period		Act	POS (Place of supply)	Tax	Inte-rest	Penalty	Fee	Others	Total
			From	To								
1	2	3	4	5	6	7	8	9	10	11	12	13
Total												

You are hereby directed to make the payment by <Date> failing which proceedings shall be initiated against you to recover the outstanding dues.

Signature  
Name  
Designation  
Jurisdiction  
Address

To

\_\_\_\_\_ (GSTIN/ID)

-----Name

\_\_\_\_\_ (Address )

**Note -**

1. Only applicable fields may be filled up.
2. Column nos. 2, 3, 4 and 5 of the Table at serial no. 5 i.e. tax rate, turnover and tax period are not mandatory.
3. Place of Supply (POS) details shall be required only if the demand is created under the IGST Act.]

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## **Master Circular on SCN, Adjudication & Recovery**

Circular No. 1053/02/2017-CX

F.No. 96/1/2017-CX.I

Government of India

Ministry of Finance

Department of Revenue

Central Board of Excise and Customs

Dated the 10<sup>th</sup> March, 2017

To,

The Principal Chief Commissioner/Chief Commissioners of Central Excise (All)

The Principal Chief Commissioner/Chief Commissioners of Central Excise and Service Tax (All)

The Principal Chief Commissioner/Chief Commissioners of Service Tax (All)

The Principal Commissioner / Chief Commissioners of Customs (All)

Madam/Sir,

Subject: Master Circular on Show Cause Notice, Adjudication and Recovery – reg.

Kind attention is invited to Ninety-two Circulars and Instructions on Show Cause Notices and Adjudication issued by the Board from time to time, placed at the Annexures to this Master Circular. These circulars address references from trade and field formations and provide clarity and uniformity on the issues raised. Board undertakes exercise of consolidating these circulars from time to time so as to ensure clarity and ease of reference. This master circular on the subject of show cause notices, adjudication proceedings and recovery is an effort to compile relevant legal and statutory provisions, circulars of the past and to rescind circulars which have lost relevance. Annexure-I to the circular provides list of the eighty-nine circulars which stand rescinded. Three circulars listed in Annexure-II have not been rescinded as they contain comprehensive instructions on the subject they address.

2. The master circular is divided into four parts. Part I deals with Show Cause Notice related issues, Part II deals with issues related to Adjudication proceedings, Part III deals with closure of proceedings and recovery of duty and Part IV deals with miscellaneous issues.

3. The provisions of the Master Circular shall have overriding effect on the CBEC's Excise Manual of Supplementary Instructions to the extent they are in conflict. 4. Difficulty, if any, in the implementation of this Circular may be brought to the notice of the Board. Hindi version will follow.

*Shankar Prasad Sarma*

*Under Secretary to the Government of India*

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## Part I : Show Cause Notice

**1.1 Demand:** Under the provisions of the Central Excise Act, 1944, demand can be issued when any duty of Central Excise has **not** been levied or paid or has been short levied or short paid or where any duty has been erroneously refunded, for any reason. The demand of duty may also arise on account of duty collected without the authority of levy or in excess of the levy but not deposited with the department in terms of Section 11D of the Central Excise Act, 1944.

**1.2** Demand of duty from the assessee is made by way of issue of a Show Cause Notice (SCN in short) indicating therein charges of violations of provision of law requiring the assessee to explain as to why the duty not levied/not paid or short levied/ short paid should not be recovered from the noticee with interest and penalty, if applicable.

Similarly, a show cause notice can also be issued for recovery of refund erroneously paid by the Government to the taxpayer.

**2.1 Show Cause notice (SCN):** Show Cause Notice (SCN) is the starting point of any legal proceedings against the party. It lays down the entire framework for the proceedings that are intended to be undertaken and therefore it should be drafted with utmost care. Issuance of SCN is a statutory requirement and it is the basic document for settlement of any dispute relating to tax liability or any punitive action to be undertaken for contravention of provisions of Central Excise Act and the rules made thereunder. A SCN offers the noticee an opportunity to submit his oral or written submission before the Adjudicating Authority on the charges alleged in the SCN. The issuance of show cause notice is a mandatory requirement according to the principles of natural justice which are commonly known as *audi alteram partem* which means that no one should be condemned unheard.

### 2.2 Structure of SCN:

A SCN should ideally comprise of the following parts, though it may vary from case to case:

- a) Introduction of the case
- b). Legal frame work
- c). Factual statement and appreciation of evidences
- d). Discussion, facts and legal frame work,
- e). Discussion on Limitation
- f). Calculation of duty and other amounts due
- g). Statement of charges
- h). Authority to adjudicate.

**2.3 Introduction of the case:** This part of the SCN must contain the details of the person to whom the notice is to be issued. It must contain the name, registration number/IEC and address of the person and the manner in which the said person,

has been identified in the later text of the notice. In case of issuance of SCN to many noticees, details of all such noticees should be stated separately irrespective of the fact that, the persons are closely related to each other. A very brief background as to how the present proceeding started should be discussed in the SCN. For example, a SCN may be based on audit of accounts by the internal audit or detailed scrutiny of return by the Range office or intelligence by anti-evasion etc. In this part, the gist of audit objections/observations/ intelligence and a brief modus operandi of duty evasion adopted by the alleged offender may be discussed. Further, the details of verification/investigation conducted/ carried out and the summary of the verification may also be discussed in this part.

**2.4 Legal framework:** The authority issuing the SCN should clearly lay down the legal provisions in respect of which the person shall be put to notice. While specifying the provisions, care should be taken to be very accurate in listing all the provisions and the law in respect of which the contraventions are to be alleged in the SCN.

**2.5 Factual statement and appreciation of evidence:** In this part of SCN, the facts relating to act of omission and commission pertinent to the initiation of the proceedings against the noticee need to be stated in a most objective and precise manner. All evidences in form of documents, statements and material evidence resumed during the course of enquiry /investigation should be organised serially in a manner so as to establish the charges against the noticee. While discussing the facts and evidences, care should be taken to be precise and succinct in expression so that unnecessary details are avoided.

**2.6 Discussion, facts and legal frame work:** In this part the facts and evidence need to be discussed against the legal framework set out in the show cause notice so as to arrive at the charges of omission and commission against each of the noticees separately. On the basis of discussion, the charges need to be clearly and succinctly spelt out against each noticee.

**2.7 Discussion on Limitation:** As per the provisions of Central Excise Act, 1944, the duty which has not been levied or paid or has been short levied or short paid or erroneously refunded can be demanded only within normal period i.e. within two years from the relevant date. However, in specific case, where any duty of excise has been not paid or short paid or erroneously refunded, by reason of fraud or collusion or any wilful mis-statement or suppression of facts or contravention of any of the provisions of the Act or rules made thereunder with intent to evade payment of duty, then the duty can be demanded within a period of five years from the relevant date. The SCN should clearly spell out the ingredients for invoking the extended period of five years with evidence on record. A more detailed discussion on the subject is contained in paragraph 3.1 to 3.6.

**2.8 Quantification of duty demanded:** It is desirable that the demand is quantified in the SCN, however if due to some genuine grounds it is not possible to quantify the short levy at the time of issue of SCN, the SCN would not be considered as invalid. It would still be desirable that the principles and manner of computing the amounts due from the noticee are clearly laid down in this part of the SCN. In the case of Gwalior Rayon Mfg. (Wvg.) Co. Vs. UOI, 1982 (010) ELT 0844 (MP), the Madhya Pradesh High Court at Jabalpur affirms the same position that merely because

necessary particulars have not been stated in the show cause notice, it could not be a valid ground for quashing the notice, because it is open to the petitioner to seek further particulars, if any, that may be necessary for it to show cause if the same is deficient.

**2.9 Interest:** Interest is chargeable on the delayed payment of duty under the provisions of Section 11AA of CEA, 1944 or Rule 8 of the Central Excise Rules, 2002 or mutatis mutandis for CENVAT Credit taken or/and utilized wrongly or for recovery of refund or on amount collected in excess of the duty payable on any excisable goods from the buyer of the goods under Section 11DD. There may not be need for any explicit mention of the interest liability in the show cause notice since the legal provisions in this regard are explicit and contained in Section 11A(14). However, to make the SCN a self-contained notice of charges, it may still be desirable to mention the liability of interest in the SCN.

**2.10 Statement of charges:** In this part, the SCN list of all charges against the noticees need to be summarized and the notice should be charged as to why action as provided in law, should not be taken against them.

**2.11 Authority to adjudicate:** A SCN must state the authority to whom the reply to the show cause notice is required to be answered. In case of seizure of goods, the issue of show cause notice is mandatory before any order for confiscation of goods is passed. Where there is a change in the adjudicating authority, a corrigendum to the SCN may be issued and served on the noticees to ensure that the noticees have a fair opportunity to present their case to the appropriate adjudicating authority. Corrigendum to SCN is issued due to change in jurisdiction, monetary limit, re assignment, etc. The authority who issued the SCN has to issue the corrigendum and then transfer the file to the new adjudicating authority.

**3.1 Limitation to demand duty:** A show cause notice demanding duty not paid or short paid or erroneous refund can be issued by the Central Excise Officer normally within two year from the relevant date of non-payment or short payment of duty, whereafter the demand becomes time-barred. Where duty has not been paid or short paid by any person chargeable with the duty by reason of fraud or collusion or any wilful mis-statement or suppression of facts or contravention of any of the provisions of the Central Excise Act, 1944 or of the Rules made thereunder with intent to evade payment of duty, a longer period of limitation applies and show cause notice demanding duty can be issued within five years from the relevant date.

**3.2 Ingredients for extended period:** Extended period can be invoked only when there are ingredients necessary to justify the demand for the extended period in a case leading to short payment or non-payment of tax. The onus of establishing that these ingredients are present in a given case is on revenue and these ingredients need to be clearly brought out in the Show Cause Notice alongwith evidence thereof. The active element of intent to evade duty by action or inaction needs to be present for invoking extended period.

**3.3** The Apex Court's in the case of M/s Cosmic Dye chemical Vs Collector of Cen. Excise, Bombay [1995 (75) E.L.T. 721 (S.C.)], has laid the law on the subject very clearly.

The same is reproduced below for ease of reference.

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

**3.4 Extended period in disputed areas of interpretation:** There are cases where either no duty was being levied or there was a short levy on any excisable goods on the belief that they were not excisable or were chargeable to lower rate of duty, as the case may be. Both trade and field formations of revenue may have operated under such understanding. Thus, the general practice of assessment can be said to be non-payment of duty or payment at lower rate, as the case may be. In such situations, Board may issue circular clarifying that the general practice of assessment was erroneous and instructing field formations to correct the practice of assessment. Consequent upon such circular, issue of demand notice for extended period of time would be incorrect as it cannot be said that the assessee was intentionally not paying the duty.

**3.5** On the other hand, there can be Board circulars which only reiterate the correct practice of assessment which is being followed by the compliant segment of the assessee. In such situations, decision to invoke extended period would depend on examination of facts of a case and where the ingredient to invoke extended period is present, show cause notice for extended period can be issued. In such situations it would be unfair to the compliant segment of the assessee to not invoke the extended period of time, if active ingredients are present to invoke extended period.

**3.6 Power to invoke extended period is conditional:** Power to issue notice for extended period is restricted by presence of active ingredients which indicate an intent to evade duty as explained above. Indiscriminate use of such restricted powers leads to fruitless adjudications, appeals and reviews, inflates the figures of outstanding demands and above all causes unnecessary harassment of the assessee. Therefore, before invoking extended period, it must be ensured that the necessary and sufficient conditions to invoke extended period exists.

**3.7 Second SCN invoking extended period:** Issuance of a second SCN invoking extended period after the first SCN invoking extended period of time has been issued is legally not tenable. However, the second SCN, if issued would also need to establish the ingredients required to invoke extended period independently. For example, in cases where clearances are not reported by the assessee in the periodic return, second SCN invoking extended period is quite logical whereas in cases of wilful mis-statement regarding the clearances made under appropriate invoice and recorded in the periodic returns, second SCN invoking extended period would be difficult to



sustain as the department comes in possession of all the facts after the time of first SCN. Therefore, as a matter of abundant precaution, it is desirable that after the first SCN invoking extended period, subsequent SCNs should be issued within the normal period of limitation.

**3.8 Applicability of limitation in demanding interest:** In cases where duty and interest is demanded, it is quite clear that limitation prescribed in Section 11A applies. However, it may be noted that in cases where the duty has been paid belatedly and interest has not been paid, interest needs to be demanded and recovered following the due process of demand and adjudication. In such cases, the period of limitation as prescribed in Section 11A applies for demand of interest. Section 11A(15) may be referred in this regard.

**4.1 Demand due to Departmental or CERA (CAG Audit):** Show Cause Notice may be required to be issued due to audit objection arising out of either internal audit or CERA conducted by the office of CAG. The decision to issue Show Cause Notice due to internal audit rests with the Audit Commissioner. As far as CERA audit is concerned, a detailed circular has been issued vide Circular No. 1023/11/2016-CX dated 8.4.16. Important directions in the circular in this regard are as follows:

**4.2** Where the department has agreed with the audit objection on merits constitute a large proportion of the audit objections. In such situations, Show Cause Notices should be issued immediately and where practicable view of the assessee should be obtained before issue of Show Cause Notice. Such cases should not be transferred to the CallBook and should be adjudicated forthwith and revenue realized in cases of confirmed demand at the earliest.

**4.3** Where the department has not agreed with the audit objection on merits no show cause notice should be issued in cases and should be replied giving detailed reasoning and case laws on the subject. For further details of the procedure to reply to CERA, the said circular may be referred.

**4.4** Where a contested audit objection has become DAP and on examination it is found by the Commissioner (PAC) or Joint Secretary (Customs) in CBEC that the objection should have been admitted, they may give necessary directions to the field formations to issue show cause notice and adjudicate the case on merits.

**4.5** It may be noted that the procedure of transferring the show cause notice arising out of CAG objection to call-book has been discontinued vide the said circular. It may be noted that Para 4.2 to para 4.4 above only give the gist of the instructions regarding issue of Show Cause Notice and for further details, the said circular dated 8.4.2016 may be referred. The procedure for adjudication of Show Cause Notices issued due to CERA objections are contained in the circular dated 8.4.2016(ibid) and have been reproduced from para 18.1 to 18.4 of this circular for ease of reference.

**5.0 Consultation with the noticee before issue of Show Cause Notice:** Board has made pre show cause notice consultation by the Principal Commissioner/ Commissioner prior to issue of show cause notice in cases involving demands of duty above Rs. 50 lakhs (except for preventive/ offence related SCN's) mandatory vide instruction issued from F No. 1080/09/DLA/MISC/15 dated 21st December 2015. Such consultation shall be done by the adjudicating authority with the assessee

concerned. This is an important step towards trade facilitation and promoting voluntary compliance and to reduce the necessity of issuing show cause notice.

**6.0 Authority to issue SCN:** A SCN should ideally be issued by the authority empowered to adjudicate the case as this ensures accountability as well as rigour of examination as demands of higher amounts are adjudicated by the officers of higher rank. Details of authority empowered to adjudicate the cases as per demand of duty are discussed in paragraph no. 11. Though, issue of SCN by an officer of the rank empowered to adjudicate the case is the accepted norm, a SCN issued by a Central Excise officer of rank other than the one prescribed in the circular would not ipso facto be an invalid SCN.

**7.0 Issue of unjust enrichment to be raised in SCN itself :** In case of consequential refund of excess duty paid, the applicant should be granted a refund of such claims as is found to be in conformity with the order of the appellate authority. The question of unjust enrichment may be examined independently, if not covered by the appellate order. Where a refund application is prima-facie found to be liable for rejection after such examination, a notice should be served on the applicant stating the ground on which the refund application is liable to be rejected. In cases where refund is admissible on merits but is liable to be paid to the Consumer Welfare Fund on grounds of unjust enrichment, the assessee will be adversely affected by the decision and therefore, a notice should be served on the applicant before any such decision is taken.

**8. Changing a long standing practice of assessment:** A long standing practice of assessment which is widely prevalent across the country should not be suddenly changed by issuing show cause notice demanding duty. Such issues should be referred to the Board in a comprehensive manner with inputs obtained from the other zones regarding the proposed change in the practice of assessment. Demand of duty if any should be limited to normal period in such cases as the practice of assessment in such cases is known to both trade as well as the department.

**9.1 Waiver of SCN:** The issue of waiver of SCN has been dealt with in circular issued vide F.No. 137/46/2015-Service tax dated 18.08.2015. The crux of the clarification given is that on receipt of written request of the assessee the requirement of written SCN may be waived and the charges alongwith duty payable may be explained orally. This clarification was given in the context of closure of cases on payment of duty, interest and penalty. However, where the issue is likely to be litigated at a later date by the assessee, it would be appropriate that a written SCN be issued. This would hold true in particular for offences of serious nature or where the duty involved is high. Conclusion of proceedings may be approved by an officer equal in rank to the officer who is competent to adjudicate such cases. The cases can be closed by the competent authority in DGCEI/Executive Commissionerate/Audit Commissionerate, as the case may be. If multiple issues involving different monetary values arise from the same proceedings, then the sum total involved in all the issues arising from the same proceedings should be considered for conclusion of proceedings.

**9.2** The conclusion of proceedings should invariably be intimated to the assessee in writing. There is no need to issue an adjudication order. Further, there is no need to undertake review of such conclusion of proceedings.

**9.3 Call-Book Cases:** A call book of cases is maintained of such cases which cannot be adjudicated immediately due to certain specified reasons and adjudication is to be kept in abeyance. The following categories of cases can be transferred to call book:-

- i. Cases in which the Department has gone in appeal to the appropriate authority.
- ii. Cases where injunction has been issued by Supreme Court/ High Court/ CEGAT, etc.
- iii. Cases where the Board has specifically ordered the same to be kept pending and to be entered into the call book.
- iv. Cases admitted by the Settlement Commission may be transferred to the Call-book, as it is already covered under Category (ii) above. Where there are multiple noticees, the case can be transferred only in respect of those noticees who have made application in the Settlement Commission, and whose case has been admitted by Settlement Commission, Cases shall be taken out of the Call-Book after Settlement Order has been issued or where the case has been reverted back for adjudication.

**9.4 Intimation of Call Book cases to noticee:** A formal communication should be issued to the noticee, where the case has been transferred to the call book.

### Part II : Adjudication of Show Cause Notice

**10. Adjudication:** Officers of Central Excise have been vested with powers under Section 33A of Central Excise Act, 1944 to adjudicate the Show cause notice issued to the noticees and answerable to the officers. They, in their capacity as adjudicating officers act as quasijudicial officers. Further as per Section 2(a) “Adjudicating authority” means any authority competent to pass any order or decision under this Act, but does not include the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963), Commissioner of Central Excise (Appeals) or Appellate Tribunal.

**11.1 Monetary limits:** Board has revised monetary limits for adjudication on 29.09.2016. The revised monetary limits and other instructions in relation to adjudication are as follows:

Sl. No.	Central Excise officer	Monetary Limits of duty/ tax/ credit demand for Central Excise and Service Tax
1	Superintendent	Not exceeding Rupees Ten lakhs
2	Deputy/Assistant Commissioner	Above Ten Lakhs but not exceeding Rupees Fifty Lakhs
3	Additional/ Joint Commissioner	Above Fifty Lakhs but not exceeding Rupees Two Crore
4	Commissioner	Without limit i.e. cases exceeding rupees two crores

The above monetary limits are hereby prescribed for all categories of cases, except the following:

- (a) cases of refund (including rebate) under Section 11B of the Central Excise Act, 1944, as made applicable to Service Tax cases also under Section 83 of the Finance Act, 1994, shall be adjudicated by the Deputy Commissioner/Assistant Commissioner without any monetary limit.
- (b) cases related to issues mentioned at Sl.No. (a) and (d) under the first proviso to Section 35B(1) of the Central Excise Act, 1944 shall be adjudicated in the following manner:

<b>Sl.No.</b>	<b>Central Excise Officer</b>	<b>Monetary Limits for Central Excise</b>
1	Additional/Joint Commissioner	Exceeding Rs. 50 lakh
2	Deputy/Assistant Commissioner	Above Rs 10 lakh but not exceeding Rs. 50 lakh
3	Superintendent	Not exceeding Rs 10 lakh

### **11.2 Other important points:**

Cases involving taxability, classification, valuation and extended period of limitation shall be kept out of the purview of adjudication by Superintendents. Such cases, upto rupees 10 Lakhs, shall also be adjudicated by the Deputy Commissioner/ Assistant Commissioner in addition to the cases exceeding rupees 10 Lakhs but not exceeding rupees 50 lakh.

- i. Refund matters (including rebate), shall be adjudicated by the Deputy Commissioner/ Assistant Commissioner without any monetary limit;
- ii. In case different show cause notices have been issued on the same issue answerable to different adjudicating authorities, Show Cause Notices involving the same issue shall be adjudicated by the adjudicating authority competent to decide the case involving the highest amount of duty.

11.3. Where differential duty/demand of duty is paid without interest, in such cases, Show Cause Notices demanding interest and levy of penalty should be issued. In the Show Cause Notice, the reference of duty already paid should also be mentioned.

11.4 As regards adjudication of the notices issued for recovery of interest alone, it is clarified that these cases should be decided by the proper officer based on the monetary limit fixed for the duty amount involved and not on the basis of the amount of interest. Therefore, the amount of duty on which interest has not been paid, should be the monetary criterion for deciding the authority to decide such cases.

11.5 In case different show cause notices have been issued on the same issue to same noticee(s) answerable to different adjudicating authorities, Show Cause Notices

involving the same issue shall be adjudicated by the adjudicating authority competent to decide the case involving the highest amount of duty.

**12.1 Jurisdiction of Executive Commissionerate:** Officers of Central Excise within the jurisdiction of a Commissionerate normally issue a SCN for demands of duty pertaining to assesseees or units falling within the jurisdiction of the Commissionerate and such cases are adjudicated by the Officers of the Executive Commissionerate. Officers of Executive Commissionerate also adjudicate SCNs issued by the Audit Commissionerates under normal circumstances.

**13. Adjudication by officers of Audit Commissionerate:** Central Excise Officers of all ranks in the Audit Commissionerate shall also have powers to adjudicate Show Cause Notice in Zones where the pendency position warrants adjudication by Audit Commissionerates Officers. Power has been accorded to the Chief Commissioners to distribute the cases for adjudication within the Zone, including to the officers of various ranks of the Audit Commissionerate. In case of Service Tax Zones, the cases would have to be transferred across the Zones. The Zonal Member in-charge shall take stock of pending cases at the Commissioner level, and in exercise of powers conferred to the Board, earmark these cases to Commissioner (Audit) and Commissioners of Central Excise across Zones if there is a need to do so. The function of review, appeal etc even for cases adjudicated by the officers of the Audit Commissionerate shall continue with the Executive Commissionerate as adjudication by officers of Audit Commissionerate shall continue be an exception rather than as a rule.

**Cases investigated by DGCEI:** DGCEI after investigation issues show cause notice which may be answerable to either ADG (Adjudication) or to Executive Commissioner as the case may be. Board has issued detailed circulars regarding adjudication of cases booked by DGCEI vide Circular no 994/01/2015-CX dated 10.02.2015 and Circular No. 1000/7/2015-CX dated the 3<sup>rd</sup> March, 2015. The salient points of the instruction given are as follows.

14. To assign cases for adjudication amongst the Additional Director General (Adjudication) and the field Commissioners, following general guidelines may be followed:-

**(i)** Cases including cases pertaining to the jurisdiction of multiple Commissionerates, where the duty involved is more than Rs. 5 crore shall be adjudicated by the ADG (Adjudication). However in case of large pendency of cases or there being a vacancy in the rank of ADG (Adjudication), Director General, CEI may assign cases involving duty of more than Rs. 5 crore to the field Commissioners following clauses (iv) and (v) of the guidelines. **(ii)** Director General, CEI may issue general orders assigning the show cause notices involving duty of more than Rs. 5 crore issued by the specified Zonal Units and/or the DGCEI Headquarters to a particular ADG (Adjudication).

**(iii)** Where ADG (Adjudication) is the adjudicating authority in one of the cases involving identical issue or common evidences, the Director General, CEI may assign all such cases to that ADG (Adjudication).

(iv) Cases to be adjudicated by the executive Commissioner, when pertaining to jurisdiction of one executive Commissioner of Central Excise, shall be adjudicated by the said executive Commissioner of the Central Excise.

(v) Cases to be adjudicated by the executive Commissioners, when pertaining to jurisdiction of multiple Commissionerates, shall be adjudicated by the Commissioner in whose jurisdiction, the noticee from whom the highest demand of duty has been made, falls. In these cases, an order shall be issued by the Director General, CEI exercising the powers of the Board, assigning appropriate jurisdiction to the executive Commissioner for the purposes of adjudication of the identified case.

(vi) Show Cause Notices issued prior to 1st March, 2015 shall continue to be adjudicated by the Commissioner before whom the adjudication proceedings are continuing unless the Director General, CEI issues orders appointing a new adjudicating authority in terms of the guidelines above or where Board appoints a new adjudicating authority on the basis of proposal of DGCEI.

(vii) Where DGCEI proposes appointment of an adjudicating authority not in conformity with the above guidelines, DGCEI shall forward such proposal to the Board.

(viii) Cases to be adjudicated by the officers below the rank of Commissioner may be adjudicated only by the field officers in the executive Commissionerates and the above guidelines shall apply *mutatis mutandis*.”

**12.5** Above guidelines shall also apply *mutatis mutandis* to the Service Tax cases booked by DGCEI. Notification No. 2/15-Service Tax, dated 10-2-2015 has been issued to provide necessary jurisdiction to the DG, CEI over the Principal Commissioners and Commissioners of Service Tax in this regard.

**13.0 Service of Show Cause Notice and Relied upon Documents:** A show cause notice and the documents relied upon in the Show Cause Notice needs to be served on the assessee for initiation of the adjudication proceedings. The documents/records which are not relied upon in the Show Cause Notice are required to be returned under proper receipt to the persons from whom they are seized. Show Cause Notice itself may incorporate a clause that unrelieved upon records may be collected by the concerned persons within 30 days of receipt of the Show Cause Notice. The designation and address of the officer responsible for returning the relieved upon records should also be mentioned in the Show Cause Notice. This would ensure that the adjudication proceedings are not delayed due to non-return of the non-relieved upon documents.

**Settlement of Cases:** As per Board instruction every show cause notice should be forwarded, along with a letter stating that party can approach settlement of case through Settlement Commission. Where the noticee approaches the Settlement Commission, the matter needs to be transferred to call book till the matter is decided by Settlement Commission. In case matter is not finally accepted for settlement by the settlement commission, the show cause notice should be adjudicated in normal manner, in case the Settlement Commission, settles the matter, the show cause notice should be taken out of call book and shown as disposed off.

**Filing of Written submissions:** Show Cause Notice generally provides a time limit of thirty days for submission of written reply, however the time limit may be extended by the adjudicating authority on written request of the assessee. Where the assessee fails to submit a written reply, the adjudicating authority may issue a letter requesting the noticee to submit reply to the SCN.

**Personal hearing:** After having given a fair opportunity to the noticee for replying to the show cause notice, the adjudicating authority may proceed to fix a date and time for personal hearing in the case and request the assessee to appear before him for a personal hearing by himself or through an authorised representative. At least three opportunities of personal hearing should be given with sufficient interval of time so that the noticee may avail opportunity of being heard. **Separate communications should be made to the noticee for each opportunity of personal hearing. In fact separate letter for each hearing/extension should be issued at sufficient interval.** The Adjudicating authority may, if sufficient cause is shown, at any stage of proceeding adjourn the hearing for reasons to be recorded in writing. However, no such adjournment shall be granted more than three times to a noticee.

**Record of personal hearing:** The adjudicating authority must maintain a record of personal hearing and written submission made during the personal hearing. Evidence of personal hearing and written submission on record is very important while adjudicating the case.

**Adjudication order:** The adjudication order must be a speaking order. A speaking order is an order that speaks for itself. A good adjudication order is expected to stand the test of legality, fairness and reason at higher appellate forums. Such order should contain all the details of the issue, clear findings and a reasoned order.

**Analysis of issues:** The Adjudicating authority is expected to examine all evidences, issues and material on record, analyse those in the context of alleged charges in the show cause notice. He is also expected to examine each of the points raised in the reply to the SCN and accept or reject them with cogent reasoning. After due analysis of facts and law, adjudicating authority is expected to record his observations and findings in the adjudication order.

**Body of the order:** The adjudication order should generally contain brief facts of the case, written and oral submissions by the party, observation of the adjudicating authority on the evidences on record and facts of omission and commission during personal hearing and finally the operating order. At any cost, the findings and discussions should not go beyond the scope and grounds of the show cause notice.

**Quantification of demand:** The duty demanded and confirmed should be clearly quantified and the order portion must contain the provisions of law under which duty is confirmed and penalty is imposed. The duty demanded in an adjudication order cannot exceed the amount proposed in the Show Cause notice.

**Corroborative evidence and Cross-examination:** Where a Statement is relied upon in the adjudication proceedings, it would be required to be established through the process of cross-examination, if the noticee makes a request for cross-examination of the person whose statement is relied upon in the SCN. During investigation, a

statement can be fortified by collection of corroborative evidence so that the corroborative evidence support the case of the department, in cases where cross-examination is not feasible or the statement is retracted during adjudication proceedings. It may be noted retracted statement may also be relied upon under given circumstances. Frivolous request for cross-examination should not be entertained such as request to cross examine officers of CERA.

**Issue and Communication of order:** In all cases where personal hearing has been concluded, it is necessary to communicate the decision as expeditiously as possible as but not later than one month in any case, barring in exceptional circumstances to be recorded in the file. The order is required to be communicated to the assessee in terms of provisions of Section 37C of the CEA, 1944.

**15. Corrigendum to an adjudication order:** A corrigendum to an adjudication order can only be issued by the adjudicating authority himself and not by any subordinate authority, after careful examination of details obviating the need to issue any corrigendum to correct minor clerical mistakes which do not alter the adjudication order per se. Therefore, adjudicating order should normally be issued. It may be noted that after issuing an adjudication order, the adjudicating authority becomes *functus officio*, which means that his mandate comes to an end as he has accomplished the task of adjudicating the case. As a concept, *functus officio* is bound with the doctrine of *res judicata*, which prevents the reopening of a matter before the same court or authority. It may also be noted that under the Central Excise Act, adjudicating authority does not have powers to review his own order and carry out corrections to the adjudication order.

**16. Transfer of adjudicating authority:** Adjudicating officers are expected to issue order in original before being relieved in cases where personal hearing has been completed. The successor in office can not issue any order on the basis of personal hearing conducted by the predecessor. The successor in office should offer a fresh hearing to the noticee before deciding the case and issuing adjudication order/formal order.

**16.1 Signing of the order:** The adjudicating order should be signed by the adjudicating authority only and it should not be further delegated to any other officer and the adjudicating order furnished to the noticee(s) has to be an originally signed copy and not an attested copy.

**Adjudication of SoFs/LARs raised by CERA which are not converted into DAP :** SoFs/LARs are replied by the Commissionerate and therefore these cases may be adjudicated after ensuring that the reply given by the Commissionerate is available on record.

**Adjudication of admitted DAPs/APs:** DAPs are replied by the Ministry (CBEC) and therefore adjudication of DAPs should be undertaken after ensuring that the reply given by the Ministry (CBEC) is available on record.

**Adjudicating authority is a quasi-judicial authority and is legally bound to adjudicate the case independently and judiciously taking into consideration the**



**audit objection by CERA/CRA, reply of the department as referred above, reply of the party, relevant legal provisions, case laws on the subject and relevant circulars of the Board, if any.** In this regard the following extract from the judgment in the matter of Simplex Infrastructure Ltd vs Commissioner of Service Tax of the Hon'ble Kolkata High Court dated 07.04.2016 at para 74 may be followed in letter and spirit while discharging one's role as an Adjudicating authority

„It is well settled that a quasi-judicial authority must act judiciously and not at the dictates of some other authority. It is quite evident that the Commissioner issued the impugned show-cause notice at the instance of CERA without any independent application of mind, and thereby, abdicated his powers and duty, which is not permissible in law“.

Accordingly, it is directed that the audit objection by CERA should be independently examined and where necessary, Show cause Notice should be issued. It is expected that the SCN is a consequence of independent examination carried out on receipt of CERA/CRA objection. Such independent findings should be incorporated in the show cause notice as well as in the adjudication order.

Where an issue was under audit objection and has been subsequently either judicially settled, by say judgment of Hon'ble Supreme Court or where a circular of the Board has been issued on the subject, further correspondence with the Board on the audit objections, even if they have become DAPs, is not necessary and such cases may be adjudicated on merits taking into consideration the latest judgments and circulars.

### **Part III: Confirmed demands/Recovery**

**18. Confirmed demands:** Section 11 of the Central Excise Act, 1944 provides powers which may be exercised for recovery of duty and any other sums of any kind payable to the Central Government. It may be noted that duty and other sums are considered payable to the Government in the following situations:

- (i) Where there is no appeal filed against the confirmed order in adjudication or appeal and statutory period of appeal is over;
- (ii) Where the CESTAT or High Court has confirmed the demand and no stay is in operation as explained in para 23.2.
- (iii) Where there is an admitted liability reflected in the periodic return as explained in para

**19. Powers of recovery:** Recovery of confirmed demand can be made by exercising any of the powers under Section 11 of the CEA, 1944 such as adjustment from refunds payable, attachment and sale of excisable goods of such person or through certificate action treating the recoverable amounts as arrears of land revenue. After exhausting the option of taking action as above, if dues remain unrecovered, action is to be taken under the provisions of Section 142 of the Customs Act, 1962 which have been made applicable to like matters in Central Excise. Further, where the entire business is disposed off with assets and liabilities, duty or any other sums are recoverable from the successor in business also. It may be noted that under sub-Section (2) of Section 11 of the Central Excise Act, 1944, now Central Excise Officers are empowered to issue an order to any other person from whom money is due to

such person from whom recovery of arrears is required to be made. Such notice for recovery to the other person is generally referred as Garnishee Notice.

**20. Recovery from the assets under liquidation:** Section 53 of the Insolvency and Bankruptcy Code, 2016 provides for order of priority for distribution of proceeds from the sale of the liquidation assets. *Pari-materia* changes have been made in Section 11E of the Central Excise Act, 1944. In effect, the Central Excise dues shall have first charge, after the dues, if any, under the provisions of Companies Act, Recovery of Debt due to Bank and Financial Institution Act, 1993 and Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the Insolvency and Bankruptcy Code, 2016, have been recovered.

**Recovery during pendency before BIFR/IFCL/OL/DRT/Insolvency and Bankruptcy Code, 2016:** When the cases are pending before BIFR/IFCL/OL/appropriate authority under Insolvency and Bankruptcy Code, 2016 then in such cases recovery measures should not be resorted. In such cases public counsel should be advised to file affidavits for first charge under Section 11E of Central Excise Act, 1944 informing the quantum of confirmed demand to BIFR/IFCL/OL/DRT/Insolvency and Bankruptcy Code Authorities.

**Recovery during pendency of litigation: Board has issued two circulars on the subject vide Circular no 984/08/2014- CX dated 16.9.2014 and Circular no 1035/23/2016-CX dated 4.7.2016.**

- (i) Sub-Section (iii) of Section 35F of the Central Excise Act, 1944 and Section 129E of the Customs Act, 1962 stipulate payment of 10% of the duty or penalty payable in pursuance of the decision or order being appealed against i.e. the order of Commissioner (Appeals). In the event of appeal against the order of Commissioner (Appeals) before the Tribunal, 10% is to be paid on the amount of duty demanded or penalty imposed by the Commissioner (Appeals). This need not be the same as the amount of duty demanded or penalty imposed in the Order in-Original in the said case.
- (ii) In a case, where penalty alone is in dispute and penalties have been imposed under different provisions of the Act, the pre-deposit would be calculated based on the aggregate of all penalties imposed in the order against which appeal is proposed to be filed.
- (iii) In case of any short-payment or non-payment of the amount stipulated under Section 35F of the Central Excise Act, 1944 or Section 129E of the Customs Act, 1962, the appeal filed is liable for rejection.
- (iv) Section 35F of the Central Excise Act, 1944 has been amended with effect from 6.8.14 to provide for mandatory payment of 7.5% or 10% of the of the duty demanded where duty demanded is in dispute or where duty demanded and penalty levied are in dispute for admission of appeal before Commissioner (Appeals) or CESTAT. Once the amount is paid, no coercive action shall be taken for recovery of the balance amount during the pendency of the appeal proceedings before these authorities.

In cases where stay application is pending before Commissioner (Appeals) or CESTAT for periods prior to 6-8-2014, no recovery shall be made during the pendency of the stay application.

**21. Recovery of admitted liability in periodic returns:** Rule 8(4) of the Central Excise Rules, 2002 provide those provisions of Section 11 of the Central Excise Act, 1944 would apply for recovery of sums declared payable in periodic returns but not paid. Section 11 provides wide ranging power for recovery of dues as explained in paragraph 21 above. Section 11A(16) on the other hand provides that provisions of Section 11A shall not apply for duty short paid or not paid which is self-assessed and declared in the periodic returns. The conjoined reading of these two provisions provide that where the liability of duty is admitted but not paid by the assessee, adjudication proceedings envisaged under Section 11A are not required to be undertaken. Such self-admitted liability would be covered under the expression duty and any other sums of any kind payable to the Central Government used in Section 11A notice for recovery of admitted liability may be served on the assessee under Section 11 and when such dues are not paid within a reasonable time, recovery proceedings may be initiated.

**22.0 Recovery in instalments:** Board has issued Circular No. 996/3/2015-CX dated the 28th Feb., 2015 to provide the facility of payment of confirmed demand in installments.

**22.1** It has been decided by the Board to allow recovery of arrears of taxes, interest and penalty in installments. The power to allow such payment in monthly installments shall be discretionary and shall be exercised by the Commissioners for granting sanction to pay arrears in installments upto a maximum of 24 monthly installments and by the Chief Commissioners for granting sanction to pay arrears in monthly installments greater than 24 and upto a maximum of 36 monthly installments.

**22.2** The facility to pay arrears in installments shall generally be granted to companies which show a reasonable cause for payment of arrears in installments such as the company being under temporary financial distress. Approval to pay in installments and the number of installments should be fixed such that an appropriate balance between recovery of arrears and survival of business is maintained taking into consideration the overall financial situation of the company, its assets, liabilities, income and expenses. Frequent defaulters may not be allowed payment of arrears in instalments. The decision shall be taken on a case to case basis taking into consideration the facts of the case, interest of the revenue, track record of the company, its financial situation, etc.

**22.3** The application for allowing payment of arrears shall be made to the jurisdictional

Commissioner giving full justification for the same. The approval of the application should be in writing with due acknowledgment taken on record. The permission should clearly identify the number of installments and the month from which the payments of installments should begin and should also clearly stipulate that in case of default in payment of installments, the permission shall be withdrawn and action shall be taken for recovery of arrears.

**22.4** For this purpose, Commissioner shall also exercise the power to cancel the permission to pay arrears in installments. Cancellation should be resorted to in cases of default in the payment of installments or when the company is becoming financial unviable and there is likelihood of winding up of business. After cancelling the permission to pay in installments, action should be taken forthwith for recovery of arrears.

#### **Part IV: Miscellaneous**

**23: Service of decisions, orders, summons, etc:** The statutory provisions for Service of decisions, orders, summons, etc. have been provided under Section 37C of the CEA, 1944. The Section provides that the service of interalia of any order or notice, which would include a SCN or an adjudication order needs to be carried out in prescribed manner for the service to be considered complete. The Section provides for various methods of service such as by tendering or sending it by registered post with acknowledgment due or as a fallback, by affixing a copy thereof to some conspicuous part of the factory or warehouse or other place of business or usual place of residence of the person or as a further fallback, by affixing on the notice board of the officer. For further details, the Section may be referred.

**24. De novo or Adjudication remanded by appellate authority:** In cases of de novo adjudication in pursuance of the order of Appellate Authority, such cases should be decided by the adjudicating authority of the same rank who had passed the order which was in appeal before the Appellate authority, notwithstanding the enhancement of the power of adjudication of the officers. On receipt of the order for de novo adjudication from the Appellate authority, such case should be shown as pending in the list of cases pending adjudication of such adjudicating authority till it is decided by him. Close monitoring of such pending de-novo cases should be done to ensure that these cases are adjudicated well within the time limit, if any, laid down by the Appellate authority.

**25. No SCN on voluntary payment:** In any case of short payment or non-payment of tax/ duty in a case not involving extended period of time, a person who has paid the duty payable along with interest, if any, by ascertaining the duty himself, or as ascertained by the Central Excise Officer shall not be served any notice in respect of the duty so paid or for any penalty. The provisions of Section 11A(1)(b) read with Section 11A(2) may be referred to in this regard.

#### **26. Refund of pre-deposits:-**

**(i)** Where the appeal is decided in favour of the party/assessee, he shall be entitled to refund of the amount deposited along with the interest at the prescribed rate from the date of making the deposit to the date of refund in terms of Section 35FF of the Central Excise Act, 1944

ii) Pre-deposit for filing appeal is not payment of duty. Hence, refund of predeposit need not be subjected to the process of refund of duty under Section 11B of the Central Excise Act, 1944. Therefore, in all cases where the appellate authority has decided the matter in favour of the appellant, refund with interest should be paid to the appellant within 15 days of the receipt of the letter of the appellant seeking

refund, irrespective of whether order of the appellate authority is proposed to be challenged by the Department or not.

iii) If the Department contemplates appeal against the order of the Commissioner (A) or the order of CESTAT, which is in favour of the appellant, refund along with interest would still be payable as per the time limits prescribed in the law or in the order, unless such order is stayed by a competent Appellate Authority. It is important to note that in such cases of consequential refund, besides filing of appeal against the order, it is also necessary that a protective demand of the refunded amount be issued under Section 11A by not lower than Assistant/Deputy Commissioner of Central Excise as per new monetary limits for adjudication of cases by the Central Excise officers and transferred to the callbook. In the event of a remand, refund of the pre-deposit shall be payable along with interest.

**ANNEXURE-I :**

**List of Circulars/Instructions which stand rescinded**

<b>S.No.</b>	<b>Circulars/Instructions</b>
1	32/80-CX.6 dated 26.7.80
2	5/83-CX.6 dated 10.3.1983
3	207/47/85-CX.6, dated 12.8.1986
4	17/87, dated 18.3.1987
5	267/104/87, dated 15.12.1987
6	27/88-CX.6, dated 7.4.1988
7	42/88-CX.6, dated 24.5.1988
8	48/88-CX.6, dated 10.6.1988
9	50/88-CX.6, dated 17.6.1988,
10	67/17/88-CX.2, dated 18.8.1988
11	76/88-CX.6, dated 2.11.1988
12	79/88-CX.6, dated 15.11.1988
13	66/88, dated 20.12.1988
14	2/89, dated 9.1.1989
15	29/89, dated 2.5.1989
16	50/89, dated 29.8.1989
17	53/90-CX.3, dated 6.9.90
18	1/90-AU dated 19.3.90
19	18/90-CX.8, dated 28.3.1990
20	53/90, dated 26.9.1990
21	21/90, dated 6.12.1990
22	289/10/91-CX.9 dated 18.03.1991

23	3/92-CX.6
24	167/39/92-CX.4, dated 13.10.1992
25	5/92, dated 13.10.1992
26	20/92-CX.6, dated 21.12.1992
27	13/93-CX.6 dated 15.10.93
28	9/93-CX.6, dated 8.7.1993
29	19/93-CX.6, dated 29.12.1993
30	20/20/94-CX, dated 10.2.1994
31	67/67/94-CX, dated 19.10.1994
32	32/32/94-CX dated 11.04.1994
33	162/73/95-CX.3, dated 14.12.95
34	163/74/95-CX, dated 14.12.1995
35	171/5/96-CX, dated 2.2.1996)
36	228/62/96-CX, dated 8.7.1996
37	268/102/96-CX, dated 14.11.1996
38	208/42/96-CX dated 02.05.1996
39	354/118/96-TRU, dated 6.1.1997
40	290/6/97-CX. dated 20.1.1997
41	295/11/97-CX., dated 10.2.1997
42	298/14/97-CX, dated 25.2.1997
43	299/15/97, dated 27.2.1997
44	312/28 /97-CX., dated 22.4.1997
45	317/33/97-CX, dated 18.6.1997
46	328/44/97-CX, dated 13.8.1997
47	350/66/97-CX. dated 4.11.1997
48	362/78/97-CX, dated 9.12.1997
49	385/18/98-CX dated 30/3/98
50	373/06/98-CX, dated 20.1.98
51	444/10/99-CX, dated 12.3.1999
52	502/68/99-CX, dated 16.12.1999
53	518/14/2000-CX, dated 3.3.2000
54	523/19/2000-CX. Dated 6.4.2000
55	534/30/2000-CX, dated 30.5.2000
56	540/36/2000-CX., dated 8.8.2000
57	552/48/2000-CX, dated 4.10.2000
58	555/51/2000-CX, dated 19.10.2000
59	588/25/2001-CX,dated 19.9.2001

60	592/29/2001-CX, dated 19.10.2001
61	606/43/2001-CX, dated 4.12.2001
62	674/65/2002-CX dated 1.11.2002
62	275/37/2K-CX.8A dated 2.1.2002
64	655/46/2002-CX dated 26.6.2002
65	712/28/2003-CX., dated 5-5-2003
66	718/34/2003-CX, dated 23.5.2003
67	723/39/2003-CX, dated 10.6.2003
68	744/60/2003-CX, dated 11.9.2003
69	752/68/2003-CX, dated 1.10.2003
70	762/78/2003-CX. dated 11.11.2003
71	765/81/2003-CX, dated 10.12.2003
72	766/82/2003-CX dated 15.12.2003
73	732/48/2003-CX dated 5.8.03
74	794/27/2004-CX, dated 23.6.2004
75	806/3/2005-CX, dated 12.1.2005
76	207/09/2006-CX.6, dated 8.9.2006
77	208/27/2003-CX.6, dated 18.12.2006
78	865/3/2008-CX. dated 19.2.2008
79	922/12/2010-CX., dated 18.5.2010
80	957/18/2011-CX.3, dated 25.10.011
81	962/05/2012-CX dated 28/03/2012
82	967/1/2013-CX, dated 1.1.2013
83	201/01/2014-CX.6, dated 26-6-2014
84	994/01/2015-CX, dated 10.2.2015
85	996/3/2015-CX, dated 28.2.2015
86	1000/7/2015-CX, dated 3.3.2015
87	390/CESTAT/69/2014-JC, dated 22.12.2015
88	1035/23/2016-CX, dated 4.7.2016
89	1049/37/2016-CX, dated 29.9.2016

**ANNEXURE-II**

**List of Circulars/Instructions which have not been rescinded**

<b>S.No.</b>	<b>Circulars/Instructions</b>
1	984/08/2014-CX, dated 16.9.2014
2	137/46/2015-S.T., dated 18.8.2015
3	1023/11/2016-CX, dated 8.04.2016

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\*\* For Adjudication of Show Cause Notices issued on the basis of CERA/CRA objection please Refer **Circular No.1023/11/2016-CX** : F.No.206/02/2010-CX.6 : Government of India, Ministry of Finance, : Department of Revenue, : (Central Board of Excise & Customs) : New Delhi, the 8th April, 2016

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## **E. Prosecution under CGST Act, 2017:**

**Extract from** Instruction No. 04/2022-23 [GST – Investigation] Guidelines For Launching Of Prosecution Under The Central Goods & Services Tax Act'17.

2.1 Monetary Limit: Prosecution should normally be launched where amount of tax evasion, or misuse of ITC, or fraudulently obtained refund in relation to offences specified under sub-section (1) of section 132 of the CGST Act, 2017 is more than Five Hundred Lakh rupees. However, in following cases, the said monetary limit shall not be applicable: .....

6.1 The prosecution complaint for prosecuting a person should be filed only after obtaining the sanction of the Pr. Commissioner/Commissioner of CGST in terms of subsection (6) of section 132 of CGST Act, 2017.

6.1.1 In cases, where Show Cause Notice has been issued by DGGI, the recommendation of adjudicating authority for filing of prosecution shall be sent to the Pr. Additional Director General/Additional Director General, DGGI of the concerned zonal unit/ Hqrs. Pr. Commissioner/ Commissioner for obtaining his sanction of prosecution.

6.1.2 Where at the time of passing of adjudication order, no view has been taken on prosecution by the Adjudicating Authority, the adjudication branch shall re-submit the file within 15 days from the date of issue of adjudication order to the Adjudicating Authority to take view on prosecution.

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## **F. Extracts from GST LAW & PROCEDURES PUBLISHED on the Occasion of 7th YEAR of GST by CBIC/ MoF /GoI**

### **1. DEMANDS**

1.1 While discharging the tax liability on the supplies, a supplier has to ensure proper compliance of the provisions related to classification of the supply of Goods and Services, applicable rate of tax, valuation of the supply, time of supply, place of supply, admissibility of exemption/concession granted by notification, if any, etc., so as to ensure proper payment of tax on such supplies.

1.2 Any short payment or non-payment of tax, wrong availment/utilization of input tax credit would lead to demand and determination of the amount of tax short-paid or not paid, amount of wrongly availed/utilized input tax credit. Any amount erroneously refunded shall also result in demand of such erroneously refunded amount.

1.3 The provisions of CGST Act, 2017 and CGST Rules, 2017, relevant to demand and determination of tax short paid or not paid, Input Tax Credit wrongly availed or utilized or amount erroneously refunded, are already listed above.

1.4 The relevant provisions, Forms, Circulars, Notification, etc., wherever mentioned, can be seen by clicking *ctrl+click* on the respective hyperlink, which will open the <https://taxinformation.cbic.gov.in> page. On clicking GST option on the Menu bar, 'Information-GST' page will appear, below which the option of Act, Rules, Forms, Notification, etc. is provided. The required page of the relevant provision/Form/Circular/Notification can be seen by clicking the appropriate option.

1.5 The taxable event under the Goods and Services Tax (GST) law is 'supply' of goods or services or both. That is, GST is payable when a person supplies goods or services or both to another person. The person supplying goods and/or services, called as 'supplier', has to pay the tax into the Government account by following the procedure laid down in the CGST Rules, 2017. The person liable to pay tax is commonly referred as 'taxpayer'.

1.6 Under the GST law, self-assessment of the tax payable on supply of goods or services or both is provided under Section 59 of the CGST Act, 2017. Periodical returns, as specified under Section 39 of the CGST Act, 2017 has to be furnished by the taxable person for each tax period by the taxpayer, declaring the details of supplies made, its value, tax payable, input tax credit availed, tax paid, etc. The returns filed by the taxpayer depict the compliance of tax payment for the relevant period.

#### **Section 59 of CGST Act, 2017) (Section 39 of CGST Act, 2017)**

1.7 Under self-assessment, there is a possibility of short-payment or non-payment of tax or incorrect availment of input tax credit by the taxpayer on account of various factors like incorrect rate of tax applied due to wrong classification of the supply, incorrect valuation, availing inadmissible exemption, availing inadmissible input tax credit, etc. There can be a case of erroneous refund of any amount to the taxpayer, which otherwise was not due to him. Further, there may be cases where, by reason of fraud, or willful-misstatement or suppression of facts, the tax amount has not been paid or short paid or input tax credit has been wrongly availed or utilized, with intent to evade tax, which has eventually led to improper discharge of the tax liability. Most common reasons leading to improper discharge of tax liability are –

- Mismatch in details reported in GSTR-1 Return and GSTR-3B Return;
- Difference in Input tax credit claims made in GSTR-3B vis-a-vis GSTR-2B/2A;
- Delay in filing of GSTR-1 and GSTR-3B;
- Inconsistent declaration in GSTR-1 and e-way bill portal;
- Inconsistencies in reporting of Exports in GSTR-1 with information available on ICEGATE. For example, Shipping Bill or the Bill of export lodged on ICEGATE but not reported in GSTR-1;
- Non-payment of GST liability (tax) or the short-payment of the tax with or without the intent to defraud;
- GST Refund is wrongly made with or without the intent to defraud;
- The input tax credit is wrongly availed or utilized;
- Where a business is liable to obtain GST registration but has failed and not discharged the tax and other liabilities under the CGST Act, 2017.

1.8 The above-mentioned short payment or non-payment of tax or wrongly availed/ utilized input tax credit or erroneous refund can be detected by carrying out verification of the correctness of self-assessed tax, by conducting scrutiny of returns or during the course of Audit conducted on the records of the taxpayer or during enquiry or investigation initiated against the taxpayer.

1.9 Central Goods and Services Tax (GST) Act, 2017, authorizes the Proper Officer to demand and determine the following amounts:

- (i) *A tax which is not paid (Section 73 and Section 74)*
- (ii) *A tax which is short paid (Section 73 and Section 74)*
- (iii) *A tax which is erroneously refunded (Section 73 and Section 74)*
- (iv) *Wrongly availed Input Tax Credit (Section 73 and Section 74)*
- (v) *Wrongly utilized Input Tax Credit (Section 73 and Section 74)*
- (vi) *A tax which is collected but not paid (Section 76)*
- (vii) *A tax which is collected under the wrong head (Section 77).*

Action to be taken under the provisions of GST law for recovery of the amount of tax not paid or short paid or Input Tax Credit wrongly availed/ utilized or amount erroneously refunded involves two major steps – **to demand** such amount by issuing a Show Cause Notice and then **to determine** the amount of tax, interest and penalty payable by adjudicating the Show Cause Notice, i.e. by passing an Order after following the prescribed procedure. If any short-payment or non-payment of tax or incorrect availment or utilization of input tax credit or erroneous refund of tax to the taxpayer is noticed during the above-mentioned verification, then such short-paid or not-paid tax or wrongly availed input tax credit or erroneous refund of tax shall be demanded from the taxpayer along with applicable interest by following the due process prescribed under the CGST Act, 2017 and the CGST Rules, 2017.

Section 73 of the CGST Act, 2017 is the relevant legal provision for demand and determination of the tax **short paid or not-paid or wrongly availed input tax credit or erroneously refunded amount**, in cases not involving fraud or willful misstatement or suppression of facts. In cases involving fraud or willful misstatement or suppression of facts, such amount has to be demanded and determined under the

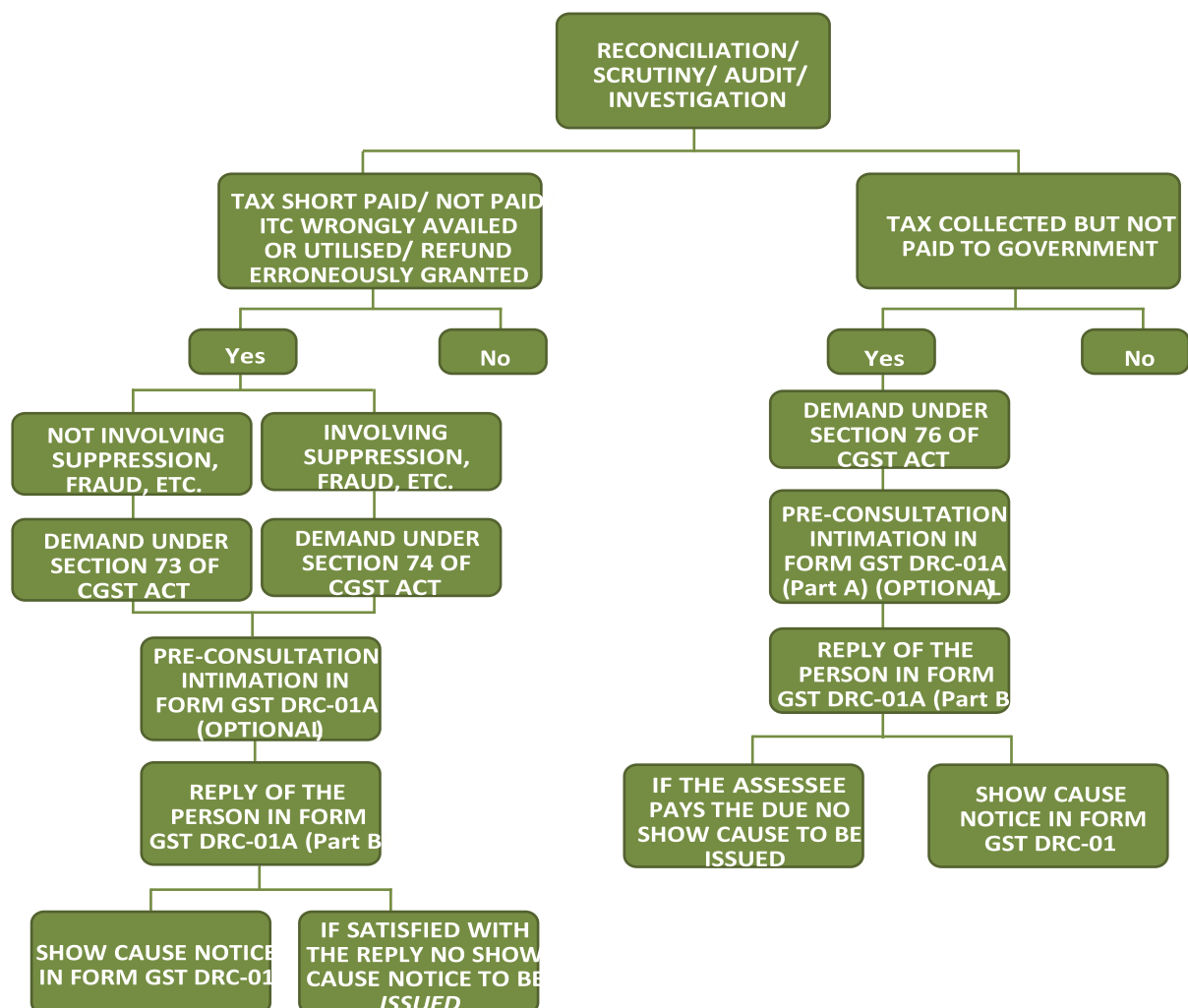
provisions of Section 74 of the CGST Act, 2017. **(Section 73 of CGST Act, 2017)**  
**(Section 74 of CGST Act, 2017)**

There can be situations where the taxpayer has collected the tax amount from the recipient of goods and/or services, i.e. their customers, but the same is not deposited into the Government account. In such cases, the amount of tax collected but not paid or deposited in the Government account is required to be demanded and determined under Section 76 of the CGST Act, 2017. **(Section 76 of CGST Act, 2017)**

## 2. DEMAND OF TAX

2.1 CGST Act, 2017, authorizes the 'Proper Officer' (please refer Para 5 below) to demand and determine the amount of tax not paid or short paid, wrongly availed/utilized Input Tax Credit, tax erroneously refunded and tax collected but not paid. The proper officer has to act as per the provisions of Sections 73, 74 and 76 of the CGST Act, 2017, relevant to the case.

2.2 The Proper Officer, has to send a show cause notice prescribed under Rule 142 of the CGST Rules, 2017, to the person liable to pay the tax. The Demand Notice contains information regarding the amount of tax owed, the reason for the demand, and the period within which the tax must be paid. The Proper officer has to follow the online procedures as illustrated in para 6 below. **Process-flow is under: (Rule 142 of CGSTR)**



## 5. SHOW-CAUSE NOTICE

5.1 On receipt of reply from the person in Part B of FORM GST DRC-01A or if no reply is received within the given time, the Proper Officer shall serve the Summary of the notice in FORM GST DRC-01 along with a Show Cause Notice to the person liable to pay tax. The Show Cause Notice should contain the details of the case, the legal provisions applicable, the amount of tax demanded, interest payable under Section 50 of CGST Act, 2017 and penalty imposable under the relevant provisions of the Act.

5.2 CBIC vide Instruction No. 04/2023-GST, dated 23.11.2023, issued under F. No. 20016/41/2023-GST, has directed that the Summary of the notice in FORM GST DRC-01 shall be served electronically on the common portal.

5.3 A Show Cause Notice (SCN) should ideally comprise of the following parts, though it may vary from case to case:

- (a) *Introduction of the case;*
- (b) *Legal frame work;*
- (c) *Factual statement and appreciation of evidences;*
- (d) *Discussion, facts and legal frame work relating thereto;*
- (e) *The period to which the Notice pertains to and the discussion on Limitation period, if applicable;*
- (f) *Calculation of tax amount payable and other amounts due, such as interest, penalty etc.;*
- (g) *Statement of charges-exact nature of violation of law, rules or safeguards etc.*

5.4 The notice under Section 73 of the CGST Act, 2017, shall be served to the concerned taxpayer at least three months prior to the due date for issuance of the adjudication order specified under Section 73(10) of the CGST Act, 2017. The due date for issuance of the adjudication order is **within three years** from the due date for furnishing the Annual Return for the financial year to which the demand pertains or **within three years** from the date of erroneous refund. **(Section 73(10) of the CGST Act, 2017)**

5.5 The notice under Section 74 of the CGST Act, 2017 shall be served to the concerned taxpayer six months before the due date for issuance of an adjudication order under Section 74(10) of the CGST Act, 2017. The due date for issuance of the adjudication order under Section 74(10) is **within five years** from the due date for furnishing of Annual Return for the relevant financial year to which the demand pertains. **(Section 74(10) of the CGST Act, 2017)**

5.6 In the demand portion, the tax amount pertaining to Central Tax (CGST), State Tax (SGST), Integrated Tax (IGST) and Compensation Cess, as applicable, are required to be clearly indicated. The breakup of each of the applicable taxes should be clearly shown either in the Annexure to the SCN or in a table inside the SCN.

5.7 The amount of demand should be clearly indicated in words as well as in figures.

5.8 The Relied Upon Documents should be clearly indicated and listed in an Annexure in the SCN.

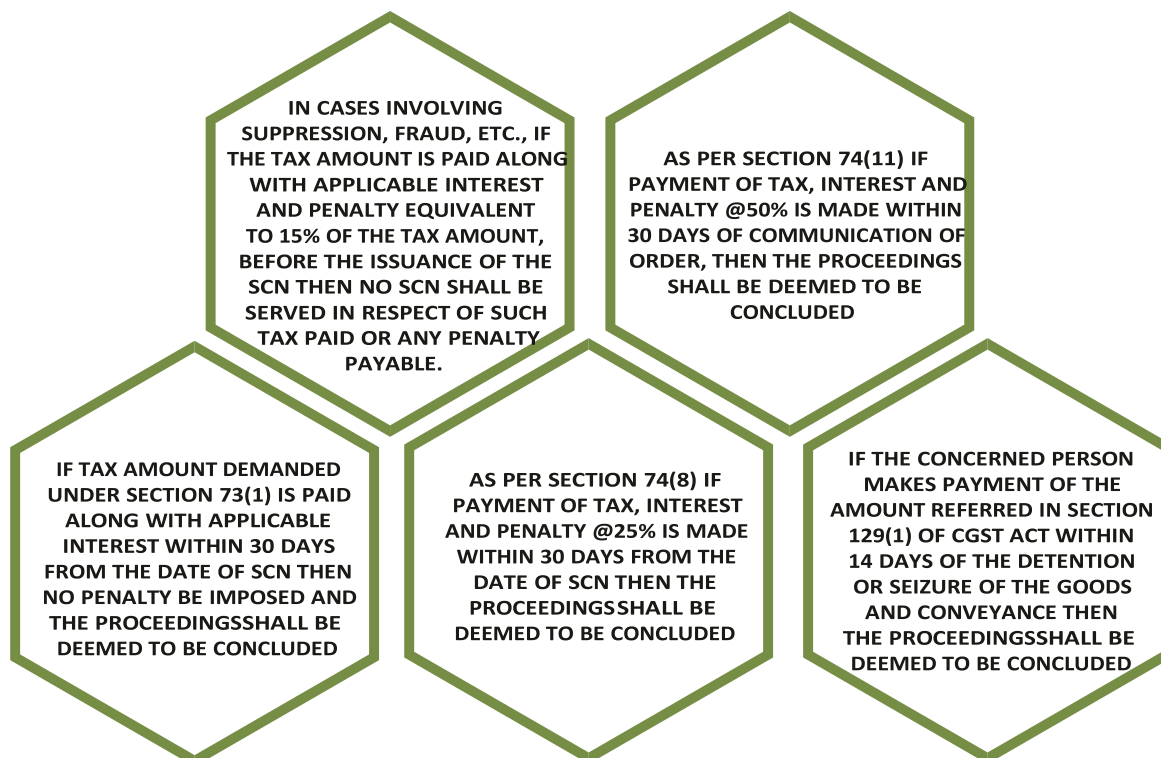
5.9 In case the taxpayer has paid the entire duty amount and the SCN is being issued for interest and/or penalty then in this case, first the duty has to be demanded and then the taxpayer has to be asked to show cause as to why the amount (to be specified) already paid should not be appropriated against the tax demanded. Similarly, if the amount has been paid along with interest and the SCN is being issued only for penalty then duty and interest should first be demanded and then the amount paid should be appropriated against the tax demand and interest.

## 6. **SUMMARY STATEMENT (DRC-02)**

As per Section 73(3) and Section 74(3) of the CGST Act, 2017, where a Show Cause Notice has been issued for any period by the Proper Officer demanding tax under Section 73(1) or Section 74(1), he may serve a statement in FORM GST DRC-02, electronically on common portal containing all the details relating to the taxes short paid or not paid or input tax credit wrongly availed or utilized, as the case may be, for the period other than the period included in the Show Cause Notice already issued on a particular ground. Service of such statement shall be deemed to be the service of show cause notice on such persons, when the grounds involved in the show cause notice issued earlier and the present statement covering further period are same. Such notices are commonly called as periodical demand notices. **(Section 73(3) and 74(3) of CGST Act, 2017)**

## 7. **PAYMENT OF TAX BEFORE ISSUANCE OF SCN OR ORDER**

7.1 A taxpayer has the option of payment of tax dues before issuance of SCN and/or order, as discussed below.



7.2 If any person pays tax dues along with interest on the delayed payment of that tax, before the issuance of show cause notice, either on his own or on the



direction of the proper officer and informs the proper officer in writing, then as per Section 73(6) of the CGST Act, 2017, no show cause notice shall be issued for such tax dues or the penalty payable. **(Section 73(6) of CGST Act, 2017)**

- 7.3 If the person to whom show cause notice demanding tax under Section 73 of the CGST Act, 2017 has been issued, pays the tax along with interest on the delayed payment of that tax, **within a period of thirty days** from the date of issue of the said show cause notice, then as per Section 73(8) of the CGST Act, 2017, penalty shall not be imposed and all the proceedings against that person relating to the said show cause notice shall be considered as concluded. **(Section 73(8) of CGST Act, 2017)**
- 7.4 The person chargeable with tax may pay the tax dues on the basis on his own or on the direction of the Proper Officer, before the issuance of show cause notice, along with the applicable interest for the delayed payment of tax and also pay penalty equivalent to 15% of the tax amount and inform the Proper Officer about such payment. As per Section 74(6) of the CGST Act, 2017, the Proper Officer shall not serve any notice in respect of the tax so paid or any penalty payable. **(Section 74(6) of CGST Act, 2017)**
- 7.5 If the person to whom show cause notice demanding tax under Section 74 of CGST Act, 2017 has been issued, pays the tax dues along with interest on the delayed payment of that tax and penalty equivalent to 25% of the tax dues, **within a period of thirty days** from the date of issue of the said show cause notice, then as per Section 74(8) of the CGST Act, 2017, all the proceedings against that person relating to such show cause notice shall be considered as concluded. **(Section 74(8) of CGST Act, 2017)**

## **8. INTIMATION OF PAYMENT OF TAX**

- 8.1 As mentioned in para 7 above, if the person charged with non-payment of tax pays the tax and interest in accordance with Section 73(5) or 73(8) of the CGST Act, 2017 or the tax, interest and penalty in accordance with Section 74(5) or 74(8) of the CGST Act, 2017, either on his own or as communicated by the Proper Officer, then he shall inform about such payment in FORM GST DRC-03. **(Section 73 and 74 of CGST Act, 2017)**

## **9. ACKNOWLEDGEMENT OF VOLUNTARY PAYMENT BY TAXPAYER**

Whenever any person makes payment of dues and informs in FORM GST DRC-03, the Proper Officer shall issue an acknowledgement accepting the payment in FORM GST DRC-04 prescribed in Rule 142(2) of CGST Rules, 2017. If only partial payment of the amount payable, communicated in FORM GST DRC-01A, is made then such person chargeable for non-payment of tax shall make his submission in Part B of FORM GST DRC-01A, mentioned above. (Rule 142(2) of CGST Rules, 2017)

## **10. INTIMATION OF CONCLUSION OF PROCEEDINGS ON PAYMENT BY Taxpayer**

If the person, to whom demand notice has been issued, makes payment as per Section 74(8) of the CGST Act, 2017 within 30 days of the service of the show cause notice or where the concerned person makes payment of penalty in terms of Section 129(1) of the CGST Act, 2017 within 14 days of detention or

seizure of the goods and conveyance, then such person shall intimate to the Proper Officer about such payment in FORM GST DRC-03 and the Proper Officer shall issue order in FORM GST DRC-05 concluding the proceedings in respect of such notice. (Refer Rule 142(3) of the CGST Rules, 2017) **(Section 74 (8) and 129 of CGST Act, 2017) (Rule 142(3) of CGST Rules, 2017)**

### **REPLY BY TAXPAYER TO THE NOTICE**

The representation or the reply to the Show Cause Notice issued in FORM GST DRC-01, shall be furnished by the Taxpayer in FORM GST DRC-06. (Refer Rule 142(4) of CGST Rules, 2017) **(Rule 142(4) of CGST Rules, 2017)**

### **13. ADJUDICATION OF SHOW CAUSE NOTICE**

13.1 The Proper Officer shall grant personal hearing, if the noticee (person to whom the show cause notice is issued) so desires, otherwise also, Proper Officer may give opportunity of personal hearing. The Proper Officer shall determine the tax payable after considering all submissions made by the noticee and pass suitable Adjudication Order, as prescribed under Section 73(9) or Section 74(9) of the CGST Act, 2017. **(Section 73(9) and 74(9) of CGST Act, 2017)**

13.2 The show cause notice pertaining to demand of tax or wrongly availed or utilized input tax credit issued under Section 73 of the CGST Act, 2017, shall be adjudicated **within three years** from the due date of filing of the Annual Returns for the relevant financial year. If the case is related to the erroneous refund received by the Taxpayer, the case shall be adjudicated **within three years** from the date when the erroneous refund was credited in the account of the Taxpayer. (Refer Section 73(10) of the CGST Act, 2017) **(Section 73(10) of CGST Act, 2017)**

13.3 The show cause notice pertaining to demand of tax and/or wrongly availed or utilized input tax credit issued under Section 74 of the CGST Act, 2017, involving suppression of facts or willful misstatement or fraud, etc. shall be adjudicated **within a period of five years** from the due date of filing of the Annual Returns for the relevant financial year. If the case is related to erroneous refund received by the Taxpayer, involving suppression of facts or willful misstatement or fraud, etc. the case shall be adjudicated **within the period of five years** from the date when the erroneous refund was credited in the account of the Taxpayer. (Refer Section 74(10) of the CGST Act, 2017). **(Section 74(10) of CGST Act, 2017)**

13.4 The show cause notice issued under Section 76 of the CGST Act, 2017, shall be adjudicated **within one year** from the date of issue of the show cause notice. (Refer Section 76(6) of the CGST Act, 2017) **(Section 76(6) of CGST Act, 2017)**

13.5 The Summary of the Adjudication Order shall be uploaded electronically in FORM GST DRC-07, prescribed under Rule 142(5) of the CGST Rules, 2017, specifying the amount of tax, interest and penalty payable by the person. Such an order shall be treated as the notice for recovery. **(Rule 142(5) of CGST Rules, 2017)**



## **PROVISIONS TO BE FOLLOWED BY THE OFFICER**

The Officers have to follow the following relevant provisions for imposition of penalties:

- Provisions related to offences and their corresponding penalties are covered under Section 122 of the CGST Act.
- If a person who is required to furnish an information return under Section 150 fails to do so within the period specified in the notice issued under sub-section (3) thereof, the proper officer may direct that such person shall be liable to pay a penalty of one hundred rupees for each day of the period during which the failure to furnish such return continues.
- Section 124 of the CGST Act, 2017 prescribes penalty for failure to furnish any information or return under Section 151 of the CGST Act.
- Any person, who contravenes any of the provisions of this Act or any rules made thereunder, for which no penalty is separately provided for in this Act, shall be liable to a penalty which may extend to twenty-five thousand rupees under Section 125 of the CGST Act, 2017.
- Section 127 of the CGST Act prescribes power to impose penalty in cases where the proper officer is of the view that a person is liable to a penalty and the same is not covered under any proceedings under Section 62 or Section 63 or Section 64 or Section 73 or Section 74 or Section 129 or Section 130, he may issue an order levying such penalty after giving a reasonable opportunity of being heard to such person.
- Section 129 of the CGST Act governs the detention, seizure, and release of goods and conveyances in transit.
- Confiscation of goods or conveyances and levy of penalty are provided under Section 130 of the CGST, Act, 2017.

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## **MONETARY POWERS OF ADJUDICATION CENTRAL EXCISE & SERVICE TAX**

**Also Refer CBIC circular no: 1086/01/2024-CX dated 03.07.2024 for Revised monetary powers for Adjudication of SCNs issued for Chapter 24 commodities, demanding Central Excise duty and GST.**

**Circular No. 1049/37/2016-CX**

F. NO. 267/40/2016-CX.8  
GOVERNMENT OF INDIA MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE : CENTRAL BOARD OF EXCISE AND CUSTOMS

New Delhi, dated the 29th September, 2016

To  
All

### **Sub: Revised Monetary Limits for adjudication of Show Cause Notice in Central Excise and Service Tax-reg.**

Madam/ Sir,

Kind attention is invited to the following circulars issued by the Board regarding adjudication of cases in Central Excise and Service Tax. In supersession of these circulars and any other circular issued on the above subject, instructions from paragraph 2 onwards are hereby issued to revise the existing monetary limits for adjudication and to allow greater flexibility in allocation of cases amongst adjudicating authorities.

- i) Circular No. 752/68/2003-CX dated 01.10.2003
- ii) Circular No. 806/3/2005-CX dated 12.01.2005
- iii) Circular No. 865/3/2008-CX dated 19.02.2008
- iv) Circular No. 922/12/2010-CX dated 18.05.2010
- v) Circular No. 957/18/2011-CX dated 25.10.2011
- vi) Circular No. 80/1/2005-ST dated 10.08.2005
- vii) Circular No. 99/2/2008-ST dated 11.03.2008
- viii) Circular No. 130/12/2010-ST dated 20.09.2010

2. Adjudication of confiscation and penalty by the Central Excise Officers is provided in Section 33 of the Central Excise Act, 1944. Central Excise Officers have the power under Section I IA to adjudicate show cause notices demanding duty short paid or not paid and erroneously refunded. Similar powers exist in Service Tax under Section 73 and Section 83A of the Finance Act, 1994 (Notification No. 44/2016-Service Tax dated 28.09.2016 refers). It is hereby directed that henceforth powers of adjudication both in Central Excise and Service Tax shall be exercised, based on the monetary limit of the duty/ tax/ credit involved in a case, as under:-

<b>Sl. No.</b>	<b>Central Excise Officer</b>	<b>Monetary Limits of duty/ tax/ credit demand for Central Excise and Service Tax</b>
1.	Superintendent	Not exceeding rupees ten lakh
2.	Deputy/ Assistant Commissioner	Above ten lakh but not exceeding rupees fifty lakh
3.	Additional/ Joint Commissioner	Above fifty lakh but not exceeding rupees two crore
4.	Commissioner	Without limit i.e. cases exceeding rupees two crores

i) Cases involving taxability, classification, valuation and extended period of limitation shall be kept out of the purview of adjudication by Superintendents. Such cases, upto rupees 10 lakhs, shall also be adjudicated by the Deputy Commissioner/ Assistant Commissioner in addition to the cases exceeding rupees 10 lakhs but not exceeding rupees 50 lakh.

ii) The above monetary limits are hereby prescribed for all categories of cases, except the following:

a) cases of refund (including rebate) under Section 11B of the Central Excise Act, 1944, as made applicable to Service Tax cases also under Section 83 of the Finance Act, 1994, shall be adjudicated by the Deputy Commissioner/ Assistant Commissioner without any monetary limit.

b) cases related to issues mentioned at Sl. No. (a) and (d) under the first proviso to Section 35B(1) of the Central Excise Act, 1944 shall be adjudicated in the following manner:

<b>Sl. No.</b>	<b>Central Excise Officer</b>	<b>Monetary Limits for Central Excise</b>
1.	Additional Commissioner	Exceeding Rs. 50 lakh
2.	Deputy/Commissioner	Above Rs. 10 lakh but not exceeding Rs. 50 lakh
3.	Superintendent	Not exceeding Rs. 10 lakhs

iii) In case different show cause notices have been issued on the same issue answerable to different adjudicating authorities, Show Cause Notices involving the same issue shall be adjudicated by the adjudicating authority competent to decide the case involving the highest amount of duty.

iv) Every adjudicating authority of Central Excise and Service Tax in the field shall endeavor to adjudicate 100 cases in a year.

3. Further, in view of huge pendency of adjudication of Service Tax cases at the level of Commissioner, the Service Tax cases shall be earmarked to Commissioners of Central Excise and Commissioners (Audit) of Central Excise also, depending upon the pendency level in the Zone, in the following manner:

- a) Central Excise Zones with no exclusive Service Tax Commissionerate In such Zones, the Chief Commissioners shall review the position of Service Tax cases pending for adjudication at the level of Commissioner, and in exercise of powers conferred under Section 37A of the CEA, 1944 as made applicable to Service Tax by Section 83 of the Finance Act, 1994, read with notification no. 6/2009-ST dated 30.01.2009, earmark these cases to Commissioners of Central Excise and Commissioners (Audit) also within their respective Zones. Orders allocating cases for adjudication would be required to be issued. Similar exercise can be done on the Central Excise side also by exercising powers under Section 37A of the CEA, 1944 read with notification no. 11/2007-CE(NT) dated 01.03.2007.
- b) Central Excise Zones having exclusive Service Tax Commissionerates (namely .....
- c) Service Tax Zones .....
- d) It may be noted that the Commissioner (Audit) had been invested with powers of Central Excise Officer for the purposes of Audit and issue of Show Cause Notice, vide Notification No. 30/2014- CE (NT) dated 14.10.2014. The said notification has now been amended vide Notification no 47/2016-Central Excise (N.T.) dated 28th September, 2016 to invest the Commissioner (Audit) with powers of adjudication.

4. The above directions shall apply only to adjudication of cases where the personal hearing is yet to be commenced. In all cases where the personal hearing has been completed, orders will be passed by the adjudicating authority before which the hearing has been held. Such orders should normally be issued within a month of the date of completion of the personal hearing.

5. Notwithstanding the above directions, cases which have been remanded back for de novo adjudication shall be decided by an authority of the rank which passed the said remanded order.

6. ....

7. It may also be noted that the age-wise pendency of cases as shown in monthly report should be reflected based on the date of issuance of Show Cause Notice and not on the basis of transfer of cases to the new adjudicating authority.

8. The Chief Commissioners .....

9. Hindi version will follow.

(Santosh Kumar Mishra)  
Under Secretary to the Government of India

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## **Extracts from NACIN KANPUR E-book on Adjudication**

### **Adjudication of Multiple SCNs on Same Issue Answerable to Different Adjudicating Authorities**

2.5 In case different show cause notices have been issued on the same issue answerable to different adjudicating authorities, then all the show cause notices involving the same issue will be adjudicated by the adjudicating authority competent to decide the cases involving the highest amount of duty [Ref: CBEC's Circular No. 362/78/97-CX dated 9.12.97].

### **Value of Goods/Conveyance Liable to confiscation not to Affect Power of Adjudication**

**2.6** The value of goods/conveyance liable to confiscation will not alter the above powers of adjudication, which shall solely depend upon the amount of duty/CENVAT credit involved in the offending goods.

### **SCN to be approved in Writing by Authority Competent to adjudicate it**

**2.7** Regarding issuance of show cause notices, it has been clarified that in respect of all cases, whether or not fraud, collusion, willful mis-statement, suppression of fact or contravention of Central Excise Act/ Rules with intent to evade duty and/ or where extended period has been invoked i.e. cases falling under any category (A), (B) or (C) above, the show cause notice shall be approved in writing and signed by the officer competent to adjudicate the said show cause notice.

## **CALL BOOK : Introduction**

**1.1** According to the Manual of Office Procedure (also referred to in short as the 10. OPM) brought out by the Department of Administrative Reforms and Public Grievances (DARPG), a call book is required to be maintained by a Department in which a case, which had reached a stage where no action could, or needed to be taken to expedite its disposal for at least 6 months (e.g. cases held up in the law courts), could be transferred with the approval of a competent authority. Cases transferred to the call book are not included in the monthly statement of pending cases.

**1.2** In the context of our Department, the Call book cases are those Show Cause Notices (SCNs), which cannot be adjudicated immediately due to certain specified reasons and adjudication is to be kept in abeyance by transferring such cases to call book.

### **Category of Cases to be kept in Call Book**

**2.1** The Central Board of Excise and Customs (Board), *vide* Circular No. 162/73/95CX.3, dated 14-12-1995 read with Circular Nos. 992/16/2014-CX, dated 26.12.2014 and 1023/11/2016-CX dated 08.04.2016, has specified the following categories of cases which can be transferred to call book:-

**A. Cases in which the Department has gone in appeal to the appropriate authority.**

This category refers to cases wherein on identical issue the Department has filed appeal before higher appellate authority against the order passed by the lower authority, which was against the Government.

For example, on certain issue, the CESTAT has passed order which is against the Department. The Department has filed appeal before High Court/Supreme Court against the order of CESTAT. If any SCN on the same issue is pending for adjudication in respect of same or different party, the same should be transferred to call book till matter is decided by the Hon'ble High Court /Supreme Court. The CBEC vide Circular No.1028/16/2016-CX dated 26.04.16 has clarified that where issue involved has either been decided by Hon'ble Supreme Court or Hon'ble High Court and such order of the Hon'ble High Court has attained finality, such cases shall be taken out of Call Book and adjudicated.

**B. Cases where injunction has been issued by Supreme Court/High Court/CESTAT, etc.**

Sometimes, Hon'ble Supreme Court/High Court issue injunction and restrain the department from proceeding further in the matter by way of adjudication. If in any case, such injunction is issued by the Hon'ble High Court/Supreme Court, then SCN cannot be adjudicated and has to be kept in call book. The term "injunction" means that one of the parties to a certain action must either do something or refrain from doing something. It is court order forbidding something from being done (prohibitory injunction), or commanding something to be done (mandatory injunction).

**C. Cases Pending before Settlement Commission**

Vide CBEC Circular No. 992/16/2014-CX, dated 26.12.2014, the Board clarified that Cases admitted by the Settlement Commission may be transferred to the Callbook, as it is already covered under Category "**(ii) cases where injunction has been issued by the Supreme Court/High Court/CEGAT etc.**" mentioned in Circular dated 14.12.1995. In respect of cases pending before Settlement Commission, it has been further clarified that where there are multiple noticees, the case can be transferred only in respect of those noticees who have made application in the Settlement Commission, and whose case has been admitted by Settlement Commission. Such cases should be taken out of the Call-Book after Settlement Order has been issued or where the case has been reverted back for adjudication.

**D. Cases where audit objections are contested –**

[Now stands omitted vide Circular No.1023/11/2016-CX dt.08.04.2016]

This Category now stands omitted vide CBEC Circular No.1023/11/2016-CX dated 08.04.2016. It means that procedures of transferring the Show Cause Notices arising out of CAG objection, which were contested by the Department,

to the Call Book has been discontinued and in future no such Show Cause Notice should be transferred to Call Book. However CBEC vide aforesaid instruction has prescribed a detailed procedure for issue and adjudication of Show Cause Notices pursuant to CERA objection / SOF.

***E. Cases where the Board has specifically ordered the same to be kept pending and to be entered into the call book.***

11. Sometimes instructions are issued by the Board to keep SCN on certain issues in the call book till further instruction. On finalization of Departmental views /stand on the issue, the instructions are again issued by the Board to the field formations to take such SCNs out of call book and to adjudicate the same.

12. As an example under this category, the issue of inclusion of “after sales service and pre-delivery charges in the assessable value” can be mentioned. First, vide Circular No. 909/29/09-CX, CBEC directed all its field formations to transfer SCN issued on the subject matter to call book. Later, vide Circular No. 936/36/2010-CX, dated 27/10/2010, it directed field formations to decide the cases pending in the call book on the issue of inclusion of after sales service and pre-delivery inspection charges in the Assessable value in the light of CESTAT Order dated 13.8.2010.

13. Vide Circular No. 1028/16/2016-CX dated 24.04.16, CBEC has directed that wherever Board has issued new Instruction or Circular clarifying the issue involved, subsequent to the issue of order to transfer the case to Call Book, such cases shall be taken out of Call Book and adjudicated.

**Transfer of Case to/ out of Call book**

**3.1** A SCN can be transferred to call book if any of the situation mentioned above exist. SCN cannot be transferred on ground (s) other than those specifically mentioned in the above said Board Circular dated 14.12.1995 read with Circular No. 992/16/2014-CX, dated 26.12.2014 as amended *vide* circular No.1023/11CX dated 08.04.2016 and 1028/16/2016-CX dated 26.04.2016. Further, a SCN can only be transferred to call book with the prior approval of the Commissioner in charge.

**3.2** In one of its Audit Report, the C& AG pointed out that in spite of clear instructions of the Board on transfer of cases to call book, there are several other types of cases, which are transferred to call book in violation of the instructions of the CBEC. These cases are:-

- (i) Cases ordered for de-novo adjudication by the Courts
- (ii) Cases pending for want of Chemical Examiner’s report;
- (iii) Provisional Assessment cases

**3.3** Transfer to cases to call book on above mentioned grounds, not specified in CBEC Circular dated 14.12.1995 is not correct and should not be done.



## Periodical Review of Call book

**4.1** The Board had issued instructions to Commissioners to review the cases transferred to call books on a monthly basis. If grounds, on which a case has been transferred to call book, no longer exist, then the case should be taken out of the call book and adjudicated. [Ref: Board's DO Letter F. No. 101/2/92CX.3, dated 04.03.1992 and Board's Circular No. 53/90-CX.3, dated 06.09.1990].

**4.2** Further where the issue involved has either been decided by Hon'ble Supreme Court or High Courts and where such order of Hon'ble High Court has attained finality or in cases where Board has issued new instructions, separate direction to take such cases out of Call Book should not be awaited from Board. This clarification applies to cases involving Central Excise duty, Customs duty & Service Tax. [Ref: CBEC circular 1028/16/2016-CX dated 26.04.2016]

## Inclusion of cases filed in the Settlement Commission in the "Call Book"

### 6.6 Circular No. 992/16/2014-CX dated 26.12.2014

#### **Sub: Inclusion of cases filed in the Settlement Commission in the "Call Book" – Regarding.**

Reference has been received in the Board from field that cases which are admitted in the Settlement Commission should be allowed to be transferred to Call-book in addition to the three category of cases prescribed by Board, for inclusion in Call Book, *vide* Circular No. 162/73/95-CX dated 14.12.1995 issued *vide* F. No. 101/20/93-CX.3 read with Circular No. 53/90-CX dated 06.09.1990.

2. The issue has been examined and it is clarified that:-
  - I. Cases admitted by the Settlement Commission may be transferred to the Callbook, as it is already covered under Category "(ii) cases where injunction has been issued by the Supreme Court/High Court/CEGAT etc." mentioned in Circular dated 14.12.1995;
  - II. Where there are multiple noticees, the case can be transferred only in respect of those noticees who have made application in the Settlement Commission, and whose case has been admitted by Settlement Commission;
  - III. Cases shall be taken out of the Call-Book after Settlement Order has been issued or where the case has been reverted back for adjudication.
3. Difficulties faced, if any, in implementation of this Circular may be brought to the notice of the Board. Hindi version follows.

OSD (CX-6)

## Drafting of Good Show Cause Notice

### Introduction

Show Cause Notice (SCN) is the culmination of our efforts from the beginning of investigation/proceedings for contravention of provisions of the tax statute(s) till



conclusion of investigation /proceeding by way of formal issuance of a written notice to the noticee(s). Issuance of SCN is a statutory requirement and it is the basic document for settlement of any dispute relating to tax liability or any punitive action (civil proceeding) to be taken for contravention of provisions of Customs/Central Excise / Service tax laws and/ or Allied Laws, which are required to be enforced by our departmental officers.

1.1 It is the most important item of our work and any lapse in timely issuance of SCN or issuing SCN of poor quality may lead to serious trouble to the officer concerned. Since, it is the starting point of any legal proceeding, utmost care is required to be taken while drafting SCN.

### **Distinct Parts of the SCN**

2.1 For convenience of understanding, the SCN can be broadly divided in several parts- each part dealing with a specific aspect of SCN. The several parts, into which an SCN can be broadly divided and the specific aspect dealt by each part, are as under:-

#### **Part I: Receipt of Intelligence/Audit Objection/Reference**

In this part, we discuss the background as to how the present proceeding started. It may differ from case to case. A case may be based on intelligence or audit objection or discrepancies in documents noticed during scrutiny of return, or reference received from other department /DRI/DGCEI/Vigilance/Audit etc. In this part, we basically mention gist of intelligence/audit objection/ observation/ communication received from other department /organization, name of the unit/ importer/ exporter/ dealer/assessee etc. and a brief modus operandi of duty evasion adopted by the alleged offender. The details given in this para should be sufficient enough to justify further investigation/Inquiry.

#### **Part-II: Preliminary Action on Intelligence/Audit Objection/Reference**

In this part, after receipt of intelligence/inputs/reference, what further action has been carried out by the department is discussed.

- The action could be by way of search (es) conducted, recording statement of concerned person(s), collecting relevant information from other sources including Bank, other departments etc.
- In case where searches have been carried out, details of the premises searched and outcome of such searches have to be mentioned in this part of SCN. If statement of any person, who is materially important for the investigation/inquiry, has been recorded, then relevant portions of such statement have to be captured/discussed in the SCN. Wherever letters have been addressed to Bank /other Government Department, other manufacturer /dealer etc., such action taken by the Department and consequent outcome thereof, have to be discussed in this part. If any computer has been recovered, the details of examination of such computer

by expert and recovery of incriminating documents, if any, may also be mentioned in this part.

- Panchnama of premises searched, summons issued, statements recorded, any incriminating documents recovered etc. should be made as „RUD“. As far as possible, incriminating documents recovered during searches, or obtained from other authorities and intended to be used as relied upon documents, should be shown to the concerned person (s) during recording of his statement (under Section 108 of the Customs Act, 1962/ Section 14 of the Central Excise Act) and his/her explanation to such incriminating documents should be obtained during recording of statement.

#### Part-III: Details of Further Investigations :

In this part, further course of action taken to pursue further inquiry/ investigation is discussed. It may, inter alia, include following details:-

- If any offending goods are seized and later released provisionally, then such details are discussed here.
- If any sample is sent for testing, then the outcome of such testing has to be mentioned.
- If any arrest is made, then details of arrest and subsequent development thereof, have to be mentioned in this part.
- If any court proceeding (such as for non-compliance of summons etc.) takes place, brief of such Court proceeding have to be discussed here. (v) Differential duty recoverable and its calculation may also be worked out in this part. If it is not mentioned in this part, then it may also be mentioned in Part IV of the SCN.

#### **Part IV: Summary of Investigations.**

Now, after conducting searches, recording statements, conducting market inquiries/ testing of samples, seizure/ or provisional release of goods etc., the story-line, which emerges, has to be summarized in this part.

#### **Part V: Relevant legal provisions:**

In this part, we discuss the relevant legal provisions in the form of Sections/ Rules/ Notification/Circular/Department Instruction etc. which are relevant to this case.

#### **Part VI: Act of Commission or Omission by Noticee *vis a vis* Legal Requirement**

In this part, the act of noticee (s) *vis-a-vis* legal requirements is discussed, thereby, discussing contravention of various statutory provisions as well. Role played by each person and contravention of specific provision of the Act by the person should also be discussed. This would be required for imposition of personal penalty on the individual who, by his/her acts of omission or commission, resulted in evasion of duty/ contravention of provisions of law.

Wherever extended period of five years for demand of duty/tax is being invoked, then justification for such extended period of limitation should be clearly mentioned in the show cause notice. Whether there is fraud, or suppression of fact, or mis-statement or deliberate contravention of provisions of the Act, has to be clearly

brought out in the SCN. Since invocation of extended period of limitation requires presence of *mens rea*, it has to be clearly explained/ discussed along with evidences supporting such intent in this paragraph dealing with invocation of extended period of limitation. Evidence, if any, which may help in establishing *mens rea* on part of alleged offender should also be mentioned here.

**Part VII: Charging Paragraph-**

In this part, the noticee is asked to show cause against the adverse actions which are proposed to be taken against him by the Department. This paragraph also mention as to whom (Designation of authorities and its office address) the impugned SCN is answerable. In this paragraph, depending upon the facts of the case, the following course of actions may be proposed by the Department:-

- Proposing confiscation of seized goods, demand of duty/tax along with interest, appropriation of amount deposited during investigation, if any, towards duty/interest demanded, imposition of penalty on the party as well as individuals including transporter/CHA, etc. Relevant sections of the Central Excise Act, 1944/ the Finance act, 1994/Customs Act, 1962 should also be mentioned. For example, for demanding Central Excise duty short paid/not paid, section 11A of Central Excise Act, 1944, must be mentioned. For demand of interest, relevant section providing for demand and recovery of interest should be mentioned. Similarly, section under which penalty is proposed to be imposed, should be clearly mentioned.
- For deciding the competent adjudicating authority, relevant instructions/ Circulars issued by CBEC from time to time specifying monetary limits for different levels of adjudicating authority may be referred to. Such instructions for Central Excise, Customs and Service tax are different; therefore, the relevant instructions /Circulars may be carefully seen. [For this, e-book on monetary limits for adjudicating authorities may be referred].
- If any amount has been pre-deposited by the noticee during investigation, then appropriation of this amount towards duty /interest demanded should also be mentioned. It should be remembered that any amount deposited during investigation remain deposit only.
  
- While drafting this part, we should clearly decide as to who is the adjudicating authority (designation-wise, not name-wise) for the SCN and it should be mentioned in the SCN. Office address of adjudicating authority should be mentioned in this Para. Further, from the reading of this Para, it should appear as an allegation, rather than definite conclusion; in other words, it should start with “ From the foregoing, it appears that ...”}
- Quantification of demand and basis (in the form of documents /balance sheets etc.) on which it has been worked out, should be explained in the SCN]. Any document such as Bill of Entry, Shipping Bills, Copy of Contract, Invoices, Private records, Balance Sheet/ or documents/email etc. recovered from computer/ during search proceeding, which may form basis of calculation of duty/tax demanded, should be made RUD to the SCN.

**Part VIII: Three Standard Paragraphs which are Integral Part of Every SCN.**

This part consists of three Standard Paragraphs, which are common to all SCNs. In these paragraphs, following aspects are discussed: –

- Asking noticee to furnish written submission within a period of 30 days of the receipt of SCN.
- Informing him that in case of failure to submit reply within prescribed period, the SCN will be decided Ex-parte.
- Asking him to submit documents/evidence in support of his contention/ defence.
- Asking him to indicate in writing as to whether he/she want personal hearing.
- Mentioning that the present show cause notice is without prejudice to any other action, which may be taken under the same Act or any other Act for the time being in force.
- If there is any exception/limitation, the same can be mentioned in this paragraph. This is must where part SCN is being issued.

**Part IX: List of Relied upon Documents (RUDs) and to enclose legible copies of RUDs.**

- The RUDs should be numbered serially (starting from 1 till last number). Each RUD should be given a specific number (as RUD-1, or RUD-2 etc.) and its position in the complete set of RUDs (by way of page number(s)) should also be mentioned.
- The copy of documents enclosed should be legible. While listing any document as RUD, the complete document should be enclosed rather than enclosing some specific pages (which are relevant for the investigation) of the documents in question. Sometime, officer encloses only relevant pages of agreement/ contract/ balance sheet etc., which is a wrong practice.
- When a statement recorded has been made RUD to the SCN, then, if any evidence, recovered/obtained during investigation has been shown to the person at the time of recording of his statement and got signed from him in token of having seen and perused the documents, then such documents /evidence should also be treated as an integral part of the statement.
- Since only xerox copy of RUDs is given to the noticee along with SCN, an option should be given to the noticee to inspect original RUDs during official working hours of any working day. In case, the noticee choose to inspect the original documents, a record of this exercise should be kept in the file and signature of the noticee having seen the original and convinced himself should be taken.

### **Part X: Determination of Noticees**

Care should be taken to mention all noticees to whom the notice is to be served. The name and address of each noticee should be clearly and correctly mentioned. Sometime, despite the role of person been discussed in the SCN, he is not made noticee to the Show Cause notice. Such lapses should be avoided. Similarly, it should be noted that the company and individual are different and both should be made separate noticees (except in the case of proprietary concern).

### **Part XI: Return of non-RUDs or seized computer if not required for further investigation or criminal proceedings.**

The non-RUDs or seized computer should be returned to the person from whom such documents /computer were recovered. If possible, in the SCN itself, the concerned noticee may be given opportunity to take back non-RUDs/ computer etc. Further, evidence indicating returns of non-RUDs/Computer should be kept in file and if possible, also be supplied to adjudicating authority while forwarding SCN along with RUDs for adjudication.

### **Service of Show Cause Notice**

It is important to be aware and comply with statutory provisions contained in section 153 of the Customs Act, 1962 or Section 37 C of the Central Excise Act, 1944 (made applicable to Service tax also vide Section 83 of the Finance Act, 1994), which provide for service of decision, orders, summons or notice etc.

Make sure that SCN is delivered to the noticee before the last date for issuance of SCN, which include delivery of SCN to the party. Further, the evidence proving service or delivery of SCN to the noticee may be kept in file from which SCN has been issued and a copy of such evidence may also be given to the Adjudicating authority while forwarding the SCN along with RUDs for adjudication.

### **Other important thing to be kept in mind while issuing SCN**

- 3.1 SCN to be issued with approval of the authority, who is competent to adjudicate the same.
- 3.2 To decide the level of adjudicating authority i.e. superintendent/AC/DC/JC / ADC /Commissioner, departmental instructions/Circular laying down monetary limits for adjudicating authorities may be seen carefully.
- 3.3 Whether extended period of limitation is being invoked or not ? If extended period of limitation has been invoked, grounds for invoking extended period of limitation should be clearly mentioned /explained in the SCN.
- 3.4 What is the last date of issuance of SCN? It should be clearly indicated in the file being sent for approval of draft SCN.
- 3.5 Where investigation in a case also involves violation of other allied laws which are administered by other departments, a copy of SCN along with RUDs should be endorsed /sent to the concerned department (s) also for further necessary and appropriate action by that department.
- 3.6 Also examine as to whether the case is fit for being referred to REIC (Regional Economic Intelligence Council). If the case also involves serious violation of

other tax laws such as income tax or sale tax or it involves criminal act such as preparing forged documents (punishable under Indian Penal Code) aimed at causing serious loss of government revenue/money, which may be of interest to CBI/police, then it may be shared with the concerned department at the platform of REIC.

- 3.7 Whether the case is fit enough for launching criminal proceeding without waiting for adjudication of SCN. If so, then proceed further to launch prosecution against the offenders.
- 3.8 Whether the case is fit for taking deterrent action in case of Central Excise duty evasion, then proposal may be sent to jurisdictional Chief Commissioner for initiation of deterrent action against the alleged offender. It should be done within a period of one month from the date of initiation of investigation. [For details, Ebook on concept of deterrent action under Central Excise law may be referred].

4. ***Checklist for the SCNs***

- 4.1 Whether noticee's name, Central Excise Registration No./ Service Tax Registration No. / IEC No in case of import/export has been mentioned along with complete address.
- 4.2 Whether noticee is a manufacturer/dealer/service provider/service receiver /importer/ exporter/ warehouse owner/EOU/SEZ units, has been mentioned in the SCN.
- 4.3 Whether noticee is proprietary concern/private limited/ public limited/body corporate etc. has been mentioned or not.
- 4.4 Whether primary activity of the noticee mentioned. For example, in case of manufacturer, kind of goods manufactured or not etc.
- 4.5 Whether gist of intelligence/information resulting in further inquiry/ investigation has been mentioned in the SCN or not.
- 4.6 Whether grounds for invoking extended period of limitation has been clearly explained in the SCN.
- 4.7 Whether quantification of duty being demanded has been explained in an unambiguous manner. The documents on which such duty calculation is based, is also clearly mentioned in the SCN and whether or not, the same has been made RUD to the SCN.
- 4.8 Whether list of RUDs along with description of each RUD and page nos. at which it is placed, is enclosed with SCN.
- 4.9 Whether RUDs are legible and properly photocopied or not.
- 4.10 Whether SCN has been approved by the Adjudicating authority who is competent to decide the same.
- 4.11 Whether Non-RUDs have been returned or not. If not, then the same should be returned at the earliest after issuance of SCN.

The list of checks given above is only illustrative, not exhaustive.

5. ***Other Essential Checks to be done while putting up the SCN for Approval or /while approving the SCN.***

- 5.1 Often it is said that issuance of poor quality SCN by the field formations is the reasons for department losing the large number of cases before

Commissioner (appeals)/ Tribunal. Before any draft SCN is put up to senior officer for approval or while senior officer is approving the Draft SCN, it may be re-checked in the light of the following points. This will not only improve the quality of SCN but also eliminate any possibility of SCN being set aside on flimsy grounds. This document has been prepared with an objective of helping field officers to issue better quality SCNs.

A. Examination on following of Principles of natural justice

**5.2** All adjudicating authorities including quasi-judicial authorities are required to follow the principles of natural justice. The following are the principles of natural justice:-

- (i) No one can be judge in his own cause.
- (ii) Nobody should be condemned unheard.

**5.3** In the light of above basic principles, the following checks may be done on the SCN to see whether there are any violations of principle of natural justice:

- Whether adjudicating authority was associated with the case in capacity other than supervisory role. In other words, if adjudicating authority has recorded Panchnama, or statement etc. then he cannot be the adjudicating authority simultaneously on ground of personal bias. This is necessary to remove any element of bias.
- Also see that the person, who has been alleged to have committed any offence under Customs Act/Central Excise Act/Finance Act,1994, was given any opportunity to give his side of explanation to the allegations.
- Whether all the documents /evidence submitted by the noticee in his defence have been taken on record or not. If not, then also bias can be alleged.
- There should not be anything in the SCN, which can give opportunity to the noticee to allege “personal bias” against him. Otherwise, such lapses may result in SCN getting set aside on ground of investigating authority being “bias and subjective”, rather than being objective.

B. Non-availability / Loss of documents/loss of computer seized by the investigating authority

**5.4** During investigations, lot of documents, computers etc. are seized by the investigating officers. Out of document recovered and seized, some documents are relied upon for supporting allegations made out in the SCN. The documents which have not relied upon, should be returned to the party from whom these documents have been recovered. The SCN may get vitiated in the following circumstances:-

- (i) Any of the documents seized and not relied upon, has not been returned to the person from whom it had been seized.
- (ii) Any documents, which has been seized, has gone missing on account of misplacement of file etc. If this happens, then the noticee can ask for

returns of the same on the ground that it contains the information which is necessary for preparing his defence to the SCN.

(iii) if any documents has been recovered from seized computer and being used as evidence against the noticee, then make sure that necessary procedure to maintain evidentiary value of documents recovered from the computer is followed. Any failure to follow the prescribed procedure may vitiate the evidentiary value of such crucial evidences and in turn, also weaken the SCN.

C. Close Examination of Statement/ Panchnama

**5.5** Under the law, the statement has to be recorded before the Gazetted officer.

- Make sure that the statements, recorded during investigation and being relied upon, have been duly signed by the officer, who has recorded statement and his name should also appear below his signature. If any statement is not signed by the Gazetted officer, the same is not a valid statement and has no value in the eye of law. Any admission of the alleged offender contained in such statement may be of little or no use for the adjudicating authority.
- Make sure that the witnesses present during search are independent witnesses. If the witnesses are not independent witnesses, then the Panchnama proceedings can be questioned during adjudication proceedings and get vitiated. • At times, the main portion of statement relied upon in the SCN (included in the body of SCN) do not match with the actual statement given. At times, the officers draw their own conclusion while drafting the SCN.
- See whether the statement recorded could be interpreted differently than the interpretation of the Department and avoid any such chances of same being interpreted in multiple ways by being careful while recording the statement.

D. Evaluation of Evidences Relied Upon by the Department.

**5.6** Case should be based on evidences which have been obtained in a legal manner or recovered from the noticee or his computer. Further, explanation of the noticee to these evidences should be obtained during investigation.

- Make sure that all evidences which the department has relied upon in the SCN have been obtained in a legal manner.
  - While issuing SCN in case of undervaluation of imported goods, the valuation rules should be followed sequentially after rejection of declared value under Rule 12 of the Valuation Rules.
  - At times, if the evidence relied upon by the Department in the SCN has not been legally obtained, then the same could be questioned by the noticee and has no or considerably low evidentiary value in the eye of law. For



example, the documents obtained from overseas customs without cover of any Mutual Assistance Agreement has no or low evidentiary value.

- If the case is based on incriminating statements of some persons, then these persons may get invariably be cross-examined during adjudication proceeding. But this cannot be done in appellate proceedings. Therefore, the case should not be based on mere statements only, but based on evidences. Number of statements, if possible, should be kept at minimum while maximizing evidences.

E. Jurisdiction of the SCN Issuing Authority

5.7 Make sure that the officer, who is issuing SCN, has jurisdiction to issue SCN. If not, then SCN can be questioned on the ground of jurisdiction also.

F. Time Barred SCN

5.8 In cases, where extended period is invoked, the following need to be carefully considered:-

- If it is case of invocation of extended period, then see whether it is case of allegation of fraud, suppression of facts or mis-statement or contravention with intention to evade the duty. The SCN should be specific with regard to nature of allegation and free from any vagueness in allegations. This is necessary to eliminate any possibility of challenge of invocation of extended period. Evaluation of evidences relied upon by the Department also needs to be carefully seen and it should be ensured that there is no ground for questioning the admissibility of such evidences.
- Sometimes, the department uses only some of the evidences. The documents which do not support department's case, particularly allegation of suppression of facts, but still on record, are not used as RUD. Eliminate such possibility if any by bringing such documents on record but countering any inference in the SCN itself, which can be drawn from such documents.
- Make sure that the SCN is not questioned on ground of non-delivery or nonservice of SCN. Law provides certain mechanism for delivery of SCN, make sure to follow the same and keep evidence of delivery of SCN in the file.

G. Quantification of demand

5.9 With regard to duty/tax being demanded from the noticee, the following may be considered:-

- Make sure that the quantification of demands has been done correctly and is based on proper documents. Documents relied upon for such calculations should be made RUDs.
- Also make sure that source of such documents should be authentic and reliability of such documents could not be questioned by the noticee.

H. Charging para of the SCN.

5.10 The Charging paragraph of the SCN should be carefully drafted and correct provisions of the law are mentioned therein. Carefully see as to what has been mentioned in the Charging paragraph. Charging paragraph defines the limit of the SCN. Adjudicating authority cannot go beyond the charging paragraph.

I. Definitive conclusion drawn by the Department in the SCN

5.11 Make sure that the language of the SCN should not indicate that definite conclusion has been drawn by the Department in the SCN by using the word such as it is clear case of evasion of duty / it is evident that noticee has evaded the duty. Use of such words indicates that department has already drawn conclusion and there is nothing left for the adjudicating authority. Such SCN can be set aside on this ground alone.

J. Burden of Proof

13. Make sure that burden of proof has been discharged by the Department. While in most of the cases it is on the department, but depending on the evidence produced by the Department such as documents recovered from the noticee etc., then in such cases, burden of proof can be shifted onto the noticee. Burden to prove to explain any documents recovered from the noticee or produced by the noticee is on the noticee, not on the department.

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**Circular No.1079/03/2021-CX F.No.116/13/2020-CX-3**

Government of India  
Ministry of Finance Department of Revenue,  
Central Board of Indirect Taxes and Customs,  
New Delhi, Dated 11th November, 2021

To (All). Sir/Madam,

**Subject: - Clarification in respect of the Master Circular No. 1053/02/2017- CX dated 10.03.2017-reg.**

As a trade-facilitation measure, a concept of pre-show cause notice consultation in Central Excise and Service Tax was introduced vide Board's instruction dated 21.12.2015, 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)".

2. Para 5.0 of the Master Circular No. 1053/02/2017-CX dated 10.03.2017 merely reiterates the principle of pre-show cause notice consultation enunciated vide aforementioned Instruction dated 21.12.2015. Further, vide Circular No.1076/02/2020-CX dated 19.11.2020, 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.50Lakhs (except for preventive/offence related SCNs) is mandatory & shall be done by the Show cause notice issuing authority".

3. 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 21.12.2015 or otherwise.
4. In this regard, it is hereby clarified that exclusion from pre-show cause notice consultation is case-specific and not formation specific.
5. 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.
6. Trade, industry and field formations may be suitably informed.
7. Difficulty, if any, in the implementation of this Circular may be brought to the notice of the Board. 8. Hindi version will follow.

*(Varun Kumar Singh) Under Secretary -CX.8*

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GOVERNMENT OF INDIA : MINISTRY OF FINANCE

DEPARTMENT OF REVENUE

(CENTRAL BOARD OF EXCISE AND CUSTOMS)

New Delhi, the 9<sup>th</sup> June, 2017, 19 Jyaishta, 1939 Saka

Notification No. 14 /2017-Central Excise ( N.T )

G.S.R (E).-In exercise of the powers conferred by section 37A of the Central Excise Act, 1944 (1 of 1944) read with section 83 of the Finance Act, 1994 ( 32 of 1994) and in supersession of the notifications of the Government of India in the Ministry of Finance, Department of Revenue, Central Board of Excise and Customs vide numbers 11/2007Central Excise (N. T), dated the 1<sup>st</sup> March, 2007, 16/2007-Service Tax, dated the 19<sup>th</sup> April, 2007 and 6/2009-Service Tax, dated the 30<sup>th</sup> January, 2009, published in the Gazette of India Extraordinary vide numbers G.S.R 151 (E) dated the 1<sup>st</sup> March, 2007, G.S.R 303 (E) dated the 19<sup>th</sup> April, 2007 and G.S.R 60 (E) dated the 30<sup>th</sup> January, 2009, respectively, except as respects things done or omitted to be done before such supersession, the Central Government hereby directs that the powers exercisable by the Central Board of Excise and Customs under rule 3 of the Central Excise Rules, 2002 and rule 3 of the Service Tax Rules, 1994, may be exercised by-

- a) the Principal Chief Commissioner of Central Excise and Service Tax; or
- b) the Chief Commissioner of Central Excise and Service Tax, for the purpose of assignment of adjudication of notices to show case issued under the Act under the provisions of the Central Excise Act, 1944 (1 of 1944) or the Finance Act 1994 (32 of 1994), to the Central Excise Officers subordinate to them.

2. This notification shall come into force on a date to be notified by the Central Government in the Official Gazette.

[F.NO. 137/17/2017-Service Tax]

Dr. Sreeparvathy S.L.

Under Secretary to the Government of India

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## CASE LAWS (only for academic reference)

1. The Hon'ble Supreme Court in their Order dated 22.11.2002 in the case of Metal Forgings Vs Union of India reported in 2002 (146) E.L.T. 241(SC) (2 Judge bench) has held that the Show Cause Notice is a mandatory requirement for raising demand.

**Hon'ble** Apex Court's in the case of M/s Cosmic Dye Chemical Vs Collector of Cen. Excise, Bombay [1995 (75) E.L.T. 721 (S.C.)], has laid the law on the subject very clearly.

The same is reproduced below for ease of reference.

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

2. Mis-statement or suppression of fact must be willful.

The first and foremost principle is what is commonly known as **audi alteram partem** rule. It says that no one should be condemned unheard. The Show Cause Notice is the first limb of this principle. It must be precise and unambiguous. It should appraise the party determinatively the case he has to meet. The order should not travel beyond the SCN. However, if a new ground is required to be considered, the same could be done by way of putting the party to notice subject to law of limitation. [**SURESH SYNTHETICS 2007 (216) E.L.T. 662 (S.C.)**].

Further, time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him.

3. Case laws relied upon by the noticee in his defence should be carefully gone through.

Each order of the High Court and Supreme Court, inter alia, has two important portion–

- (i) *obiter dictum (plural- obiter dicta) –it is by way of observation and it is not an issue under consideration of the court; and*
- (ii) *ratio decidendi- ratio laid down by the court.*

Judgement delivered by Hon'ble Supreme Court is of the highest precedence as it becomes law of the land. If, under any circumstances, the Hon'ble Apex Court reverts its own judgement, then the lordships discuss the earlier judgement and also give reasons for reverting the earlier Judgement and more often, the orders are reverted by larger bench. In that case, the last Judgement becomes the law.

Proper Officer (not below the rank of Joint Commissioner) must have reason to believe before authorizing any action of Search & Seizure and Inspection as well. The phrase 'Reason to believe' is not defined under the GST law. The phrase 'reason to believe' is defined in Section 26 of the Indian Penal Code, 1860 as under:

4. "A person is said to have "reason to believe" a thing, if he has sufficient cause to believe that thing but not otherwise".

*BELIEF MAY BE SUBJECTIVE BUT REASON IS OBJECTIVE: - [GANGA PRASAD MAHESHWARI VS. CIT].*

HON'BLE M.P HIGH COURT RECENTLY IN JAGDISH ARORA VS DGGI, INTERPRETING THE 'REASON TO BELIEVE' WHILE HEARING THE BAIL PLEA IN AN ARREST CASE.

"Reason to believe" is a common feature in taxing statutes. it has been considered to be the most salutary safeguard on the exercise of power by the officer concerned.

It is made of two words "reason" and "to believe".

*\*\* The word "reason" means cause or justification and the word "believe" means to accept as true or to have faith in it.*

Before the officer has faith or accepts a fact to exist there must be a justification for it. the belief may not be open to scrutiny as it is the final conclusion arrived at by the officer concerned, as a result of mental exercise made by him on the information received.

But, the reason due to which the decision is reached can always be examined. When it is said that reason to believe is not open to scrutiny what is meant is that the satisfaction arrived at by the officer concerned is immune from challenge but where the satisfaction is not based on any material or it cannot withstand the test of reason, which is an integral part of it, then it falls through and the court is empowered to strike it down.

THE TERM 'BURDEN OF PROOF' MEANS WHEN A PERSON STATES SOMETHING AND CONSIDERS IT TO BE FACT WHICH HE NEEDS TO PROVE. THIS IS AN IMPORTANT CONCEPT INTEGRATED IN THE INDIAN EVIDENCE ACT, 1872.

Burden of proof is a legal standard that determines if a legal claim is valid or invalid based on the evidence produced. the burden of proof requirement is designed to ensure that legal decisions are made based on facts rather than conjecture.

The main principle is that a person who claims reliefs or any such orders or judgement from court, the burden of proof falls on that person unless the law specifically requires the other person to prove the fact's existence or lead evidence. A person is deemed to be innocent until he is proven guilty by the court. therefore, it is upon the plaintiff to prove that the person has committed the offense.

The party initiating a case or lawsuit must support its claims with facts and evidence. There are three levels of the burden of proof that determine the amount of evidence required for a claim to be successful. these include "preponderance of the evidence," "clear and convincing," and "beyond a reasonable doubt.

The H'Bombay High Court in the case of Phoenix Mill Ltd. vs. Union of India has lucidly explained the difference between the two in the following words:-

‘THERE IS ESSENTIAL DISTINCTION BETWEEN BURDEN OF PROOF AND ONUS OF PROOF.

THE BURDEN OF PROOF LIES UPON THE PERSON WHO HAS TO PROVE A FACT AND IT NEVER SHIFTS. HOWEVER, THE ONUS OF PROOF SHIFTS. ONUS MEANS A DUTY OF ADDUCING EVIDENCE.

The term burden of proof used in Section 155 of CGSTA'17, in the circumstances narrated above, is required to be interpreted to mean onus of proof. It would shift to the departmental officials, if no data or improper or insufficient data is available.

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HON'BLE SUPREME COURT DIRECTIVES REGARDING RIGHTS OF AN ARRESTEE:

**THE HON'BLE SUPREME COURT OF INDIA IN THEIR JUDGMENT DATED 18.12.1996, IN THE CASE OF SHRI D.K BASU V. STATE OF WEST BENGAL IN W.P. (CRL) NO. 539 OF 1986 WITH W.P (CRL)592 OF 1987 IN THE CASE OF ASHOK K. JOHRI V. STATE OF U.P33 STIPULATED THE FOLLOWING REQUIREMENTS TO BE OBSERVED BY THE OFFICERS OF THE CUSTOMS & CENTRAL EXCISE AND DRI IN ALL CASES OF ARREST/DETENTION.**

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When specific goods can be used for different purposes the end use of the input becomes the main source to classify the said input. The Hon'ble Supreme Court in **Commissioner of Customs Vs Hongo India Pvt Ltd (2013)**, held that classification was based on the predominant use of the goods and not on the technical specification.

Also, in the case of **Atul Ltd Vs Commissioner of Central Excise (2005)**, the Hon'ble Supreme Court held that the classification should be based on the essential character of the goods and their use in the manufacturing process.

**Hon'ble Supreme Court in case of Collector of C. Ex., Vadodara v Dhiren Chemical Industries 2002 (139) E.L.T. 3 (S.C.)** held that regardless of the interpretation that of the Court, if there are circulars which have been issued by the CBIC which place a different interpretation upon the said phrase, then that interpretation will be binding upon the Revenue.

The Hon'ble Supreme Court in the case of **GoI vs Indian Tobacco Association**, held that doctrine of fairness is relevant factor while construing a statute to be given retrospective operation.

**Union of India Vs Dharamendra Textile processors**, it was held that :

*“33. This Court in a catena of decisions has held that mensrea is not an essential element for imposing penalty for breach of civil obligations”.*

**In UoI vs West Cost Paper Mills [2004 (164) ELT 375.S.C]** it was held that once an appeal is filed before this Court and the same is entertained, the judgment if the High Court or the Tribunal is in jeopardy. The subject matter of the lis unless determined by the last Court, cannot be said to have attained finality.

**Commr (Cus) Import vs Dilip Kumar & Co [2018.361.ELT.577 S.C]** : the words in a statutory exemption notification should be strictly followed.

Burden on appellant to prove satisfaction of notification conditions : **Hotel Leela Venture [2009(234) ELT. 389 .S.C].**

Relevant date for issue of show cause notice is the date when the department came to know of the facts of the case and time period to be computed from then : **CCE, Visakhapatnam Vs Mehta & Co [2011 (264) ELT 481. S.C].**

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## 47<sup>TH</sup> GST COUNCIL DECISION

**Agenda item 3(iii): Authority to issue recurring SCN in case of an enforcement action initiated by the central authorities against a taxpayer assigned to state and vice versa**

7.4 The Principal Commissioner. GST Policy wing informed that references had been received regarding diverse practices in the field on the issuance of recurring show cause notices (SCNs) arising out of investigation initiated and finalized by central tax authorities against taxpayers under state administration and vice versa. due to cross-empowerment, an enforcement action against a taxpayer assigned to state tax authorities can be initiated by the central tax authorities and vice versa.

**7.5 THE LAW COMMITTEE RECOMMENDED THAT ALL CONSEQUENTIAL ACTION RELATING TO SUCH CASES LIKE APPEAL, REVIEW, ADJUDICATION, RECTIFICATION AND REVISION WOULD LIE WITH THE AUTHORITY WHICH HAD INITIATED THE ENFORCEMENT ACTION. HOWEVER, THE REFUND ARISING OUT OF SUCH CASES MAY BE GRANTED ONLY BY THE JURISDICTIONAL TAX AUTHORITY.**

7.6 Further, the Law committee recommended that the recurring show cause notices in such cases may be issued by the concerned jurisdictional tax authority.

- **The council agreed to the proposal of the law committee. it was also recommended that the decision may be communicated to all states, either through a circular or a communication from the GST Council secretariat.**

## LEGAL DOCTRINE

Legal doctrine is a framework, set of rules, procedural steps, or test, often established through precedent in the common law, through which judgments can be determined in a given legal case.

\*DOCTRINE OF MERGER: The doctrine of merger is a legal principle that addresses the relationship between an original order or decision and a subsequent one. According to this doctrine, once a decision is made at a lower level, and an appeal is filed against it leading to a higher authority's decision, the lower decision is said to be merged into the higher one. In other words, the lower order loses its independent existence and becomes a part of the higher decision.

\*DOCTRINE OF ESTOPPEL: The doctrine of estoppel is a legal principle that prevents a person from asserting a fact or a right that is contrary to their previous statements or conduct. Estoppel is based on the idea that a party should be prevented from going back on its previous representations if another party has reasonably relied on those representations to their detriment.

\*DOCTRINE OF HARMONIOUS CONSTRUCTION : The term harmonious construction refers to such construction by which harmony or oneness amongst various provisions of an enactment is arrived at. When the words of statutory provision bear more than one meaning and there is a doubt as to which meaning should prevail, their interpretation should be in a way that each has a separate effect and neither is redundant or nullified. The Doctrine of Harmonious construction originated through interpretations given by courts in a number of cases. The evolution of the doctrine can be traced back to the very first amendment made in the Constitution of India with the landmark judgment of Shankari Prasad v. Union of India.

In the landmark case of **CIT v. Hindustan Bulk Carriers (2003)** the Supreme Court laid down five principles of rule of harmonious construction:

- The courts must avoid a head-on clash of seemingly contradicting provisions and they must construe the contradictory provisions.
- The provision of one section cannot be used to defeat the provision contained in another unless the court, despite all its efforts, is unable to find a way to reconcile their differences
- When it is impossible to completely reconcile the differences in contradictory provisions, the courts must interpret them in such a way so that effect is given to both the provisions as much as possible.
- Courts must also keep in mind that interpretation that reduces one provision to useless number or death is not harmonious construction.
- To harmonize is not to destroy any statutory provision or to render it fruitless.

\*\*In **East India hotels ltd. V. Union of India (2001)**, it was held that an Act is to be read as a whole, the different provisions have to be harmonized and the effect to be given to all of them.

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## SOME LEGAL TERMS

Audi Alterem Partem	<i>No man shall be condemned unheard.</i>
Ejusdem Generis	<i>Of the same class, or kind.</i>
Locus Standi	<i>The right of a party to appear and be heard before a court</i>
Noscitur a Sociis	<i>The meaning of a doubtful word may be ascertained by reference to the meaning of words associated with it.</i>
Obiter Dicta	<i>Remarks of a judge which are not necessary to reaching a decision, but are made as comments, illustrations or thoughts.</i>
Pari Materia	<i>Of the same matter; on the same subject.</i>
Res Integra	<i>An entire thing; an entirely new or untouched matter.</i>
Res Judicata	<i>A thing adjudged.</i>

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**\*\*\* For Clarification with regard to applicability of provisions of section 75(2) of Central Goods Services Tax Act, 2017 and its effect on limitation, Please refer Circular No. 185/17/2022-GST : F. No. CBIC-20001/2/2022 - GST : Government of India : Ministry of Finance Department of Revenue : Central Board of Indirect Taxes and Customs : GST Policy Wing : New Delhi, Dated the 27<sup>th</sup> December, 2022 for**

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**\*\*\* F.No. CBIC-20001/2/2022-GST : Government of India : Ministry of Finance  
: Department of Revenue : Central Board of Indirect Taxes and Customs :  
GST Policy Wing : New Delhi, Dated the 6<sup>th</sup> July, 2022**

**Sub: Clarification on various issues relating to applicability of demand and penalty provisions under the Central Goods and Services Tax Act, 2017 in respect of transactions involving fake invoices .**

...

A number of cases have come to notice where the registered persons are found to be involved in issuing tax invoice, without actual supply of goods or services or both (hereinafter referred to as “fake invoices”), in order to enable the recipients of such invoices to avail and utilize input tax credit (hereinafter referred to as “ITC”) fraudulently. Representations are being received from the trade as well as the field formations seeking clarification on the issues relating to applicability of demand and penalty provisions under the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”), in respect of such transactions involving fake invoices. In order to clarify these issues and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the CGST Act, hereby clarifies the issues detailed hereunder.

Sl. No.	Issues	Clarification
1.	In case where a registered person “A” has issued tax invoice to another registered person “B” without any underlying supply of goods or services or both, whether such transaction will be covered as “supply” under section 7 of CGST Act and <i>whether any demand and recovery can be made from ‘A’ in respect of the said transaction under</i>	Since there is only been an issuance of tax invoice by the registered person ‘A’ to registered person ‘B’ without the underlying supply of goods or services or both, therefore, such an activity does not satisfy the criteria of “supply”, as defined under section 7 of the CGST Act. As there is no supply by ‘A’ to ‘B’ in respect of such tax invoice in terms of the provisions of section 7 of CGST Act, no tax liability arises against ‘A’ for the said transaction, and accordingly, no demand and recovery is required to be made against ‘A’
	the provisions of section 73 or section 74 of CGST Act. Also, <i>whether any penal action can be taken against registered person ‘A’ in such cases.</i>	under the provisions of section 73 or section 74 of CGST Act in respect of the same. Besides, no penal action under the provisions of section 73 or section 74 is required to be taken against ‘A’ in respect of the said transaction. The registered person ‘A’ shall, however, be <u>liable for penal action under section 122 (1)(ii)</u> of the CGST Act for issuing tax invoices without actual supply of goods or services or both.

<p>2.</p>	<p>A registered person “A” has issued tax invoice to another registered person “B” without any underlying supply of goods or services or both. ‘B’ avails input tax credit on the basis of the said tax invoice. B further issues invoice along with underlying supply of goods or services or both to his buyers and utilizes ITC availed on the basis of the above mentioned invoices issued by ‘A’, for payment of his tax liability in respect of his said outward supplies. <i>Whether ‘B’ will be liable for the demand and recovery of the said ITC, along with penal action, under the provisions of section 73 or section 74 or any other provisions of the CGST Act.</i></p>	<p>Since the registered person ‘B’ has availed and utilized fraudulent ITC on the basis of the said tax invoice, without receiving the goods or services or both, in contravention of the provisions of section 16(2)(b) of CGST Act, he shall be liable for the demand and recovery of the said ITC, along with penal action, under the provisions of section 74 of the CGST Act, along with applicable interest under provisions of section 50 of the said Act. Further, as per provisions of section 75(13) of CGST Act, if penal action for fraudulent availment or utilization of ITC is taken against ‘B’ under section 74 of CGST Act, no penalty for the same act, i.e. for the said fraudulent availment or utilization of ITC, can be imposed on ‘B’ under any other provisions of CGST Act, including under section 122.</p>
<p>3.</p>	<p>A registered person ‘A’ has issued tax invoice to another registered person ‘B’ without any underlying supply of goods or services or both. ‘B’ avails input tax credit on the basis of the said tax invoice and further passes on the said input tax credit to another registered person ‘C’ by issuing invoices without underlying supply of goods or services or both. <i>Whether ‘B’ will be liable for the demand and recovery and penal action, under the provisions of section 73 or section 74 or any other provisions of the CGST Act.</i></p>	<p>In this case, the input tax credit availed by ‘B’ in his electronic credit ledger on the basis of tax invoice issued by ‘A’, without actual receipt of goods or services or both, has been utilized by ‘B’ for passing on of input tax credit by issuing tax invoice to ‘C’ without any underlying supply of goods or services or both. As there was no supply of goods or services or both by ‘B’ to ‘C’ in respect of the said transaction, no tax was required to be paid by ‘B’ in respect of the same. <i>The input tax credit availed by ‘B’ in his electronic credit ledger on the basis of tax invoice issued by ‘A’, without actual receipt of goods or services or both, is ineligible in terms of section 16 (2)(b) of the CGST Act. In this case, there was no supply of goods or services or both by ‘B’ to ‘C’ in respect of the said transaction and also no tax was required to be paid in respect of the said transaction.</i> Therefore, in these specific cases, no demand and recovery of either input tax credit wrongly/ fraudulently availed by ‘B’ in such case or tax liability in respect of the said outward transaction by ‘B’ to ‘C’ is</p>

		<p>required to be made from 'B' under the provisions of section 73 or section 74 of CGST Act.</p> <p>However, in such cases, 'B' shall be liable for penal action both under section 122(1)(ii) and section 122(1)(vii) of the CGST Act, for issuing invoices without any actual supply of goods and/or services as also for taking/ utilizing input tax credit without actual receipt of goods and/or services.</p>
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2. The fundamental principles that have been delineated in the above scenarios may be adopted to decide the nature of demand and penal action to be taken against a person for such unscrupulous activity. Actual action to be taken against a person will depend upon the specific facts and circumstances of the case which may involve complex mixture of above scenarios or even may not be covered by any of the above scenarios. Any person who has retained the benefit of transactions specified under sub-section (1A) of section 122 of CGST Act, and at whose instance such transactions are conducted, shall also be liable for penal action under the provisions of the said sub-section. It may also be noted that in such cases of wrongful/ fraudulent availment or utilization of input tax credit, or in cases of issuance of invoices without supply of goods or services or both, leading to wrongful availment or utilization of input tax credit or refund of tax, provisions of section 132 of the CGST Act may also be invocable, subject to conditions specified therein, based on facts and circumstances of each case. ....

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## **CROSS- EXAMINATION**

\*\* The Hon'ble High Court of Telangana, in its judgment dated 06-11-2020 in the case of Mr. Mohammed Muzzamil and Another vs. The CBIC in WP.No.18081 of 2020, on the basis of several judgment of the Hon'ble Supreme Court, has held as follows:

*“Thus, there is no doubt that where a plea of violation of principles of natural justice by denying a party an opportunity to cross examine witnesses is raised in proceedings under the Customs Act,1962 or similar legislation, the question of prejudice suffered to such party by such denial has to be gone into. If there is no prejudice caused by such denial, no relief can be granted to him.*

From the contents of the Hon'ble Supreme Court's judgments referred to and relied upon in the said judgment of High Court, it may be seen that denial of opportunity for Cross Examination has been upheld. Some of these judgments are given herein below: -

a) The Hon'ble Supreme Court, in the case of Surjeet Singh Chhabra vs Union of India (Judgment dated 25/10/1996) has held that:

*“The Customs officials are not police officers. The confession, though retracted, is an admission and binds the petitioner. So, there is no need to call panch witnesses for examination and crossexamination by the petitioner.”*

b) The Hon'ble High Court of Telangana in the same judgment, has vide paragraph 33 has held that :

*“in cases where there is a confession”, denial of Cross Examination is justified.*

c) The Hon'ble High Court of Telangana in the same judgment, has vide paragraph 34, has observed that the Hon'ble Supreme Court, in the case of M/s Telestar Travels Pvt. Ltd. v Special Director of Enforcement has held that :

*“cross-examination of witnesses would make no material difference and failure to permit the party to cross-examine cannot be said to have caused any prejudice calling for reversal of the orders impugned by directing a Denovo enquiry into the matter”.*

## TIME LINES OF GST ADJUDICATION

F.Y/Tax Period	Annual Return filing Due Date	SCN u/s 73 to be issued before*	Order u/s 73 to be issued before*	SCN u/s 74 to be issued before*	Order u/s 74 to be issued before*
<b>2017-18</b>	05/07.02.2020	<b>30.09.2023</b>	<b>31.12.2023</b>	03.08.2024	04.02.2025
2018-19	31.12.2020	31.01.2024	30.04.2024	29.06.2025	30.12.2025
2019-20	31.03.2021	31.05.2024	30.08.2024	29.09.2025	30.03.2026
2020-21	28.02.2022	26.11.2024	27.02.2025	26.08.2026	27.02.2027
2021-22	31.12.2022	30.09.2025	30.12.2025	30.06.2027	30.12.2027
2022-23	31.12.2023	30.09.2026	30.12.2026	30.06.2028	30.12.2028
2023-24	31.12.2024	30.09.2027	30.12.2027	30.06.2029	30.12.2029
2024-25* Proposed FB 2024	31.12.2025	30.06.2029 *New Section 74A	30.06.2030 / Extendable 30.12.2030	30.06.2029 *New Section 74A	30.06.2030 / Extendable 30.12.2030

**NOTE: CGST Section 76 : NO TIME LIMIT for SCN but ORDER to be PASSED within ONE year of SCN date.**



## **PROCESS FLOW IN ADJUDICATION MODULE**

**SCREEN SHOTS OF NEW GSTN BO**

**[Determination of Tax]**

## DEMAND CREATION

Dashboard / View DCR English

### DEMAND AND COLLECTION REGISTER (DCR)

**Demand belonging to the Financial Year\***

Or

**Demand created in the Financial Year\***

**Period From**

**To**

**Headquarter**

**Earlier Laws/GST Law**

**Type of Demand**

[Advanced Search](#)

The GST has subsumed the following taxes which were levied and collected by the Centre:  
 a. Central Excise duty  
 b. Duties of Excise (Medicinal and Toilet Preparations)  
 c. Additional Duties of Excise (Goods of Special Importance)  
 d. Additional Duties of Excise (Textiles and Textile Products)  
 e. Additional Duties of Customs (commonly known as CVD)  
 f. Special Additional Duty of Customs (SAD)  
 g. Service Tax  
 h. Central Surcharges and Cesses so far as they relate to supply of goods and services

State taxes that have been subsumed under the GST are given below:  
 a. State VAT  
 b. Central Sales Tax  
 c. Luxury Tax  
 d. Entry Tax (all forms)  
 e. Entertainment and Amusement Tax (except when levied by the local bodies)  
 f. Taxes on advertisements  
 g. Purchase Tax  
 h. Taxes on lotteries, betting and gambling  
 i. State Surcharges/Additional Taxes and Cesses so far as they relate to supply of goods and services

**Status**

- Select
- Demand Created
- Demand Created against Rectification Order
- Recovery Initiated
- First Appeal Admitted
- First Appeal Rejected
- Recovery Initiated / resumed after rejection of First Appeal
- Demand Created against First Appeal
- Demand Created against Rectification of First Appeal Order
- Recovery Initiated / resumed after First Appeal
- Demand Created by Revisional Authority
- Appeal accepted by Tribunal
- Appeal rejected by Tribunal
- Recovery Initiated / resumed after rejection by Tribunal
- Demand Created against Tribunal Order
- Demand Created against Rectification of Tribunal Order
- Recovery initiated / resumed after Tribunal Order
- Appeal filed at High Court
- Recovery Initiated / resumed after Appeal filed at High Court
- Stay granted by High Court

f. You can also search the demand by providing the demand amount range in From and To fields.

[Advanced Search](#)

**GSTIN/Temporary ID**

**Name of Taxpayer**

**Status**

**Pending Demand Amount(between)**

**From**

**To**

## EXTRACTS : DETERMINATION OF TAX UNDER SECTION 73 & 74 of CGSTA'17

## Manual > Determination of Tax u/s 73 and 74

### How can I conduct Assessment & Adjudication proceedings for the determination of tax-liability u/s 73 and 74?

To conduct Assessment & Adjudication proceedings for determining tax-liability of a person under section 73 and 74, perform the following steps:

- A. [Conduct Assessment & Adjudication proceedings on intimation of voluntary payment](#)
- B. Create a new Case ID
  - B(1). Create a new Case ID using [SUO MOTO PROCEEDING](#) button
  - B(2). [Search for the ARN \(Application Reference Number\)/Case ID](#)
- C. Take action using NOTICES tab of Case Detail page:
  - C(1): [Issue Intimation DRC-01](#)
  - C(2): [Show Issue Show Cause Notice \(SCN\) and summary in Form GST DRC-01](#)
  - C(3): [Statement and summary in Form GST DRC-02](#)
  - C(4): [Reminder](#)
  - C(5): [Adjournment](#)
- D. Take action using REPLIES tab of Case Detail page: [View replies Filed by the taxpayer, if any](#)
- E. Take action using PROCEEDINGS tab of Case Detail page: [Record Personal Hearing Proceedings, if any](#)
- F. Take action using ORDERS tab of Case Detail page:
  - F(1). Issue an [Assessment order u/s 73 or 74](#)
  - F(2). [Drop Proceeding](#)
- G. Take action using REFERENCES tab of Case Details page:
  - G(1). Record [Communications](#)
  - G(2). [References](#) related to the case, if any


**[Click each hyperlink above to know more.](#)**


### B(1). Suo Moto PROCEEDING


For Suo Moto proceedings, i.e. to initiate a new proceeding for determining tax-liability of a person under section 73 and 74, perform following steps:


1. Access the **GST Back Office Portal** for tax officials.
2. Login using your valid credentials. The **Home** page is displayed.
3. Navigate to **Statutory Functions > Assessment & Adjudication > Determination of tax (Fraud/Other)** option. Navigate to **Assessment & Adjudication > Determination of tax (Fraud/Other)** option. **Note:** The "Bell" icon denotes notifications related to specific work items pending with the user and "!" icon denotes alerts for critical updates to the user.


### Summary


 Registration  
00


 Refund  
23


 Enforcement  
15


 DCR  
14


 Appeal & Revision  
00


 Review  
02

 Prosecution & Compounding  
00

 Advance Ruling  
00

 Recovery  
128

 LUT  
02

 Assessment & Adjudication  
10

**Tax Officer Actions**

- Determination of tax(Fraud/Other)-DRC07
- Intimation of Voluntary Payment
- Penalty
- Assessment of unregistered persons
- Assessment of Non-filers of Returns
- Determination of tax(Fraud/Other)
- Rectification of Orders
- Summary Assessment
- Tax collected but not deposited
- Scrutiny of Returns
- Provisional Assessment
- Recommendations
- Remanded Cases and Appeal Effects
- BI Feedback Application

My List / Pending Actions	Total Count
Penalty-Pending for Issue of Order (Reply Furnished)	00
Penalty-Pending for Issue of Order (Reply Not Furnished)	00
Scrutiny-Pending for Issue of Order / Recommendations (Reply Furnished)	00
Scrutiny-Pending for Issue of Order / Recommendations (Reply Not Furnished)	00
Non-Filter Assessment - Pending for Issue of Order	00
Unregistered Assessment - Pending for Issue of Order (Reply Furnished)	00
Unregistered Assessment - Pending for Issue of Order (Reply Not Furnished)	00
Summary Assessment -Pending for Issue of Order	00
Determination of Tax (Fraud/Others) - Pending for Issue of Order (Reply Furnished)	00
Determination of Tax (Fraud/Others) - Pending for Issue of Order (Reply Not Furnished)	00
Tax Collected But Not Deposited u/s 76- Pending for Issue of Order (Reply Furnished)	00
Tax Collected But Not Deposited u/s 76- Pending for Issue of Order (Reply Not Furnished)	00
Rectification- Pending for Issue of Rectification Order (Reply Furnished)	00
Rectification- Pending for Issue of Rectification Order (Reply Not Furnished)	00
Provisional Assessment- Pending for Issue of Provisional Order	00
Provisional Assessment- Pending for Issue of Final Order	00
Remanded Cases - Pending for Issue of Order (Reply Furnished)	00
Remanded Cases - Pending for Issue of Order (Reply Not Furnished)	00
Recommendations - Pending for Action	01
Voluntary Payment-Pending for issue of Ack / Conclusion of Proceedings	09

4. Search page is displayed. Click the **SUO MOTO PROCEEDING** button.

[https://botutorial.internal.gst.gov.in/userguide/taxofficial1/index.html#t=Determination\\_of\\_Tax\\_u\\_s\\_73.htm](https://botutorial.internal.gst.gov.in/userguide/taxofficial1/index.html#t=Determination_of_Tax_u_s_73.htm)

2/48

108 of 118

Dashboard > Determination of tax(Fraud/Other) > Case Detail

English

## Search

**SUO MOTO PROCEEDING**

**ARN**  
Enter ARN

**GSTIN**  
Enter GSTIN

**Status**  
Select

**From Date**  
DD/MM/YYYY

**To Date**  
DD/MM/YYYY

**SEARCH**

5. Suo Moto page is displayed. The "Proceeding Type" field gets auto-populated with "Determination of tax(Fraud/Others)". Enter the **GSTIN** or **UIN** or **Temporary Id** of the taxpayer and then click the **GO** button. This will enable the **CREATE** button. To go to the previous Search page, click **BACK**.

Dashboard > Determination of tax(Fraud/Other) > **Suo Moto**

English

**Proceeding Type\***  
Determination of tax(Fraud/Others)

**GSTIN/UIN/Temporary Id\***  
Enter GSTIN **GO**

**Financial Year\***  
Select

**Tax Period\***

From		To	
Select	Select	Select	Select

**BACK** **CREATE**

For Unregistered Person [Click here](#) to create Temp Id

By clicking on 'Create' button, case id will be created

**Note 1:** All fields are mandatory. You must enter the required data in these fields to proceed.

**Note 2:** To create Temporary Id of an unregistered taxpayer, you can click the **Click here** hyperlink provided on the left-below side of the page. To know more on how to create a Temporary ID, refer to the Suo Moto Registration User Manual.

6. Select the **Financial Year** from the drop-down list.
7. Select the Tax Period from the **From** and **To** drop-down lists.
8. Click the **CREATE** button.
9. A Success popup appears. Click the **CONTINUE** button.

Dashboard > Determination of tax(Fraud/Other) > Case Detail English

## Search

**SUO MOTO PROCEEDING**

**ARN**

**GSTIN**

**Status**

Select

Select

Demand created

Order for creation of demand issued

Pending for action by tax officer

Pending for reply by taxpayer

Order for dropping proceedings issued

Reply furnished, pending for order by tax officer

Reply not furnished, pending for order

**From Date**

**To Date**

**SEARCH**

**Note:** You must enter data in at least one field to proceed.

5. Click the **SEARCH** button.

6. Based on your search criteria, the required ARN/Case ID or the list of the required ARNs/Case ID gets displayed.

Dashboard > Determination of tax(Fraud/Other) > Case Detail English

## Search

**SUO MOTO PROCEEDING**

**ARN**

**GSTIN**

**Status**

Select

**From Date**

**To Date**

**SEARCH**

**List of Application/Case Reference Numbers (ARNs)**

ARN	GSTIN	Applicant Name	Date Of Filing	Status
AD1807180000385	18AJIPA1572EAZB	ANGAD JASBIRSINGH ARORA	20/07/2018	Reply furnished, pending for order by tax officer
AD1807180000377	18AJIPA1572EAZB	ANGAD JASBIRSINGH ARORA	20/07/2018	Pending for reply by taxpayer

**Note:** Because **From Date & To Date** was selected earlier as the Search criteria, all those ARNs that were created during that period is displayed.

Click the **ARN/Case ID** hyperlink of the case you want to act on.

7. **Case Detail** page is displayed. From this page, you can initiate conducting all Assessment & Adjudication proceedings related to this particular case by clicking the tabs provided at the left-hand side of the page: **INTIMATIONS, NOTICES, REPLIES, PROCEEDINGS, ORDERS and REFERENCES.**

To issue Show Cause Notice (SCN) u/s 73 or 74, perform following steps:

1. On the **Case Detail** page of that particular taxpayer, select the **NOTICES** tab. This tab displays all the notices (SCN/Reminder/Adjournment) you would issue against the case created.



**Note:** Current **Status** as displayed is "Pending for action by tax officer". It will change once you issue SCN.

2. Click **ADD NOTICE** to open the drop-down list and select **SCN u/s 73/74 and GST DRC-01**.



3. The SCN page is displayed. The **Type**, **Financial Year**, and the **From & To** fields of overall **Tax Period** are auto-populated. Enter details in the other displayed fields as mentioned in the following steps. To go to the previous page, click **BACK**.



ARN/Case Id <b>AD070119000022V</b> Date of Application/Case Creation <b>04/01/2019</b>	GSTIN/UIN/Temporary Id <b>07AJIPA1572E01X</b> Legal Name <b>ANGAD JASBIRSINGH ARORA</b>	Status <b>Pending for action by tax officer</b> Trade Name <b>AutomationsTest</b>
---	--	--

NOTICES	<div style="text-align: right; font-size: small; color: red;">                     * indicates mandatory fields                      MIS Report                      Tax Liability                      Tax Return History                 </div> <table style="width:100%; border: none;"> <tr> <td style="width:33%;"><b>Type</b></td> <td style="width:33%;"><b>Section Number*</b></td> <td style="width:33%;"><b>Reference Number*</b></td> </tr> <tr> <td>SCN u/s 73/74 and GST DRC-01</td> <td>select ▼</td> <td>Reference Number <a href="#">Generate Reference Number</a></td> </tr> <tr> <td><b>ARN</b></td> <td><b>ARN Date</b></td> <td><b>Is Personal Hearing Required?</b></td> </tr> <tr> <td>Select ▼</td> <td>DD/MM/YYYY</td> <td><input type="checkbox"/></td> </tr> <tr> <td><b>Due Date to Reply*</b></td> <td><b>Financial Year*</b></td> <td><b>Act/ Rules Provisions</b></td> </tr> <tr> <td>DD/MM/YYYY <input type="text"/></td> <td>2017-2018 ▼</td> <td>Act/ Rules Provisions</td> </tr> <tr> <td><b>Brief Fact of the Case*</b></td> <td><b>Grounds*</b></td> <td></td> </tr> <tr> <td>Brief Fact of the Case</td> <td>Grounds</td> <td></td> </tr> </table> <table style="width:100%; border: none; margin-top: 10px;"> <tr style="background-color: #00a68f; color: white;"> <th colspan="4">Overall Tax Period*</th> </tr> <tr> <th colspan="2">From</th> <th colspan="2">To</th> </tr> <tr> <td>AUG ▼</td> <td>2017 ▼</td> <td>SEP ▼</td> <td>2017 ▼</td> </tr> </table> <table style="width:100%; border: none; margin-top: 10px;"> <tr style="background-color: #00a68f; color: white;"> <th colspan="5">Tax Period*</th> </tr> <tr> <th colspan="2">From</th> <th colspan="2">To</th> <th>Tax Rate(%)</th> <th>Turnover (₹)</th> <th>Act*</th> </tr> <tr> <td>Month ▼</td> <td>Year ▼</td> <td>Month ▼</td> <td>Year ▼</td> <td></td> <td></td> <td>Select</td> </tr> </table> <div style="text-align: right; margin-top: 5px;"> <input type="button" value="ADD"/> </div>	<b>Type</b>	<b>Section Number*</b>	<b>Reference Number*</b>	SCN u/s 73/74 and GST DRC-01	select ▼	Reference Number <a href="#">Generate Reference Number</a>	<b>ARN</b>	<b>ARN Date</b>	<b>Is Personal Hearing Required?</b>	Select ▼	DD/MM/YYYY	<input type="checkbox"/>	<b>Due Date to Reply*</b>	<b>Financial Year*</b>	<b>Act/ Rules Provisions</b>	DD/MM/YYYY <input type="text"/>	2017-2018 ▼	Act/ Rules Provisions	<b>Brief Fact of the Case*</b>	<b>Grounds*</b>		Brief Fact of the Case	Grounds		Overall Tax Period*				From		To		AUG ▼	2017 ▼	SEP ▼	2017 ▼	Tax Period*					From		To		Tax Rate(%)	Turnover (₹)	Act*	Month ▼	Year ▼	Month ▼	Year ▼			Select
<b>Type</b>	<b>Section Number*</b>	<b>Reference Number*</b>																																																						
SCN u/s 73/74 and GST DRC-01	select ▼	Reference Number <a href="#">Generate Reference Number</a>																																																						
<b>ARN</b>	<b>ARN Date</b>	<b>Is Personal Hearing Required?</b>																																																						
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From		To		Tax Rate(%)	Turnover (₹)	Act*																																																		
Month ▼	Year ▼	Month ▼	Year ▼			Select																																																		

**Attachments\***

No file chosen

File with PDF or JPEG format is only allowed

Maximum 4 files and 5 MB for each file allowed

Note: Preview and Proceed will be available only after filling the mandatory fields

3a. Select the relevant section number in the drop-down list of the **Section Number** field.

**Section Number\***

select ▼
 

select  
 73  
 74

3b. Click the **Generate Reference Number** hyperlink. Reference Number field gets auto-populated.



[Go back to the Main Menu](#)

## F(1). Assessment order u/s 73 or 74

To issue an assessment order against the case created, perform following steps:

1. On the **Case Detail** page of that particular taxpayer, select the **ORDERS** tab. Click **ADD ORDER** to open the drop-down list and select **Assessment order and GST DRC-07**.

Dashboard - Determination of tax(Fraud/Other) - **Case Detail** English

ARN: **AD180718000042G** GSTIN/UIN/Temporary Id: **18AJIPA1572EAZB** Date of Application/Case Creation: **20/07/2018** Status: **Reply furnished, pending for order by tax officer**

NOTICES  
REPLIES  
PROCEEDINGS  
**ORDERS**  
REFERENCES

**ADD ORDER** ▾

DROP PROCEEDING

**Assessment order and GST DRC-07**

Order Number	Order Date	Section	Attachments
No Records Found			

**Note:** Current application **Status** as displayed is "Reply furnished, pending for action by tax officer". This status will change once you issue this order.

2. **Assessment order and GST DRC-07** page is displayed. Enter the required data as mentioned in the following steps. To go back to the previous page, click **BACK**.

Dashboard > Determination of tax(Fraud/Other) > Case Detail English

ARN: **AD180718000032H**      GSTIN/UIN/Temporary Id: **18BVIPD2202D2Z8**      Date of Application/Case Creation: **19/07/2018**      Status: **Reply furnished, pending for order by tax officer**

NOTICES  
REPLIES  
PROCEEDINGS  
**ORDERS**  
REFERENCES

Order Details    Details of Goods and Services    Details of Demand    Attach Documents    MIS Report  
Tax Liability  
Tax Return History

Details for summary of order to be filed up by Officer

• indicates mandatory fields

**Type**  
Assessment order and GST DRC-07

**Order Number\***  
Reference Number  
[Generate Reference Number](#)

**SCN Ref No\***  
ZA180718000099E

**Date Of SCN\***  
19/07/2018

**Due Date Of Payment\***  
DD/MM/YYYY

**Section Number\***  
73

**Financial Year\***  
2017-2018

**Tax Period\***

From		To	
JUL	2017	JAN	2018

**Issue Involved\***  
Select


**Note:**


Before issuing the Order, if required, you can also refer to the following hyperlinks provided on the right-side of the page to view various details:


- **MIS Reports:** Contains all available MIS Reports.
- **Tax Liability:** Contains details of estimated tax liabilities of current tax period as updated from Form GSTR-1, 1A, Form GSTR-2, 2A and other Returns and Statements
- **Tax Return History:** Contains details of the returns of the previous tax periods, and also option to view any other return of the defaulter.


2a. Select the **Order Details** tab, if not selected by default. **Type**, **Section Ref No.**, **Date of SCN**, **Section Number**, **Financial Year** and **Tax Period** fields are auto-populated. Enter the required data as mentioned in the following steps:

- (i) Click the **Generate Reference Number** hyperlink. Reference Number field gets auto-populated.
- (ii) In the **Due Date of Payment** field, click calendar and select the date to enter.
- (iii) In the **Issue Involved** field, select the check-box(es) against the listed issues from the drop-down list. The selected issues will appear below the **Issue Involved** field.

  
 Order Details

  
 Details of Goods and Services

  
 Details of Demand

  
 Attach Documents

MIS Report  
Tax Liability  
Tax Return History

**Details for summary of order to be filled up by Officer**

\* indicates mandatory fields

**Type**

**Order Number\***

  
Generate Reference Number

**SCN Ref No\***

**Date Of SCN\***

**Due Date Of Payment\***

**Section Number\***

**Financial Year\***

**Tax Period\***

From		To	
JUL	2017	AUG	2017

**Issue Involved\***

Classification X
Valuation X

(v). This will change the colour of the **Order Details** tab and a tick mark will appear on it.

  
 Order Details

  
 Details of Goods and Services

  
 Details of Demand

  
 Attach Documents

**Details for summary of order to be filled up by Officer**

- 2b. Select the **Details of Goods and Services** tab. Enter the required data as mentioned in the following steps:
- (i) In **Goods** section, enter description of the Goods or select from the drop-down list. The drop-down list will show the relevant description based on your entered description.

MIS Report  
Tax Liability  
Tax Return History

Order Details ✓ Details of Goods and Services ✓ Details of Demand ✓ Attach Documents

Details for summary of order to be filled up by Officer

**Attachments\***

Choose File No file chosen

PDF  
01test.pdf

File with PDF or JPEG format is only allowed  
Maximum 4 files and 5 MB for each file allowed

BACK PREVIEW PROCEED

3. The **Notice/Reminder/Order** page is displayed with a Warning message. On this page, click the **ISSUE WITH DSC** button.

Dashboard Notice/Reminder/Order English

ARN	Date	GSTIN
AD1807180000880	24/07/2018	18GDSPS3444H1ZU

**Warning**

Digital signatures are governed by the provisions of Information Technology Act, 2000 ("IT Act") and rules made thereunder. It is a mode of authenticating electronic records [Section 2(p) of IT Act]. Affixing digital signature on any document herein is deemed to be equivalent to affixing hand written signature/mark on such information/document (Section 5 of IT Act). Fraudulently/Dishonestly making use of any other person's digital signature is a punishable offence under IT Act (Section 66 C). Before attaching your digital signature certificate, please be certain that you wish to authenticate this electronic record.

Facing problem using DSC? Click here for help

ISSUE WITH DSC

5. The **Dashboard** page is displayed with a confirmation message. Click **OK**.

Dashboard English

Your DSC has been attached properly and notice reference number (RFN) or order reference number has been generated. Notice or order will be mailed to taxpayer and will also be available on his dashboard. If you want to serve the notice or order by post or through special messenger, Please take a print, sign manually and send.

OK

6. The updated **Case Detail** page is displayed, with the table containing the record of the **Assessment order and Form GST DRC-07** just issued and the **Status** updated to "**Order for creation of demand issued**".

Dashboard > Determination of tax(Fraud/Other) > Case Detail

ARN: AD180718000032H | GSTIN/UIN/Temporary Id: 18BVIPD2202D2Z8 | Date of Application/Case Creation: 19/07/2018 | Status: Order for creation of demand issued

NOTICES: ADD ORDER ▾

Type	Order Number	Order Date	Section Number	Attachments
Assessment order and GST DRC-07	ZA180818000205P	29/08/2018	73	01test.pdf DRC07_ORDER_ZA180818000205P_20180829103449.pdf

**Note 1:** As mentioned in the confirmation message on the Dashboard page, you can serve the Order to the taxpayer by post or through a special messenger as well. In the case of unregistered persons, it is mandatory to serve the Order by post/special messenger. For this, click the documents attached in the **Attachments** section of the table to download them. Take a print and then sign the printed document manually before sending.

**Note 2:** Once Assessment order and Form GST DRC-07 is issued, following actions take place on the GST Portal:

- Intimation of the issue of order is sent to the concerned taxpayer on his/her email ids and SMS.
- Order generated by system and annexure uploaded by officer will be made available on the Taxpayer's dashboard: **Services > User Services > View Additional Notices/Orders > View > Case Details.**

[Go back to the Main Menu](#)

## F(2). Drop Proceeding

To drop the proceedings, perform following steps:

- On the **Case Detail** page of that particular taxpayer, select the **ORDERS** tab. Click **ADD ORDER** to open the drop-down list and select **DROP PROCEEDING**.

Dashboard > Determination of tax(Fraud/Other) > Case Detail

ARN: AD180718000042G | GSTIN/UIN/Temporary Id: 18AJIPA1572EAZB | Date of Application/Case Creation: 20/07/2018 | Status: Reply furnished, pending for order by tax officer

NOTICES: ADD ORDER ▾

REPLIES: DROP PROCEEDING

PROCEEDINGS: Assessment order and GST DRC-07

Order Number	Order Date	Section	Attachments
No Records Found			

**Note:** Current application **Status** as displayed is "Reply furnished, pending for action by tax officer". This status will change once you issue this order.



***e-Book on  
Demand & Adjudication  
(GST & Legacy)***

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***National Academy of Customs, Indirect Taxes & Narcotics  
Andhra Pradesh Zonal Institute, Visakhapatnam***

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