Handling of GST Notices, Summons and Departmental Audit

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Flow of GST Litigation

Background

S. No.	Topic	Chapter	Section	Rules
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Flow of Litigation

Assessment
(Chapter XII)

Audit
(Chapter XIII)

Regular enquiry/ Investigation

Any other proceedings

Any discrepancy noticed and officer is not satisfied with assessee's submissions

SCN will be served by the proper officer u/s 73 or 74

Reply to SCN to be furnished by the Assessee

An opportunity of being heard will be granted

Adjudicating Order/OIO will be passed by Adjudicating Authority

Appeal to 1st Appellate Authority (Either by assessee or the department)

An opportunity of being heard will be granted

Appellate Order/OIA will be passed by 1st Appellate Authority

Appeal to 2nd Appellate Authority (GSTAT)
(Either by assessee or the department)

An opportunity of being heard will be granted

Final Order will be passed by GSTAT (2nd Appellate Authority)

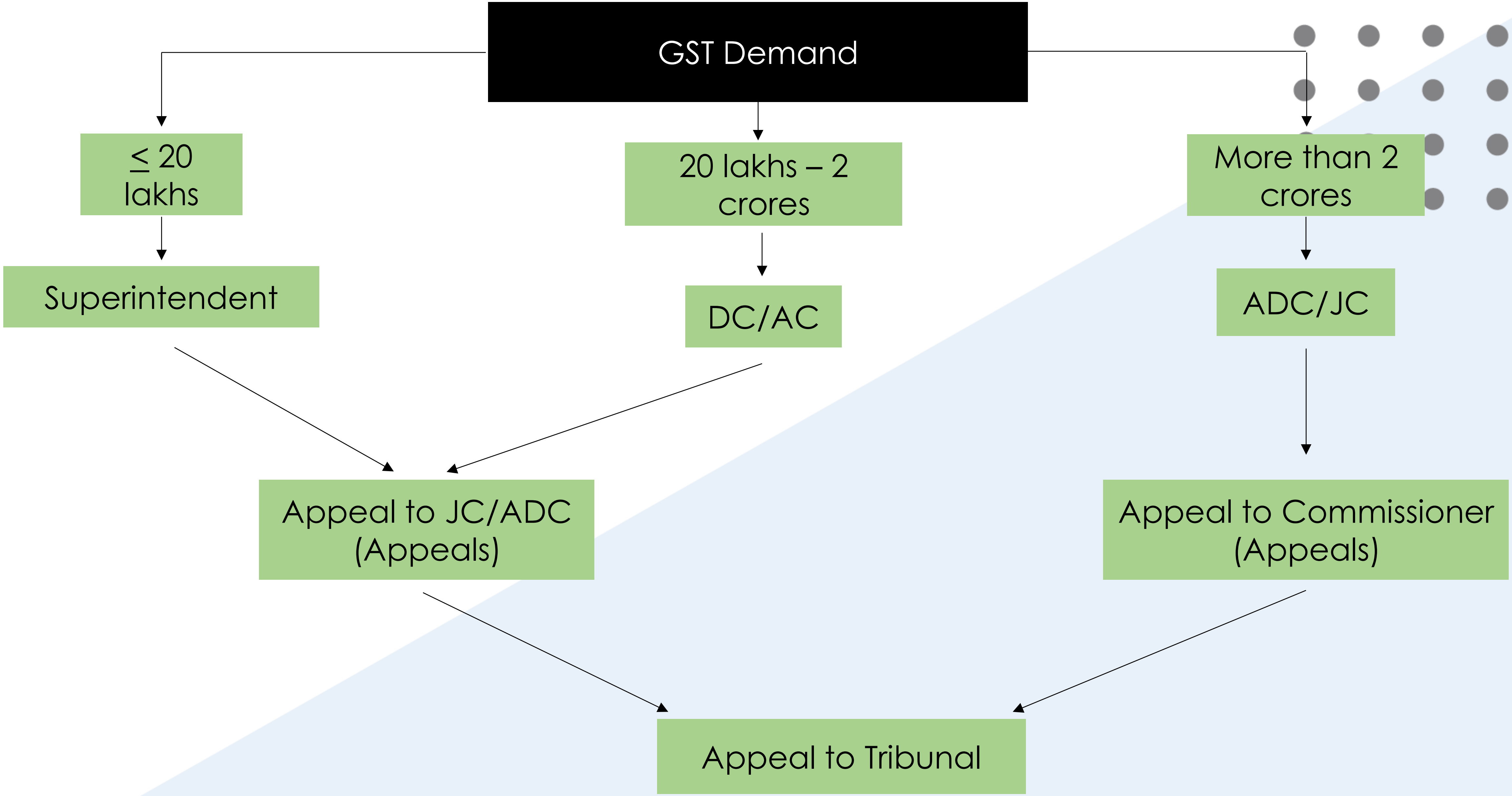
Order passed by State Benches, which involves substantial question of law

Appeal to HC
(Either by assessee or the department)

Order passed by Principal Bench

Appeal to SC
(Either by assessee or the department)

Hierarchy


GST Demand
≤ 20 lakhs
20 lakhs – 2 crores
More than 2 crores
Superintendent
DC/AC
ADC/JC
Appeal to JC/ADC (Appeals)
Appeal to Commissioner (Appeals)
Appeal to Tribunal

Procedure

Pre SCN intimation notice **DRC-01A**

Tax paid *via* **DRC-03**

Tax not paid

File Reply in Part – B of DRC-01A

SCN to be issued

SOD's summary in **DRC-02**

Summary of notice (Form **DRC-01**)

Provision of pre-SCN intimation inserted w.e.f. 09/10/2019 and made mandatory.

Pre-SCN later made voluntary w.e.f. 15/10/2020

Procedure

Summary of notice (Form **DRC-01**)

Tax paid within 30 days

Tax paid after 30 days

Tax not paid (litigated)

Reduced penalty – Tax to be paid in DRC-03 – Proceedings concluded in **DRC-05**

Reply to SCN DRC-06

Adjudicating Order/OIO **DRC-07**

Notice for Recovery

If Order is to be rectified/withdrawn **DRC-08**

Enquiry

Inspection

Audit

Aspect	Chapter XII – Assessment & Scrutiny	Chapter XIII – Audit	Chapter XIV – Enforcement
Purpose	To determine tax liability – voluntarily (self) or through departmental intervention	To verify correctness of turnover declared, taxes paid, ITC availed, refund, etc.	To detect tax evasion, suppression, or violations through physical checks and evidence collection
Triggering Condition	Based on filing behaviour (e.g., non-filing, inconsistencies, uncertainty in tax rate/value, revenue threat, etc.)	Commissioner considers audit necessary to verify compliance – risk-based selection	"Reason to believe" tax evasion or suppression of facts, etc.
Who Conducts	Proper Officer (varies by provision)	Officer authorised by the Commissioner (Section 65) CA/CMA nominated by Commissioner (Section 66)	Joint Commissioner or above - authorized in writing
Tax Authorities	Authority to whom taxpayer is administratively assigned to – Center or State	Authority to whom taxpayer is administratively assigned to – Center or State	Any Authority – Centre / State
Applicability on Type of Person	Applicable only on registered persons, except in case of Section 63, which covers assessment of unregistered persons.	Applicable only on registered persons	Applicable on both registered and unregistered persons

Aspect	Chapter XII – Assessment & Scrutiny	Chapter XIII – Audit	Chapter XIV – Enforcement
Scope	Varies – can be a self-filed return or departmental intervention based on records – **Generally record based**	Full review of books of account, documents, returns, inward/outward supplies, ITC – **Generally record based**	Inspection of premises, goods, records; search and seizure of goods/documents/devices – **Generally intelligence based**
Process	Application (for PA), Notices (ASMT-10 to 18,) Best judgment or summary order - Time-bound processes	• Advance notice (15 days), conduct audit at taxpayer's premises or Tax office, completion within 3 months (extendable to 6 months) • Special Audit ordered under Section 66 in case of perceived complexities	Officer enters premises, may seize goods/documents, may arrest subject to monetary limits, may issue summons, detailed records to be maintained
Safeguards for Taxpayer	Opportunity of being heard, right to file response, Deemed withdrawal of Best Judgment Assessment order	Mandatory prior notice, Time bound completion, Intimation of audit findings and seeking auditee's response before finalization	Search/seizure/arrest only upon "reason to believe", summons to be issued under Section 70, must follow due procedure and record reasons, right to apply for release of seized goods
Time Limits	• Final assessment under Section 60: 6 months (extendable) • Best judgment (Section 62/63): Within 5 years of due date of annual return	• Audit to be completed within 3 months (extendable to 6 months) • Special Audit to be completed within 90 days (extendable by 90 days)	No specific time limit for inspection/search- Seized goods/documents to be returned within 6 months unless proceedings initiated
End Result	• Discrepancies noticed – Action under Section 73/74/74A • Determination of final tax liability (in case of PA): additional tax payable or refund due	• Discrepancies noticed – Action under Section 73/74/74A	• Action under Section 73/74/74A • Arrest in case of grave offences • Recovery proceedings

Time Limits for FY 2017-18 to FY 23-24 under Section 73 and Section 74

Section 73:

Tax Period	Due Date GSTR 9	Notice Last Date	Order Last Date
2017-18	05/02/2020, *07/02/2020	30/09/2023	31/12/2023
2018-19	31/12/2020	31/01/2024	30/04/2024
2019-20	31/03/2021	31/05/2024	31/08/2024
2020-21	28/02/2022	30/11/2024	28/02/2025
2021-22	31/12/2022	30/09/2025	31/12/2025
2022-23	31/12/2023	30/09/2026	31/12/2026
2023-24	31/12/2024	30/09/2027	31/12/2027

Section 74:

Tax Period	Due Date GSTR 9	Notice Last Date	Order Last Date
2017-18	05/02/2020, *07/02/2020	05/08/2024, 07/08/2024	05/02/2025, 07/02/2025
2018-19	31/12/2020	30/06/2025	31/12/2025
2019-20	31/03/2021	30/09/2025	31/03/2026
2020-21	28/02/2022	31/08/2026	28/02/2027
2021-22	31/12/2022	30/06/2027	31/12/2027
2022-23	31/12/2023	30/06/2028	31/12/2028
2023-24	31/12/2024	30/06/2029	31/12/2029

- 05/02/2020 for 2017-18 is for Chandigarh, Delhi, Gujarat, Haryana, Jammu and Kashmir, Ladakh, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh, Uttarakhand.
- For other States due date is 07/02/2020

Assessment

- **Section 59:** Self-Assessment
- **Section 60:** Provisional Assessment
- **Section 61:** Scrutiny of Returns
- **Section 62:** Assessment of Non-filers of returns
- **Section 63:** Assessment of unregistered persons
- **Section 64:** Summary Assessment in certain special cases

Section 61: Scrutiny of Returns

Proper officer to scrutinize the return to verify its correctness

<u>FORM ASMT - 10</u>
Inform assessee about the discrepancies noticed seeking his explanation and quantifying the amount of tax, interest, etc.

<u>FORM ASMT - 11</u>
Assessee to furnish explanation **or** can accept and pay

<u>FORM ASMT - 12</u>
Explanation found acceptable, no further action to be taken

Where assessee does not reply

or

after acceptance, fails to take corrective action

or

does not offer satisfactory explanation,

initiate proceedings u/s 65/66/67/73/74

<u>Time limit for reply to ASMT – 10</u>

30 days of receipt of ASMT – 10 or such further period as may be permitted.

C.B.I. & C. Instruction No. 2/2022-GST, dated 22-3-2022 dated 22 March 2022 – Standard Operating Procedure (SOP) notified for Scrutiny of returns for FYs 2017-18 and 2018-19

- DGARM to select returns for scrutiny and inform concerned officer
- Risky Assessments (having revenue implications) to be prioritized in deciding the scrutiny schedule
- Every proper officer to conduct scrutiny of <u>minimum</u> 3 GSTINs per month
- **ASMT-10 to be issued with documents available with department. No need to seek documents before issuing ASMT-10**
- **Discrepancies mentioned in Form ASMT-10 to be specific & not generic**
- **Additional payments not made through GSTR but paid through DRC-03 should also be considered before serving ASMT-10**
- If matter needs to be further investigated, refer to jurisdictional officer to decide whether the matter needs to go to Audit or Anti-Evasion.
- Timelines for Scrutiny of Returns/Internal working given.

C.B.I. & C. Instruction No. 2/2022-GST, dated 22-3-2022 dated 22 March 2022 – Standard Operating Procedure (SOP) notified for Scrutiny of returns for FYs 2017-18 and 2018-19

Indicative list (not exhaustive) of parameters for scrutiny –

1. GSTR-1 v/s 3B
2. ITC availed for discharging RCM liability or Cash utilized less than RCM liability
3. Mapping of reverse charge liability (2A v/s 3B)
4. ITC from ISD (2A v/s 3B)
5. Other ITC (2A v/s 3B)
6. Reconciliation of outward taxable supplies
7. Outward Supplies (3B v/s E-way bill data)

C.B.I. & C. Instruction No. 2/2022-GST, dated 22-3-2022 dated 22 March 2022 – Standard Operating Procedure (SOP) notified for Scrutiny of returns for FYs 2017-18 and 2018-19

Indicative list (not exhaustive) of parameters for scrutiny –

8. ITC availed on supplies from the vendors post their effective date of cancellation of registration
9. Return filed after September of next FY to check inadmissible ITC
10. Details of Import of Goods cross – verified from ICEGATE portal
11. Reversal of ITC as per Rule 42/43
12. Interest paid on delayed payment of taxes
13. Late fee paid in case of delayed filing of return

Audit

- **Section 65:** Audit by departmental officers
- **Section 66:** Special Audit by Chartered/Cost Accountant appointed by department

Background

S. No.	Topic	Section	Rule	Form
1.	Definition of ‘Audit’	Section 2(13)	-	-
2.	Definition of ‘Place of Business’	Section 2(85)	-	-
3.	Audit by proper officer	Section 65	Rule 101	ADT-01 and ADT-02
4.	Special Audit by CA/CWA appointed by department	Section 66	Rule 102	ADT-03 and ADT-04

Section 2(13): Definition of Audit

"Audit" means –

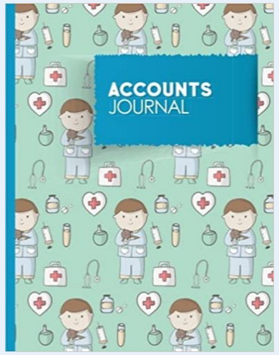
- the examination of records, returns and other documents
- maintained or furnished by the registered person under this Act or the rules made thereunder or under any other law for the time being in force
- to verify the correctness of
  - turnover declared,
  - taxes paid,
  - refund claimed, and
  - input tax credit availed, and
- to assess his compliance with the provisions of this Act or the rules made thereunder.

Section 2(85): Definition of Place of Business

“Place of business" includes –

Place from where business is carried on

Warehouse or godown or any other place where goods are stored



Place where books of accounts are maintained

Place where a taxable person is engaged in business through an agent

Section 65: Audit by departmental authorities

Authorization by whom?

Commissioner or any officer authorized by Commissioner

Where audit to be conducted?

At the place of business of registered person or at own office (desk review)

For how much period audit can be conducted?

Section 73/74 containing provisions of issuance of demand notice must be referred for ascertaining the maximum period for which audit can be conducted. Audit can be conducted for one or multiple financial years or <u>a part of financial year</u>*.

* Inserted by CGST (14th Amendment) Rules, 2018 w.e.f. 31 December 2018

Section 65: Audit by departmental authorities

- **How assessee will be informed? –** By way of a notice in Form GST ADT – 01 from proper officer informing about the Audit to be conducted.
- **Time limit for issuance of such notice? -** At least 15 days before the date on which proper officer wishes to conduct audit.

Form GST ADT - 01

[See rule 101(2)]

Date:

Reference No.:

To,

GSTIN ....

Name ....

Address ....

Period - F.Y.(s) - ....

Notice for conducting audit

Whereas it has been decided to undertake audit of your books of account and records for the financial year(s) .... to .... in accordance with the provisions of section 65. I propose to conduct the said audit at my office/at your place of business on -------.

And whereas you are required to:-
(i) afford the undersigned the necessary facility to verify the books of account and records or other documents as may be required in this context, and
(ii) furnish such information as may be required and render assistance for timely completion of the audit.

You are hereby directed to attend in person or through an authorised representative on .... (date) at..............................(place) before the undersigned and to produce your books of account and records for the aforesaid financial year(s) as required for audit.

In case of failure to comply with this notice, it would be presumed that you are not in possession of such books of account and proceedings as deemed fit may be initiated as per the provisions of the Act and the rules made thereunder against you without making any further correspondence in this regard.

Signature ...
Name
Designation ....

Section 65: Audit by departmental authorities

Manner of conducting audit – No set manner has been prescribed for conducting audit. However, Rule 101 provides the documents/records which must be verified by proper officer –

- the documents on the basis of which the books of account are maintained and the returns and statements furnished under the provisions of the Act and the rules made thereunder; and,
- the correctness of –
  - the turnover;
  - exemptions claimed;
  - rate of tax applied in respect of supply so made;
  - ITC availed and utilized; and,
  - refund claimed.

Section 65: Audit by departmental authorities

- **Time limit for completion of audit? –** Within a period of 03 months from date of commencement of audit. Can be extended by Commissioner by further period of maximum 06 months, after recording reasons in writing.

- **Date of commencement of audit** shall mean the later of –
  - Date on which documents (as called by the proper officer) are furnished by assessee; or,
  - Date of actual institution of audit at the place of business.

Section 65: Audit by departmental authorities

Conclusion of audit – Within 30 days of conclusion, proper officer shall inform the assessee about his findings and the reasons for such findings in FORM GST ADT – 02

No finding/
No non-compliance
discovered

Audit deemed to
be concluded

Where assessee agrees
with findings of audit team

Audit shall be concluded after payment
of taxes, as determined by audit team

Where assessee does not agree
with findings of audit team

SCN will be issued by audit team under
Section 73 or 74, as the case may be

Form GST ADT - 02

Form GST ADT – 02

[See rule 101(5)]

Reference No.: Date:

To,

GSTIN ………………………………..
Name ……………………………………
Address ………………………………….

Audit Report No. ……….. dated ……..

Audit Report under section 65(6)

Your books of account and records for the F.Y.…………… has been examined and this Audit Report is prepared on the basis of information available / documents furnished by you and the findings are as under:

Short payment of	Integrated tax	Central tax	State /UT tax	Cess
Tax				
Interest				
Any other amount				

[Upload pdf file containing audit observation]

You are directed to discharge your statutory liabilities in this regard as per the provisions of the Act and the rules made thereunder, failing which proceedings as deemed fit may be initiated against you under the provisions of the Act.

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

Section 66: ‘Special Audit’ by CA/CWA appointed by department

When it is required?

- At any stage of scrutiny, inquiry, investigation or any other proceedings
- Officer (not below the rank of AC) **having regard to the nature and complexity of the case and in the interest of revenue,** is of the opinion that
- The value has not been correctly declared or the credit availed is not within the normal limits
- Such officer may direct the assessee by issuing FORM GST ADT – 03 to get his records examined and audited* by a Chartered/Cost Accountant, as nominated.

*Special audit to be conducted even if an audit of assessee has already been undertaken under any other provision of this Act or any other Law

Form GST ADT - 03

Form GST ADT - 03

[See rule 102(1)]

Date:

Reference No.:

To,

GSTIN ……………………………………

Name ……………………………………

Address ……………………………………

Tax period - F.Y.(s) - ……………………………

Communication to the registered person for conduct of special audit under section 66

Whereas the proceedings of scrutiny of return /enquiry/investigation/…….. are going on;

And whereas it is felt necessary to get your books of account and records examined and audited by ………………………….(name), chartered accountant / cost accountant nominated by the Commissioner;

You are hereby directed to get your books of account and records audited by the said chartered accountant / cost accountant.

Signature ……………….

Name ……………………….

Designation ……………………….

Section 66: 'Special Audit' by CA/CWA appointed by department

Approval of special audit by whom and who shall nominate such CA/CWA?

Commissioner

Time period for completion of such audit by CA/CWA?

90 days. Can be extended by Assistant Commissioner (on an application by assessee or CA/CWA) by a further period of 90 days.

Who will pay for the remuneration of CA/CWA?

Expenses (including remuneration) of such examination and audit shall be determined and paid by Commissioner

Section 66: ‘Special Audit’ by CA/CWA appointed by department

Conclusion of special audit -

- CA/CWA, as nominated, to submit his report within the time period, as specified, to Assistant Commissioner containing his findings.
- Findings of Special Audit to be communicated to assessee in FORM GST ADT – 04.
- Any material gathered by CA/CWA which is intended to be used against the assessee in any proceedings must be done only after affording an opportunity of being heard to the assessee.
- Special Audit results in detection of amount not paid/short paid, etc. – Proceedings under Section 73/74 (demand notice) can be initiated by proper officer.

Form GST ADT - 04

Form GST ADT – 04
[See rule 102(2)]

Reference No.: Date:

To,

GSTIN …………………………………..
Name ……………………………………
Address …………………………………

Information of Findings upon Special Audit

Your books of account and records for the F.Y…………… has been examined by -------------- (chartered accountant/cost accountant) and this Audit Report is prepared on the basis of information available / documents furnished by you and the findings/discrepancies are as under:

Short payment of	Integrated tax	Central tax	State /UT tax	Cess
Tax				
Interest				
Any other amount				

[Upload pdf file containing audit observation]

You are directed to discharge your statutory liabilities in this regard as per the provisions of the Act and the rules made thereunder, failing which proceedings as deemed fit may be initiated against you under the provisions of the Act.

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

Inspection, Search, Seizure & Arrest

- **Section 67:** Power of Inspection, Search & Seizure
- **Section 68:** Inspection of goods in movement
- **Section 69:** Power to Arrest
- **Section 70:** Power to Summon
- **Section 71:** Access to Business Premises
- **Section 72:** Officers to assist Proper Officers

Background

S. No.	Topic	Section	Rule	Form
1.	Power of Inspection, Search & Seizure	Section 67	Rule 139 to 141	FORM GST INS – 01 to INS - 05
2.	Inspection of goods in movement	Section 68	Rule 138, 138A to 138D, 55A	FORM GST EWB – 01 to EWB-04 FORM GST INV – 01 FORM GST MOV – 01 to MOV - 11
3.	Power to Arrest	Section 69	-	-
4.	Power to Summon	Section 70	-	-
5.	Access to Business Premises	Section 71	-	-
6.	Officers to assist proper officers	Section 72	-	-

Section 67: Power to Inspection, Search & Seizure

- Inspection
- Search & Seizure
- Break open or seal
- Other

Inspection

When can Inspection be ordered?

If the officer authorizing inspection has reasons to believe

- Any person engaged in the **business of transporting goods (transporter) or an owner or operator of a warehouse or a godown** or any other place is **keeping goods** which have escaped payment of tax or **has kept his accounts** or goods in such a manner as is **likely to cause evasion of tax** payable under this Act
- **A taxable person** has **suppressed** any transaction relating to supply of goods or services or both or the stock of goods in hand
- **A taxable person** has **claimed input tax credit** in excess of the entitlement
- **A taxable person** has indulged in **contravention** of any provisions of this Act or Rules **to evade tax** under this Act

Inspection

» **Proper officer who can authorize inspection?**

Officer in the rank of Joint Commissioner or above in FORM GST INS - 01

» **What can be inspected by proper officer?**

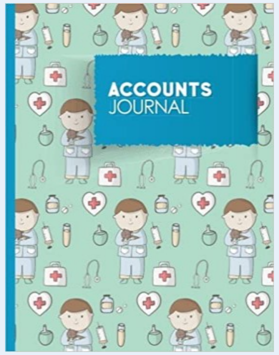
Any place of business of the taxable person **or** the persons engaged in the business of transporting goods or the owner or the operator of warehouse or godown or any other place.

Section 2(85): Definition of Place of Business

“Place of business" includes –

Place from where business is carried on

Warehouse or godown or any other place where goods are stored



Place where books of accounts are maintained

Place where a taxable person is engaged in business through an agent

Search & Seizure u/s 67(2)

» **Officer who can authorize Search & Seizure?**

Officer in the rank of Joint Commissioner or above in FORM GST INS - 01

» **When can search & seizure be authorized?**

Proper officer, either pursuant to an inspection or otherwise, has reasons to believe that any goods liable to confiscation or any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Act, are secreted in any place.

» **Who can seize?**

Any officer of central tax authorized by proper officer or proper officer himself

» **What can be seized?**

Goods I Documents* I Books I Things

Order of seizure in FORM GST INS-02.

*Document as defined under Section 2(41) includes written and printed record of any sort and electronic record as defined in Section 2 of I.T. Act

Search & Seizure u/s 67(2)

» **Not practical to search or seize goods**

Serve on the owner or custodian of goods an order in FORM GST INS - 03 that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer

» **Seized goods to be released on provisional basis**

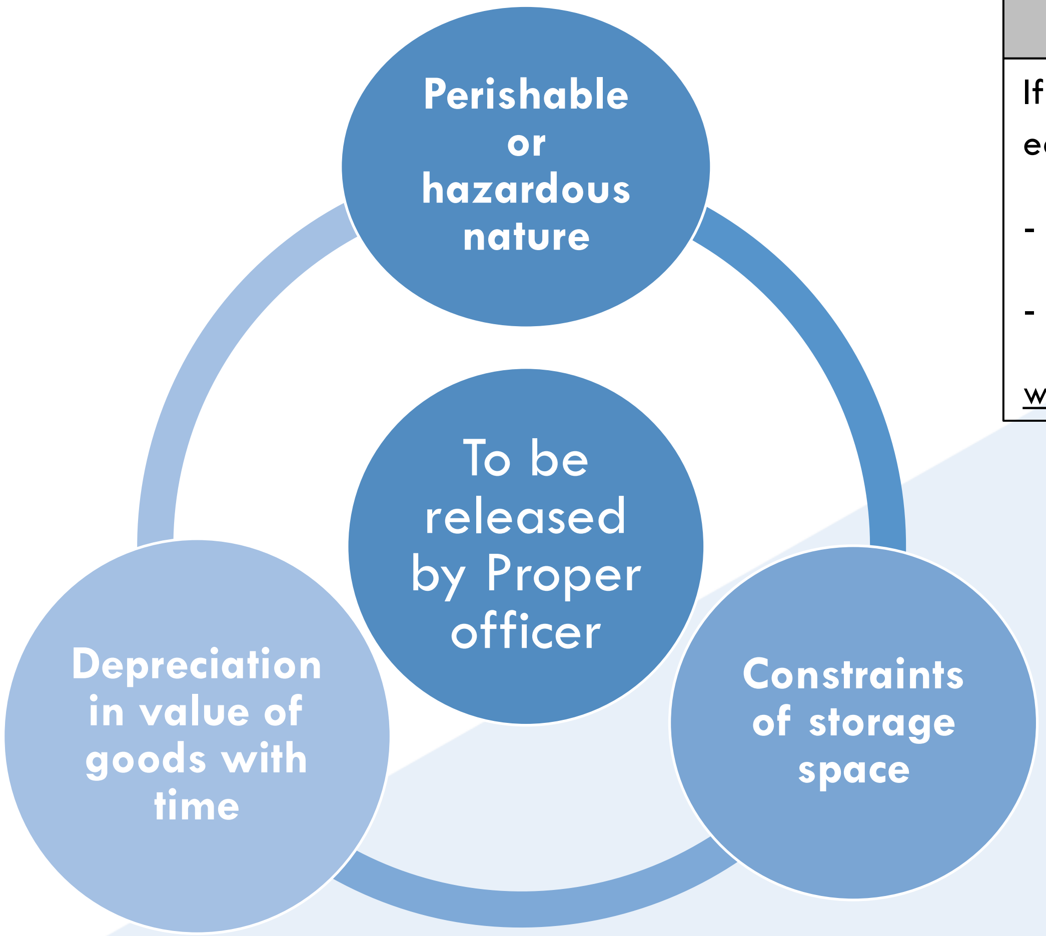
On execution of bond (equal to value of goods) in FORM GST INS – 04 and furnishing of security (equal to value of tax, interest and penalty) **or** on payment of applicable tax, interest and penalty.

Person to whom goods released provisionally fails to produce the goods at appointed date and place – encash security.

» **Time limit**

A demand notice must be served within 6 months of seizure of goods otherwise goods to be returned by officer. Extension – Can be further extended by maximum 6 months.

Search & Seizure u/s 67(2)



Condition of release

If the taxable person pays an amount equivalent to the

- market price of such goods or things; or,
- the amount of tax, interest and penalty

whichever is lower

Inventory

Proper officer shall prepare an inventory of all such goods seized, containing fields such as *description, quantity or unit, make, mark or model, where applicable* and get it signed from the assessee.

Form of release

FORM GST INS - 05

Condition not fulfilled

Goods will be disposed off and amount realized be adjusted against tax, interest and penalty

Goods notified *vide* **Notification No. 27/2018 – Central Tax dated 13 June 2018**

Schedule

(1) Salt and hygroscopic substances
(2) Raw (wet and salted) hides and skins
(3) Newspapers and periodicals
(4) Menthol, Camphor, Saffron
(5) Re-fills for ball-point pens
(6) Lighter fuel, including lighters with gas, not having arrangement for refilling
(7) Cells, batteries and rechargeable batteries
(8) Petroleum Products
(9) Dangerous drugs and psychotropic substances
(10) Bulk drugs and chemicals falling under Section VI of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975)
(11) Pharmaceutical products falling within Chapter 30 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975)
(12) Fireworks
(13) Red Sander
(14) Sandalwood
(15) All taxable goods falling within Chapters 1 to 24 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975)
(16) All unclaimed/abandoned goods which are liable to rapid depreciation in value on account of fast change in technology or new models etc.
(17) Any goods seized by the proper officer under section 67 of the said Act, which are to be provisionally released under sub-section (6) of section 67 of the said Act, but provisional release has not been taken by the concerned person within a period of one month from the date of execution of the bond for provisional release.

[F. No. 349/58/2017 – GST (Pt.)]

Search & Seizure u/s 67(2)

» **Time period for which <u>documents or books or things</u> can be retained**

As long as they are necessary for their examination for any inquiry or proceedings. However, if a demand notice has been issued and anything from above has not been made part of RUD, return it to the assessee within 30 days of issuance of such notice.

» **Rights of assessee in case of seizure of <u>documents</u>**

- Can make copies thereof **or** take extracts therefrom

- In presence of authorized officer at the place and time, such officer may indicate

<u>Exception</u> – When officer is of the opinion that it may prejudicially affect the investigation

» Provisions of CrPC, in relation to search & seizure, to apply. 'Magistrate' to be substituted by 'Commissioner'.

Search & Seizure u/s 67(11)

- **Proper officer?**

  Same in FORM GST INS - 01

- **When?**

  When PO has reasons to believe that any person has evaded or is attempting to evade the payment of any tax

- **What can be seized?**

  Accounts, Registers or documents of such person produced before the PO and grant a receipt for the same

- **Time period?**

  So long as required in connection with any proceedings under this Act/Rules for prosecution

C.B.I. & C. Instruction No. 1/2020-21/GST-Investigation, dated 2-2-2021 – Instructions/Guidelines on Procedure to be followed during search operations accordance with provisions of CrPC, 1973

- Officer authorizing search should have valid & justifiable reasons duly recorded in file.
- Search only with proper search authorization issued by Competent Authority
- DIN should be quoted on each search authorization
- Premises of a person (Mr. X) cannot be searched basis search authorization of premises of another person (Mr. Y).
- Search Authorization issued on the name of a person who is already dead. Fresh search authorization to be issued on the name of its legal heirs.
- In case of search of residence, a lady officer to accompany.
- Search in presence of two independent witnesses. PSU Employees, Bank Employees, etc. may be preferred.
- Officers to show their ID cards to the person-in-charge of premises. Personal search to be offered of both officers and independent witnesses both before the start of search and after commencement of search.

C.B.I. & C. Instruction No. 1/2020-21/GST-Investigation, dated 2-2-2021 – Instructions/Guidelines on Procedure to be followed during search operations accordance with provisions of CrPC, 1973

- Search Authorization to be executed before the start of search. Sign with date and time to be obtained of person-in-charge and independent witnesses on search authorization.
- Panchnama to be made. It should contain list of documents/ goods/things recovered. Time & date of start & conclusion of search proceedings to be also mentioned on Panchnama.
- For sensitive premises, videography may be considered.
- Sensitive & respectable towards assessee and his social & religious sentiments.
- Special attention to elders, women & children. Children can go to school after examination of their bags. If someone is not well, medical practitioner to be called.
- Panchnama's copy to be given to person-in-charge of premises. Every page of panchnama & its annexures to be signed by officer.

C.B.I. & C. Instruction No. 1/2020-21/GST-Investigation, dated 2-2-2021 – Instructions/Guidelines on Procedure to be followed during search operations accordance with provisions of CrPC, 1973

- If person-in-charge does not sign panchnama, paste copy of panchnama at premises.
- Statement recorded during search, each page of statement to be signed by person giving statement.
- After search, report to be given to officer who authorized search.
- Leave the premises immediately after completion of Panchnama proceedings.
- Take COVID precautions.

Paresh Nathalal Chauhan v. State of Gujarat

Guj. HC (24.12.2019) **2019 Taxo.online 935**

- From the contents of the panchnama as referred to hereinabove, it is evident that the concerned officers remained at the residential premises of the petitioner with a view to extort confessions from the family members of the petitioner regarding the presence of the petitioner and the place where the petitioner might have secreted the documents regarding his business dealings.

- In the facts of the present case, the power under sub-section (2) of Section 67 of the GST Acts has not only not been exercised strictly in accordance with law, but has also not been exercised for the purposes for which the law authorises it to be exercised, namely that though the power was to be exercised for carrying out search and seizure of goods liable to confiscation, documents, books or things at the place in respect of which the authorisation of search was given, the search was converted to a search for the dealer and into an investigation to find out other places where documents, books or things could have been secreted, which was beyond the scope of the powers vested in the authorised officer.

Pioneer Cooperative Car Parking Servicing & Constr. Society Ltd. v. State of West Bengal – 2019 Taxo.online 336 (30.05.2019)

- Search and seizure under GST by an officer below the rank of Joint Commissioner is without jurisdiction and amounts to harassment of assessee.

Prakashsinh Hathisinh Udavat v. State of Gujarat 2019 Taxo.online 678 (16.10.2019)

- The AC was not conferred any power under Section 67(2) to carry out any search or inspection.
- A perusal of the impugned order further reveals that against the name of person to whom the premises where the search is carried out belong, nothing has been stated and it has been left blank and against the names of witnesses, the petitioner's name and address has been shown. At the end of the order, the names of the witnesses are shown without complete addresses, making it impossible to identify the witnesses.

Break open or seal

- **Proper officer?**

  Same as for Search or Seizure

- **Power?**

  - To Seal or Break Open the door of any premises; or

  - To Break Open any almirah, electronic devices, box, receptacle

  - in which any goods, accounts, registers or documents of the person are suspected to be concealed

  - where access to such premises, almirah, electronic devices, box or receptacle is denied.

Steel Hypermart India Pvt. Ltd. v. ADC, CT Enforcement

2019 (22) G.S.T.L. 321 – Kar. HC (01.02.2019)

- Sealing of petitioner's premises although access to business premises not denied by the petitioner.
- Revenue directed to unseal the premises in question at a time convenient to the petitioner and the petitioner shall co-operate for inspection/search of the premises in question, including the computer system.

Section 69: Power to Arrest

Offences

01

Supplies any goods or services or both **without issue of any invoice**, in violation of the provisions of this Act/Rules, **with the intention to evade tax**

02

Issues any invoice or bill **without supply of goods or services or both** in violation of the provisions of this Act/Rules, leading to wrongful availment or utilisation of input tax credit or refund of tax

03

Avails input tax credit using the invoice or bill referred to in (2)

04

Collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due

Punishment

01

Where amount evaded exceeds Rs. 5 crores

Imprisonment of upto 5 years and with fine

02

Where amount evaded exceeds Rs. 2 crores but less than 5 crores

Imprisonment of upto 3 years and with fine

03

Again convicted for such offence

Imprisonment of upto 5 years and with fine

Section 69: Power to Arrest

» **Authorization by whom?**

Commissioner

» **Power?**

When he has reasons to believe that a person has committed offences (as listed) punishable (as listed), authorize any officer of central tax to arrest such person.

Cognizable & Non - Bailable Offence

- Amount evaded in Offences (as listed) is more than Rs. 5 crores are cognizable and non - bailable offences.

- In such cases, after arrest, officer shall inform the person arrested about –

  - the grounds of arrest; and,

  - produce him before a Magistrate within 24 hours.

Cognizable v/s Non-cognizable

Particulars	Cognizable	Non-cognizable
Defined under which section of CrPC, 1973	Section 2(c)	Section 2(l)
Requirement of Warrant for Arrest	Not required	Required
Nature of crime	Serious offence	Not serious
Examples of CrPC	Murder, Rape, Dowry Death, Kidnapping, Theft, etc.	Assault, Cheating, Forgery, etc.
FIR	Can be lodged without obtaining prior permission of Magistrate	Cannot be lodged without obtaining prior permission of Magistrate
Procedure for Arrest	Can be arrested after lodging FIR	Lodge FIR, Investigate, prepare and file charge sheet in court, trial, final order of arrest by Court

Bailable v/s Non-bailable

Particulars	Non - Bailable	Bailable
Defined under which section of CrPC, 1973	Section 2(a)	Section 2(a) read with First Schedule
Bail	Matter of discretion	Matter of right
Release on bail	By Court only	By Police also
Nature	Grave & Serious	Less grave & serious

Section 70: Power to Summons

- Proper Officer has
- 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

○ Manner same as provided in the case of civil court under the provisions of CPC

FAQs released by CBIC

Q 34. What are the guidelines for issue of summons?

Ans. The Central Board of Indirect Taxes and Customs (CBIC) in the Department of Revenue, Ministry of Finance has issued guidelines from time to time to ensure that summons provisions are not misused in the field. Some of the important highlights of these guidelines are given below:

i. summons is to be issued as a last resort where assesses are not co-operating and this section should not be used for the top management;

ii. the language of the summons should not be harsh and legal which causes unnecessary mental stress and embarrassment to the receiver;

iii. summons by Superintendents should be issued after obtaining prior written permission from an officer not below the rank of Assistant Commissioner with the reasons for issuance of summons to be recorded in writing;

FAQs released by CBIC

iv. *where for operational reasons, it is not possible to obtain such prior written permission, oral/ telephonic permission from such officer must be obtained and the same should be reduced to writing and intimated to the officer according such permission at the earliest opportunity;*

v. *in all cases, where summons are issued, the officer issuing summons should submit a report or should record a brief of the proceedings in the case file and submit the same to the officer who had authorized the issuance of summons;*

vi. ***senior management officials such as CEO, CFO, General Managers of a large company or a Public Sector Undertaking should not generally be issued summons at the first instance. They should be summoned only when there are indications in the investigation of their involvement in the decision making process which led to loss of revenue.***

FAQs released by CBIC

Q 35. What are the precautions to be observed while issuing summons?

Ans. The following precautions should generally be observed when summoning a person:-

(i) A summon should not be issued for appearance where it is not justified. The power to summon can be exercised only when there is an inquiry being undertaken and the attendance of the person is considered necessary.

(ii) Normally, summons should not be issued repeatedly. As far as practicable, the statement of the accused or witness should be recorded in minimum number of appearances.

(iii) Respect the time of appearance given in the summons. No person should be made to wait for long hours before his statement is recorded except when it has been decided very consciously as a matter of strategy.

(iv) Preferably, statements should be recorded during office hours; however, an exception could be made regarding time and place of recording statement having regard to the facts in the case.

Circular bearing F. No. 208/122/89-CX.6 dated 13 October 1989

Complaints have been received from the trade that in some of the Collectorates summons under Section 14 of the Central Excise and Salt Act, 1944 are being issued to the Managing Directors and other high officers with a view to enforce recovery of dues which are under dispute. Action under this section is to be taken only as a last resort in cases whether assesses are not cooperating or investigations are to be completed expeditiously. This section should not be used for harassing the top management for forcing them to pay up demands which are disputed by them. For recovery of demands normal procedure under the law should be followed.

If any instance of issue of summons to Managing Directors and others without justification is noticed, a serious view will be taken by the board. Collectors will be held personally responsible for enforcing these instructions in their charges.

Instruction bearing F. No. 207/07/2014-CX-6, dated 20 January 2015

It has been brought to the notice of the Board that in some instances, the summons under Section 14 of the Central Excise Act, 1944 have been issued by the field formations to the top senior officials of the companies in a routine manner to call for material evidence/documents. Besides, summons have been issued to enforce recovery of dues, which are under dispute. As per Section 14 of Central Excise Act, 1944, summons can be used in an inquiry for recording statements or for collecting evidence/documents. While the evidentiary value of securing documentary and oral evidence under the said legal provision can hardly be over emphasized, nevertheless, it is desirable that summons need not always be issued when a simple letter, politely worded, can also serve the purpose of securing documents relevant to investigation. It is emphasized that the use of summons be made only as a last resort when it is absolutely required.

Instructions bearing no. 3/2022-23 (GST-Investigation) dated 17 August 2022

- *Officers are also advised to explore instances when instead of resorting to summons, a letter for requisition of information may suffice.*

- *The officer issuing summons should record in file about appearance/ non-appearance of the summoned person and place a copy of statement recorded in file.*

- *Summons should normally indicate the name of the offender(s) against whom the case is being investigated unless revelation of the name of the offender is detrimental to the cause of investigation, so that the recipient of summons has prima-facie understanding as whether he has been summoned as an accused, co-accused or as witness.*

- *Do not issue summons for statutory documents which are available on GST portal.*

- *DIN mandatory on Summons.*

Instructions bearing no. 3/2022-23 (GST-Investigation) dated 17 August 2022

- *The summoning officer must be present at the time and date for which summons is issued. In case of any exigency, the summoned person must be informed in advance in writing or orally.*

- *All persons summoned are bound to appear before the officers concerned, the only exception being women who do not by tradition appear in public or privileged persons. (For exemption, Refer Section 132 and 133 of CPC)*

- *Repeated summons without ensuring service of the summons must be avoided.*

- *Sometimes it may so happen that summoned person does not join investigations even after being repeatedly summoned. In such cases, after giving reasonable opportunity, generally three summons at reasonable intervals, a complaint should be filed with the jurisdictional magistrate. However, this does not bar to issue further summons to the said person under Section 70 of the Act.*

FSM Education Pvt. Ltd. v. Union of India & Ors.

2022 Taxo.online 18 (10.01.2022)

Facts of the case –

- The Petitioner received a communication dated 02 Dec. 2021 from the Office of the Commissioner of CGST, Mumbai West, requesting to submit certain documents within a period of 4 days from the date of receipt of the Notice. Documents submitted from time to time.

- Department issued a Summons on the Petitioner on 15 Dec. 2021, under Section 70 to remain present on 16 Dec. 2021 at 11.20 a.m. The Petitioner deputed Mr. Piyush Patel, Accounts Manager of the Petitioner. Said Piyush Patel was grilled and interrogated for a period of about five hours from 4.00 p.m. to 9.00 p.m. and was subjected to cross-questioning which was contrary to the guidelines issued by Department.

- The Department issued another summons on 23 Dec. 2021 to Mrs. Tanuja Gomes, one of the Directors of the Petitioner for producing documents and providing oral evidence and to remain present before his office on 29 Dec. 2021.

FSM Education Pvt. Ltd. v. Union of India & Ors.

2022 Taxo.online 18 (10.01.2022)

Petitioner's Arguments –

- The summons cannot be issued to coerce and pressurize the Petitioner or its director. He submits that Ms. Tanuja Gomes is not personally familiar with the issue of exemption regarding payment of GST, she being a musician.

Plea –

- Requested for HC's interference to quash and set aside the summons issued to Ms. Tanuja Gomes and seeks direction to the Respondents to conduct an enquiry without initiating summons and interrogation unless found extremely necessary and only by due adherence of the law.

FSM Education Pvt. Ltd. v. Union of India & Ors.

2022 Taxo.online 18-Bombay HC (10.01.2022)

Held –

- A perusal of the reply to the question 34 of FAQs dated 15 December 2018, issued by GST Department would clearly indicate that issuance of summons is a last resort and are not issued in a casual manner. There are no allegations made by the Respondents alleging non-cooperation on the part of the Petitioner.
- Directed the Department to seek whatever document was necessary for inquiry and consultants were directed to furnish all the data within stipulated timeline.
- It was further held that if any summons is issued by the Department, the summons shall indicate the purpose of issuing summons to the Petitioner with clear 7 days notice before fixing the date for recording the statement of the said Director Ms. Tanuja Gomes.

Reasons to believe

Golden Cotton Industries v. Union of India, reported in 2019 (29) G.S.T.L. 587 (Guj.)

- The words "where the proper officer has reasons to believe" in Section 67 of the Act suggest that the **belief must be that of an honest and reasonable person** **based upon the relevant materials and circumstances.**
- The statutory requirement of reasonable belief, rooted in the information in possession of Proper Officer under the Act, is to safeguard the citizen from vexatious proceedings.
- 'Belief' is a mental operation of accepting a fact as true, so, **without any fact, no belief can be formed.**
- It is true that it is not necessary for the Proper Officer under the Act to state reasons for his belief. **But if it is challenged that he had no reasons to believe, in that case, he must disclose the materials upon which his belief was formed,** as it has been held by the Supreme Court in **Sheonath Singh's case (AIR 1971 SC 2451),** that the Court can examine the materials to find out whether an honest and reasonable person can base his reasonable belief upon such materials although the sufficiency of the reasons for the belief cannot be investigated by the Court.

Rimjhim Ispat Ltd. v. State of U.P., reported in 2019 (24) G.S.T.L. 711 (All.)

The principles that are culled out from the catena of decisions referred is that the 'reasons to believe' should exist and should be based on reasonable material and should not be fanciful or arbitrary.

L.R. Gupta v. Union of India, reported in (1992) 194 ITR 32

Delhi High Court held that the expression **"information" must be something more than a mere rumour or a gossip or a hunch. There must be some material, which can be regarded as information, which must exist on the file** on the basis of which the authorizing officer can have reason to believe. **Merely because a person does not file a return or does not disclose true income and wealth cannot be a ground** for authorising the search and seizure, under Section 132(1) of the Act.

Demands & Recovery

Background – Demands & Recovery (Chapter XV)

S. No.	Topic	Section	Rule	Form
1.	Determination of tax not paid/short paid/erroneously refunded or ITC wrongly availed or utilised for any reason other than fraud or any wilful misstatement or suppression of facts	Section 73	Rule 121 Rule 142	Form DRC-01 to DRC-08
2.	For reasons of fraud or any wilful misstatement or suppression of facts	Section 74		
3.	General provisions relating to determination of tax	Section 75		

Section 73 & 74: Issuance of Show Cause Notice

Serve SCN on the assessee, if –

- Tax not paid
- Tax short paid
- Tax erroneously refunded
- ITC wrongly availed or utilized

Whether following ingredients exists?

- Fraud
- Wilful-misstatement
- Suppression of facts

to evade tax

No

SCN under **Section 73**

Interest u/s 50 and Penalty (10%)

Yes

SCN under **Section 74**

Interest u/s 50 and Penalty (100%)

Section 73 & 74: Difference

Particulars	Section 73	Section 74
Time limit for passing Adjudicating Order	3 years*	5 years*
Time limit for passing Issuing SCN	At least 3 months prior to last date of issuing Order	At least 6 months prior to last date of issuing Order
Penalty leviable	10% of tax or Rs. 10,000, whichever is higher	100% of tax
Reduced Penalty (in case tax along with Interest & Penalty, if any, paid before service of SCN)	0%**	15%
Reduced Penalty (in case tax along with Interest & Penalty, if any, paid within 30 days of SCN)	0%**	25%
Reduced Penalty (in case tax along with Interest & Penalty, if any, paid within 30 days of Order)	No provision of reduced penalty	50%

*In case of tax & ITC – 3/5 years from the due date for furnishing of annual return for the financial year.

*In case of erroneous refund – 3/5 years from the date of refund.

**These benefits u/s 73 not available in case of self-assessed tax or tax collected but not paid within 30 days.

Section 73 and 74: Common rules

- For subsequent period demand, extended period of limitation cannot be invoked and SOD has to be served u/s 73 only.

- **"Suppression"** – 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.

- Service of notice or issuance of order stayed by Court – Period of stay to be excluded for computing period of limitation.

Section 75: General provisions

- Charges of fraud, wilful-misstatement or suppression of facts to evade tax not proved – SCN deemed to be issued u/s 73 instead of 74.
- Any Order is to be issued as per directions of Court – Time limit – 2 years from the date of communication of directions.
- Opportunity of being heard is to be given when –
  - Written request is made; or,
  - Any adverse order is to be passed.

Section 75: General provisions

- Adjournment of hearing can be sought subject to maximum of 3 adjournments.
- Speaking Order to be passed.
- Order cannot travel beyond SCN.
- Adjudication Proceedings deemed to be concluded if Order not passed in stipulated time period.
- If same issue has been decided against Revenue and revenue has filed an appeal against the same, period of decision of lower authority till decision of higher authority before which Appeal has been filed by revenue is to be excluded.

Section 75: General provisions

- *Non obstante clause* – Amount of self-assessed tax (tax declared in GSTR-1 but not paid in 3B) is not paid, refer provisions of Section 79 (Recovery) and not Section 73/74.

- Penalty leviable u/s 73/74, no penalty for same Act or omission leviable under any other Section.

Section 74A: New provision

Particulars	Section 74A
Applicability	01.04.2024 onwards (on all cases)
Time limit for passing Adjudicating Order	12 months from SCN (extendable to further 6 months)
Time limit for passing Issuing SCN	42 months from Annual return
Penalty leviable	Fraud – 100% Non-fraud – Rs. 10,000/- or 10% of tax, whichever is higher

No SCN required if demand is less than Rs. 1,000/-.

Section 74A: New provision

Reduced penalty –

- Non fraud cases –
  - Tax & Interest paid before SCN – 0%
  - Tax & Interest paid within 60 days of SCN – 0%
- Fraud cases –
  - Tax, Interest & reduced penalty paid before SCN – 15%
  - Tax, Interest & reduced penalty paid within 60 days of SCN – 25%
  - Tax, Interest & reduced penalty paid within 60 days of Order – 50%

Section 76: Tax collected but not paid to Government

- Amount collected as tax – to be paid to Government – irrespective of whether taxable/exempt supplies or notwithstanding any Court's order
- Not paid – SCN to be served with Interest & **100% penalty**
- Time limit for issuance of Order – **1 year from date of issuance of Notice**
- Time limit for issuance of Notice – **No time limit.** Can be recovered even after 3/5 years.

How to draft Reply to SCN/ Appeal?

Importance

Maxim "*verba volant, scripta manent*" means ***spoken words fly away, written words remain!***

- ✓ Contains in detail all your submissions.
- ✓ An incomplete or unsubstantiated reply can never win the matter.
- ✓ Written argument of a counsel
- ✓ Hearing at various levels is a mere formality due to huge number of cases, so only your reply is going to help win the matter.
- ✓ To cover tracks for future litigation, if required.

Important Points to remember

- ✓ Carefully read (word by word) Notice or SCN against which Reply is to be drafted
- ✓ Carve out all the important points from Notice or SCN relating to Allegations which has to be replied
- ✓ Clarity must be obtained as to on what issue we need to draft (Understand the matter)
- ✓ Necessary research around all such provisions must be done, like, notifications, circulars, case laws, rules, etc.
- ✓ Intend to remove ambiguities in Notice or SCN and solve it through your reply as far as possible
- ✓ Make it simple and easy to understand even by a layman

Important Points to remember

- ✓ Quote all necessary provisions in your reply
- ✓ Make it concise and to the point
- ✓ Don't make it too concise that reader does not understand what your submission is
- ✓ Use relevant material and convey your submission effectively. Skip irrelevant aspects and repeated submissions/facts
- ✓ Proper supporting documents/evidences are **MUST**. Without supporting documents/evidences, you **CANNOT** win the matter merely based on statements/submissions.
- ✓ **REPLY SHOULD BE SELF-EXPLANATORY**

Do’s & Don'ts

- ✓ Take Alternate/Technical Grounds
- ✓ Grounds on merits must have the following –
  - ✓ Relevant provision must be quoted
  - ✓ Case laws/Notification/Circular around on the issue must be properly quoted
  - ✓ Proper supporting documents should be there to support our submission, like, Ledgers, Agreements, Invoices, CA Certificates, Credit register, etc.
- ✓ Flow of the draft should be proper
- ✓ In factual matters, reconciliations should be as simple & self-explanatory as possible

Do's & Don'ts

- ✓ Supporting documents, like, excel worksheet, ledgers, etc. should be self-attested
- ✓ Use legal maxims or doctrines in draft, wherever applicable
- ✓ If the submissions are lengthy due to nature of case, give proper conclusion to summarize your submissions
- ✓ List out the allegations of the department in bullets and highlight in draft that basis these allegations, case has been formed. Counter each & every allegation with the use of provisions, case laws, supporting evidences, etc.
- ✓ Counter contents of the statement, if relied upon by the department to make case against the taxpayer.

Common Alternate Grounds to look out for

- ✓ Whether SCN is issued within authority of law, like, monetary limits, jurisdiction, etc.
- ✓ No Pre-SCN consultation held (now voluntary)
- ✓ Procedural Infirmities which renders proceedings null & void
- ✓ SCN issued after a long time-gap of initiating proceedings
- ✓ Wrong computation of demand (Rate, BJA, etc.)
- ✓ Cum-Duty Benefit (except under RCM)

Common Alternate Grounds to look out for

- ✓ **Principles of Natural Justice Violated**
  - ✓ No opportunity of being heard given
  - ✓ Non-speaking SCN or Order
  - ✓ No SCN served and directly Order passed
  - ✓ Order travelled beyond SCN
  - ✓ No opportunity of cross-examination is given
- ✓ Whether it is within the authority's power to do a certain act, like, confiscation, detention, provisional attachment, etc.?

Common Alternate Grounds to look out for

- ✓ Proper basis/computation of demand is not given
- ✓ Extended period of limitation is wrongly invoked
  - Receipts shown in financial statements or ST-3 returns
  - Previous period SCN is served
  - Issue is interpretational or contrary judgements are available
  - Previous period Audit/enquiry is conducted
  - PSUs or Government offices cannot be said to have any *mala-fide* intent

Common Alternate Grounds to look out for

- ✓ No particular clause of the Section/Rule which is invoked is mentioned
- ✓ Grounds for penalty
- ✓ Opportunity of cross examination should be asked for.

Case laws for Alternate Grounds

- ✓ **Particular clause which is violated needs to be highlighted/Specific allegation needs to be mentioned –**
  - Dr. Jagjeet Singh Parwana v. Commissioner of CE & ST, Chandigarh – II, (Tri. – Chan.) - ST/59189/2013 dated 07.08.2023
  - Kalpataru Power Transmission Ltd.- 2023 (69) GSTL 54 (Tri. Ahmedabad).
  - Forward Resources Pvt. Limited- 2023 (69) GSTL 76 (Tri. Ahmd.).
  - Swapnil Asnodkar- 2018 (10) GSTL 479 (Tri. Mumbai).
  - Balaji Enterprises- 2020 (33) GSTL 97 (Tri. Del.).

Case laws for Alternate Grounds

- ✓ **Long time gap in concluding proceedings**
  - P.V. Mahadevan v. M.D. Tamil Nadu Housing Board (Supreme Court) while disposing off Appeal No. 4901 of 2005
  - Parle International Limited Versus Union of India and Others as cited in 2020 (11) TMI 842 - BOMBAY HIGH COURT
- ✓ **Procedural Infirmities**
  - Ram Prasad Sharma v/s The Chief Commissioner and another bearing W.P. No. 16119 of 2020
  - M/s Shri Shyam Baba Edible Oils v. The Chief Commissioner and another bearing WP No. 16131/2020

Case laws for Alternate Grounds

- ✓ **Time barred adjudication (Service tax cases)**
  - Kopertek Metals Pvt Ltd vs Commissioner, CGST-Delhi West, in Excise Appeal No. 52178 of 2022, decided on 25.11.2024 – Delhi CESTAT
  - M/s VOS Technologies India Pvt. Ltd. vs. Principal Additional Director General Anr. [W.P.(C) 4831/2021] vide Final Order bearing no. 2024: DHC:9493-DB dated 10 December 2024 wherein the Hon'ble High Court
  - Sundar System Pvt. Ltd. v. Union of India, reported in 2020 (33) G.S.T.L. 621 (Del.)
  - Swatch Group India Pvt. Ltd. v. Union of India, cited in 2023 (386) E.L.T. 356 (Del.)
  - GPI Textiles Limited v. Union of India, cited in 2018 (362) E.L.T. 388 (P & H)
  - UPL Ltd. v. Union of India, cited in 2023 (79) G.S.T.L. 225 (Bom.)

NKAS Services Pvt. Ltd. v. State of Jharkhand
2022 (58) G.S.T.L. 257 (Jhar.)

- **Format –** A perusal of the impugned SCN creates a clear impression that it is a notice issued in a format without even striking out any relevant portions and without stating the contraventions committed by the petitioner.

- **Detailed SCN –** A summary of SCN as issued in Form DRC-01 cannot substitute the requirement of proper SCN, also fails to describe the necessary facts which could give an inkling as to the contravention done by the petitioner.

- **Beyond SCN –** At the same time, if a SCN does not specify the grounds for proceeding against a person no amount of tax, interest or penalty can be imposed in excess of the amount specified in the notice or on grounds other than the grounds specified in the notice as per Section 75(7) of the JGST Act.

Extended Period – Landmark Judgements

- Simplex Infrastructures Ltd. v. Commissioner of S.T., Kolkata cited in 2016 (42) S.T.R. 634 (Cal.)
- Commissioner of C. Ex., Chandigarh v. Punjab Laminates Pvt. Ltd. reported in 2006 (202) E.L.T. 578 (S.C.)
- Uniworth Textiles Ltd. v. Commissioner of Central Excise, Raipur cited in MANU/SC/0060/2013; 2013 (288) ELT 161 (S.C.)
- Anand Nishikawa Co. Ltd. v. CCE cited in [2005 (188) ELT 0149 (S.C)]
- Collector of Central Excise v. Chemphar Drugs & Liniments reported in1989 (40) ELT 276 (SC)

Extended Period – Landmark Judgements

- **Merely holding that issue unearthed in enquiry/investigation is not sufficient to prove *mala – fide* intent –**
  - Chattisgarh State Industrial Development Corporation Ltd. v. C.C.E. & S.T., Raipur cited in MANU/CE/0199/2016; 2016 (44) STR 642 (Tri. – Del.)
  - Simplex Infrastructure
- **No suppression when receipts shown in Financial Statements/Returns –**
  - Central India Engineering Co. v. Commissioner of C. Ex., Nagpur reported in 2016 (44) S.T.R. 657
  - Khandwala Securities Ltd. v. Commissioner of Service tax, Mumbai – I reported in 2015 (40) S.T.R. 738 (Tri. – Mum.)
  - Valencia Construction Pvt. Ltd. v. Commr. of C. Ex., Cus. & S.T., Nagpur reported in 2016 (41) S.T.R. 436 (Tri. – Mum.)

Best Judgement Assessment (BJA)

Illustration

Mr. A's turnover/taxable value is increasing by almost 5-10% every month from past 1 year and BJA is conducted by department for non-filing of GST Return for the m/o August 2019.

Case – 1: For computing tax payable in the m/o August 2019, proper officer enhanced July 2019's taxable turnover by 100%.

Case – 2: For computing tax payable in the m/o August 2019, proper officer enhanced July 2019's taxable turnover by 10%.

In Re: Omsai Professional Detective and Security Services Pvt. Ltd., reported in 2020 (37) G.S.T.L. 360 (AA – AP)

- Failure to file returns on outward supplies – BJA (150% hike) should be based on taking into account all the relevant material, available or gathered by assessing authority - Impugned order does not speak of any material collected by assessing authority - No enquiries made to establish turnover assumed by AA - Assessment not *bona fide* - Failure on assessing authority's part of to any reason or basis in estimating the quantum of the outward taxable supplies

- Returns in Form GSTR-1 filed by assessee not rejectable due to lack of any additional contra evidence, hence the turnover and tax liability disclosed through these GSTR-1 returns to be confirmed as the real turnovers of assessee

Raghubar Mandal v State of Bihar reported in **MANU/SC/0094/1957**

Supreme Court has held that the best judgment assessment is an estimate and involves guess work, the estimate must relate to some evidence or material and it must be something more than mere suspicion.

Golden Mesh Industries v. Assistant Commissioner of State Tax, cited in **[2021] 127 taxmann.com 336 (Telangana)**

Method adopted by Assessing Authority in multiplying 3 times monthly SGST tax to determine tax liability was arbitrary. Remanded back for fresh consideration.

Some of the common principles that needs to be followed in BJA

- Estimate **must relate to some evidence** and be made reasonable and not on surmises
- Assessing Authority **must not act dishonestly or vindictively or capriciously**
- Assessing officer **needs to consider all relevant material** on records
- BJA must **not be fanciful & arbitary**
- Judgment should have **reasonable nexus to the available material** and circumstances of the case
- **Basis of Computation to be disclosed in the order**

Legal Maxims/Important Words that can be used in drafts

- ✓ Res Judicata
- ✓ Res Integra
- ✓ Sub-judice
- ✓ Otiose
- ✓ Verbatim
- ✓ In extenso
- ✓ Qua
- ✓ Sine Qua Non

- ✓ Quid Pro Quo
- ✓ Audi Alteram Partem
- ✓ Ratio Decidendi
- ✓ De hors
- ✓ Generalia Specialibus Non Derogant
- ✓ De novo
- ✓ Modus operandi

- ✓ Locus Standi
- ✓ Mutatis Mutandis
- ✓ Pari materia

THANK YOU

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