

GST –  
SCN and Assessments -  
Provisions, Challenges and  
Solutions!

[28<sup>th</sup> May 2022]

CA Pritam Mahure



After attending numerous webinars!



Subject kuch bhi mehsoos nahi kar sakta..

# If self-assessment then why?

## ***SECTION 59. Self-assessment***

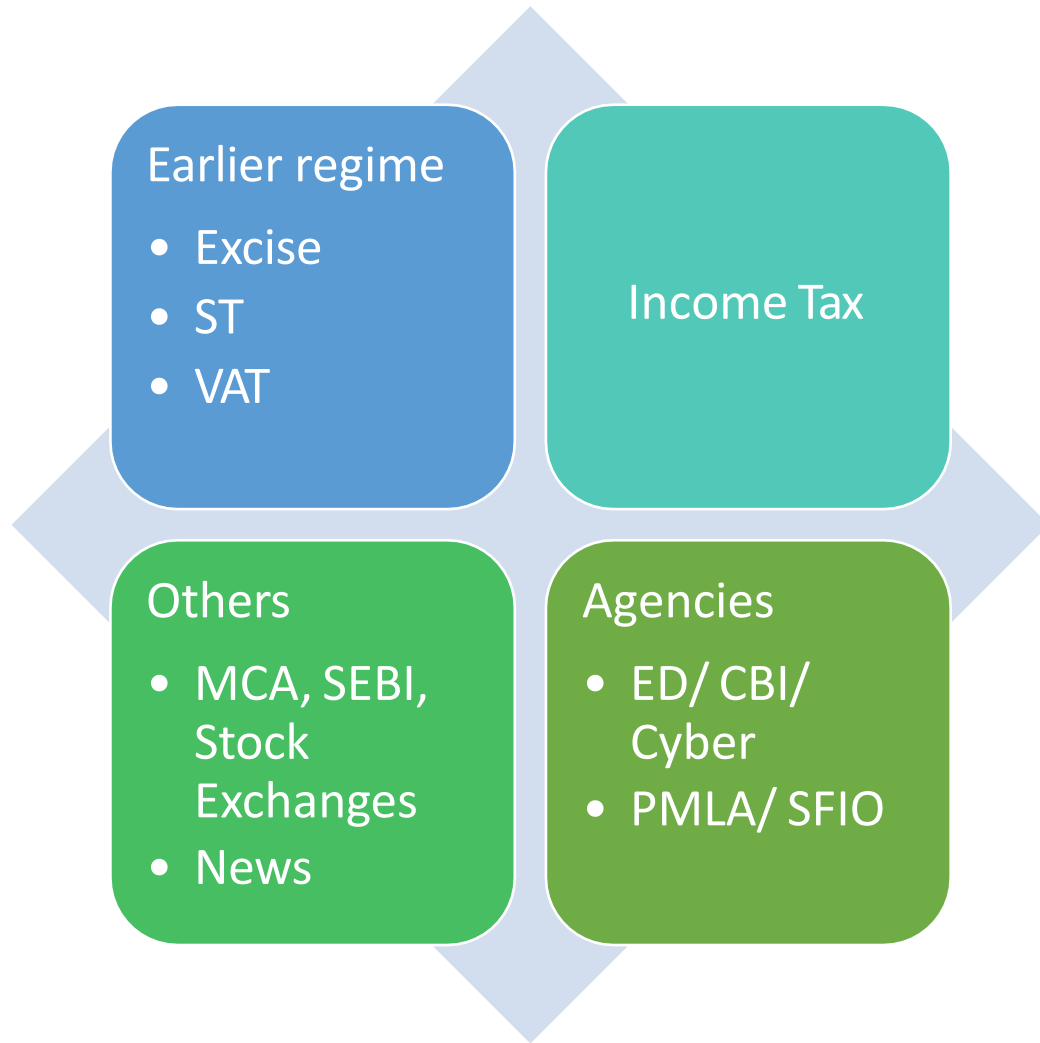
- *Every registered person shall **self-assess** the taxes payable under this Act and furnish a return for each tax period as specified under section 39.*

## **Section 2**

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

# ANALYZING THE TAXPAYERS!





From 'informer'  
based to 'IT'  
based!

## CBIC & CBDT sign MoU to facilitate smoother bilateral exchange of data [\[PIB 21.07.2020\]](#)

- *A Memorandum of Understanding (MoU) was signed between the Central Board of Direct Taxes (CBDT) and the Central Board of Indirect Taxes and Customs (CBIC) today, for **data exchange** between the two organisations. ...*
- *This MoU will facilitate the sharing of data and information between CBDT and CBIC on an automatic and regular basis. In addition to regular exchange of data, CBDT and CBIC will also exchange with each other, **on request and spontaneous basis**, any information available in their **respective databases** which may have utility for the other organisation.*

Surge in cases!



## Service Tax, VAT and Excise

- ASAP before time-barring!



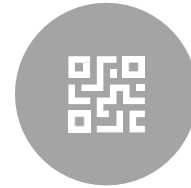
## GST

- Nascent stage!
- GST Audits started!
- Menace of fake invoicing and declining Tax Revenue!

# Real time data being captured!



E-Invoicing



QR Code



E-way Bill



RFID Tag



Data Analytics



Scrutiny of GST Returns

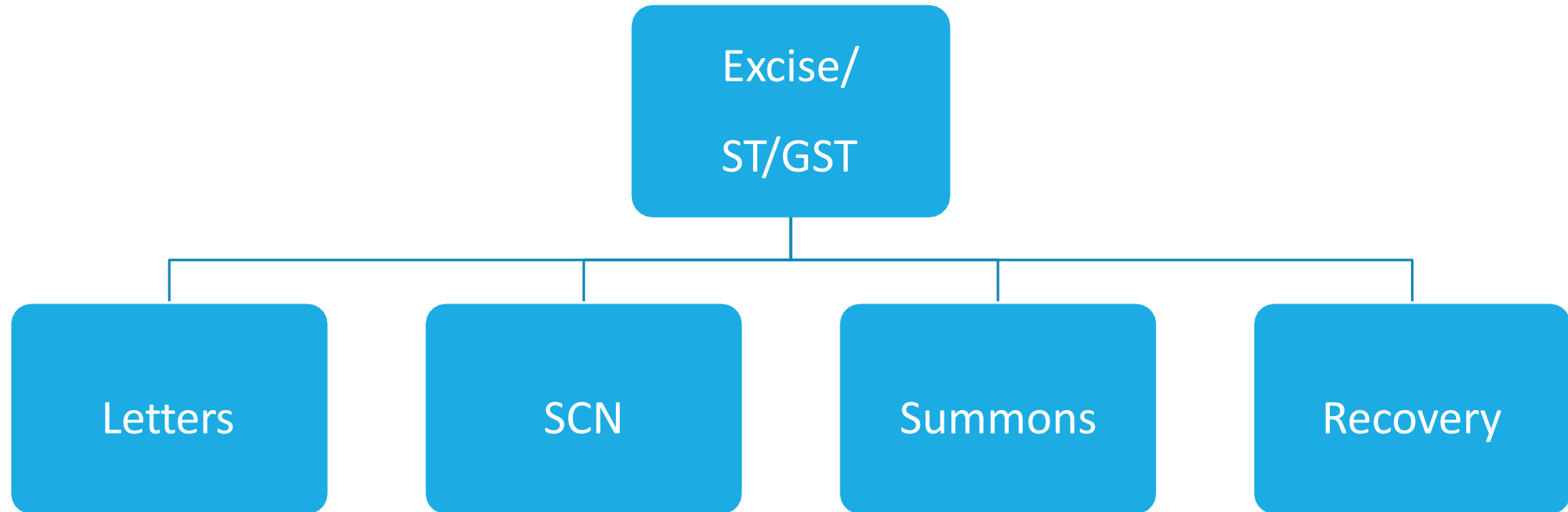


ARE ALL  
THESE  
SAME?

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# CHITHI AAYI HAI!



## Letters

Request for information  
(data, documents, etc.)

## Summons

Intimation to specified  
person!

To appear, to give or  
produce documents etc.

## SCN

Communication for Tax  
dues!

Generally for lapses!

WHAT?

LETTER?

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# ST/ Excise



# ST - Data Analytics notices!

## Sub: Third Party Verification of data / Detailed scrutiny- – reg

As per the directions, it is to inform that an exercise of scrutiny / verification of returns (ST-3 returns) filed by the tax payers for the period from 2016-17 onwards is undertaken by this office.

It is further requested that reconciliation of the differences as per below mentioned table may be seen and the reasons for the same may be conveyed along with the documentary evidence wherever necessary.

Period	TOTAL SALE OF SERVICES (STR)	TOTAL SALE OF SERVICES (ITR)	TOTAL VALUE for TDS(including 194C, 194Ia,194Ib,194J,194H)	HIGHER VALUE (VALUE OF SALE OF SERVICES ) OR (TOTAL VALUE for TDS)
2016-17	0	15 [REDACTED]	11 [REDACTED]	15 [REDACTED]

You are also requested to furnish copies of ITR, Balance Sheet, Profit & Loss (Income & Expenditure) A/c & 26AS in r/o services for relevant period in which the difference is noticed.

This exercise is being done with the intention to verify the appropriate payment of Service Tax. If liability of any kind is noticed, then the same is required to be paid along with interest as applicable.

## ST - SCN!

Year	Value as per ITR	Value as per TDS	Taxable value under Section 67 i.e. highest of value either of ITR or TDS	Service Tax payable
(1)	(2)	(3)	(4) higher of (2) or (3)	(5)
2014-15		0		

As the noticee never came forward for submission of documents and explaining his position, therefore the highest value as per TDS /ITR data has been considered and is treated as taxable value in terms of Section 67 of Finance Act, 1994. Also for period 2014-15, the value, so determined is treated to be for the services provided during the period 2014-15. Thus, it appears that the noticee has failed to register themselves & pay Service Tax of Rs.11,00,000/- for period 2014-15 as shown at column No. 5 of the table above on the differential value of as shown in column No. 4 of the table above.

# Mis-match!

Export!

Exempt!

RCM!

Works contract!

Accounting  
system!

Advances!

Centralised or  
premises based!



# GST - Data Analytics notices!

It has come to the notice of the Department that you have received ~~g~~ services from \_\_\_\_\_ Limited since 01.07.2017. \_\_\_\_\_ is covered under the definition of \_\_\_\_\_ services”) as provided in sub-section (17) of Section 2 of the IGST Act, 2017.

2. In cases where the \_\_\_\_\_ services are received by any registered person from an entity in the non-taxable territory \_\_\_\_\_ Limited in this case), the law clearly stipulates that the onus of discharging the tax liability on such services, is on registered person in India, under the Reverse Charge Mechanism. (Notification No. 10/2017- Integrated Tax (Rate) dated 28.06.2017)

3. On examining the GST Returns of the corresponding period, it has been observed that no IGST has been paid on such \_\_\_\_\_ services, by you. You are, therefore, requested to deposit the same immediately through DRC-03 (making a reference to this email by \_\_\_\_\_ Ihi), alongwith applicable interest, to avoid further initiation of legal proceedings. The details of payment made through DRC-03 voluntarily, may be intimated to this office within a week of receipt of this email.

# MISMATCH LETTERS/SMS!

TDS and GST!

GSTR-1 and GSTR-3B!

GSTR-2A and GSTR-3B!

E-way Bill!

# SURGE IN SCNS/LETTERS?





# DIN

CGST

▣Mandatory!

SGST?

# LEGAL PROVISIONS

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# Legal Provision!

Act	Rules	Others	Case law
<ul style="list-style-type: none"><li>• Finance Act</li><li>• Excise Act</li><li>• State VATs</li><li>• CGST Act</li><li>• IGST Act</li><li>• SGST Act</li><li>• UTGST Act</li><li>• Cess Act etc</li></ul>	<ul style="list-style-type: none"><li>• CCR</li><li>• Valuation Rules</li><li>• PoPSR Rules</li><li>• POT Rules</li><li>• CGST Rules</li><li>• SGST Rules</li><li>• IGST Rules</li></ul>	<ul style="list-style-type: none"><li>• Notifications</li><li>• Circulars</li><li>• Press Notes</li><li>• GSTC Minutes</li></ul>	<ul style="list-style-type: none"><li>• Supreme Court</li><li>• High Court</li><li>• AR</li><li>• AAR</li><li>• NAPA</li><li>• Erstwhile cases</li></ul>

# Legal Provision!

## CGST Act

- Section 73
- Section 74
- Section 75
- Section 76
- Section 79
- Section 169

## CGST Rules

- Rule 142
- Rule 143
- Rule 144
- Rule 145
- Rule 147
- Rule 149

## CGST Forms

- DRC-01A
- DRC-01
- .....
- DRC-22

FORMS!

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# Summary of Forms

Sr. No.	Name of Form	Particulars
1	<b>DRC-01A</b> (Part A)	Summary issued before SCN having details of Tax, Interest and Penalty
	DRC-01A (Part B)	Paying partial liability or making additional submissions before issue of SCN
2	<b>DRC-01</b>	Summary of SCN issued, on GST Portal
3	<b>DRC-02</b>	Statement issued, which is deemed to be SCN (Refer Sec 73(3))
4	DRC-03	Intimation of payment by Taxpayer to Officer, before issue of SCN or after issue SCN
5	DRC-04	Acceptance of Payment by Officer, in response to DRC-03
6	DRC-05	Acceptance of Payment and concluding of Proceedings
7	DRC-06	Summary uploaded on GST portal for representations / reply made against the Notice

# Summary of Forms

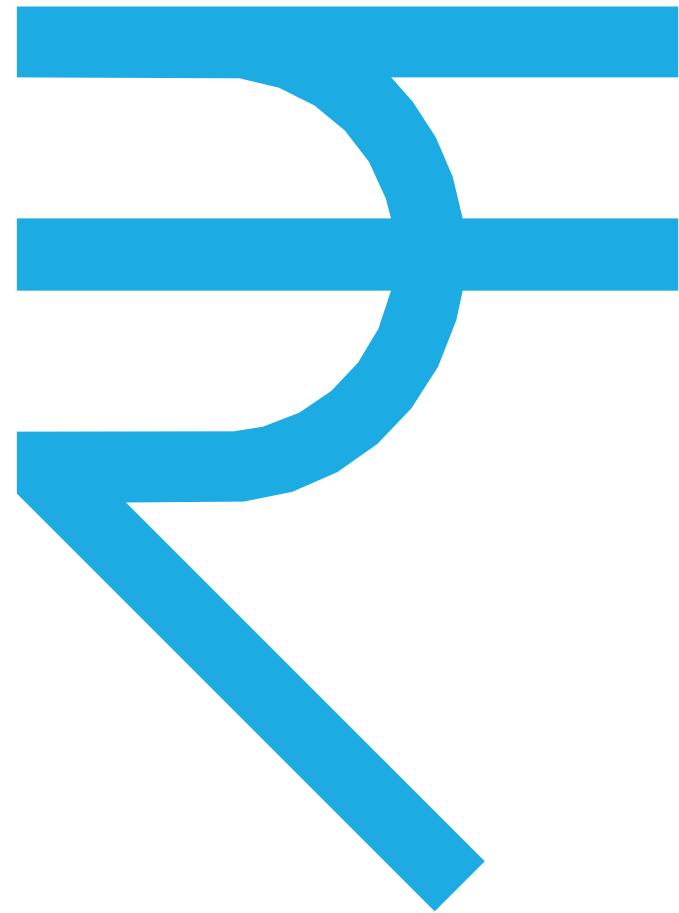
Sr. No.	Name of Form	Particulars
8	DRC-07	Summary of Order passed with Tax, Interest and Penalty amount
9	DRC-08	Summary of Order withdrawn or modified
10	DRC-08A	Details of Demand against order withdrawn or modified or quashed including appeals
11	DRC-09	Recovery of amount through any money owned by Government to Such Taxpayer, say refund pending to be disbursed
12	DRC-10	Details of Goods belonging to defaulting Taxpayer to be auctioned
	DRC-11	Notice to successful bidder of Goods or Immovable Property to make payment to Government
	DRC-12	Certificate of Payment and order of transfer of possession of goods or Immovable Property to Successful bidder

# Summary of Forms

Sr. No.	Name of Form	Particulars
13	<b>DRC-13</b>	Notice to third person to make payment of amount due to the defaulting taxpayer say Debtors
	DRC-14	Certificate to such third person on making of payment
14	DRC-16	Order of Attachment and Notice for Sale of Immovable Property
	DRC-17	Notice for Action for selling such Immovable Property
16	DRC-22	Provisional Attachment of Property or Bank Account

SUMMONS?

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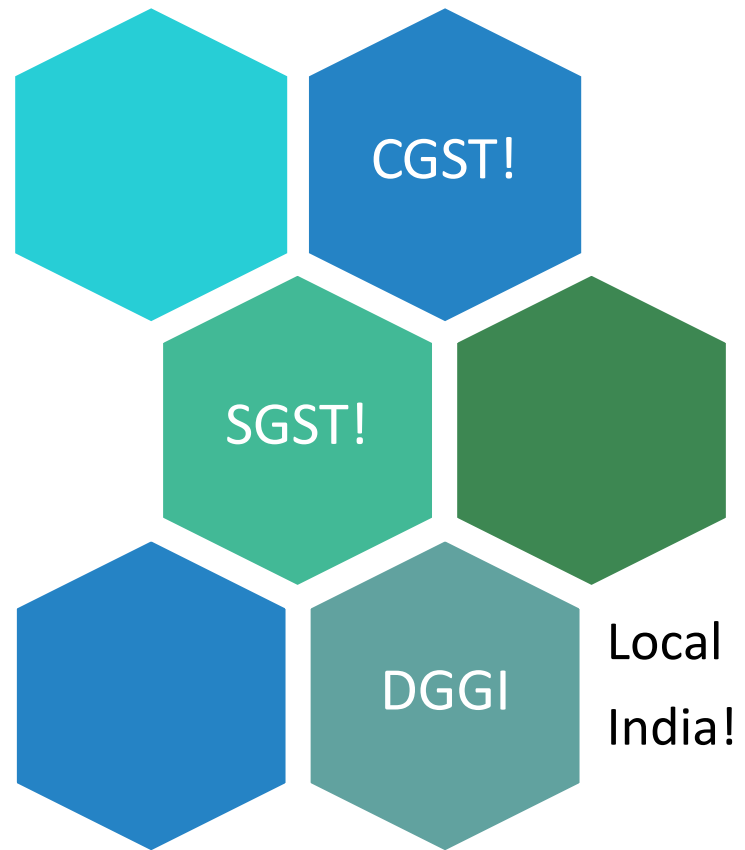


## SECTION 70 POWER TO SUMMON PERSONS TO GIVE EVIDENCE AND PRODUCE DOCUMENTS.

*(1) The proper officer under this Act shall have **power to summon any person** whose attendance he considers necessary either to **give evidence or to produce a document** or any other thing in any inquiry in the same manner, as provided in the case of a civil court under the provisions of the Code of Civil Procedure, 1908 (5 of 1908).*

*(2) Every such inquiry referred to in sub-section (1) shall be deemed to be a “judicial proceedings” within the meaning of section 193 and section 228 of the Indian Penal Code (45 of 1860).*

# SUMMONS!



## SUMMONS /

[under Section 70 of the Central Goods and Services Tax Act, 2017]

WHEREAS I

am making inquiry in connection with  
under the Central Goods and Services Tax

Act, 2017.

AND WHEREAS, I consider your attendance necessary to

(a) give evidence and / or

(b) produce documents or things of the following description in your  
possession or under your control:

**1. Details of Sale/Purchase alongwith E-way Bills from**

**2. Bank Statement from J**

**3. Reconciliation of Balance Sheet vis-a-vis GSTR-3B, GSTR-1 and  
GSTR-2A from J**

NOW, THEREFORE, in exercise of powers vested in me under Section 70 of  
the Central Goods and Service Tax Act, 2017 I do hereby summon you to  
appear before me in person on \_\_\_\_\_ at the office of

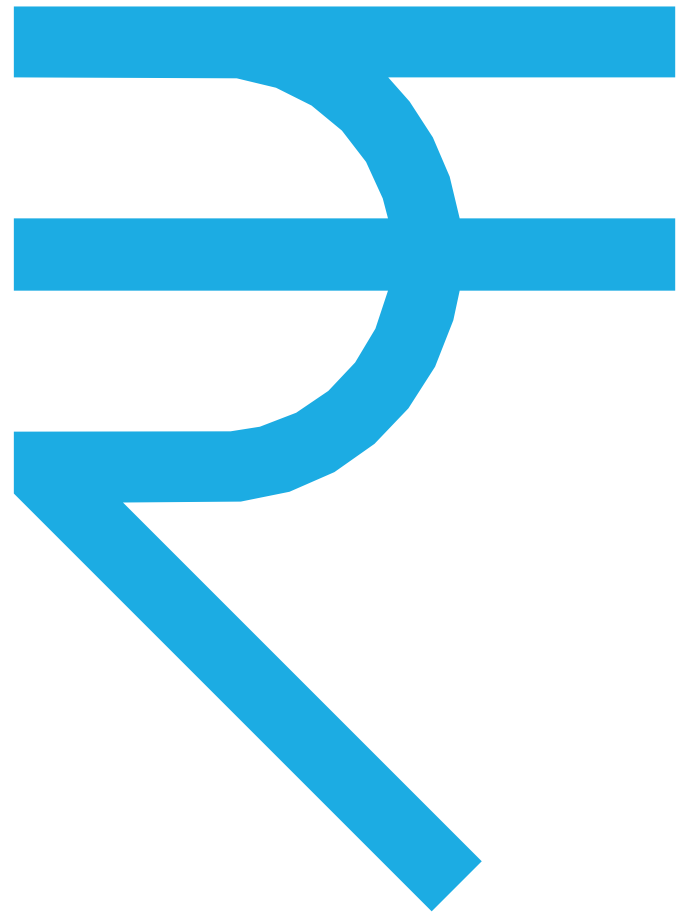
Inquiry as aforesaid is deemed to be a judicial proceeding within the  
meaning of section 193 and section 228 of the Indian Penal Code, 1860 (45  
of 1860) and non-compliance of this summon is an offence punishable under  
Section 174 & 175 of the Indian Penal Code, 1860.

Given under my hand and seal of office to-day the \_\_\_\_\_

at \_\_\_\_\_

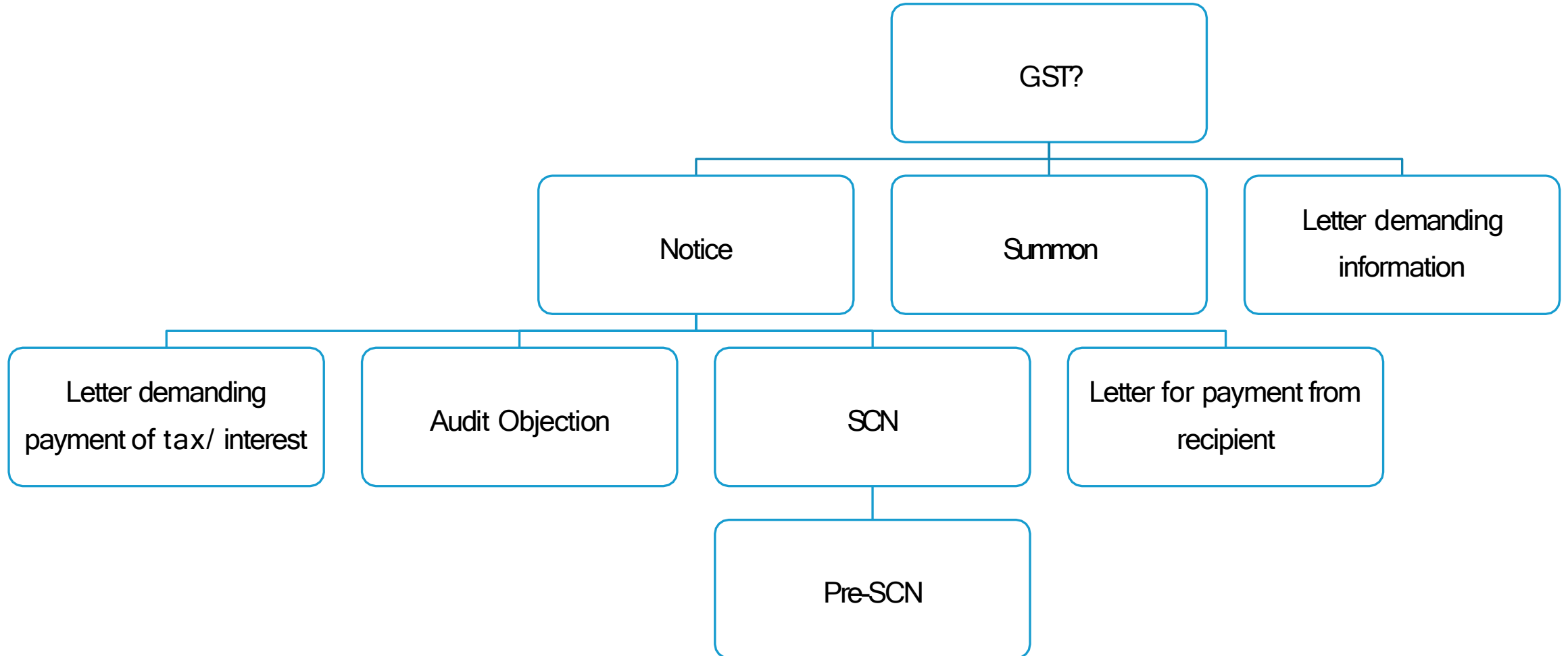
SCN?

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# GST!



## Section 73 Determination of tax not paid or short paid

(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 utilized 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.

# Show Cause

## Any tax has not been paid

- Eg. Treated as exempt

## Short paid

- Eg. Treated as liable for 18% whereas it should be 28%
- Value


## Erroneously refunded

- Eg. Not export

## Where input tax credit has been wrongly availed or utilized

- Eg. personal expenses/ car

## TRAN Notices!



**Excise/ ST  
regime**



**GST  
regime**

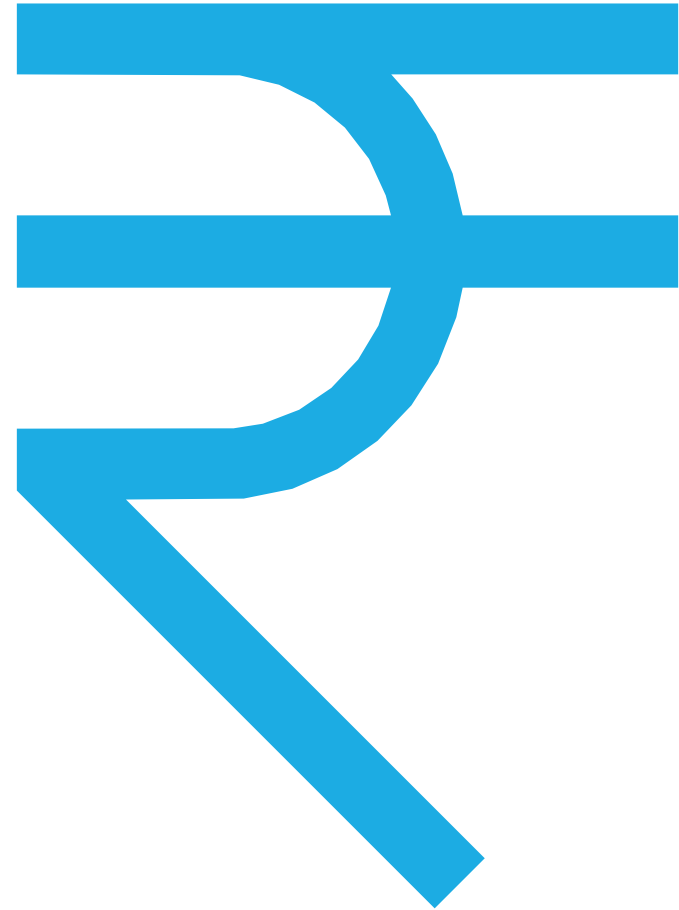
# ITC

2( 62) “input tax” in relation to a registered person, means the central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes —

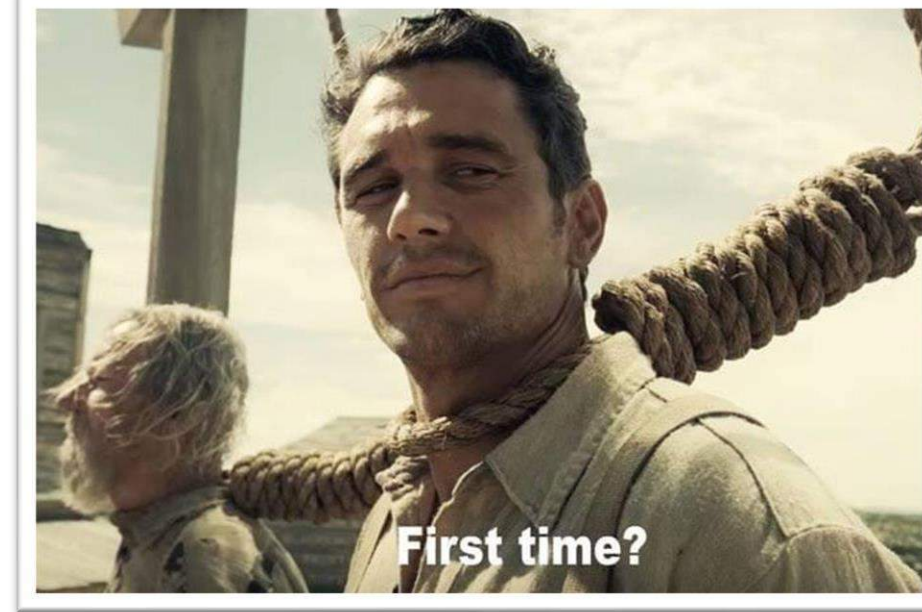
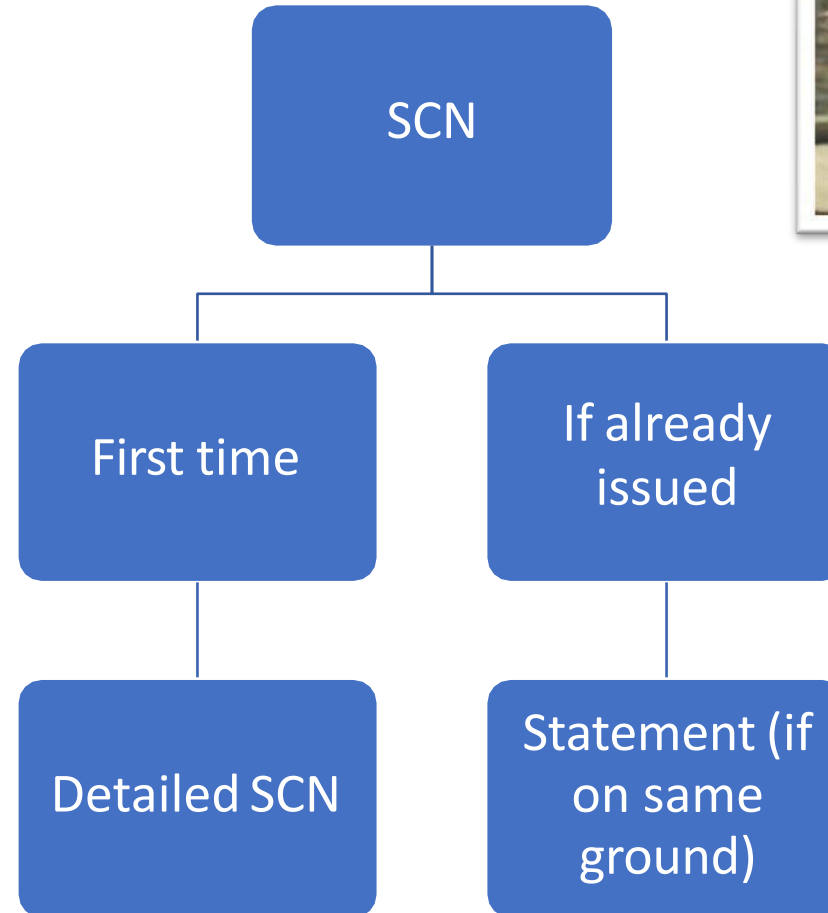
(a) integrated tax or Union territory tax charged ...

SCN/  
STATEMENT

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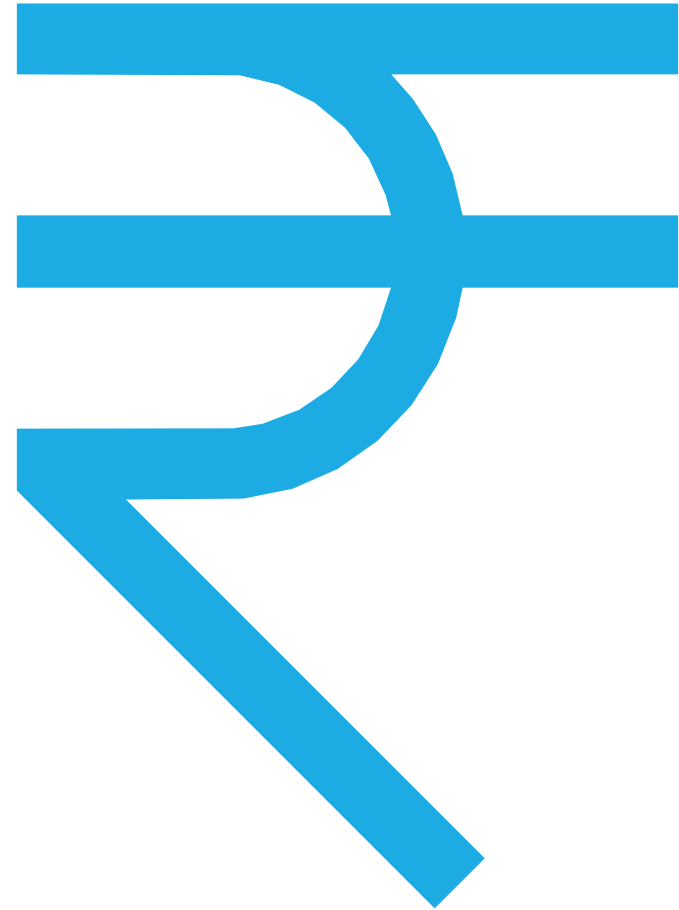


How?



OPTIONS!

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## Option I – No Notice

- **(5) Before service of notice**
  - Under sub-section (1) or, as the case may be, the statement under sub-section (3),
- **Pay** the amount of **tax** along with **interest** payable thereon under section 50
- On the basis of
  - His own ascertainment or
  - Tax as ascertained by the proper officer
- And inform the proper officer in writing of such payment

## Option I – No Notice

- (6) The proper officer, on receipt of such information, **shall not** serve any notice under sub-section (1) or, as the case may be, the statement under sub-section (3), **in respect of the tax so paid or any penalty payable** under the provisions of this Act or the rules made thereunder.
- (7) Where the proper officer is of the opinion that the amount paid under sub-section (5) 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.

## Option II – SCN but no Penalty

- (8) Where any person chargeable with tax under sub-section (1) or sub-section (3) **pays** the said **tax** along with **interest** payable under section 50 within **thirty days** of issue of show cause notice, **no penalty** shall be payable and all proceedings in respect of the said notice shall be **deemed to be concluded**.

## Option III – SCN and 10% Penalty

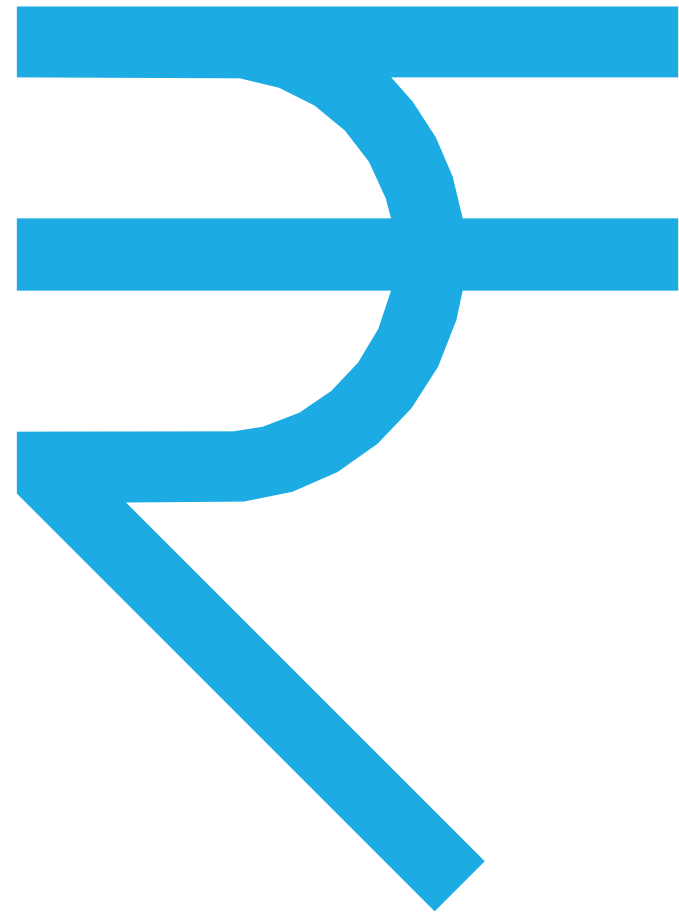
- (9) The proper officer shall, after considering the representation, if any, made by person chargeable with tax, **determine** the amount of tax, interest and a penalty equivalent to **ten per cent.** of tax or ten thousand rupees, whichever is higher, due from such person and issue an order.
- (11) Notwithstanding anything contained in sub-section (6) or sub-section (8), penalty under sub-section (9) 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.

## Option III – SCN and 10% Penalty

- (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**.

TIME LIMIT?

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## When?

- Section 73 (2) :The proper officer shall **issue the notice** under sub-section (1) at least three months prior to the time limit specified in sub-section (10) for issuance of order.
- Example

FY	Final date AR	Normal Order (3 Years)	Extended Order (5 Years)
2017-18	5 <sup>th</sup> /7 <sup>th</sup> .02.2020	5 <sup>th</sup> /7 <sup>th</sup> .02.2023	5 <sup>th</sup> /7 <sup>th</sup> .02.2025
2018-19	31.12.2020	31.12.2023	31.12.2025
2019-20	31.03.2021	31.03.2024	31.03.2026

## SECTION 75. General provisions relating to determination of tax

(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.



## Section 73 – Other critical points

Order must be passed within **three years** from the due date for furnishing of annual return for the financial year or within three years from the date of erroneous refund!

Notice must be issued at least **three months** prior to the time limit specified in sub-section (10) for issuance of order!

**Statement** would be deemed to be notice in case where SCN for same matter is already issued earlier

If tax paid along with interest, **no** such **notice** would be issued

If tax paid along with interest within **30 days of SCN**, no penalty is payable and proceeding would be concluded

Penalty is **maximum 10%** of the tax amount

## Whether SCN is mandatory?

- Section 11A of the Central Excises and Salt Act, 1944 clearly proceeds that prior Show Cause Notice **must be issued** to the person against whom any demand on ground of short-levy or non-levy of payment of excise duty is proposed to be made. Therefore a post facto Show Cause Notice cannot be regarded as adequate in law
  - **MADHUMILAN SYNTEX PVT. LTD. 1988 (35) E.L.T. 349 (S.C.)**

## LC Infra Projects 2020-TIOL-827-HC-KAR-GST

- Issuance of show Cause Notice is *sine qua non* to proceed with the **recovery** of interest payable
- Before recovery of interest payable in accordance with Section 50 of the GST Act, a show Cause Notice is required to be issued

## Amount should be specified?

- *This is because of the fact that issuance of a show cause notice in a particular format is a **mandatory requirement** of law. The law requires the said notice to be issued under a specific provision of law and not as a correspondence or part of an order. The said notice **must** also **indicate the amount** demanded and call upon the assessee to show cause if he has any objection for such demand. The said notice also will have to be **served** on the assessee ***within the said period*** which is either 6 months or 5 years as the facts demand. Therefore, it will be futile to contend that **each and every communication or order** could be construed as a show cause notice.*
  - METAL FORGINGS 2002 (146) E.L.T. 241 (S.C.)

## Can SCN be waived?

- Mandatory requirement of a statute whether **can be waived** by the party concerned
- Even though a provision of law is mandatory in its operation if such provision is one which deals with the individual rights of a person concerned and is for his benefit, the said person can always waive such a right
  - VIRGO STEELS 2002 (141) E.L.T. 598 (S.C.)

## SCN is foundation!

- It is well settled that unless the **foundation** of the case, is made out in the show-cause notice, Revenue cannot in Court argue a case not made out in its show-cause notice
  - CHAMPDANY INDUSTRIES LTD. 2009 (241) E.L.T. 481 (S.C.)
- *The Department cannot be travel **beyond** the show cause notice.*
  - *TOYO ENGINEERING INDIA LIMITED 2006 (201) E.L.T. 513 (S.C.)*

## Put to notice!

- Unless the assessee is **put to notice**, the assessee would have no opportunity to meet the case of the department. The defaults enumerated in the proviso to the said sub-section are more than one and if the excise department places reliance on the proviso it **must be specifically stated** in the show cause notice which is **the allegation** against the assessee falling within the four corners of the said proviso.
  - HMM Ltd 1995 (76) E.L.T. 497 (S.C.)

## Vague SCN?

- 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
  - BRINDAVAN BEVERAGES (P) LTD. 2007 (213) E.L.T. 487 (S.C.)



# Demand cannot be raised on assumptions!

- Now, these calculations certainly involve some **assumptions**. If any of these assumptions breaks down, then the ultimate conclusion will have to be rejected as incorrect
  - OUDH SUGAR MILLS LTD. 1978 (2) E.L.T. (J 172) (S.C.)

## Not every SCN is a valid!

- The show cause notice issued prior to passing of the impugned order does not stipulate even basic details such as the date and time of hearing and **merely states DD/MM/YYYY at HH/MM, without filling in the fields.**
- The requirement of passing a **speaking order has been entirely frustrated** in so far as in the field marked 'speaking order', there are no reasons set out for the conclusion arrived at by the authority. Manifest non application of mind is evident.
- Authorities directed to issue fresh notice, hear the assessee & pass a speaking order
  - **Tarmal Industrial Supply Company (2021-TIOL-1004-HC-MAD-GST)**

# Not every SCN is a valid!

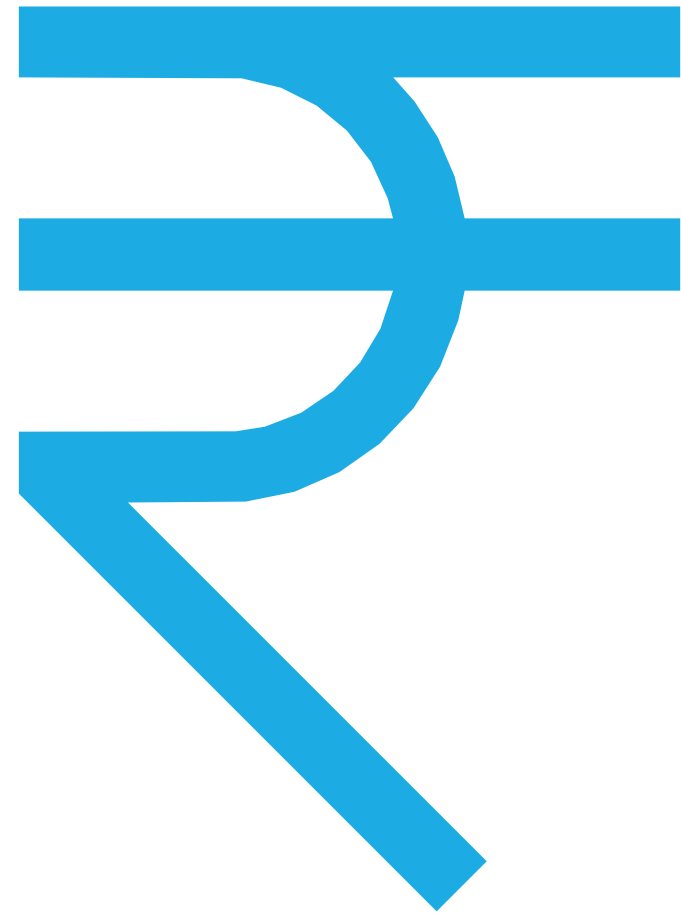
- The **SCN was completely vague** and did not even point out as to what ground the reply was proposed to be sought
- A perusal of the said show cause notice clearly highlights the fact that serious quasi-adjudicatory functions are being discharged by persons who do not have a **legally trained mind** and are entrusted in discharging functions affecting huge revenues.
- Consequently, the order cancelling the registration **stands revoked** from the date of filing of the application before the respondent no. 2.
- In view of the specific findings recorded above to the effect that the petitioner was unnecessarily harassed, the writ petition is allowed with a **cost of Rs. 10,000/-** to be paid to the petitioner within 30 days by the respondent no. 2 **from his own salary.**
  - **M/s Ansari Construction (2020-TIOL-2107-HC-ALL-GST)**

## Excise or Customs?

- Duty to be paid by a 100% export oriented unit for clearance in the Domestic Tariff Area is the **duty of excise** and **not customs duty**. There is merit in the above contention. The duty in question is excise duty and not customs duty. Even the investigations were made under the Central Excise Act, 1944. Therefore, the show cause notice was defective in law and since it was defective notice the demand was not maintainable.
  - SURESH SYNTHETICS 2007 (216) E.L.T. 662 (S.C.)

DRC-01A?

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# 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**,

**(b) statement** under sub-section (3) of section 73 or sub-section (3) of section 74, a summary thereof electronically in **FORM GST DRC-02**, specifying therein the details of the amount payable.

(1A) The proper officer **may**, before service of notice to the person chargeable with tax, interest and penalty, under sub-section (1) of Section 73 or sub-section (1) of Section 74, as the case may be, communicate the details of any tax, interest and penalty as ascertained by the said officer, in **Part A** of **FORM GST DRC-01A**

**[FORM GST DRC-01A]**

**Intimation of tax ascertained as being payable under section 73(5)/74(5)**

**[See Rule 142 (1A)]**

**Part A**

***Sub.: Case Proceeding Reference No-  
of liability under Section 74(5) – reg.***

***Intimation***

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 74(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) 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.

## Section 16 Eligibility and conditions for taking input tax credit

*(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both **after the due date of furnishing of the return under section 39 for the month of September** following the end of financial year to which such invoice or ~~invoice relating to such~~ debit note pertains or furnishing of the relevant annual return, whichever is earlier.*



[FORM GST DRC-01A]

[See Rule 142 (1A)]

Summary of show-cause Notice

**Sub.:** Recovery of ITC shown available but not entitled u/s 16(4) of GST Act.

Please refer to the above proceedings. In this regard, the amount of tax/interest/penalty payable by you under section 16(4) with reference to the said case as ascertained by the undersigned in terms of the available information, as is given below:

Act	Period	Tax
CGST Act		
SGST/UTGST Act		
IGST Act		
Cess		
Total		

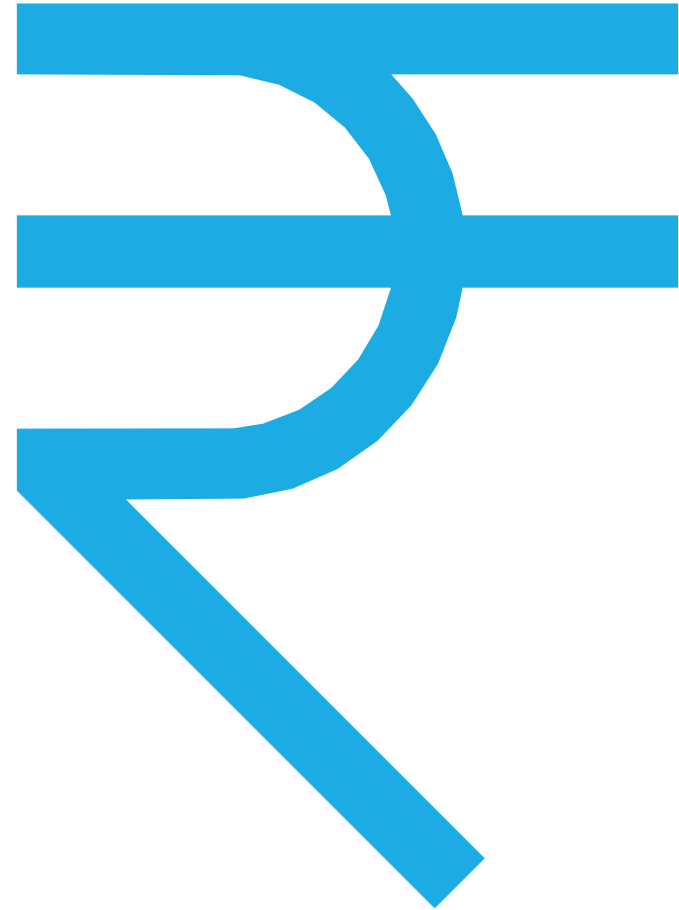
The grounds and quantification are attached / given below:

ITC claim beyond time limit prescribed in the GST Act.

You are hereby advised to pay the amount of tax as ascertained above alongwith the amount of applicable interest in full by \_\_\_\_\_ failing which Show Cause Notice will be issued under section 16(4). You are hereby advised to pay the amount of tax as ascertained above alongwith the amount of applicable interest and penalty under section 14(4) by \_\_\_\_\_ failing which Show Cause Notice will be issued under section 16(4). In case you wish to file any submissions against the above ascertainment, the same may be furnished in Part B of this Form

SERVE?

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# SHALL BE “SERVED”!

## **Section 169 Service of notice in certain circumstances:**

Any decision, order, summons, notice or other communication under this Act or the rules made thereunder **shall be served** by any one of the following:

# MANNER!

## In-person

- Directly or by messenger / courier

## Courier

- By RP or Speed Post or courier with AD

## Digital

- Email
- Common portal

## Print-media

- Newspaper

## Affixing

# MANNER OF SERVING!

## In-person

- Directly or by messenger / courier

## Courier

- By RP or Speed Post or courier with AD

## Digital

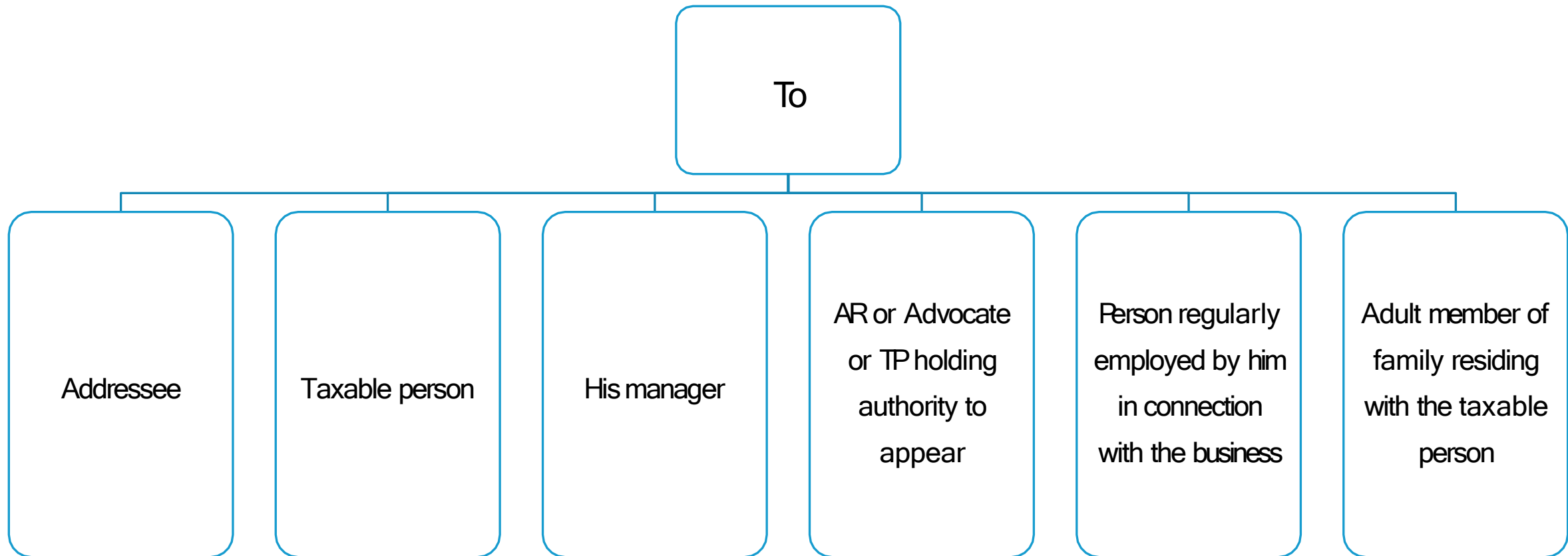
- Email
- Common portal

## Print-media

- Newspaper

Affixing

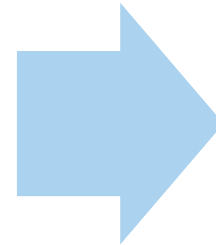
# IN-PERSON!



# COURIER!

By

- RP or Speed Post or Courier with AD



To

- The person for whom it is intended or his AR, if any, at his last known place of business

# DIGITAL!

By sending a communication to his **e-mail** address provided at the time of registration or as amended from time to time; or

By making it available on the common **portal**; or



# PRINT-MEDIA!

By publication in a **newspaper**

Circulating in the **locality** in which

- Taxable person or the person to whom it is issued
- Is last known to have **resided, carried on business** or personally worked for gain

# AFFIX!

If none of the modes aforesaid is **practicable**,

By **affixing it** in some conspicuous place at his last known place of business or residence and

If such mode is not practicable for any reason,

Then by affixing copy on notice board of office of concerned officer / authority who or which passed such decision / order or issued such summons / notice

## ST regime – AD required!

- ... whereas in the present case, the order is said to have been **sent by speed post** and there is **no evidence of tendering** the decision to the assessee.
- As per Section 37C(1)(a) of the Central Excise Act, 1944, it was **obligatory** on the part of the Revenue, either to tender a copy of the decision to the assessee or to send it by registered post **with acknowledgment due** to the assessee or its authorized agent. In the present case, neither of the above have been complied with by the Revenue.
- **Amidev Agro Care Pvt. Ltd. [2012 (26) STR 299 (Bom.)]**

# 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**,

**(b) statement** under sub-section (3) of section 73 or sub-section (3) of section 74, a summary thereof electronically in **FORM GST DRC-02**, specifying therein the details of the amount payable.

(1A) The proper officer **may**, before service of notice to the person chargeable with tax, interest and penalty, under sub-section (1) of Section 73 or sub-section (1) of Section 74, as the case may be, communicate the details of any tax, interest and penalty as ascertained by the said officer, in **Part A** of **FORM GST DRC-01A**

Yet to be specified modes!

SMS

Whats App

Telegram

Consultant's  
email

RAJU ARORA

[2018 (361) E.L.T. 270 (Del.)]

- *It was, however, **not ascertained** as to when and to whom the summonses were **delivered**. **No efforts** were **made** by the Investigating Agency **to serve** the summonses **personally** upon the respondent. It was **specifically denied** by the respondent that no such summonses were received by him. It was further informed that during the relevant period he was **admitted in the hospital**.*
- *The impugned judgment records that the summons dated 6-9-2016 sent by speed post **was delivered** as per tracking report **on 14-9-2016**. The **date of appearance** mentioned therein was **13-9-2016**. The trial court committed no error to observe that before initiating criminal proceedings against the respondent, the prosecution/Investigating Agency was **expected to ensure** that the summonses were **duly served** upon the respondent and he avoided to appear before it deliberately or intentionally.*

# KAUSHAL CONSTRUCTIONS

[2020 (37) G.S.T.L. 235 (Tri. - Chan.)]

- ... as per the records the impugned order was sent to the appellant by way of **speed post** on 26-7-2016 and the same has **not been returned back** to the Department but there is no contradiction to that stand of the Revenue by the appellant, moreover, as per the application, it is **contended by the appellant** that they had **written several letters** to the Department for supply of the order but **none** of the letters are having any **receipt from the Department** which shows that the appellant has **never approached to the Department** for supply of the copy of the order. In that circumstances, we do not find any merits in the application for condonation of delay, ...

# SHAGIRD DECORATORS

2020 (33) G.S.T.L. 204 (Tri. - Mumbai)

- *There is no doubt that the impugned order had been **dispatched** by speed post but that **does not necessarily imply service** on the addressee as the signature on the delivery manifest does not bear any resemblance to the names of the employees listed in certificate of the Chartered Accountant. It would appear that the mail intended for the applicant had been **delivered to an individual whose connection with the applicant is not decipherable**. While dispatch suffices to evidence service, it is **open to the addressee to rebut the presumption** with circumstantial evidence of non-delivery.*



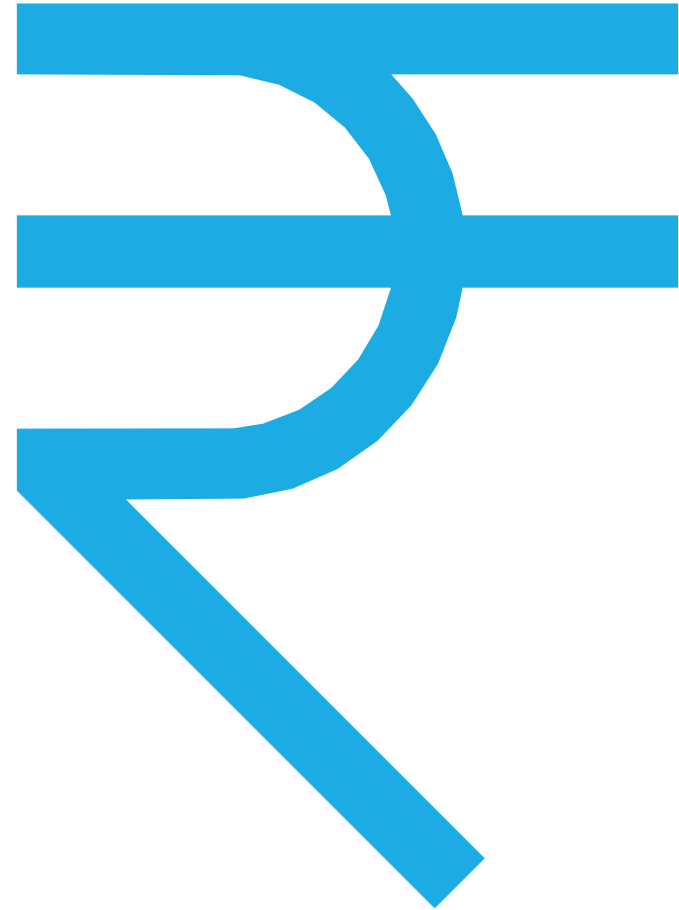
# RAM NIVAS SINGH CONTRACTOR

## 2019 (24) G.S.T.L. 451 (Tri. - All.)

- There is **no attempt to serve** the notice in the normal process by registered post or speed post. ...  
Straightaway upon receiving the notice it has been **served by affixture**. Thus, it is writ large on the face of the record that the show cause notice has not been served upon the appellant-assessee and only so-called record of service of show cause notice has been prepared, which is against the provisions of law and the rules. I hold that there is **no valid service** of show cause notice.  
Accordingly, the impugned **order** cannot be sustained and the same is **set aside**.

OTHER  
ASPECTS!

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# All Proceedings!

***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;***

## **SECTION 75. General provisions relating to determination of tax**

*(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.***

## **Facts and Basis needed!**

- (6) The proper officer, in his order, shall set out the relevant facts and the basis of his decision.

## Order cannot exceed demand!

(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

## Interest to follow!

(9) The interest on the tax short paid or not paid shall be payable **whether or not specified** in the order determining the tax liability.

## Self-assessed Tax can be recovered!

*(12) Notwithstanding anything contained in section 73 or section 74, where any amount of self-assessed tax in accordance with a return furnished under **section 39** remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be **recovered under the provisions of section 79**.*

**Explanation.** — For the purposes of this sub-section, the expression “self-assessed tax” shall include the tax payable in respect of details of outward supplies furnished under **section 37**, but not included in the return furnished under section 39.



## Double jeopardy!

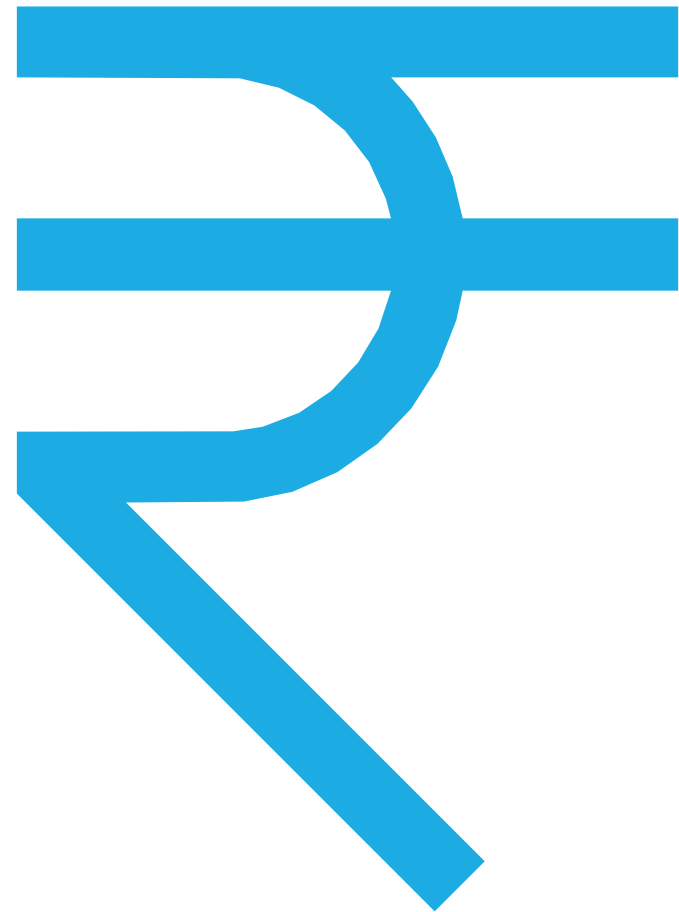
(13) Where any penalty is imposed under section 73 or section 74, **no penalty for the same act** or omission shall be imposed **on the same person under any other provision** of this Act.

# Opportunity

- 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!

FRAUD, OR  
WILFUL  
MISSTATEMENT  
OR  
SUPPRESSION OF  
FACTS!

---



## Section 74

By reason of

- Fraud, or any
- Wilful misstatement or
- Suppression of facts

To evade tax

# Meaning of ‘Suppression’

***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.

## Section 74 – Other critical points

Order must be passed within **five years** from the due date for furnishing of annual return for the financial year or within three years from the date of erroneous refund

Notice must be issued at least **six months** prior to the time limit specified in sub-section (10) for issuance of order.

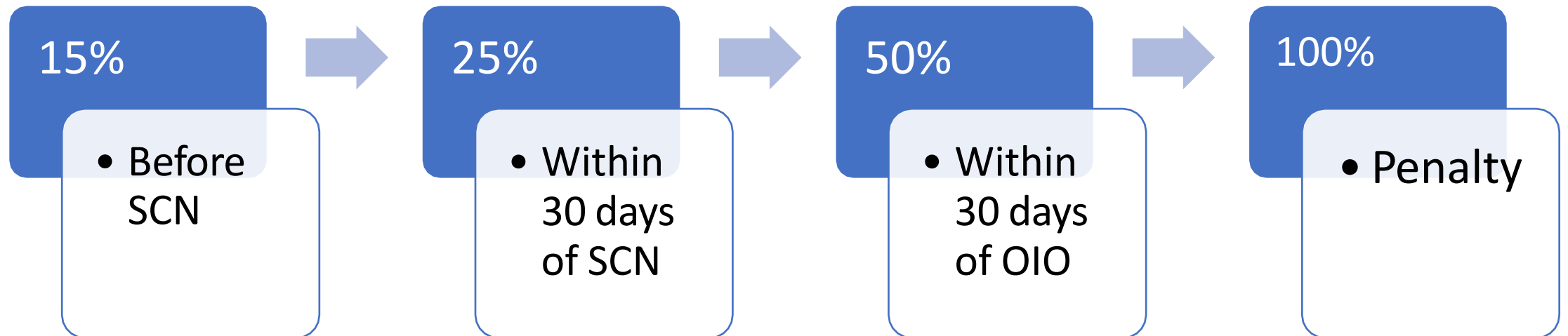
**Statement** would be deemed to be notice in case where SCN for same matter is already issued earlier

If tax paid along with interest and 15% penalty , no such notice would be issued

If tax paid along with interest and penalty of 25% within 30 days of SCN, proceeding would be concluded

If tax paid along with interest and penalty of 50% within 30 days of SCN, proceeding would be concluded

## Section 74 - Penalty



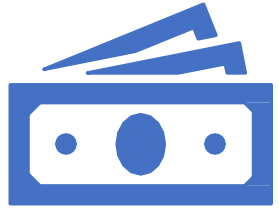
## Penalty – Decision Matrix!

Particulars	Sec. 73 (A)	Incremental (B)	Sec. 74 (C)	Incremental (D)	Sec. 73 vs. Sec. 74 (A vs. C)
Before	Nil	-	15%	-	15%
Within 30 days of SCN	Nil	Nil	25%	10%	25%
Within 30 days of Order	10%	10%	50%	25%	40%
Afterwards	10%	Nil	100%	50%	90%



## Remark Flour Mills Pvt Ltd 2018-TIOL-28-HC-AHM-GST

- Two SCNs issued
  - First under 73 (1) and subsequently under 74
- Powers under sub-section (3) of section 74 of the CGST Act, 2017 cannot be exercised for expanding or enlarging the liability arising out of show-cause notice issued under sub-section (1) for the same period



What to reply?

# Reply!

## Not to worry

- Take a deep breath!

## Allegations / foundation

- Vague!

## Drafting

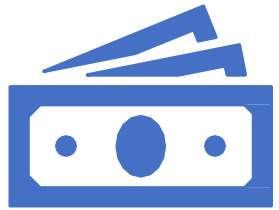
- Section
- Rule

## Contentions

Research

Italics

Summary



PH?

Reply!

On-line/  
Off-line!

PoA

Dress  
well

Summary

# Thank You

CA Pritam Mahure and Associates

We would love to hear your suggestions or queries!