



How to Reply to Show Cause Notice, Audit, Appeal Proceedings, Brief of penalties provisions

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**Legal
framework
for
Demands
under GST**

Audit, Assessment & Investigation – Different powers

Assessment – Chapter XII

- Self Assessment (S. 59)
- Provisional Assessment (S. 60)
- Scrutiny of Returns (S. 61)
- Assessment of Non-filers of returns (S. 62)
- Assessment of unregistered persons (S. 63)
- Summary assessment in certain special cases (S. 64)



Audit – Chapter XIII

- Audit by Tax Authorities (S. 65)
- Special Audit (S. 66)



Investigation – Chapter XIV

- Power of inspection, search & seizure (S. 67)
- Inspection of goods in movement (S. 68)
- Power of Arrest (S. 69)
- Power to summon persons to give evidence and produce documents (S. 70)



Demands & Recovery – Chapter XV

- Adjudication of taxes – Matters not involving fraud etc. (S. 73)
- Adjudication of taxes – Matters involving fraud etc. (S. 74)

Service of Show Cause Notice

- Where it appears to the Proper officer that,
 - ✓ Tax has not been paid or
 - ✓ Short paid or
 - ✓ Erroneously refunded, or
 - ✓ ITC has been wrongly availed or utilised

S. 73 – For any reason

S. 74 – By reason of:

- ✓ fraud, or
- ✓ any wilful-misstatement or
- ✓ suppression of facts to evade tax

- 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.*

Replying for extended period of limitation & Penalties

- Mere non-declaration in the return cannot be labeled as suppression - Chemphar Drugs 1989 (40) E.L.T. 276 (S.C.)
- Details declared in the books of accounts cannot be said to be suppressed - Super Industries - 2017 (348) E.L.T. A127 (S.C.);
- Intent to evade duty built into the expressions “fraud” and “collusion” but “mis-statement” and “suppression” being qualified by immediately preceding words “wilful” and “contravention of any of the provisions of this Act or rules” being qualified by the immediately following words “with intent to evade payment of duty – Cosmic Dye Chemicals 1995 (75) E.L.T. 721 (S.C.)

Time-limit for issuance of Show Cause Notice & Order

Section 73 – Normal Cases

- Proper officer shall issue the notice **at least 3 months** prior to the time limit specified for issuance of order;
- Proper officer shall issue order within:
 - ✓ 3 years from the due date for furnishing of annual return for the financial year to which the tax relates; or
 - ✓ 3 years from the date of erroneous refund.

Sec 74 – Cases involving fraud etc.

- Proper officer shall issue the notice **at least 6 months** prior to the time limit specified for issuance of order;
- Proper officer shall issue order within:
 - ✓ 5 years from the due date for furnishing of annual return for the financial year to which the tax relates; or
 - ✓ 5 years from the date of erroneous refund.

Financial Year	Normal cases	Cases involving fraud etc.
2017-18	Nov 05, 2022	Aug 9, 2024
2018-19	Sep 30, 2023	June 30, 2025
2019-20	Dec 21, 2023	Sep 30, 2025

Other key Points to be noted

- Proper officer shall serve along with the notice/ statement, a summary thereof electronically in FORM GST DRC-01 or DRC 02 respectively;
- No Time-limit provided in the law for replying to the show cause notice;
- Appeal to be filed within 3 months from the date on which the said decision or order is communicated – 6 months for departmental appeal - Additional 1 month with Condonation of delay;
- Pre-deposit of a sum equal to 10% of the tax in dispute must be made;
- Appellate Authority shall, where it is possible to do so, hear and decide every appeal within a period of one year from the date on which it is filed;



**Effective
Reply to
SCN**

Areas to be focused in effectively drafting a SCN

- Detailed study of a Show Cause Notice;
- Understanding the complete facts and its collation;
- Testing the validity and legality of the SCN and making appropriate submissions;
- Framing grounds and replying them on merits;
- Replying for demand of interest;
- Replying for invocation of extended period of limitation & Penalties;
- Prayer & verification;
- Authorization for reply/ appearance;
- Copy of SCN along with other supporting documents & Annexures.

Detailed study of a Show Cause Notice

- SCN contains the following, each element must be read in detail:
 - ✓ Introduction of the case;
 - ✓ Legal frame work;
 - ✓ Factual statement and appreciation of evidences;
 - ✓ Discussion, facts and legal frame work;
 - ✓ Discussion on Limitation;
 - ✓ Discussion on penalties;
 - ✓ Calculation of duty and other amounts due;
 - ✓ Statement of charges;
 - ✓ Authority issuing the SCN;
 - ✓ Authority before matter to be adjudicated.
- Framing various issues alleged in the notice along with its reasons and basis and identifying the Crux of the allegation;
- SCN must be unbiased and not prejudiced - Nemo Judex in re Sua

Understanding the complete facts and its collation

- Copy of agreements, invoices, calculation sheets, mails/ letters and other relied upon documents must be obtained and the same must be analysed;
- Understand & analyze the various submissions made in the past up to the receipt of SCN;
- Understanding various oral submissions made – Opportunity to reduce it in writing;
- Plotting the sequence of complete events with the date of its occurrence;
- Detailed discussion with the client – Factory visit, Business understanding, Product understanding;
- Facts gathered to be corroborated with the facts mentioned in the SCN – Missing/ incorrect facts.

Findings in CAG (Report No. 1 of 2021) Dated 24.03.2021

5.9 Deficiencies noticed in SCNs pending for Adjudication

In the selected 116 offices, 11,723 SCNs were pending for adjudication as on 31 March, 2019. We examined 4,457 SCNs involving money value of ₹ 29,672.96 crore and noticed irregularities in 1,407 SCNs (31.57 per cent) involving money value of ₹ 12, 162.53 crore. Deficiencies noticed pertain to incorrect computation of demand in SCN, delay in adjudication and not taking steps to reduce litigation etc. as detailed in the table 5.5 below:

Table No. 5.5: Deficiencies noticed in SCNs pending for adjudication

Sl. No.	Type of Deficiency	No. of Deficiencies	Money value (in ₹ crore)	Deficiencies in % of sample (No.)
1.	Incorrect computation of demand in SCN resulting in Short demand raised	161	36.63	3.61
2.	Late issuance of SCNs which may result in demand getting time-barred in adjudication	71	30.17	1.59
3.	Delay in Adjudication	373	4,310.17	8.37
4.	Non-intimation regarding settlement commission	768	7,658.32	17.23
5.	Incorrect invocation of extended period	2	3.19	0.04
6.	Abnormal delay in Preparation of SCNs	23	94	0.52
7.	Short raising of demand due to delay in finalization of investigation	6	30.05	0.13
8.	Incorrect issue of SCN	3		0.07
	Total Deficiencies noticed	1,407	12,162.53	31.57
	Total Cases examined by Audit	4,457	29,672.96	
	Total Cases pending for adjudication in selected units	11,723		

Findings in CAG (Report No. 1 of 2021) Dated 24.03.2021

Table No.5.6: Deficiencies noticed in adjudicated SCNs during FY17 to FY19

Sl. No.	Type of Deficiency	No. of Deficiencies	Money value (in ₹ crore)	Deficiencies in per cent of sample (No.)
1.	Invocation of extended period of time held irregular in adjudication	10	17.32	0.3
2.	Invocation of extended period of time for issuing periodical SCN which may be held irregular in further appeal	9	4.94	0.27
3.	Non-inclusion of demand for part period due to late issuance of SCN	4	8.26	0.12
4.	Incorrect computation of demand resulting in short confirmation of demand in adjudication	15	147.81	0.45
5.	Delay in adjudication	340	4,716.09	10.19
6.	Delay in issuance of OIO within stipulation period after completion of last PH	581	4,063.89	17.42
7.	Dropping of demand due to non-availability of Relied upon documents	9	48.55	0.27
	Total Deficiencies noticed	968	9006.86	29.03
	Total Cases examined by Audit	3,335	17,208.40	
	Total Cases adjudicated in selected units	8,766		---

Testing validity and legality of the SCN

- SCN can only be issued electronically on the common portal - Shri Shyam Baba Edible Oils Vs CCE (MP High Court) 2020-TIOL-2016-HC-MP-GST
 - *It is trite principle of law that when a particular procedure is prescribed to perform a particular act then all other procedures/modes except the one prescribed are excluded - This principle becomes all the more stringent when statutorily prescribed.*
- DIN to be quoted on all communications (including emails): To be treated as invalid and deemed to have never been issued - Circular No. 122/ 2019 & Circular No. 128/ 2019
- Pre-communication of the demand under Rule 142 - Similar to Pre-SCN consultation under the erstwhile laws - Amadeus India Pvt. Ltd - Del HC & Back Office IT Solutions;

Testing validity and legality of the SCN

- Proper officer for the purpose of the act - Jurisdiction of the officer issuing the notice:
 - ✓ Cross empowerment between Centre & State - Below 1.5 Crore (90% to the state) & Above 1.5 Crore (50% by both). Criteria to be followed for the division of taxpayer base between the Centre and the States **to ensure single interface** - Circular No. 1/ 2017 - F. No. 166, GST Council;
 - ✓ Proper officer to execute various functions entrusted under the provisions of the act and rules – Sec 2(91) read with Circular No. 3/3/2017;
 - ✓ Assignment of the territorial jurisdiction to the proper officers - Notification No.2/2017-Central Tax [Sayed Ali (2011) ELT 17 (SC) & Canon India 2021-TIOL-123-SC-CUS-LB]
 - ✓ Monetary limits for different levels of officers of central tax - Circular No. 31/05/2018 - GST
 - ✓ The central tax officers of Audit Commissionerate's 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 - Circular No. 31/05/2018 - GST

Testing validity and legality of the SCN

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DECCAN
Chronicle

GST Council to meet on February 18

During the 9th meeting of the GST Council, a high level forum of the Centre and all the states, a consensus was reached on how tax payers will be split for audit.

As per the agreement the states will have the power to assess and administer 90 per cent of the tax payers with less than Rs 1.5 crore annual turnover while the remainder would be controlled by the Centre.

However, intelligence based enforcement power will be with both the Centre and states. For tax-payers with more than Rs 1.5 crore turnover, the states and the Centre will control and administer them in a 50:50 ratio.

Mr Jaitley said each assessee will be assessed by only one authority. The states would also have the powers to levy tax on economic activity within 12 nautical miles of territorial waters even though such rights constitutionally vest with the Centre.

Testing validity and legality of the SCN

- ✓ *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) - Circular No. 31/05/2018 - GST*
- *Where a proper officer under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under this Act on the same subject matter - Sec 6(2)(b)*

Testing validity and legality of the SCN

- Notice must be clear and specific, vague allegations without containing all the details cannot be a valid notice - Brindavan Beverages 2007 (213) E.L.T. 487 (S.C.)
 - *“The show cause notice is the foundation on which the department has to build up its case. If the allegations in the show cause notice are not specific and are on the contrary vague, lack details and/or unintelligible that is sufficient to hold that the noticee was not given proper opportunity to meet the allegations indicated in the show cause notice.”*
- SCN not to pre-judge the issue – Oryx Fisheries - 2011 (266) ELT 422 (SC)
 - *“If on a reasonable reading of a show-cause notice a person of ordinary prudence gets the feeling that his reply to the show cause notice will be an empty ceremony and he will merely knock his head against the impenetrable wall of prejudged opinion, such a show cause notice does not commence a fair procedure especially when it is issued in a quasi-judicial proceeding under a statutory regulation which promises to give the person proceeded against a reasonable opportunity of defence.”*
- Allegations must be based on evidence and proof and not on mere assumptions and presumption - Oudh Sugar - 1978 (2) E.L.T. (J 172) (S.C.)

Testing validity and legality of the SCN

- Orders contrary to the allegations in SCN are not valid - Gas Authority of India Ltd (2008) 232 ELT 7 (SC);
- Whether adjudicating authorities can step beyond the scope of allegations in the SCN – Section 75(7) & Bhor industries 2011 (267) E.L.T. A127 (S.C)
- Order acted upon without jurisdiction can be challenged before the Writ court - Sanawarmal Purohit (1979) 4 ELT J 613 (SC)
- No one can be a judge in his own cause - Nemo Judex in causa sua – Issues faced in the e-way bill matters

Framing grounds and replying on merits of the case

- Grounds must be framed based on the following assertions:
 - ✓ Principles of natural justice not followed;
 - ✓ Case built on incorrect factual position;
 - ✓ Not in accordance with the provisions of the act or rules – Relied on Circulars etc.;
 - ✓ Favorable judicial precedents – Higher Courts, Jurisdictional rulings, Final order to be relied, Reliance on international jurisprudence;
 - ✓ Constitutional validity;
 - ✓ Cardinal principles of interpretation & Legal Maxims;
 - ✓ Incorrect quantification of demand;
- There can be multiple grounds for the same issue. Each ground can be without prejudice to the other – Bombay Tyres;
- Each and every allegation must be precisely and clearly rebutted;
- Benefit of Cum Tax can be claimed, if tax not collected;

Replying for demand of interest

- Correctness of interest computations can be challenged;
- Interest to be payable on Net Tax liability;
- Applicability of interest on Input tax Credit availed and not utilised;
- Interest on the tax short paid or not paid shall be payable whether or not specified in the order determining the tax liability. - Sec 75 (9);
- *Interest is compensatory in character and is imposed on an assessee who has withheld payment of any tax as and when it is due and payable - Levy of interest is geared to actual amount of tax withheld and the extent of the delay in paying the tax on the due date, thus essentially it is compensatory and different from penalty, which is penal in character. – Pratibha Processors - 1996 (88) E.L.T. 12 (S.C.)*

Replying for extended period of limitation & Penalties

- Fraud, wilful-misstatement, suppression is a question of fact and has to be established if there is a positive act. Conscious or deliberate withholding of information necessary to invoke larger limitation - Chemphar Drugs 1989 (40) E.L.T. 276 (S.C.), Padmini Products 1989 (43) E.L.T. 195 (S.C.)
- While issuing subsequent show cause notices, same/similar facts could not be taken as suppression of facts on part of assessee - Nizam Sugar Factory 2008 (9) S.T.R. 314 (S.C.)
- Department already had the knowledge of the transaction - Monsanto manufacturers 2010 (260) E.L.T. 335 (S.C.)
- Filing of returns on a regular basis and facts were known to the department - Pahwa Chemicals 2005 (189) ELT 257 (SC)
- Can extended period be invoked in the cases involving revenue neutrality - Nirlon Ltd 2015 (320) E.L.T. 22 (S.C.)

Replying for extended period of limitation & Penalties

- Matter involving interpretation - Issue pending with various courts - Nirmala Dyechem 2007 (207) E.L.T. 161 (S.C.)
- Extended period cannot be invoked in case of retrospective amendment - JK Cotton Spinning and weaving mills 1998 (99) E.L.T. 8 (S.C.)
- Initial Burden of proof lies on the department, once stated, then defence lies on the taxpayer - Tamilnadu Housing Board, Bajaj Auto & Marco Textiles;
- SCN issued due to departmental audit - Dynamic Industries 2014 (307) E.L.T. 15 (Guj.)
- Where penalties dropped, extended period cannot be invoked - Kapadia enterprises vs UOI



**Brief of
Penalty
Provisions**

Penalty for Certain Offences

Section	Particulars	Penalty
Sec 122	Penalty for certain offences viz., 1) Supply goods/ services without invoice; 2) Issues invoice without supply of goods/ services 3) Tax collected but not paid 4) Fails to deduct or collect tax as per sec 51 and 52 5) Fraudulent refunds 6) Takes or utilizes input tax credit without actual receipt of goods or services 7) Liable to registration but is not registered	Rs. 10,000/- or an amount equivalent to the tax (whichever is higher)
	Person at whose instance the transaction is conducted is also liable for penalty	
	For any reason other than fraud	Rs. 10,000/- or 10% of tax (whichever is higher)
	For reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty	Penalty equal to Rs. 10,000/-or the tax due from such person, whichever is higher.

Penalty for Certain Offences

Section	Particulars	Penalty
Sec 122	Aids or abets any of the offences specified in clauses (i) to (xxi) of sub-section (1) of section 122	Rs. 25,000/-
	Acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder	
	Receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions of this Act or the rules made thereunder	
	Fails to appear before the officer of central tax, when issued with a summons for appearance to give evidence or produce a document in an inquiry	
	Fails to issue invoice in accordance with the provisions of this Act or the rules made thereunder or fails to account for an invoice in his books of account	

Penalty for Certain Offences

Section	Particulars	Penalty
Sec 123	Failure to furnish information return u/s 150	Rs. 100/- per day
Sec 124	Failure to furnish statistics u/s 151	Rs. 100/- per day
Sec 125	General Penalty	Rs. 25,000/-
Sec 129	Contravention to the provisions of the act or rules during transports any goods or stores any goods while they are in transit	<p>Where the owner of the goods comes forward for payment of such penalty</p> <ul style="list-style-type: none">• Taxable goods - Penalty equal to 200% of the tax payable on such goods and• Exempted goods - Penalty equal to 2% of the value of goods or Rs. 25,000/- whichever is less <p>Where the owner of the goods does not comes forward for payment of such penalty</p> <ul style="list-style-type: none">• Taxable goods - Penalty equal to 50% of the value of the goods or 200% of the tax payable (whichever is higher)• Exempted goods - Penalty equal to 5% of the value of goods or Rs. 25,000/- whichever is less



**Principle of
Natural
Justice**

Principle of Natural Justice

- Both parties to the cause must be heard - Audi Alteram Parteim
- In case of Tax collected but not paid, an opportunity of hearing shall be granted where a request is received in writing from the person to whom the notice was issued – Sec 76(5)
- No such adjournment shall be granted for more than three times to a person during the proceedings - Sec 75 (5) – Read down as violative to Article 14 of the Constitution of India - Salem Bar Association v UOI AIR 2005 SC 3353
- Concept of Natural Justice vs. Legal Justice - Uma Nath Pandey (2009) 237 ELT 241 (SC) – Meaning of the term ‘Suppression’;
- Principal of Natural justice apply even if the statutory provisions do not make any express provision for the same - Mohinder singh gill v Chief Election Commissioner AIR 1998 SC 851;

Principle of Natural Justice

- It is regrettable that when administrative officers are entrusted with quasi-judicial functions, often times they are unable to keep aside administrative considerations while discharging quasi-judicial functions. This Court as well as the High Courts have repeatedly tried to impress upon them that their two functions are separate; while functioning as quasi-judicial officers they should not allow their judgments to be influenced by administrative considerations or by the instructions or directions given by their superiors. In this case both the Collector as well as the Central Government have ignored the line that demarcates their administrative duties and their judicial functions – ***[Orient Paper Mills vs UOI 1978 (2) E.L.T. J 345 (S.C.)]***
- Lord Denning expressed the paramount policy consideration behind this rule of public law while dealing with the Nemo Judex aspect with expressiveness. *"Justice must be rooted in confidence and confidence is destroyed when right minded people go away thinking the judge was biased."*

THANK YOU



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