

RECENT NOTIFICATIONS/ CIRCULARS AND APPEALS UNDER GST

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Remedies under GST

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107(1)

Appeal by Aggrieved person
against the order of Adjudicating
Authority

107(2)

Commissioner to direct any officer
subordinate to him to appeal to Appellate
Tribunal

“Review Appeal”

Upon Issuance of
Adjudication Order

First Appellate Authority

- u/s 107 of CGST Act
- Read with Rule 108,109 and 112
- Within 3+1 months from date of communication



Appeal to Tribunal

- u/s 112 of CGST Act.
- Read with Rule 110,111 and 112
- Within 3+3 months from date of communication



Appeal to High Court

- Read with Rule 114
- u/s 117 of CGST Act
- Within 180 days+ as may be allowed by high court



Appeal to Supreme Court

- u/s 118 of CGST Act
- Read with Rule 115
- Within 60 days from date of communication

Sec
107(1)

Appeal by Aggrieved person
against the order of Adjudicating
Authority

Form
107(5)

GST
APL-01

Time limit
107(4)

Within 3
months from
communication
of order

Condonation
107(4)

1 month

Pre-Deposits

Mandatory Pre Deposit =AA

- Full amount of undisputed tax/interest/penalty/fine
- 10% of disputed TAX amount **Subject to max 25 Crores (each) i.e Rs. 50 crores**

Sec
107(2)

Commissioner to direct any officer
subordinate to him to appeal to Appellate
Authority

Form
107(5)

GST
APL-03

Time limit
107(4)

Within 6
months from
communication
of order.

Condonation
107(4)

1 month

No Pre-Deposits

Appellate Authority (Rule 109A)

Order Passed By (N/N 55/2017)

i) Addt. Comm/Joint Comm.

Comm. (Appeal)

ii) Asst.Comm. /D.Comm. or
Superintendent

Any Officer not below the
rank of Joint Comm.

AA **shall not** refer the case back for fresh adjudication.

SEC 112

Appeal to Appellate Tribunal (GSTAT)

Against the order of Appellate Authority

Pre-Deposits

Mandatory Pre Deposit =AT

- Full amount of tax/interest/penalty/fine
- 20% of remaining amt of tax in dispute (in addition to 10%) **Subject to max 50 Crores**

SEC 117

Appeal to High Court

Against the order of Appellate Tribunal (State/Area Tribunal)
where disputed point is other than Place of Supply

In addition to
Pre deposits to
AA

SEC 118

Appeal to Supreme Court

- Against the order of Appellate Tribunal (National/Regional Tribunal)
where any of the disputed point is Place of Supply
- Against an order passed by High Court where High Court certifies to be a fit one for appeal to the Supreme court

SEC 119

Payment of Due confirmed by AT or HC :- Notwithstanding that an appeal has been preferred to the High Court or the Supreme Court, sums due to the Government as a result of an order passed by the Tribunal or an order passed by the High Court, as the case may be, shall be payable in accordance with the order so passed by AT or HC

Composition of Appellate Tribunal

CENTER						STATE					
National Bench			Regional Bench			State Bench			Area Bench		
JM	TM	TM	JM	TM	TM	JM	TM	TM	JM	TM	TM
To hear appeals involving issues relating to POS (in cases where one of the issues involved relates to POS (Sec 109))						To hear appeals involving issues relating to other than POS					
MEMORANDUM OF CROSS OBJECTIONS CAN BE FILED within 45 days from the receipt of notice in Form GST APL-06 (Condonation-45days).											
FEES =1000/- (For every 1 lakh of tax, penalty etc) max 25000/- per act i.e (Rs. 2000 max Rs. 50000) No fee for Rectification.											

↓

SUPREME COURT

↓

HIGH COURT

↓

SUPREME COURT

- PIL filed to SC for its constitution
- Tribunal can remand back

APPEAL

Not defined in the act

“An Appeal under any law is an application to a higher court for a reversal of the decision of a court. Appeals arise when there are any legal disputes.

Disputes arise due to non-compliance of taxpayer with the provisions under law.

ADJUDICATION ORDER

The initial resolution of this dispute is done by a departmental officer by a quasi-judicial process resulting into the issue of an initial order known as Adjudication order.

Rights to Appeal

- Rights to appeal is a statutory right, it is not constitutional right.
- Right to appeal is a vested Right.
- CIT v. Ashoka Engineering Co. (1992) 194 ITR 645 (SC) it was held assessee and that it has to be **spelt from the words of the statute**, If any, providing for an appeal. But it is an equally wellsettled proposition of law that, if there is a provision conferring a right of appeal, it should be read in a reasonable, practical and liberal manner.
- (CIT v. Bengal Card Board Industries And Printers (P). Ltd. (1989) 176 ITR 193 (Cal), CIT v. Kerala Transport Co. (2000)242 ITR 263 (Ker). In Hoosein Kasam Dada (India) Ltd vs. The State of Madhya Pradesh & Ors. (1953) 4 STC 114 (SC) : AIR 1953 SC 221
- **Garikapati Veerayya vs. Subhiah Choudhry- AIR 1957 SC 540**
- **Hoosein Kasam Dada (India) Ltd. vs. State of M.P. – 1983 (13) ELT 1277 (SC)**
- **Thirumalai Chemicals Ltd. vs. UOI- 2011 (268) ELT 296 (SC)**
- **Sumages Pharma Pvt. Ltd. vs. CCE- 1987 (89) ELT 139 (Tribunal)**

❖ Is right to file an appeal a natural right or Creature of statute?

Right by statute

- **Ganga Bai vs. Vijayakumar – AIR 1974 SC 1126**
- **Anant Mills vs. State of Gujarat- AIR 1975 SC 1234**

SEC 121- Non-appealable decisions and orders

-relating to any of the following matters

an order of the Commissioner or other authority empowered to **direct transfer of proceedings from one officer to another officer**

an order pertaining to the **seizure or retention of books of account, register and other documents**

an order sanctioning **prosecution** under this Act

an order passed under **section 80** relating to payment of tax or interest etc in **installments**

Are the following orders?

Notice

Summons

Audit Memos



In Commissioner of Central Excise, Haldia v. Krishna Wax (P.) Ltd. (2020) 77 GST 562 (SC). The Supreme Court held that an internal order is not a decision or determination and hence can not be appealed against an order or decision in general parlance refers to any which effects right and liabilities issued by the department.

Illustrative list of orders under GST

- ☐ Cancellation of registration
- ☐ Tax Not paid, short paid, input tax wrongly availed under section 73 without willful misstatement of facts or fraud
- ☐ Tax Not paid, short paid, input tax wrongly availed under section 74 with willful misstatement of facts or fraud
- ☐ Order of refund
- ☐ Rejection of LUT
- ☐ Order of provisional assessment, reassessment, summary assessment



Sec
107(1)

Appeal by Aggrieved person
against the order of Adjudicating
Authority

Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such **Appellate Authority as may be prescribed** within three months from the date on which the said decision or order is communicated to such person.

Sec
107(2)

Commissioner to direct any officer
subordinate to him to appeal to
Appellate Authority

The Commissioner may, on his own motion, or upon request from the Commissioner of State tax or the Commissioner of Union territory tax, call for and examine the record of any proceedings in which an adjudicating authority has passed any decision or order under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, for the purpose of satisfying himself as to the **legality or propriety of the said decision or order** and may, by order, direct any officer subordinate to him to apply to **the Appellate Authority** within six months from the date of communication of the said decision or order for the determination of such points arising out of the said decision or order as may be specified by the Commissioner in his order.

Aggrieved Person

•Meaning of ‘person Aggrieved’

○“Aggrieved” means one whose pecuniary interest is directly affected by the adjudication, one whose right of property may be established or divested thereby.”

[‘Advanced Law Lexicon- P. Ramantha Aiyar]

○right of appeal to be exercised by the persons permitted by the statute to prefer appeal subject to conditions regarding filling the appeals.

○Appeal – person aggrieved and locus-stand!

❖Can a customer or receipt of goods or services file the appeal? No

- Mahindra and Mahindra Ltd. vs. CCE- 1983 (13) ELT 974 (Tribunal)
- Jagat Industries vs. CCE - 1998 (104) ELT 566 (Tribunal)

APPEAL WHO CAN FILE IT?

- Rohit Pulp and Paper Mills vs. CCE – 2000 (120) ELT 566 (Tribunal)
- Ahisma Mines and Minerals Ltd. vs. Designated Authority – 2002 (142) ELT 71 (Tribunal)
- Oil Dale Trading Private Ltd. vs. CCE. 1983 (140 ELT 1835 (Tribunal)
- Polychem Ltd. vs. Collector – 1987 (30) ELT 1007 (Tribunal)

Important Definitions

Adjudicating Authority – Sec2(4) of CGST Act, 2017

-amended as per the Finance (No.2) Act,2019

Means any authority appointed or authorized to pass any order or decision under this act but **does not include**:

- Central Board of Indirect Taxes and Customs
- Revisional Authority
- Authority for Advance Ruling
- National Appellate Authority for Advance Ruling *
- Appellate Authority for Advance Ruling
- Appellate Authority
- Appellate Tribunal
- Anti-Profiteering Authority u/s 171(2)*

Sec 107(3)

Where, in pursuance of an order **under sub-section (2)**, the authorised officer makes an application to the **Appellate Authority**, such application shall be dealt with by the Appellate Authority as if it were an appeal made against the decision or order of the adjudicating authority and **such authorised officer were an appellant and the provisions of this Act relating to appeals shall apply to such application.**

Sec 107(4)

The Appellate Authority **may, if** he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of **three months or six months**, as the case may be, allow it to be presented within a **further period of one month.**

Sec 107(5)

Every appeal under this section shall be in such **form** and shall be verified in such **manner as may be prescribed**

Sec 107(6) Pre Deposit -Mandatory

No appeal shall be filed under sub-section (1), unless the appellant has paid—

- (a) **in full, such part of the amount of tax, interest, fine, fee and penalty** arising from the impugned order, as is admitted by him; and
- (b) **a sum equal to ten percent of the remaining amount of tax** in dispute arising from the said order, [*subject to a* **maximum of twenty-five crore rupees,**] in relation to which the appeal has been filed:

**Rule 108
& 109**

Amendment of section 107.

10 Appeals to Appellate Authority.

Section 107(6):- No appeal shall be filed under sub-section (1), unless the appellant has paid-

- (a) *in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and*
- (b) *a sum equal to ten per cent. of the remaining amount of tax in dispute arising from the said order ¹[subject to a maximum of twenty-five crore rupees], in relation to which the appeal has been filed.*

“Provided that no appeal shall be filed against an order under sub-section (3) of section 129, unless a sum equal to twenty-five per cent. of the penalty has been paid by the appellant.”

Analysis

- Appeal against order of detention and seizure of goods in transit can now be made only after making pre deposit of 25% of penalty as levied under Section 129(3).
- This is in lieu of deposit of 10% of tax amount .
- This will lead to blockage of working capital.

e.g

On 15.02.2022 proper officer detaining or seizing goods or conveyance passes an order under section 129(3) for imposition of penalty of Rs. 2,00,000/- [which is 200% of the tax payable on such goods] on Rohit Limited.

If Rohit Ltd. decides to file an appeal to the appellate authority, it can do so only after depositing Rs. 50,000/- [25% of penalty of Rs. 2,00,000/- imposed in the order].

Example 1:-

An adjudication order has been served upon Mr. Rakesh Kumar. The order confirms a tax demand of Rs. 300 Crore under the CGST act. Mr. Rakesh Kumar admitted the tax liability of Rs. 20 Crore under the CGST Act and wants to contest the balance amount in an appeal before the appellate authority. The effect amount to be paid by Mr. Rakesh Kumar prior to filling of appeal shall be computed as under:-

<u>Particulars</u>	<u>Amount (Rs. in Crore)</u>
Tax amount under the CGST Act, which has been admitted by Mr. <u>Rakesh Kumar</u>	20
Tax amount in dispute under the CGST Act	280
Amount of Pre-deposit for filling appeal- Rs. 20 <u>Crore</u> + (10% of the disputed amount of tax i.e. 10% of Rs. 280 <u>Crore</u> , subject to maximum amount of Rs. 25 <u>Crore</u>)	45 [20+ Rs. 25]
Effective amount to be deposited after considering equivalent SGST amount	90

Sun mac Enterprises Vs. The Commissioner of Central Excise (Madras High Court)

- Inability to pay Pre- Deposit can't be ground to entertain a Writ Jurisdiction
- Appeal Number : Writ Petition No. 285 of 2018 & WMP. No. 340 of 2018
- Date of Judgement/Order : 09/01/2018

Conditions for Admissibility of Writ Petition

2021 (9) TMI 480 – Supreme Court in the Assistant Commissioner of State Tax And Others Versus M/S Commercial Steel Limited

The existence of an alternate remedy is **not an absolute bar** to the maintainability of a writ petition under Article 226 of the Constitution.

But writ petition can be entertained in exceptional circumstances where there is:

- i. A breach of fundamental rights;
- ii. A violation of the principles of natural justice;
- iii. An excess of jurisdiction; or
- iv. A challenge to the vires of the statute or delegated legislation.

As there was **no violation of the principles of natural justice** since a notice was served on the person in charge of the conveyance. In this backdrop, it was **not appropriate** for the High Court **to entertain a writ petition**.

Provided that no appeal shall be filed against an order under sub-section (3) of section 129, unless a sum equal to twenty-five per cent of the penalty has been paid by the appellant.]

Sec 107(7)

Where the appellant has paid the amount under sub-section (6), the recovery proceedings for the balance amount shall be deemed to be stayed.

Sec 107(8)

The Appellate Authority shall give an **opportunity to the appellant of being heard.**

Sec 107(9)

The Appellate Authority may, if sufficient cause is shown at any stage of hearing of an appeal, grant time to the parties or any of them and **adjourn the hearing of the appeal for reasons to be recorded in writing:**

Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.

Sec 107(10)

The Appellate Authority may, at the time of hearing of an appeal, **allow an appellant to add any ground of appeal not specified in the grounds of appeal,** if it is satisfied that the omission of that ground from the grounds of appeal was not wilful or unreasonable.

Sec 107(11)

The Appellate Authority shall, after making such further inquiry as may be necessary, pass such order, as it thinks just and proper, confirming, modifying or annulling the decision or order appealed against but **shall not refer the case back to the adjudicating authority that passed the said decision or order:**

Provided that an order enhancing any fee or penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund or input tax credit shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order:

Provided further that where the Appellate Authority is of the opinion that any tax has not been paid or short-paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised, no order requiring the appellant to pay such tax or input tax credit shall be passed unless the appellant is given notice to show cause against the proposed order and the order is passed within the time limit specified under section 73 or section 74.

Sec 107(12)

The order of the Appellate Authority disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for such decision.

No fresh
Adjudication

Can enhance
the demand?
YES

Sec 107(13)

The Appellate Authority shall, where it is possible to do so, **hear and decide every appeal within a period of one year** from the date on which it is filed:

Provided that where the issuance of order is stayed by an order of a court or Tribunal, **the period of such stay shall be excluded** in computing the period of one year.

Sec 107(14)

On disposal of the appeal, the **Appellate Authority shall communicate the order passed by it to the appellant, respondent and to the adjudicating authority.**

Sec 107(15)

A copy of the order passed by the Appellate Authority shall also be sent to the jurisdictional Commissioner or the authority designated by him in this behalf and the jurisdictional Commissioner of State tax or Commissioner of Union Territory tax or an authority designated by him in this behalf.

Sec 107(16)

Every order passed under this section shall, **subject to** the provisions of **section 108** or **section 113** or **section 117** or **section 118** be **final and binding** on the parties.

Orders of Appellate Tribunal

Appeal to HC

Appeal to SC

Powers of Revisional Authority

Rule 108 Appeal to the Appellate Authority

- (1) An appeal to the Appellate Authority **under sub-section (1) of section 107** shall be filed in **FORM GST APL-01**, along with the relevant documents, either electronically or otherwise as may be notified by the Commissioner, and a provisional acknowledgement shall be issued to the appellant immediately.
- (2) The grounds of appeal and the form of verification as contained in **FORM GST APL-01** shall be signed in the manner specified in rule 26.
- (3) A certified copy of the decision or order appealed against shall be submitted **within seven days of filing the appeal under sub-rule (1)** and a final acknowledgement, indicating appeal number shall be issued thereafter in **FORM GST APL-02** by the Appellate Authority or an officer authorised by him in this behalf:

Provided that where the certified copy of the decision or order is **submitted within seven days** from the date of filing the FORM GST APL-01, **the date of filing of the appeal shall be the date of the issue of the provisional acknowledgement** and where the said copy is **submitted after seven days**, the **date of filing of the appeal shall be the date of the submission of such copy.**

Explanation.—For the provisions of this rule, the appeal shall be treated as filed only when the final acknowledgement, indicating the appeal number, is issued.

Rule 109 Appeal to the Appellate Authority

*(1) An application to the Appellate Authority **under sub-section (2) of section 107** shall be made in **FORM GST APL-03**, along with the relevant documents, either electronically or otherwise as may be notified by the Commissioner.*

*(2) A certified copy of the decision or order appealed against shall be submitted **within seven days of the filing the application under sub-rule (1)** and an appeal number shall be generated by the Appellate Authority or an officer authorised by him in this behalf.*

Rule 110 & 111 deals procedure related with Appeal to the Appellate Tribunal

Rule 112 - Production of Additional Evidence

Additional Evidence means an evidence other than the evidence produced by him during the proceeding before Adjudicating Authority or the Appellate Authority or Appellate Tribunal

*The appellant shall not be allowed to produce before the Appellate Authority or the Appellate Tribunal any evidence, whether oral or documentary **except in following :-***

Contd.

EXCEPTIONS :

i.e. Cases where Additional Evidence can be produced

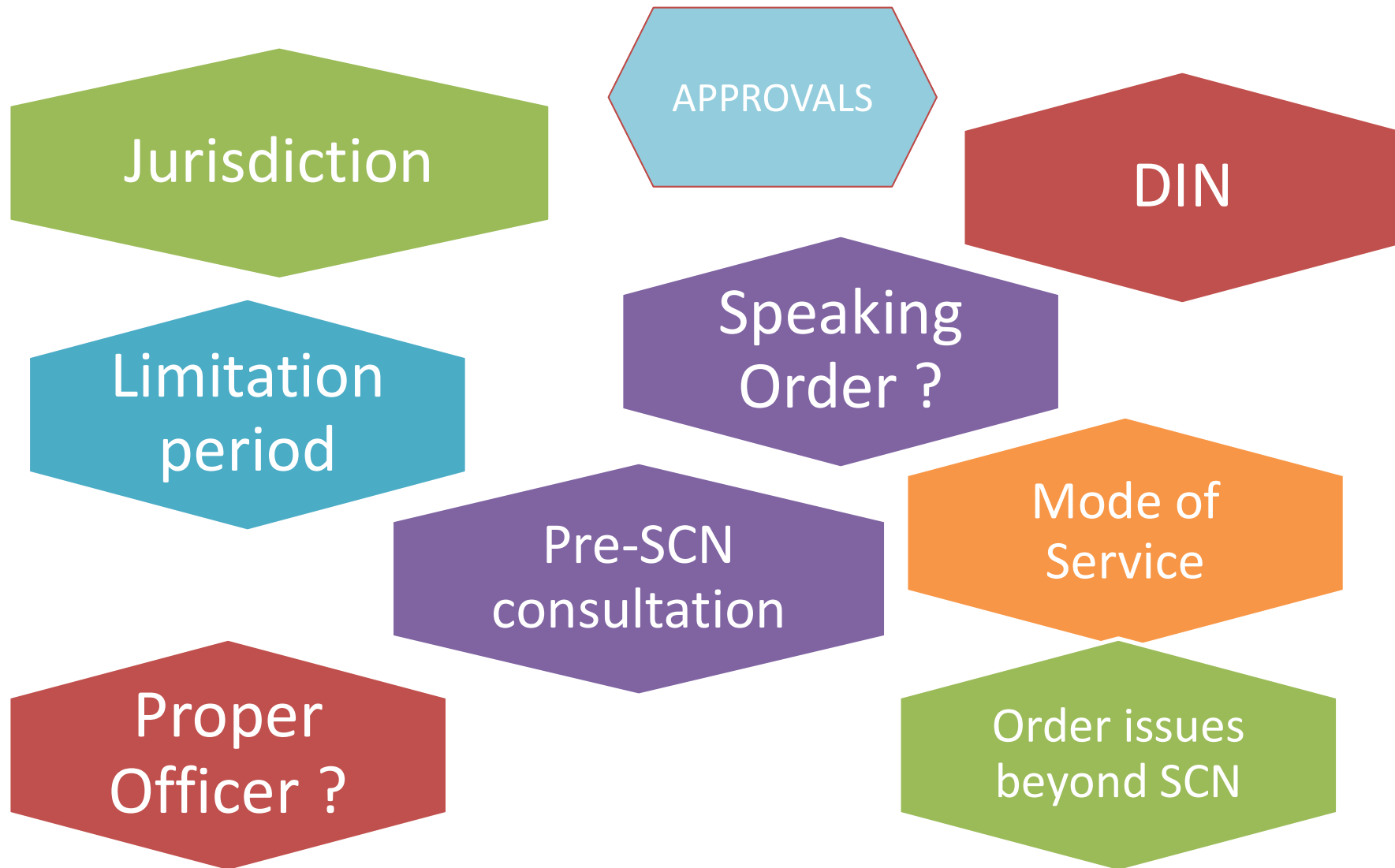
where the adjudicating authority or the Appellate Authority has refused to admit evidence which ought to have been admitted

where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the adjudicating authority or the Appellate Authority

where the appellant was prevented by sufficient cause from producing before the adjudicating authority or the Appellate Authority any evidence which is relevant to any ground of appeal

where the adjudicating authority or the Appellate Authority has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

Points to be considered for Grounds of Appeal



Grounds of Appeal

1. Constitutional
2. Time barring
3. Not a reasoned order or non- speaking order
4. Without application of mind
5. Not given fair or reasonable hearing
6. Breach of Principle of Audi Alterm Partem
7. SCN is Vague- on the basis of presumption and asuptions
8. Authority has not acted as quasi judicial authority
9. Deemed acceptance of an appeal

Sec 75(4)- Opportunity of being heard

An opportunity of being heard 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**

Sec 75(13)- One penalty for one default

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.**

Speaking Order

Sec 75(6)- The proper officer, in this order, **shall set out the relevant facts and the basis of his decisions.**

Sec 75(7)- Notice and order should be on same lines

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 grounds specified in the notice.**

Penalty imposed should commensurate with the degree and severity of Breach of provisions of law and rules alleged

Penalty depends on totality of facts and circumstances of case

Penalty not imposable if the demand of duty/tax is not sustainable

No Penalty is imposable in case of Retrospective amendment In one of its historic judgments rendered in the case of J.K. Spinning and Weaving Mills Ltd. vs. UOI – 1987 (32) ELT 234 (SC), the Supreme Court held that it would be against all principles of legal jurisprudence to impose a penalty on a person or to confiscate his goods for an act or omission which was lawful at the time when such act was performed or omission made, but subsequently made unlawful by virtue of any provision of law.

Nature of breach & provisions of law under which penalty is imposed is to be specified

Penalty is not imposable when issue relates to the statutory interpretation In the case of Uniflex Cables Ltd. vs. CCE – 2011 (271) ELT 161 (SC), the Supreme Court dealt with the issue with regard to the imposition of penalty where the issue involved was of interpretational nature. Taking note of the fact that the Commissioner himself had found that it was only a case of interpretational nature, the Supreme Court quashed the order of the Commissioner imposing the penalty as also the order of the Tribunal so far as it confirmed the imposition of penalty on the Appellant.

DIN

- ❖ CBIC vide its **Circular No 128/47/2019-GST** has mandated that in all the communications (except in exceptional circumstances) with the assessee (including on e-mails), Documents Identification No is required to be mentioned.
- ❖ DIN can be confirmed by the assessee online at **Cbic.gov.in**
- ❖ All the communication with the assessee which does **not contain** DIN shall be treated **Invalid** and shall be considered as never been issued.

Monetary limits for SCN – 31/2018 (Circular)

Designation of Officer	Monetary limit of the amount of CGST (including cess) for issuance of show cause notices & orders u/s 73 & 74 of CGST	Monetary limit of the amount of IGST (including cess) for issuance of show cause notices & orders u/s 73 & 74 of CGST Act made applicable to IGST	Monetary limit of the amount of CGST and IGST (including cess) for issuance of show cause notices & orders u/s 73 & 74 of CGST Act made applicable to IGST
Superintendent	Up to Rs. 10 lakhs	Up to Rs. 20 lakhs	Up to Rs. 20 lakhs
Deputy or Assistant Commissioner	Above Rs. 10 lakhs up to Rs. 1 crore	Above Rs. 20 lakhs up to Rs. 2 crore	Above Rs. 20 lakhs up to Rs. 2 crore
Additional or Joint Commissioner	Above Rs. 1 Crore	Above Rs. 2 Crore	Above Rs. 2 Crore

Notice and order should be on same lines(Order beyond SCN)

- The adjudicating authority has to pass his order within the parameter of the allegations levelled in the show cause notice
- In the case of Commissioner of customs, Mumbai v. Toyo Engineering India Ltd. [(2006) 7 SCC 592] , the apex court while delivering judgement under para 16 held that, the department cannot travel beyond the scope of the show cause notice

Power of Limitation

- Order cannot be issued beyond the time limit mentioned U/s 73(10) and 74(10)
- In view of section 74(2), SCN is required to be **issued** at least 6 months prior to the time limit of issuing order which is 5 years from **“DUE DATE”** for furnishing annual return of relevant F.Y. or date of erroneous refund {i.e. within 4 years 6 months from due date of annual return}
- Annual return F.Y. 17-18: 31.01.2020, order can be passed upto 30.01.2025. Order passed after this date is invalid.
- SCN issued after 31.07.2024 will be time- barred

If tax:-

- Not paid,
- Short paid or
- Erroneous refund

Section 73 (Other than fraud)

Section 74 (fraud)

SCN

2 years 9 months (i.e. 33 months from due date of annual return)

4 years 6 months (i.e. 54 months from due date of annual return)

Demand order

3 years from due date of annual return

5 years from due date of annual return

Time limit u/s 73 and 74

Sr. No.	Relevant F.Y. to which the demand relates	Due date for furnishing the AR in FORM GSTR-9	Last date for issuance of the show cause notice as per S.73(2) r/w. S.73(10)	Last date for issuance of the show cause notice as per S.74(2) r/w. S.74(10)
1	2017-18	05.02.2020 07.02.2020	05.11.2022 07.11.2022	05.08.2024 07.08.2024
2	2018-19	31.12.2020	30.09.2023	30.06.2025
3	2019-20	31.03.2021	31.12.2023	30.09.2025

Show Cause Notice

Section-73

- ☐ Show cause as to why -
 - ☐ He should not pay the amount specified in the notice
 - ☐ Along with interest
 - ☐ And a penalty leaviable under the provisions of this act or the rules made there under

Section-74

- ☐ Show cause as to why -
 - ☐ He should not pay the amount specified in the notice
 - ☐ Along with interest payable thereon u/s 50
 - ☐ And a penalty equivalent to the tax specified in the notice

SEC 115 - Interest on refund of amount paid for admission of appeal.

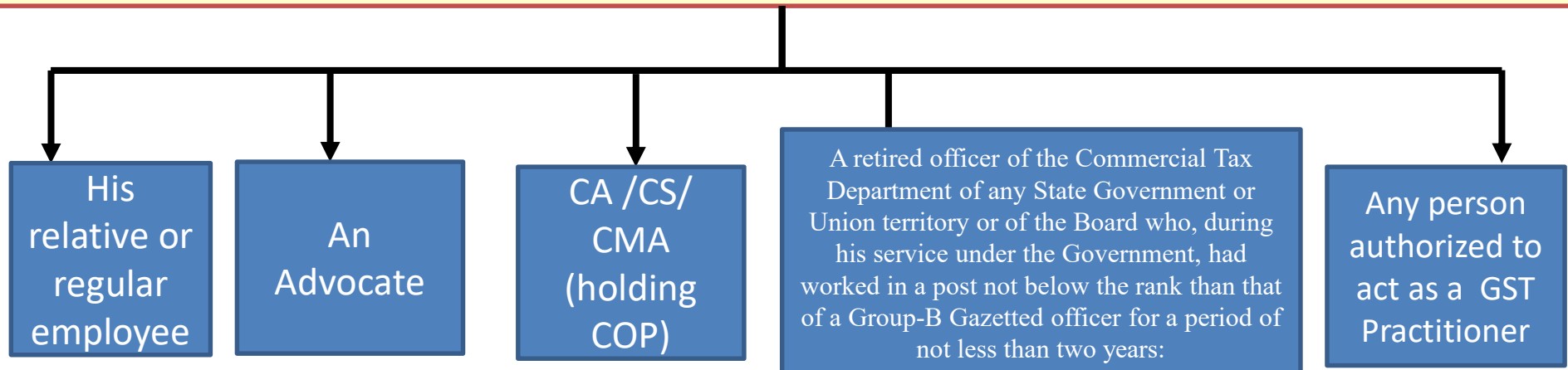
Where an amount paid by the appellant under sub-section (6) of section 107 or sub-section (8) of section 112 is required to be refunded consequent to any order of the Appellate Authority or of the Appellate Tribunal,

interest at the rate specified under section 56 shall be payable in respect of such refund from the date of payment of the amount till the date of refund of such amount.

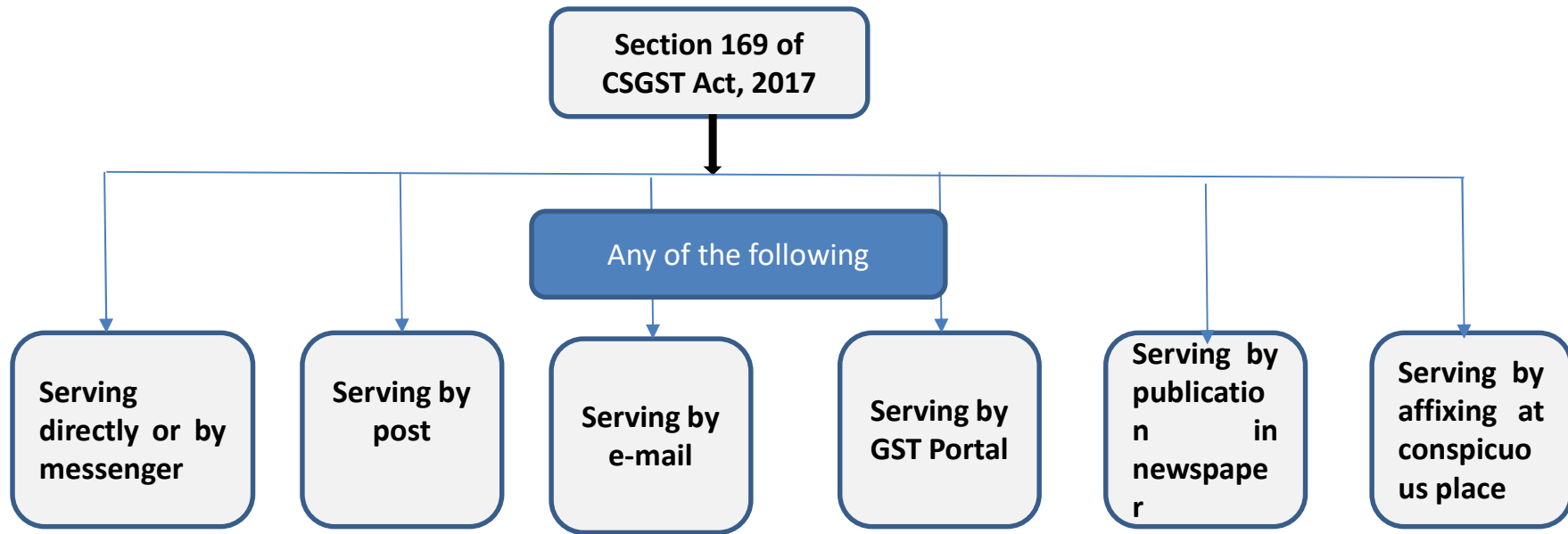
@ 9%

SEC 116 –Appearance by Authorised representative.

Any person who is entitled or required to appear before an officer appointed under this Act, or the Appellate Authority or the Appellate Tribunal in connection with any proceedings under this Act, may, otherwise than when required under this Act to appear personally for examination on oath or affirmation, subject to the other provisions of this section, appear by an authorised representative.



- **Service of Notice in certain circumstances**



Show Cause Notices to Taxpayers Under GST Act Mandatory to Upload on Website – Mere E-Mail is not Suffice.[Akash Garg Vs State of M.P, vide order dated 19.11.2020]

The Honourable Madhya Pradesh Court in case of Akash Garg Vs State of M.P, vide order dated 19.11.2020 held that statutory procedure prescribed for communicating show-cause notice or order under Rule 142(1) of CGST Act is required to be followed mandatorily by the revenue.

- Rule 142 prescribes the manner to upload show-cause notices on Website.
- Thus, a mere **e-mail of show-cause notices to the taxpayer would not suffice.** Upload of such notices on the website is mandatory.

Accordingly, instant petition stands allowed with liberty to the revenue to follow the procedure prescribed under Rule 142 of CGST Act by communicating the show-cause notice to the petitioner by appropriate mode thereafter to proceed in accordance with law.

SC allowed service of notices/summons/ document via WhatsApp, Telegram in addition to e-mail

Cognizance for Extension of Limitation [Suo Moto W.P. (C) No. 3/2020 dated on July 10, 2020]

The Hon'ble Supreme Court in *Re: Cognizance for Extension of Limitation [Suo Moto W.P. (C) No. 3/2020 dated on July 10, 2020]* w.r.t. I.A. No. 48461/2020 **observed that service of notices, summons and exchange of pleadings/documents, is a requirement of virtually every legal proceeding and that the service of notices, summons and pleadings etc. have not been possible during the period of lockdown because this involves visits to post offices, courier companies or physical delivery of notices, summons and pleadings.**

The Court therefore, **considered it appropriate to direct that such services may be effected by e-mail, FAX, commonly used instant messaging services, such as WhatsApp, Telegram, and Signal etc.**

However, if such services are made by means of said instant messaging services, then **in addition thereto**, the service of the same document/documents **must be made via e-mail on the same date.**



CROSS EMPOWERMENT

- **Show cause notice**

Authority empowered to issue show cause notice

- ✓ 'Proper officer'
- ✓ S. 2(91)
- ✓ Circular No. 3/3/2017 -GST dt. 05-07-2017

Section – 2(91) , Central Goods And Services Tax Act, 2017

"proper officer" in relation to any function to be performed under this Act, means the Commissioner or the officer of the central tax who is assigned that function by the Commissioner in the Board;

Section - 6, Central Goods And Services Tax Act, 2017

6. (1) Without prejudice to the provisions of this Act, the officers appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act are authorised to be the proper officers for the purposes of this Act, subject to such conditions as the Government shall, on the recommendations of the Council, by notification³³, specify.

(2) Subject to the conditions specified in the notification issued under sub-section (1),—

(a) where any proper officer issues an order under this Act, he shall also issue an order under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as authorised by the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, under intimation to the jurisdictional officer of State tax or Union territory tax;

(b) **where a proper officer under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under this Act on the same subject matter.**

CIRCULAR NO.3/3/2017-GST

GST PROPER OFFICER RELATING TO PROVISIONS OTHER THAN REGISTRATION AND COMPOSITION UNDER THE CENTRAL GOODS AND SERVICES TAX ACT, 2017

CIRCULAR NO.3/3/2017-GST, DATED 5-7-2017
AS AMENDED BY CIRCULAR NO.31/05/2018-GST, DATED 9-2-2018

In exercise of the powers conferred by clause (91) of section 2 of the Central Goods and Services Tax Act, 2017 (12 of 2017) read with Section 20 of the Integrated Goods and Services Tax Act (13 of 2017) and subject to sub-section (2) of section 5 of the Central Goods and Services Tax Act, 2017, the Board, hereby assigns the officers mentioned in Column (2) of the Table below, the functions as the proper officers in relation to the various sections of the Central Goods and Services Tax Act, 2017 or the rules made thereunder given in the corresponding entry in Column (3) of the said Table:—

TABLE

S. No.	Designation of the officer	Functions under Section of the Central Goods and Services Tax Act, 2017 or the rules made thereunder
(1)	(2)	(3)
1.	Principal Commissioner/ Commissioner of Central Tax	i. Sub-section (7) of Section 67 ii. Proviso to Section 78
2.	Additional or Joint Commissioner of Central Tax	i. Sub-sections (1), (2), (5) and (9) of Section 67 ii. Sub-section (1) and (2) of Section 71 iii. Proviso to section 81 iv. Proviso to sub-section (6) of Section 129 v. Sub-rules (1),(2),(3) and (4) of Rule 139 vi. Sub-rule (2) of Rule 140
3.	Deputy or Assistant Commissioner of Central Tax	i. Sub-sections (5), (6), (7) and (10) of Section 54 ii. Sub-sections (1), (2) and (3) of Section 60 iii. Section 63 iv. Sub-section (1) of Section 64 v. Sub-section (6) of Section 65

CIRCULAR NO.3/3/2017-GST

		<p>xxxv. Rule 152</p> <p>xxxvi. Rule 153</p> <p>xxxvii. Rule 155</p> <p>xxxviii. Rule 156</p>
4.	Superintendent of Central Tax	<p>i. Sub-section (6) of Section 35</p> <p>ii. Sub-sections (1) and (3) of Section 61</p> <p>iii. Sub-section (1) of Section 62</p> <p>iv. Sub-section (7) of Section 65</p> <p>v. Sub-section (6) of Section 66</p> <p>vi. Sub-section (11) of Section 67</p> <p>vii. Sub-section (1) of Section 70</p> <p>viii. Sub-sections (1), (2), (3), (5), (6), (7), (9) and (10) of Section 73</p> <p>2[(viii)(a). Sub-sections (1), (2), (3), (5), (6), (7), (9) and (10) of Section 74]</p> <p>ix. Sub-rule (6) of Rule 56</p> <p>x. Sub-rules (1), (2) and (3) of Rule 99</p> <p>xi. Sub-rule (1) of Rule 132</p> <p>xii. Sub-rule (1), (2), (3) and (7) of Rule 142</p> <p>xiii. Rule 150</p>
5.	Inspector of Central Tax	<p>i. Sub-section (3) of Section 68</p> <p>ii. Sub-rule (17) of Rule 56</p> <p>iii. Sub-rule (5) of Rule 58</p>

[2021] 125 taxmann.com 188 (SC)
Canon India Private Limited v. Commissioner of Customs

PROPER OFFICER ????????

The question that arises is whether the Directorate of Revenue Intelligence had authority in law to issue a show cause notice under section 28(4) of the Act for recovery of duties allegedly not levied or paid when the goods have been cleared for import by a Deputy Commissioner of Customs who decided that the goods are exempted. It is necessary that the answer must flow from the power conferred by the statute i.e. under section 28(4) of the Act. This Section empowers the recovery of duty not paid, part paid or erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts and confers the power of recovery on "the proper officer". The obvious intention is to confer the power to recover such duties not on any proper officer but only on "the proper officer".

'2. Definitions. — (34) 'proper officer', in relation to any functions to be performed under this Act, means the officer of customs who is assigned those functions by the Board or the Commissioner of Customs;'

It is clear from a mere look at the provision that only such officers of customs who have been assigned specific functions would be 'proper officers' in terms of section 2(34) the Act. specific entrustment of function by either the Board or the Commissioner of Customs is therefore, the governing test to determine whether an 'officer of customs' is the 'proper officer'. 20. From a conjoint reading of sections 2(34) and 28 of the Act, it is manifest that only such a Customs officer who has been assigned the specific functions of assessment and reassessment of duty in the jurisdictional area where the import concerned has been affected, by either the Board or the Commissioner of Customs, in terms of section 2(34) of the Act is competent to issue notice under section 28 of the Act.

Any other reading of Section 28 would render the provisions of Section 2(34) of the Act otiose inasmuch as the test contemplated under section 2(34) of the Act is that of specific conferment of such functions."

Director General of DRI for recovery of duty not paid under section 28(4) were invalid, without any authority of law and liable to be set-aside - Held, yes [Paras 14,15 and 23]

DIR officers are not proper officers

- Judgement by Larger bench of 3
- The expression 'the' in Section 28 indicates that the re-assessment by way of issuance of SCN is to be done by the same officer who has initially assessed- 'the' is difference from 'a/an'
- Where the statute confers the same power to perform an act on different officers, the two officers cannot exercise their power in the same case. Where one officer has exercised his powers of assessment, the power to order re-assessment must also be exercised by the same officer or his successor and not by another officer of another department though he is designated to be an officer of the same rank.- Doctrine of Comity.

Parallel proceedings cannot be initiated by State GST authorities on the same subject matter

Raj Metal Industries & Anr. v. UOI & Ors. [W. P. A. 1629 of 2021,

Facts

Raj Metal Industries (“**the Petitioner**”) has filed this petition challenging the actions initiated by the State GST Authorities (“**the Respondent**”) with respect to summons issued dated October 19, 2020 under Section 70 of the WBGST Act

Challenging blocking of the electronic credit ledger on December 8, 2020 being challenged the vires of Rule 86A of the West Bengal Goods and Services Tax Rules, 2017 (“the WBGST Rules”)/ Central Goods and Services Tax Rules, 2017 (“the CGST Rules”) & Section 16(2)(c) of the WBGST Act/ CGST Act

Further, the proceedings were already pending against the Petitioner on the same subject matter under the CGST Act.

Issues

Whether the summon issued and proceedings initiated by the Respondent is in violation of the Section 6(2)(b) of the WBGST Act?

Held

The Hon’ble Calcutta High Court in *W. P. A. 1629 of 2021, dated March 24, 2021* stayed the summons and proceedings thereunder and held that the summons issued by the Respondent is, prima facie, in violation of Section 6(2)(b) of the WBGST Act.

Parallel proceedings cannot be initiated by State GST authorities on the same subject matter

Certain relevant judgement on stated issue

the Hon'ble Punjab & Haryana High Court in ***Kaushal Kumar Mishra v. Additional Director General & Anr. [CWP-21387-2020 (O&M), decided on February 12, 2021]*** dismissed the petition and refused to interfere with the investigations undertaken by the competent authorities against the proprietor, for alleged misuse and fake availment of Input Tax Credit ("ITC. Further, the Court held that where different officers appointed are independently investigating altogether different matters involving contraventions of prima facie cognizable and punitive offences under CGST Act, without any overlapping, such investigation is not barred by Section 6(2)(b) of the CGST Act.

the Hon'ble Allahabad High Court in ***G.K. Trading Company v. Union of India & Ors. [Writ Tax No. 666 of 2020, dated 2.12.2020]*** dismissed the petition filed for prohibiting another proper officer to initiate any inquiry/proceeding on the same subject-matter. The Court observed and held that, there was no proceeding initiated by a proper officer against the assessee on the same subject-matter referable to Section 6(2)(b) of the CGST Act as it was merely an inquiry by a proper officer under Section 70 of the CGST Act.

Koenig Solutions Pvt. Ltd. Vs. UOI – 2021-TIOL-1013-HC-DEL-GST
Himanshu Balram Gupta vs. UOI – 2020-TIOL-2241-HC-AHM-GST.

- **Overlapping/Different Jurisdictions [Sec .6 (2)(b)]**

- Koenig Solutions Pvt. Ltd. Vs. UOI – 2021-TIOL-1013-HC-DEL-GST
- Raj Metal Indus. Vs. UOI – 2021-TIOL-744HC-KOL-GST
- Himanshu Balram Gupta vs. UOI – 2020-TIOL-2241-HC-AHM-GST.
- Kaushal Kumar Mishra vs. ADG, Ludhiana ZU-2021-TIOL-387-HC-P & H-GST

- **The powers vested in Commissioner u/s. 69 be further delegated by him**

- _Nathalal Maganlal Chauhan vs. State of Gujarat-2020 (35) GSTL 145 (Guj.)

- **Authority which initiates will conclude**

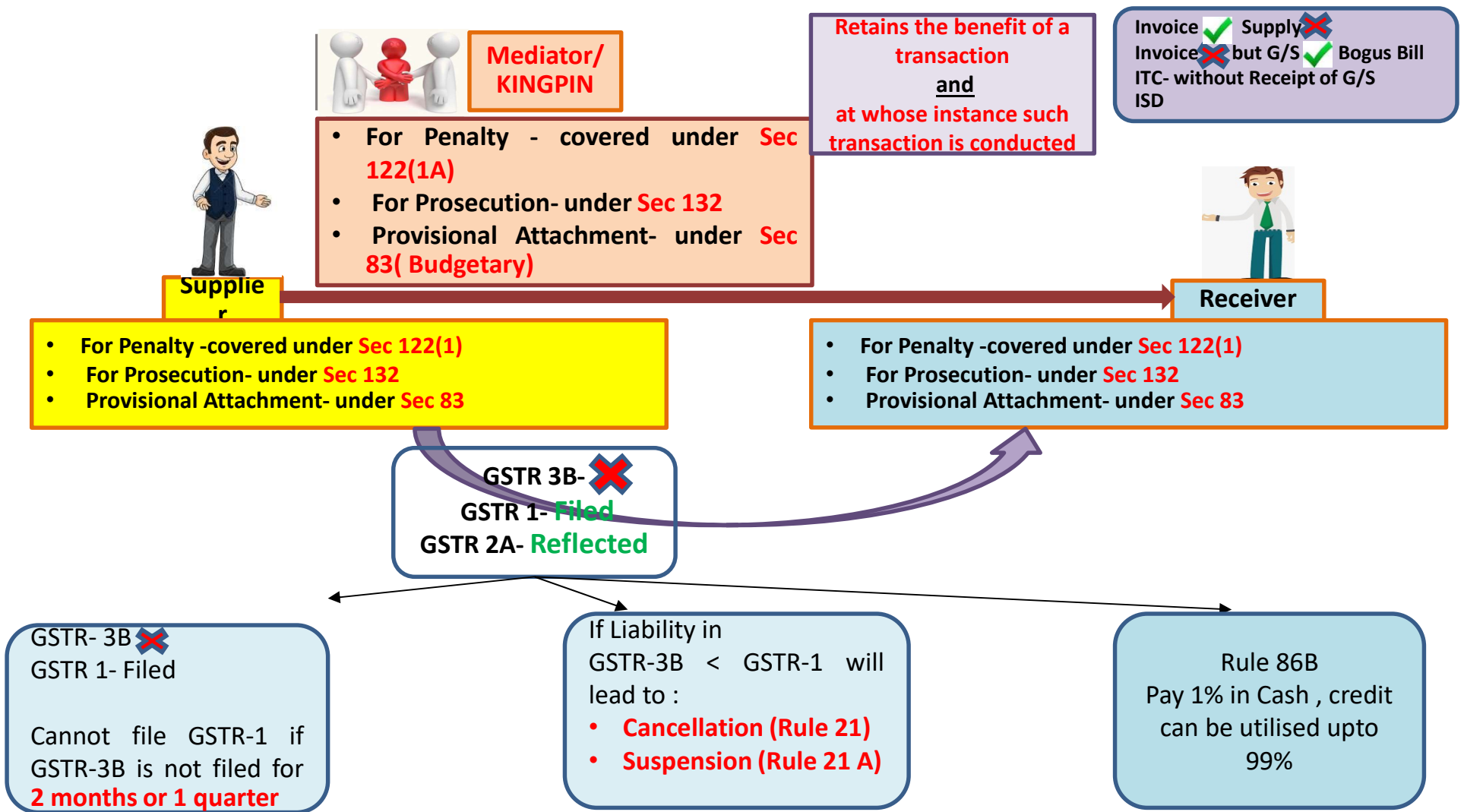
RAJ METAL INDUSTRIES-Kolkatta HC 2021-TIOL-744HC-KOL-GST
Proceedings pending before CGST , simultaneously initiated by SGST

- **The stay on arrest grantable in case of GST frauds**

- Govind Enterprises vs. State of UP -2019 (27) GSTL 161 (All.)



Fake Invoicing Transaction



Fake Invoicing

1. No definition of Fake Invoicing is given in GST Law.

It is an Economic Offence . It can be Invoice❌ Supply✅ , ✅ Invoice but G/S❌ Bogus Bill

2. Check Jurisdiction on receipt of summon and the other legal issues like DIN etc.

For the checking the Jurisdiction one must check :- Who is the Proper Officer? (He must be an authorized person).

Person cannot be put to prejudice by having multiple assessments by center and state

3. Confirm whether the invoice is indeed fake or not.

=> If it is indeed fake and credit is reversed with interest – Intimate the Department

=> If it is not fake – One can go for Writ Remedy in the High Court

- In this case question of penalty may arise later on even if reversed
- Income tax disallowance will arise in case of fake invoice.
- Question whether reversal=not availed is still a question mark(Partibha Processors, Bombay Dyeing -
-If assessee reverses credit on his own without utilising then it will be presumed as never been taken.)

Fake Invoicing

- One should submit the evidences and documents on receipt of DRC-01.
- For goods you have to submit: E-way Bill, Vehicle No., Toll Receipts , Transport Documents, For Services, its difficult as it leaves no trail but e.g in advertisement Services, hoarding etc. documents can be furnished.
- Statements can be cross verified . Statements made under duress can be retracted within reasonable time of Receipt of copy. Statement made, can be retracted but within a reasonable time as held in VINOD SOLANKI (SC)(Civil Appeal FEMA matter)- SC says Statement retracted are relevant but becomes weak and need corroborative Evidences)
- If person alleges that Statement is made under coercion/ duress then it will not be presumed but he needs to establish.
- It is not mandatory for a person to make statement appearing for the summon. One has a Right of Silence during Summon proceedings.

Fake Invoicing

- *Presence of Tax Professional during Statement –There are contradictory views available in this regard in various judgements . In few custom and other cases, it allowed Visible Distance but not Hearing Distance.*
- *Burden of proof is on Department to prove Fake Invoicing. If assessee furnishes documents , the officer cannot ignore the submissions, against principle of Natural Justice.*
- *You have to evaluate arrest provisions- whether these are applicable or not. Decision as to Anticipatory Bail is to be carefully examined. Its very difficult to get anticipatory bail in Economic Offences involving high stakes.*
- *Check that Principle of Natural Justice is followed and adherence to norms concerning Ladies. Can refer to Human Right Commission.*

Other Points

1. Simultaneous Investigation by Center and State GST Authorities for same period is not allowed. A person cannot be put to adjudication under both.

Eg. If person has state jurisdiction then center cannot assess. It can be challenged as violation of Article 14 (Equality Before Law)

Sri Balaji Rice Mill, vs The State Of Andhra Pradesh (WRIT PETITION No.20786 of 2020)

Krishna ShivRam Hegde – Kerala High Court

Raj Metal Industries & Anr. Vs. Union of India & Ors (W.P.A. 1629 OF 2021)

Anurag Suri Vs. DGGSIT (WP (c) no. 158 of 2020)

2. Maximum detention under section 167 CRPC is 60 days

3. Bail is the rule, not the jail, if a person cooperates even if Cognizable + Non Bailable -> No Need to arrest, held in case of ***Naresh Kumar Mangla–SC. In Vimal Yashwantgiri Goswami vs. State Of Gujarat (GHC)*** -The powers of arrest under section 69 are to be exercised with lot of care and circumspection. Prosecution should normally be launched only after the adjudication is completed. To put it in other words, there must be in the first place a determination that a person is liable to a penalty. Till that point of time, the entire case proceeds on the basis that there must be an apprehended evasion of tax by the assessee.

4. Any professional filing Returns cannot be arrested directly, unless found involved and defending client in Fake Invoice cases as a counsel is not challengeable, as ones job is to defend.

Canon India (P.) Ltd. v. Commissioner of Customs [2021] 125 taxmann.com 188 (SC)[09-03-2021]

Audi Alteram Partem

Audi alteram partem meaning 'let the other side be heard' that no person can be adjudged guilty without being given an opportunity to answer charges against such person.



To hear a person, such person should be "put at notice" which clearly states various aspects about the charges or allegations in such notice so that the person can understand the allegations and answer them.

Sine Qua Non

- In GST ,as with every legislation, this notice is called "show cause notice" and this show cause notice is a mandatory requirement for raising demands.
- Any other communication, letter, endorsement, suggestion or advisory from tax Department cannot be considered to be a show cause notice.
- Notice is thus a **sine qua non** for any demand proceedings and SCN is the one that 'sets the law in motion'.

Audi Alteram Partem

The rule of audi alteram partem is a principle of natural justice

Maneka Gandhi v. Union of India (1978) 1 SCC 248

- The rule of audi alteram partem mandates of giving the other side an opportunity of being heard and it was recognised as a part of article 21 of the constitution making it a fundamental right available to the citizens by the 7 judge bench of the Hon'ble Supreme Court of India by Majority decision of J. PN Bhagwati
- Being a fundamental right hence it is available to all assesses and not given a reasonable opportunity of being heard frustrates the proceedings

Validity of Show Cause Notice issued by an officer in excess of monetary limit

Pahawa Chemicals (P) Ltd. vs. CCE – 2005 (181) ELT 339 (SC).

Mere letter or communication asking for payment is not a 'show cause notice'

- Metal Forgings vs. UOI (supra)
- CC vs. Merchant Impex – 2012 (276) ELT 458 (Kar.)
- Steel Ingots vs. UOI – 1988 (36) ELT 529 (MP)

Show Cause Notice shall not be based on conjunctures, assumptions and surmises

Oudh Sugar Mills Ltd. vs. UOI -1978 (2) ELT (J172) (SC)

Show Cause Notice – a 'condition precedent' to a demand

- Gokak Patel Volkart Pvt. Ltd. vs. CCE -1987 (28) ELT 53 (SC)
- Madhumilan Syntex Pvt. Ltd. vs. UOI -1981 (35) ELT 349 (SC)
- Metal Forgings vs. UOI-2002 (146) ELT 2141 (SC)

Is oral show cause notice valid? Can a show cause notice be waived?

- CC vs. Virgo Steels – 2002 (141) ELT 598 (SC)
- National Co-op. Bank Ltd. vs. CST (Audit)-2018 (15) GSTL 202 (Kar.)

Show cause notice to indicate the amount demanded

- Hindustan Aluminium Corp. Ltd. vs. Supdt. of C.Ex. - 1981 (8) ELT 642 (Del.)
- JBA Printing Inks Ltd. vs. UOI -1980 (6) ELT 121 (Mad)
- Gwalior Rayon (Wgt.) Ltd. vs. UOI -1982 (10) ELT 844 (MP).

Show Cause Notice must be in writing?

Voltas Ltd. vs. CCE – 2000 (121) ELT 802 (Tri-Mum.)

Notice must contain all essential details

- CCE vs. Brindavan Beverages (P) Ltd.-2007 (213) ELT 487 (SC)

SEC 108 - REVISION

Revisional Authority (RA)

- On its own motion
- On information received by him
- On request of SGST/UTGST Commissioner

May call for & examine all records.

Revisional Authority – Sec 2(99) of CGST Act, 2017

Means any authority appointed or authorized for revision of decision or orders as referred to in sec 108

Revision Authority

⇒ Order Passed By (N/N S/2020)

i)	Addt. Comm/Joint Comm.	Principal Comm./Comm.
ii)	Asst.Comm. /D.Comm. or Superintendent	J.Comm/Addt.Comm

- 1) Sec 108 of CGST ACT gives power to Revisional Authority to revise the order of officer subordinate to him if it is prejudicial to interest of Revenue, erroneous, illegal or improper
- 2) As per Sec. 108(2)(b) The Revisional Authority shall not exercise any power under sub-section (1), if the period specified under sub-section (2) of section 107 has not yet expired which is six months from the date of communication of the said decision.

⇒ RA cannot revise following orders

- Order subject to appeal before AA/AT/HC/SC
- Order having period before 6 months, & after 3yrs from communication of order
- Order already taken for revision
- Revisional order

RA may pass an order on any point not raised in any appeal before AA/AT/HC/SC, before expiry of :-

- *1 yr. from date of order in appeal, (or)
- *3 yr. from date of initial order, whichever is later

SEC 161 – Rectification



Without prejudice to the provisions of section 160, and notwithstanding anything contained in any other provisions of this Act,

- **any authority**, who has passed or issued any decision or order or notice or certificate or any other document,
- **may rectify any error which is apparent on the face of record** in such decision or order or notice or certificate or any other document,
- either on its own motion or where such error is brought to its notice by any officer appointed under this Act or by the affected person
- **within a period of three months** from the date of issue of such decision or order or notice or certificate or any other document.

Provided that **no such rectification shall be done after a period of six months** from the date of issue of such decision or order or notice or certificate or any other document:

Provided further that the said period of **six months shall not apply in such cases where the rectification is purely in the nature of correction of a clerical or arithmetical error**, arising from any accidental slip or omission:

Provided also that where such rectification adversely affects any person, the principles of natural justice shall be followed by the authority carrying out such rectification.

Dashboard	Services ▾	GST Law	Search Taxpayer ▾	Help ▾	e-Way Bill System
Registration	Ledgers	Returns	Payments	User Services	Refunds
My Saved Applications	My Applications				
View/Download Certificates	View Notices and Orders				
View My Submissions	Contacts				
Search HSN / Service Classification Code	Holiday List				
Feedback	Grievance / Complaints				
Locate GST Practitioner (GSTP)	Engage / Disengage GST Practitioner (GSTP)				

My Applications

• indicates mandatory fields

Application Type •

Select ▾
Select
Advance Ruling
Intimation of Voluntary Payment - DRC-03
Letter Of Undertaking
Appeal to Appellate Authority
REFUNDS
Application for rectification of order
Application for Restoration of Provisional Attachment
Application for Deferred Payment/Payment in Instalments
Provisional Assessment ASMT-01
Compounding Application
Application for unblocking of E-way bill

From Date

DD/MM/YYYY

To Date

DD/MM/YYYY

SEARCH

NEW APPLICATION

My Applications

Application Type*

Appeal to Appellate Authority ▼

From Date

DD/MM/YYYY



To Date

DD/MM/YYYY



* indicates mandatory fields

SEARCH

NEW APPLICATION

GST APL-01:Appeal to Appellate Authority

GSTIN/Temporary ID/UIN -

Legal Name -

Trade Name -

Address -

Order Type*

Select

Order No*

SEARCH

Order Details

Order Date*
03/04/2018

Demand Id

[REDACTED]

Date of communication*

03/04/2018



Category of the case under dispute*

Select



ADD

Period of Dispute

From*

01/02/2018



To*

28/02/2018



Category of the case under dispute•

Select ▼

Select

1. Misclassification of any goods or services or both
2. Wrong applicability of a notification issued under the provisions of this Act
3. Incorrect determination of time and value of supply of goods or services or both
4. Incorrect admissibility of input tax credit of tax paid or deemed to have been paid
5. Incorrect determination of the liability to pay tax on any goods or services or both
6. Whether applicant is required to be registered
7. Whether any particular thing done by the applicant results in supply of goods or services or both
8. Rejection of application for registration on incorrect ground
9. Cancellation of registration for incorrect reasons
10. Transfer/Initiation of recovery/ Special mode of recovery
11. Tax wrongfully collected/Tax collected not paid to Government
12. Determination of tax not paid or short paid
13. Refund on wrong ground/Refund not granted/ Interest on delayed refund
14. Fraud or wilful suppression of fact
15. Anti profiteering related matter
16. Others

DISPUTED AMOUNT/ PAYMENT DETAILS

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DISPUTED AMOUNT/ PAYMENT DETAILS

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Goods and Services Tax

[Logout](#)[Dashboard](#)[Services](#)[GST Law](#)[Downloads](#)[Search Taxpayer](#)[Help](#)[e-Way Bill System](#)[Dashboard](#) > [Services](#) > [User Services](#) > [Payment Details](#)[English](#)

GSTIN/Temporary ID/UIN -

Legal Name -

Trade Name - AutomationsTest

Address

* Indicates Mandatory Fields

Disputed Amount/ Payment Details

Amount under Dispute

Description		Central tax (₹)	State/ UT tax (₹)	Integrated tax (₹)	Cess (₹)	
Amount of dispute	Tax/Cess	0	0	30000	0	
	Interest	0	0	0	0	
	Penalty	0	0	0	0	
	Fees	0	0	0	0	
	Other charges	0	0	0	0	

Amount Of Demand created and admitted

Amount Of Demand created and admitted

Description		Central tax (₹)	State/ UT tax (₹)	Integrated tax (₹)	Cess (₹)	
Amount of demand created (A)	Tax/Cess	0	0	33944	0	
	Interest	0	0	0	0	
	Penalty	0	0	0	0	
	Fees	0	0	0	0	
	Other charges	0	0	0	0	
Amount of demand admitted(B)	Tax/Cess	0	0	3944	0	
	Interest	0	0	0	0	
	Penalty	0	0	0	0	
	Fees	0	0	0	0	
	Other charges	0	0	0	0	

Details of payment of admitted amount and pre-deposit

Pre-deposit % of disputed tax

10

❗ Minimum of 10% of the disputed amount needs to be paid as pre-deposit before filing an appeal. Lower percentage may be declared here with relevant approvals from the competent authorities.

Details of payment required

Enter Document Description

Choose File No file chosen

- ❗ Only PDF & JPEG file format is allowed.
- ❗ Maximum file size for upload is 5MB.
- ❗ Maximum 4 supporting documents can be attached in the application. The remaining documents can be handed over in hard copy
- ❗ Click on Add Document button to add the uploaded Supporting Document.

☐ I, ANGAD JASBIRSINGH ARORA, hereby solemnly affirm and declare that the information given herein above is true and correct to the best of my / our knowledge and belief and nothing has been concealed therefrom.

Name of Authorized Signatory *

Select

Place *

Enter Place

Designation / Status

Date

05/09/2018

BACK

PREVIEW

PROCEED TO FILE



I, ANGAD JASBIRSINGH ARORA, hereby solemnly affirm and declare that the information given herein above is true and correct to the best of my / our knowledge and belief and nothing has been concealed therefrom.

Name of Authorized Signatory *

ANGAD ARORA

Place *

Enter Place

Designation / Status

Director

Date

05/09/2018

BACK

PREVIEW

PROCEED TO FILE

[REDACTED]
Shiva Shankar Market, Old Railway Road, [REDACTED]

[GSTIN: [REDACTED]

Appeal under section 107 of the CGST Act, 2017

Before

Joint Commissioner (AO CGST Appeals, Commissionerate
[REDACTED]

Against

Refund Sanction/Rejection Order No. [REDACTED]

Dated 08.07.2020

Passed by
Assistant Commissioner,
Central Tax, North-I Division,
[REDACTED]

Tax Period: From April 2018 To April 2018

Before Joint Commissioner (AO) CGST Appeals, Commissionerate [REDACTED]

In the matter of

[REDACTED]

.....APPELLANT

-Vs.-

Assistant Commissioner, North- I Division, Central Tax, [REDACTED]

.....RESPONDENT

I N D E X

Sl.	Particulars	Annexure No.	Page No.
1.	Copy of Appeal in Form GST APL-01		1-6
2.	Annexure to Form GST APL-01	A-1	7-8
3.	Statement of Facts, Grounds of Appeal and Prayer	A-2	9-14
4.	Copy of the Refund ARN Receipt		15
5.	Copy of SCN		16-17
6.	Copy of Refund Rejection Order in GST RFD-06		18-24
7.	Copy of Reply furnished		25-
8.	Copy of Documents furnished at time of Refund Adjudication		

GST

Form GST APL-01

[See rule 108(1)]

Appeal to Appellate Authority

1. GSTIN/Temporary ID/UIN - [REDACTED]
2. Legal name of the appellant - [REDACTED]
3. Trade name, if any - [REDACTED]
4. Address - **Shiva Shanker Market, Old Railway Road,** [REDACTED]
5. Order No. - [REDACTED]
6. Order date - [REDACTED]
7. Designation and address of the officer
Passing the order appealed against - **Assistant Commissioner of CGST
North- I Division, Central Tax GST,** [REDACTED]
8. Date of communication of the order
Appealed against - **13.04.2021**
9. Name of the authorised representative - **CA Aanchal Kapoor**
10. Details of the case under dispute -
 - (i) Brief issue of the case under dispute - **Refer to Annexure-1 (Page no. 6-7)**
 - (ii) Description and classification of goods/
Services in dispute - **Commercial credit notes**
 - (iii) Period of dispute - **March 2019**
 - (iv) Amount under dispute :

Description	Central tax	State/UT tax	Integrated tax	Cess
(a) Tax/Cess	52878	52878	0	0
(b) Interest	0	0	0	0
(c) Penalty	0	0	0	0
(d) Fees	0	0	0	0
(e) Other charges	0	0	0	0
	52878	52878	0	0

(v) Market value of seized goods-

N.A.

11. Whether the appellant wishes to be heard in person -

Yes(Through Authorized representative)

12. Statement of facts :-

Refer Page 8-10

13. Grounds of appeal :-

Refer Page 11

14. Prayer :-

Refer Page 12

15. Amount of demand created, admitted and disputed

Particulars of demand/ refund	Particulars		Central tax	State/UT tax	Integrated tax	Cess	Total amount	
	Amount of demand created (A)	(a) Tax/Cess (b) Interest (c) Penalty (d) Fees (e) Other charges	N.A.				> total >	> Total >
							< total >	
							< total >	
							< total >	
							< total >	

Amount of demand admitted (B)	(a) Tax/Cess	N.A.	0 total >	0 total >
	(b) Interest		< total >	
	(c) Penalty		< total >	
	(d) Fees		< total >	
	(e) Other charges		< total >	
Amount	(a)		0	0

3

of demand disputed (C)	Tax/Cess	N.A.	total >	Total >
	(b) Interest		< total >	
	(c) Penalty		< total >	
	(d) Fees		< total >	
	(e) Other charge s		< total >	

16. Details of payment of admitted amount and pre-deposit:-

(a) Details of payment required

	Particulars		Central tax	State/ UT tax	Integrated tax	Cess	Total amount	
a) Admitted amount	Tax/ Cess	N.A.					< total >	
	Interest						< total >	
	Penalty						< total >	
	Fees						< total >	
	Other Charges						< total >	< total >
	b) Pre- deposit (10% of disputed tax/cess	Tax/Cess						< total >

but not exceeding ₹ 25 crore			
each in respect of CGST, SGST or cess, or not exceeding ₹ 50 crore in respect of IGST and ₹ 25 crore in respect of cess)			

(b) Details of payment of admitted amount and pre-deposit (pre-deposit 10% of the disputed tax and cess but not exceeding ₹ 25 crore each in respect of CGST, SGST or cess, or not exceeding ₹ 50 crore in respect of IGST and ₹ 25 crore in respect of cess)

Sr. No.	Description	Tax payable	Paid through Cash/ Credit Ledger	Debit entry no.	Amount of tax paid			
					Central tax	State/UT tax	Integrated tax	CESS
1	2	3	4	5	6	7	8	9
1.	Integrated		Cash Ledger					
	Tax		Credit Ledger					
2.	Central tax		Cash Ledger					
			Credit Ledger					
3.	State/UT tax		Cash Ledger					
			Credit Ledger					
4.	CESS		Cash Ledger					
			Credit Ledger					

(c) Interest, penalty, late fee and any other amount payable and paid

Sr.	Description	Amount payable		Debit		Amount paid	

No.		Integrated tax	Central tax	State/UT tax	CESS	entry no.	Integrated tax	Central tax	State/UT tax	CESS
1	2	3	4	5	6	7	8	9	10	11
1.	Interest	N.A								
2.	Penalty									
3.	Late fee									
4.	Others (specify)									

17. Whether appeal is being filed after the prescribed period - No

18. If 'Yes' in item 17 -

(a) Period of delay - N.A.

(b) Reasons for delay – N.A.

19. Place of supply wise details of the integrated tax paid (admitted amount only) mentioned in the Table in sub-clause (a) of clause 15 (item (a)), if any

Place of Supply (Name of State/UT)	Demand	Tax	Interest	Penalty	Other	Total
1	2	3	4	5	6	7
	Admitted amount [in the Table in sub-clause (a) of clause 15 (item (a))]					

Verification

I, [REDACTED], hereby solemnly affirm and declare that the information given hereinabove is true and correct to the best of my knowledge and belief and nothing has been concealed therefrom.

Place : [REDACTED]

Date : 24.08.2020

AANCHAL
KAPOOR

digitally signed by AANCHAL KAPOOR
DN: cn=AANCHAL KAPOOR,
o=INDIA, ou=INDIA, email=aanchal.kapoor@india.gov.in,
serial=1, version=3,
c=IN, o=INDIA, ou=INDIA, email=aanchal.kapoor@india.gov.in,
cn=AANCHAL KAPOOR

[REDACTED]

Counsel Of Assessee Aanchal Kapoor

Annexure to FORM GST APL-01

Appeal to Appellate Authority

10. Details of the case under dispute-

(i) Brief issue of the case under dispute –

An application for refund under “Excess payment of tax” of Rs. 85,656 (CGST Rs. 42,828 and SGST Rs. 42,828) for the tax period April 2018 was filed, on account of inadvertent excess payment of tax on Commercial Credit Notes (Secondary Discounts). The Company IOCL issued commercial credit notes whereas the Appellant paid tax against commercial credit notes received from the IOCL, whereas the same were not liable to be taxed and no counter action was required to be done by the appellant. IOCL, in its copy of account has entered the commercial credit notes only and no tax effect for the same has been considered. Hence, the application for refund was made on 15.06.2020 in Form GST RFD-01 vide ARN No. [REDACTED] under Excess Payment of Tax category Refund Rejection Order No. [REDACTED] Form GST RFD-06 was issued on 08.07.2020 sanctioning refund of Rs. 0/- and rejecting refund of Rs. 85,656/-. The reason mentioned in the remarks column for refund rejection is:

“ I find that the assessee is not liable for refund as the incentives/commercial credit notes received are in the form of supply as defined under Section 7(1) of CGST Act 2017 read with serial No 5(e) of Schedule II of CGST Act 2017.

Section 7(1) of CGST Act 2017 read as follows:

For the purposes of this Act, the expression “supply” includes—

- (a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;*

Sr. No. 5(e) of schedule II read as follows:-

Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act;''

Whereas, the above provisions are not applicable and the discount received cannot be considered as independent supply, as there being no obligation on part of appellant to do any act for receipt of discounts. The commercial Credit Notes are issued for adjustment of price to maintain competitive prices and are related to original supply only. The same are specifically covered by Para D of Circular 92/11/2019 and are not taxable.

- (ii) **Description and classification of goods/ services in dispute-** Not Applicable
- (iii) **Market value of seized goods –** Not applicable

- 11. **Whether the appellant wishes to be heard in person –**Yes (through authorized representative)
- 12. **Statement of facts-** Enclosed vide Annexure-1 (Page No. 1-2)
- 13. **Grounds of appeal –** Enclosed vide Annexure-1 (Page No. 3-7)
- 14. **Prayer -** Enclosed vide Annexure-1 (Page No. 8)
- 15. **Whether appeal is being filed after the prescribed period -**No
- 16. **If 'Yes' in item 16–**
 - (a) **Period of delay –** Not Applicable
 - (b) **Reasons for delay –** Not Applicable

STATEMENT OF FACTS

1. Facts of the Case:

- a) [REDACTED] (GSTIN: [REDACTED]), a partnership firm(hereinafter referred to as 'Appellant' for the sake of brevity) having its principal place of business at Shiva Shankar Market, Old Railway Road [REDACTED] is engaged in supply of **Liquefied Petroleum Gas(LPG) cylinders and is authorised distributor of IOCL.**
- b) The appellant filed an application for refund under "Excess payment of tax" of Rs. 85,656 (CGST Rs. 42,828 and SGST Rs. 42,828) for the tax period April 2018 on account of inadvertent excess payment of tax on Commercial Credit Notes (Secondary Discounts received). The Company IOCL issued Commercial Credit Notes for which no action was required on part of appellant, whereas the Appellant wrongly issued Tax Invoice for Discount received as against commercial credit notes received from the IOCL and paid tax on it, whereas the same were not liable to be taxed. IOCL did not entertain the invoices raised by the appellant and no ITC was taken against these invoices by IOCL, clearly evident from the copy of account. Hence, the application for refund was

made on 15.06.2020 in Form GST RFD-01 vide ARN No. [REDACTED]. Copy of the Refund ARN Receipt is enclosed herewith for your ready reference (Refer Page No. 15).

- c) An acknowledgement in Form GST RFD-02 was issued on 16.06.2020 vide Acknowledgement No [REDACTED]
- d) The appellant was issued a Show cause notice for rejection of application for refund in Form GSTR RFD-08 requiring to furnish certain information. The reply to the same was furnished on 04.07.2020 in form GST RFD-09.

The notice RFD-08 states as follows:-

'The act of receiving incentives/ discount is in itself appears to be taxable activity as it is made for a consideration and is in the course of furtherance of business and is incumbent upon achieving a certain target by the assessee. The incentives received are in the form of supply as defined under Section 7(1) of CGST Act 2017 read with serial No 5(e) of Schedule II of CGST Act 2017. Thus, it appears refund liability does not arise.

The show cause notice has been attached herewith for your ready reference.

(Refer Page No. 16-17)

In reply to above it was furnished that the concern is authorised dealer of IOCL owing to which Incentives/ Secondary Discounts are given to entity by way of price reduction to maintain competitive prices, by issuing Commercial Credit

Notes at month end for which there is no obligation on the part of appellant to do any act. The same are directly covered by para D of circular 92/11/2019 & cannot be taken as supply as per section 7(1) read with Sr. No. 5(e) of schedule II

Furthermore, IOCL confirmed copy of account along with Balance sheet of Appellant had duly been submitted with the reply, clearly depicting that the Company IOCL have credited the account of appellant only with the amount of credit note/ Incentive / Secondary Discounts without any Tax effect. IOCL did not entertain the invoices raised by the appellant and no ITC was taken against these invoices by IOCL, clearly evident from the copy of account. Thus, the copy of account furnished by IOCL, clearly stating that incidence of tax has not been passed & the amount received being in nature of Secondary Discount/ Commercial Credit Notes is not liable to be taxed.

- e) A Refund Rejection Order No. [REDACTED] was issued on 08.07.2020 in Form GST RFD-06 sanctioning refund of Rs. 0 and rejecting refund of Rs. 85,656 'Remarks' field of the said order contained the followings:

'I find that the assessee is not liable for refund as the incentives/commercial credit notes received are in the form of supply as defined under Section 7(1) of CGST Act 2017 read with serial No 5(e) of Schedule II of CGST Act 2017. Section 7(1) of CGST Act 2017 read as follows: 7. (1) For the purposes of this Act, the expression "supply" includes— (a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business.' Therefore refund of Rs. 85,656 /- is rejected and refund of Rs. 0/- is sanctioned'.

Copy of the said order is enclosed herewith for your ready reference. (Refer Page No. 18-24)

- 2 Being aggrieved with the impugned Order dated 08.07.2020 made available on GST portal, passed by the Id. Assistant Commissioner of Central Tax, North- I Division, CGST Commissionerate, [REDACTED] (short 'Id. Commissioner), the Appellant is filling this appeal before the Joint Commissioner CGST Appeals, [REDACTED] for the sake of justice on the following Grounds of Appeal which are without prejudice to each other.
-

GROUND OF APPEAL

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- a) That on the facts and the circumstances of the case, the impugned order in GST RFD-06 issued by the Id. Asst. Commissioner, rejecting the refund of Rs. 85,656 /-is liable to be set aside as it is contrary to the facts on record, passed without consideration of the relevant statutory provisions and is against the principle of natural justice.
- b) That the Ld. Asst. Commissioner has not disputed the nature of credit note being Commercial Credit Note but has erred in considering the underlying supply of Commercial Credit Notes, which pertains only to price/ rate adjustments in form of Secondary Discounts and cannot be treated as a separate supply, being no obligation on part of taxable person to do an act. These are Secondary Discounts or Rate Adjustments to maintain competitiveness of prices only.
- c) That the Ld. Asst. Commissioner has erred in law by invoking the provisions of schedule II serial no. 5(e) by treating the credit notes as subsequent supply, as the same are related to original supply and are commercial credit notes, not taxable in GST by virtue of Section 15 and **para D of circular 92/11/2019.**
- d) That the Ld. Asst. Commissioner has erred in ignoring the documents placed on record i.e. Copy of account of IOCL and Copy of Balance Sheet of the Appellant.
- e) That the refund filed is less than Rs. 200000/- and the Ld. Officer has exceeded his jurisdiction by ignoring the provisions of proviso to Section 54(4). The relevant provision

states that, it is not necessary to furnish documentary evidence, which is reproduced hereunder for your ready reference: -

“Provided that where the amount claimed as refund is less than two lakh rupees, it shall not be necessary for the applicant to furnish any documentary and other evidences but he may file a declaration, based on the documentary or other evidences available with him, certifying that the incidence of such tax and interest had not been passed on to any other person.”

PRAYER

- 4 On the facts and in the circumstances of the case and in view of the legal provisions cited above the appellant hereby prays that:
 - 4.1 The impugned order rejecting the refund amount of Rs. 85,656 /- should be treated void-~~ab~~-initio, passed without authority of law, against the principal of natural justice and hence should be quashed.
 - 4.2 Considering the financial hardship that the rejection of refund amount shall cause to the appellant, an appropriate order should be passed for refund of Rs. 85,656 /-to the appellant.
- 5 The Appellant craves leaves to add, amend, modify, rescind, supplement or alter any of the grounds stated hereinabove either before or at the time of the hearing of this appeal.

6 Legal provisions

6.1 Proviso to section 54(4) of the CGST Act, 2017," *Provided that where the amount claimed as refund is less than two lakh rupees, it shall not be necessary for the applicant to furnish any documentary and other evidences but he may file a declaration, based on the documentary or other evidences available with him, certifying that the incidence of such tax and interest had not been passed on to any other person."*

6.2 Section 54(8) of the Central Goods & Services Tax Act, 2017 states that,"
Notwithstanding anything contained in sub-section (5), the refundable amount shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to –

- a) Refund of tax paid on export of goods or services or both or on inputs or input services used in making such exports.*
- b) refund of unutilised input tax credit under sub-section (3)*
- c) refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued, or where a refund voucher has been issued*
- d) refund of tax in pursuance of section 77*
- e) the tax and interest, if any, or any other amount paid by the applicant, if he had not passed on the incidence of such tax and interest to any other person; or*

6.3 Para 3 of Circular No. 125/44/2019-GST states that

“With effect from 26.09.2019, the applications for the following types of refunds shall be filed in FORM GST RFD 01 on the common portal and the same shall be processed electronically:

(i) Refund of excess payment of tax

6.4 Annexure –A of circular 125/44/2019 provides for “list of all statements/declarations/undertakings/certificates and other supporting documents to be provided along with the refund application” which states following documents to be submitted along with refund applications.

<i>Sr. No.</i>	<i>Type of refund</i>	<i>Declaration / Statement / Undertaking / Certificates to be filled online</i>	<i>Supporting documents to be additionally uploaded</i>
<i>8</i>	<i>Refund of excess payment of tax</i>	<ul style="list-style-type: none"> <i>▪ Statement 7 under rule 89(2)(k)</i> <i>▪ Undertaking in relation to sections 16(2)(c) and section 42(2)</i> <i>▪ Self-declaration under rule 89(2) (1) if amount claimed does not exceed two lakh rupees, certification under rule 89(2) (m) otherwise.</i> 	

All the documents as required to be submitted along with refund application have duly been submitted.

Refund ARN Receipt

This is an application receipt for Refund application GST RFD-01 filed by you at the common portal:

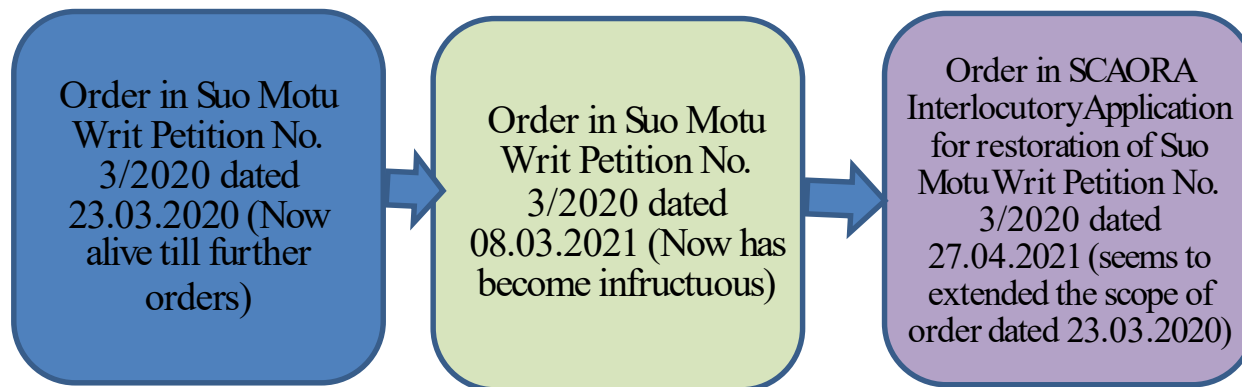
Application Reference Number (ARN):	
Date of Application:	17/06/2020
Time of Filing of Application:	04:49 PM
GSTIN/ UIN/ Temporary ID:	
Trade Name :	
Legal Name:	
Reason of Refund:	Excess payment of tax
Center Jurisdiction:	-
State Jurisdiction:	-
From Period:	DECEMBER 2018
To Period:	DECEMBER 2018

Amount of Refund Claimed (In INR)

Integrated Tax	Central Tax	State/UT Tax	Cess	Total
0	56985	56986	0	113971.00

Note: It is a system generated application receipt and does not require any signature. The Acknowledgement (RFD- 02) shall be issued after verification of the completeness of the application by the Refund Processing Officer.

PERIOD OF LIMITATION _APPLICABILTY IN GST of SUPREME COURT SUO
MOTO ORDER



● **Order in Suo Motu Writ Petition No. 3/2020 dated 23.03.2020**

- This Court has taken Suo Motu cognizance of the situation arising out of the challenge faced by the country on account of Covid-19 Virus and resultant difficulties that may be faced by litigants across the country in filing their petitions/applications/suits/appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and/or State).
- To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the country including this Court, **it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings.**
- We are exercising this power under **Article 142 read with Article 141** of the Constitution of India and declare that this order is a binding order within the meaning of Article 141 on all Courts/Tribunals and authorities.
- This order may be brought to the notice of **all High Courts for being communicated to all subordinate Courts/Tribunals** within their respective jurisdiction.

● **Order in SCAORA Interlocutory Application for restoration of Suo Motu Writ
Petition No. 3/2020 dated 27.04.2021**

- We also take judicial notice of the fact that the steep rise in COVID-19 Virus cases is not limited to Delhi alone but it has engulfed the entire nation. The extraordinary situation caused by the sudden and second outburst of COVID-19 Virus, thus, requires extraordinary measures to minimize the hardship of **litigant– public** in all the states. **We, therefore, restore the order dated 23rd March, 2020 and in continuation of the order dated 8th March, 2021 direct that the period(s) of limitation, as prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings, whether condonable or not, shall stand extended till further orders.**
- It is further clarified that the period from 14th March, 2021 till further orders shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.
- We have passed this order in exercise of our powers under Article 142 read with Article 141 of the Constitution of India. Hence it shall be a binding order within the meaning of Article 141 on all Courts/Tribunals and Authorities.
- This order may be brought to the notice of all High Courts for being communicated to all subordinate courts/Tribunals within their respective jurisdiction.

Meaning of 'Judicial Proceedings'

- **Section 2 (i) of the Criminal Proceeding Code** defines Judicial Proceeding:
- *"judicial proceeding" includes any proceeding in the course of which evidence is or may be legally taken on oath.*
- Judicial Proceedings Includes Trial and Inquiry but not Investigation.
- **Section-70 of the CGST Act, 2017**
- **Power to summon persons to give evidence and produce documents.**
- 70. (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).

Meaning of ‘Quasi-Judicial Proceedings’

- **“Quasi-judicial Proceedings”:**
- **Similar to but not exactly the same as judicial proceedings.**
- Quasi-judicial proceedings are similar to but not exactly court proceedings.
- Deal in facts and give decision by considering Law.e.g Tribunals/CIT(A)
- No formal Affidavits are filed.
- The term also implies that these authorities are not routinely responsible for holding such proceedings and often may have other duties.
- **E.g National Human Rights Commission, Dispute Rederessal Commissions, ITAT, GSTAT, CCI etc.**
- **Judicial bodies are Courts like High Court, District Court or Supreme Court etc.**

Refer VIKAS WSP Ltd. & ORS. V Director Enforement
2021 376 ELT 201. The order cannot be made
universally applicable i.e in PMLA , Bank a/c
attachment valid for 1 year. It will not extend.
e.G Period of Detention 60 days will not extend.

Quasi Judicial Authority

- Appellate authority is quasi judicial authority
 - Indian National Congress (I) v. Institute of Social Welfare, (2002) 5 SCC 685
 - The dictionary meaning of the word quasi is “not exactly” and it is just in between a judicial and administrative function. It is true, in many cases, the statutory authorities were held to be quasi-judicial authorities and decisions rendered by them were regarded as quasi-judicial
-
- In **Orient Paper Mills Ltd. vs. UOI – 1978 (2) ELT J 345 (SC)** . It was held that adjudication, appeal and revision are quasi-judicial proceedings and the same would get vitiated if administrative considerations , namely departmental clarifications and Board rulings influence the quasi-judicial authority.
 - In **Asst. Collector of C.Ex vs. National Tobacco of India Ltd. – 1978 (2) ELT 416 (SC)**, it was held that the assessment of tax on a person or property is of a quasi-judicial character, therefore, **the rules of natural justice have to be followed** and assessment is a quasi-judicial process involving due application of mind to the facts as well as to requirements of law.

- **Article 141---** Law declared by Supreme Court to be binding on all courts
- **Article 142---** 1) The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe.
- (2) Subject to the provisions of any law made in this behalf by Parliament, the Supreme Court shall, as respects the whole of the territory of India, have all and every power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself.
- Article 142 of the Constitution, confers on the Hon'ble Supreme Court a plenipotentiary power to pass any order to do complete justice in any cause or matter pending before it.

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CIRCULAR NO.
157/13/2021
DATED 20.07.2021

Clarification regarding extension of limitation under GST Law in terms of Hon'ble Supreme Court's Order dated 27.04.2021.

The extract of the Hon'ble Supreme order dated 27th April 2021 is reproduced below for reference:

"We, therefore, restore the order dated 23rd March, 2020 and in continuation of the order dated 8th March, 2021 direct that the period(s) of limitation, as prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings, whether condonable or not, shall stand extended till further orders. It is further clarified that the period from 14th March, 2021 till further orders shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings. We have passed this order in exercise of our powers under Article 142 read with Article 141 of the Constitution of India. Hence it shall be a binding order within the meaning of Article 141 on all Courts/Tribunals and Authorities."

OBSERVATIONS OF THE LEGAL OPINION

i) Hon'ble Supreme Court has stepped into to grant extensions only with reference to **judicial and quasi-judicial proceedings in the nature of appeals/ suits/ petitions etc.** and has not extended it to every action or proceeding under the CGST Act.

ii) As on date, the Orders of the Hon'ble Supreme Court **apply to appeals, reviews, revisions etc., and not to original adjudication.**

iii) Even under category **judicial and quasi-judicial proceedings**, Hon'ble Supreme Court Order, **applies only to a list which needs to be pursued within a time frame fixed by the respective statutes.**

iv) Wherever proceedings are pending, judicial or quasi-judicial which requires to be heard and disposed off, **cannot come to a standstill by virtue of these extension orders.** Those cases need to be adjudicated or disposed off either physically or through the virtual mode based on the prevailing policies and practices besides instructions if any.

v) The following actions such as scrutiny of returns, issuance of summons, search, enquiry or investigations and even consequential arrest in accordance with GST law would not be covered by the judgment of the Hon'ble Supreme Court.

vi) As regards issuance of show cause notice, granting time for replies and passing orders, the present Orders of the Hon'ble Supreme Court may not cover them even though they are quasi-judicial proceedings as the same has only been made applicable to matters relating to petitions/applications/suits, etc.

CLARIFICATIONS OF THE LEGAL OPINION

(a) **Proceedings that need to be initiated or compliances that need to be done by the taxpayers:-** These actions would continue to be governed only by the statutory mechanism and time limit provided/ extensions granted under the statute itself. Various Orders of the Hon'ble Supreme Court would not apply to the said proceedings/ compliances on part of the taxpayers.

(b) **Quasi-Judicial proceedings by tax authorities:-**

The tax authorities can continue to hear and dispose off proceedings where they are performing the functions as quasi-judicial authority. This may inter-alia include disposal of application for refund, application for revocation of cancellation of registration, adjudication proceedings of demand notices, etc.

Similarly, appeals which are filed and are pending, can continue to be heard and disposed off and the same will be governed by those extensions of time granted by the statutes or notifications, if any.

(c) **Appeals by taxpayers/ tax authorities against any quasi-judicial order:-**

Wherever any appeal is required to be filed before Joint/ Additional Commissioner (Appeals), Commissioner (Appeals), Appellate Authority for Advance Ruling, Tribunal and various courts against any quasi-judicial order or where a proceeding for revision or rectification of any order is required to be undertaken, the time line for the same would stand extended as per the Hon'ble Supreme Court's order.

TITBITS OF APPEALS

- No Pre deposit in case of Refund Appeals.
- If Online Order then Online Appeal, if manual Order then Manual Appeal.
- No specific Format of Memorandum of Cross Objections in case of First Appellate Authority.
- Online gearing through VIDYO app and Online Vkalatnama to be submitted. Should be in proper dress.
- Difference in Income Tax and GST Appeals 1) Detailed Appeal Drafting in GST 2) First Appeal can be by Department in GST 3) No Pre Deposit waiver in GST 4) Max 3 adjournments 5) Directory time period of 1 year for disposal. 6) 1st Appeal may lie to JC/Addl/ Comm, as per order passing authority.
- **Appeal be made to both CGST & SGST authorities? –No** As per the GST Act, CGST & SGST/UTGST officers are both empowered to pass orders. As per the Act, an order passed under CGST will also be deemed to apply to SGST. If an officer under CGST has passed an order, any appeal /review/revision/ rectification against the order will lie only with the officers of CGST, vice a versa for SGST.
- **Payment of excise service tax pre –Deposit** Pre-deposit can be made through CGST Credit (even of arrears of excise duty and service tax)- Dell International Service v. CCT(2019) 365 ELT 813 (CESTAT). Circular No. 58/32/2018-GST, dated 4-9-2018 and also circular No. 42/16/2018- GST dated 13-4-2018 and submitted that the Circular very clearly states that the arrears of central excise duty, service tax or wrongly availed Cenvat credit under the old law is permissible to be paid through the utilization of amounts available in the electronic Credit Ledger.
- **In case of transfer of appellate authority**
- **Same officer to hear and decide the case** The requirement of fair hearing involves decision being taken by the officer who heard the case. If after hearing, that particular officer is transferred, normal rule would be that the successor must hear the arguments afresh before he could pass an order. **Laxmi Devi v. State of Bihar, (2015) 10 SCC 241.** So Stringent is this right that it mandates that **the person who heard and considered the objections can alone decide them**; and not even his successor is competent to do so even on the basis of the materials collected by his predecessor

Condonation of delay by appellate authority S. 107(4) CGST Act

- Authorities created by statute cannot apply limitation Act, 1963. They cannot condone delay unless empowered by statute- Om Parkash v. Ashwini Kumar Bassi (2010) 258 ELT 5(SC)
- M.P. Steel Corporation v. commissioner of Central Excise [2015] 319 ELT 373 (SC) (A.K.SIKRI AND ROHINTON FALI NARIMAN, JJ.)
- Provisions of limitation Act do not apply to Tribunal, Other quasi-judicial authorities; but principles there in may be extended to proceedings before Tribunal and other quasi-judicial authorities so as to advance cause of justice.
- Time spent in pursuing remedy before wrong forum bona fide would stand excluded but period prior to institution of initiation of any abortive preceeding cannot be excluded which is principle which has been derived from section 14 of the limitation act.

Effect of withdrawal of Appeal

- In its recent decision of the Supreme Court for a matter pertaining to income tax **commissioner of income-tax, central-I v. Ansal Housing And construction Ltd. [2020] 116 taxmann.com 322** held that when an appeal is withdrawn due to circular the effect of the same would be dismissed as withdrawn **leaving the question of Law open**. Similar view as taken by the Bombay High court Commissioner of CGST, **ST & Central Excise vs. Cea Raj Constructions [2018] 98 taxmann.com 169.**

SUMMARY OF FORMS USED IN APPEALS

S. No.	FORM No.	CONTENT
1	GST APL-01	Appeal to Appellate Authority by Taxpayer
2	GST APL-02	Acknowledgement of submission of appeal
3	GST APL-03	Application to the Appellate Authority by Department under sub-section (2) of section 107
4	GST APL-04	Summary of the demand after the issue of order by the Appellate Authority, Tribunal or Court
5	GST APL-05	Appeal to the Appellate Tribunal
6	GST APL-06	Cross-objections before the Appellate Tribunal
7	GST APL-07	Application to the Appellate Tribunal under sub-section (3) of section 112
8	GST APL-08	Appeal to the High Court under section 117



RECENT CIRCULARS

CIRCULAR NO.
158/14/2021
DATED 06.09.2021

Clarification regarding extension of time limit to apply for revocation of cancellation of registration in view of Notification No. 34/2021-Central Tax dated 29th August, 2021

The extract of the Notification No. 34/2021-Central Tax dated 29th August, 2021 is given below for reference:

The Government, on the recommendations of the Council, hereby notifies that where a registration has been cancelled under **clause (b) or (c) of sub-section (2) of section 29 of the said Act** and
- the time limit for making an application for revocation of cancellation of registration under sub-section (1) of section 30 of the said Act falls during the period from the **1st day of March, 2020 to 31st day of August, 2021**,
the time limit for making such application shall be extended upto the **30th day of September, 2021**.

CLARIFICATIONS REGARDING EXTENSION OF TIME LIMIT FOR APPLICATION FOR REVOCATION OF CANCELLATION OF REGISTRATION

All applications are covered under the scope of the said notification irrespective of the status of the applications

(i) application for revocation of cancellation of registration has not been filed by the taxpayer

(ii) application for revocation of cancellation of registration has already been filed and which are pending with the proper officer-

(iii) application for revocation of cancellation of registration was filed, but was rejected by the proper officer and taxpayer has not filed any appeal against the rejection -

(iv) application for revocation of cancellation of registration was filed, the proper officer rejected the application and appeal against the rejection order is pending before appellate authority-

(v) application for revocation of cancellation of registration was filed, the proper officer rejected the application and the appeal has been decided against the taxpayer

With effect from **01.01.2021**, proviso to sub-section (1) of section 30 of the CGST Act has been inserted which provides for **extension of time for filing application for revocation of cancellation of registration**

- by **30 days by Additional/ Joint Commissioner** and
- by **another 30 days by the Commissioner.**

CLARIFICATIONS REGARDING THE TIME LIMIT OF 30 DAYS

(i) where the thirty days' time limit falls between 1st March, 2020 to 31st December, 2020, there is no provision available to extend the said time period of 30 days under section 30 of the CGST Act

The time limit to apply for revocation of cancellation of registration stands **extended up to 30th September, 2021 only**

(ii) where the time period of thirty days since cancellation of registration has not lapsed as on 1st January, 2021 or where the registration has been cancelled on or after 1st January, 2021,

The time limit for applying for revocation of cancellation of registration shall stand extended as follows:

(a) Where the time period of 90 days (initial 30 days and extension of 30 + 30 days) since cancellation of registration has elapsed by 31.08.2021

the time limit to apply for revocation of cancellation of registration stands **extended upto 30th September 2021**, without any further extension of time by Joint Commissioner/ Additional Commissioner/ Commissioner.

(b) Where the time period of 60 days (and not 90 days) since cancellation of registration has elapsed by 31.08.2021

the time limit to apply for revocation of cancellation of registration stands **extended upto 30th September 2021, with the extension of timelines by another 30 days beyond 30.09.2021** by the Commissioner, on being satisfied, as per proviso to section 30(1) of the CGST Act

(c) Where the time period of 30 days (and not 60 days or 90 days) since cancellation of registration has elapsed by 31.08.2021

the time limit to apply for revocation of cancellation of registration stands **extended upto 30th September 2021, with the extension of timelines by another 30 days beyond 30.09.2021** by the Joint/ Additional Commissioner and **another 30 days by the Commissioner**, on being satisfied, as per proviso to section 30(1) of the CGST Act

Circular no. 156/12/2021
21st June, 2020

Clarification in respect of applicability of Dynamic Quick Response (QR) Code on B2C invoices and compliance of notification 14/2020- Central Tax dated 21st March, 2020 - Reg.

Notification No. 14/2020-Central Tax, dated 21st March 2020 had been issued which requires **Dynamic QR Code on B2C invoice** issued by taxpayers having **aggregate turnover more than 500 crore rupees**, w.e.f. 01.12.2020.

Further, vide notification No. 06/2021-Central Tax, dated 30th March 2021, **penalty** has been **waived for non-compliance** of the provisions of notification No.14/2020 – Central Tax **for the period from 01st December, 2020 to 30th June, 2021**, subject to the **condition** that the **said person complies with the provisions of the said notification** from 1st July, 2021

Issues

1.	Whether Dynamic QR Code is to be provided on an invoice , issued to a person, who has obtained a Unique Identity Number as per the provisions of Sub-Section 9 of Section 25 of CGST Act 2017?	Any person, who has obtained a Unique Identity Number (UIN) as per the provisions of Sub-Section 9 of Section 25 of CGST Act 2017, is not a “registered person” as per the definition of registered person provided in section 2(94) of the CGST Act 2017. Therefore, any invoice, issued to such person having a UIN, shall be considered as invoice issued for a B2C supply and shall be required to comply with the requirement of Dynamic QR Code.
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Issues

2	UPI ID is linked to the bank account of the payee/ person collecting money. Whether bank account and IFSC details also need to be provided separately in the Dynamic QR Code along with UPI ID?	Given that UPI ID is linked to a specific bank account of the payee/ person collecting money, separate details of bank account and IFSC may not be provided in the Dynamic QR Code.
3	In cases where the payment is collected by some person other than the supplier (ECO or any other person authorized by the supplier on his/ her behalf), whether in such cases, in place of UPI ID of the supplier, the UPI ID of such person, who is authorized to collect the payment on behalf of the supplier, may be provided?	Yes. In such cases where the payment is collected by some person, authorized by the supplier on his/ her behalf, the UPI ID of such person may be provided in the Dynamic QR Code, instead of UPI ID of the supplier.
4	In cases, where receiver of services is located outside India, and payment is being received by the supplier of services in foreign exchange, through RBI approved modes of payment , but as per provisions of the IGST Act 2017, the place of supply of such services is in India, then such supply of services is not considered as export of services as per the IGST Act 2017; whether in such cases, the Dynamic QR Code is required on the invoice issued , for such supply of services, to such recipient located outside India?	No. Wherever an invoice is issued to a recipient located outside India, for supply of services, for which the place of supply is in India, as per the provisions of IGST Act 2017, and the payment is received by the supplier in foreign currency, through RBI approved mediums, such invoice may be issued without having a Dynamic QR Code, as such dynamic QR code cannot be used by the recipient located outside India for making payment to the supplier.

Issues

5.	<p>In some instances of retail sales over the counter, the payment from the customer is received on the payment counter by displaying dynamic QR code on digital display, whereas the invoice, along with invoice number, is generated on the processing system being used by supplier/ merchant after receiving the payment. In such cases, it may not be possible for the merchant/ supplier to provide details of invoice number in the dynamic QR code displayed to the customer on payment counter. However, each transaction i.e. receipt of payment from a customer is having a unique Order ID/ sales reference number, which is linked with the invoice for the said transaction. Whether in such cases, the order ID/ reference number of such transaction can be provided in the dynamic QR code displayed digitally, instead of invoice number.</p>	<p>In such cases, where the invoice number is not available at the time of digital display of dynamic QR code in case of over the counter sales and the invoice number and invoices are generated after receipt of payment, the unique order ID/ unique sales reference number, which is uniquely linked to the invoice issued for the said transaction, may be provided in the Dynamic QR Code for digital display, as long as the details of such unique order ID/ sales reference number linkage with the invoice are available on the processing system of the merchant/ supplier and the cross reference of such payment along with unique order ID/ sales reference number are also provided on the invoice.</p>
6.	<p>When part-payment has already been received by the merchant/ supplier, either in advance or by adjustment (e.g. using a voucher, discount coupon etc), before the dynamic QR Code is generated, what amount should be provided in the Dynamic QR Code for “invoice value”?</p>	<p>The purpose of dynamic QR Code is to enable the recipient/ customer to scan and pay the amount to be paid to the merchant/ supplier in respect of the said supply. When the part-payment for any supply has already been received from the customer/ recipient, in form of either advance or adjustment through voucher/ discount coupon etc., then the dynamic QR code may provide only the remaining amount payable by the customer/ recipient against “invoice value”. The details of total invoice value, along with details/ cross reference of the partpayment/ advance/ adjustment done, and the remaining amount to be paid, should be provided on the invoice.</p>

VKC Footsteps India (P.) Ltd v. Union of India[2020]

Explanation (a) to substituted rule 89(5) which denies refund of 'unutilised input tax' paid on 'input services' as part of 'input tax credit' accumulated on account of inverted duty structure is in conformity with section 54(3)

Clause (ii) of the first proviso to Section 54(3) is not merely a condition of eligibility for availing of a refund but a substantive restriction under which a refund of unutilized ITC can be availed of only when the accumulation is relatable to an inverted duty structure, namely the tax on input goods being higher than the rate of tax on output supplies. There is therefore no disharmony between Rule 89(5) on the one hand and Section 54(3) particularly Clause (ii) of its first proviso on the other hand. *Explanation* (a) to Rule 89(5) in defining 'Net ITC' to mean ITC availed on inputs (goods) is, as a matter of fact, entirely in line with the main provision, Section 54(3)

Mr G Natarajan's submission indicates an aberration where a registered person with a single product with an inverted duty structure is neither able to use the unutilized ITC for the payment of tax on output supply nor is allowed a refund. On the other hand, a registered person with products involving an inverted duty structure and otherwise, is in a position to utilise the ITC availed on input services for payment of tax on turnover not having an inverted rate structure. Mr G Natarajan has given the following example:

S. No.	Description	Tax payer having only turnover of inverted rate structure	Tax payer having both turnover of inverted rate structure and other turnover
(i)	(ii)	(iii)	(iv)
1	Value of supply of goods, attracting 5% GST (Turnover having inverted rate structure)	Rs. 50,00,000	Rs. 50,00,000
2	Value of supply of goods, not having inverted rate structure	NIL	Rs. 50,00,000
3	Adjusted Total Turnover (1+2)	Rs. 50,00,000	Rs. 1,00,00,000
4	GST payable @ 5% on turnover having inverted rate structure 5% on (1)	Rs. 2,50,000	Rs. 2,50,000
5	GST payable @ 18% on turnover not having inverted rate structure	NA	Rs. 9,00,000
5	ITC on inputs availed during the tax period	Rs. 3,00,000	Rs. 6,00,000
6	ITC on input services availed during the tax period	Rs. 50,000	Rs. 1,00,000
7	Refund entitlement as per the formula	$\left[\frac{\text{Rs. 3,00,000} \times \text{Rs. 50,00,000}}{\text{Rs. 50,00,000}} \right] - \text{Rs. 2,50,000} =$ Rs. 50,000	$\left[\frac{\text{Rs. 6,00,000} \times \text{Rs. 50,00,000}}{\text{Rs. 1,00,00,000}} \right] - \text{Rs. 2,50,000} =$ Rs. 50,000
8	Remarks	The ITC of Rs. 50,000 availed on input services is neither allowed as refund, nor used for payment of tax on output supply, but allowed to accumulate.	The Balance input credit of Rs. 3,00,000 and the entire credit of Rs. 1,00,000 availed on input services can be used for payment of tax on turnover not having inverted rate structure.

The formula in Rule 89(5) is reproduced below:

“Maximum Refund Amount= {(Turnover of inverted rated supply of goods and services) x Net ITC ÷ Adjusted Total Turnover} – tax payable on such inverted rated supply of goods and services” (emphasis supplied)

SEC. 54 (REFUND OF TAX)

(3) Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilised input tax credit at the end of any tax period.

2(62) & 2(63)

Provided that no refund of unutilised input tax credit shall be allowed in cases other than—

- I. zero-rated supplies made without payment of tax;
- II. where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than *nil* rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council:

Provided further that no refund of unutilised input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty:

Provided also that no refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies.

Para 40 of circular
125/44/2019

54(10) relates to deduction from refund for unpaid amount or withhold refund until the return furnished

i.e. Export/ Supply to SEZ under Bond/ LUT

N.N. 5/2017 for goods
N.N. 15/2017 for services
(Services as specified in 5(b) of schedule II)(construction)

Sec. 2(106) "tax period" means the period for which the return is required to be furnished;

This point is relevant, as in case of exports the period of two years is to be checked from relevant date INDIVIDUALLY and when the two or more relevant dates fall under same tax period then the relevant date from latter should be considered, as there can be SINGLE application for a Tax period. As per Law applicant can file refund application at the end of Tax Period only, and the situation is beyond his control. But in this artificial bunching should be avoided to extend the period of Limitation and minimum tax period for which refund can be applied should be considered.

SEC. 2(62) Input Tax

“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) the integrated goods and services tax charged on import of goods;
 - b) the tax payable under the provisions of sub-sections (3) and (4) of section 9;
 - c) the tax payable under the provisions of sub-sections (3) and (4) of section 5 of the Integrated Goods and Services Tax Act;
 - d) the tax payable under the provisions of sub-sections (3) and (4) of section 9 of the respective State Goods and Services Tax Act; or
 - e) the tax payable under the provisions of sub-sections (3) and (4) of section 7 of the Union Territory Goods and Services Tax Act,
- but does not include the tax paid under the composition levy;

SEC. 2(63) (Input Tax Credit)

“Input tax credit” means the credit of input tax

Recent Case Laws on Refund

[2020] 118 taxmann.com 81 (Gujarat) VKC Footsteps India (P.) Ltd. v. Union of India

Explanation (a) to Rule 89(5) of CGST Rules, 2017 which denies the refund of “unutilized input tax “ paid on “input services” as part of “input tax credit” accumulated on account of inverted duty structure is held to be ultravires the provisions of sub section (3) of section 54 of CGST ACT, 2017

Refund - Tax - Rule 89(5) as originally introduced was substituted vide Notification No. 21/2018-Central Tax, dated 18-4-2018 prescribing a revised formula for determining refund on account of inverted duty structure; revised formula inter alia excluded input services from scope of 'net input tax credit' for computation of refund amount under rule and, thus, substituted rule 89(5) denied refund on input tax credit availed on input services and allowed relief of refund of input tax credit availed on inputs alone –

- Section 54(3) allows refund of any unutilized ITC but Rule 89(5) restricts refund to Inputs. [Para 23]
- Clause (ii) of proviso to section 54(3) also deals with both supply of goods and services and not only supply of goods [Para 23].
- Law in section 54(3) has been wrongly interpreted in Circular No. 79/53/2018 dated 31-12-2018 to deny refund of ITC on input services. [Para 24]
- Explanation (a) to Rule 89(5) which denies refund of unutilized Input tax on input services is ultra vires the provisions of section 54(3) [Para 25].
- Therefore refund of input services be also allowed under inverted duty structure [Para 27].
- Court drew support from first discussion paper on GST issued by empowered committee dated 10-11-2009 [Para 16]; International VAT/GST Guidelines published on Feb 2006 [Para 17]; FAQ on GST dated 31-03-2017 [Para 18].
- Court also drew support from Delhi High Court in Intercontinental Consultants & Technocrats affirmed by Supreme Court to hold that rule which goes beyond statute is ultra vires.
- Supreme Court decision in Lohara Steel Industries quoted to lay down that offending portion which is severable can be struck down.

No Refund on entire unutilized ITC accumulated on account of being subjected to an inverted Duty Structure

Tvl. Transtonnelstroy Afcons Joint venture v. Union of India [Madras High Court]

- (1) Section 54(3)(ii) does not infringe Article 14.
- (2) Refund is a statutory right and the extension of the benefit of refund only to the unutilized credit that accumulates on account of the rate of tax on input goods being higher than the rate of tax on output supplies by excluding unutilized input tax credit that accumulated on account of input services is a valid classification and a valid exercise of legislative power.
- (3) Therefore, there is no necessity to adopt the interpretive device of reading down so as to save the constitutionality of Section 54(3)(ii).
- (4) Section 54(3)(ii) curtails a refund claim to the unutilized credit that accumulates only on account of the rate of tax on input goods being higher than the rate of tax on output supplies. In other words, it qualifies and curtails not only the class of registered persons who are entitled to refund but also the imposes a source-based restriction on refund entitlement and, consequently, the quantum thereof.
- (5) **As a corollary, Rule 89(5) of the CGST Rules, as amended, is in conformity with Section 54(3)(ii). Consequently, it is not necessary to interpret Rule 89(5) and, in particular, the definition of Net ITC therein so as to include the words input services.**

THANK YOU

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