



HOW TO HANDLE
"NOTICES" IN GST

CA SWAPNIL MUNOT, PUNE



COMMON ISSUES OBSERVED -

Taxpayer is not aware that officer has sent notice

Sometime Taxpayer is not aware of submission made by consultant or vice versa

Whether notice is on law part or on calculation part [Arithmetic / Calculation oriented allegation and/or Legal Provision related allegation]

Reconciliation of ITC as per GSTR 3B vs 2A is not prepared

Reply is not submitted in proper way : There is format of reply (like ASMT 10 is required to be replied in ASMT 11)

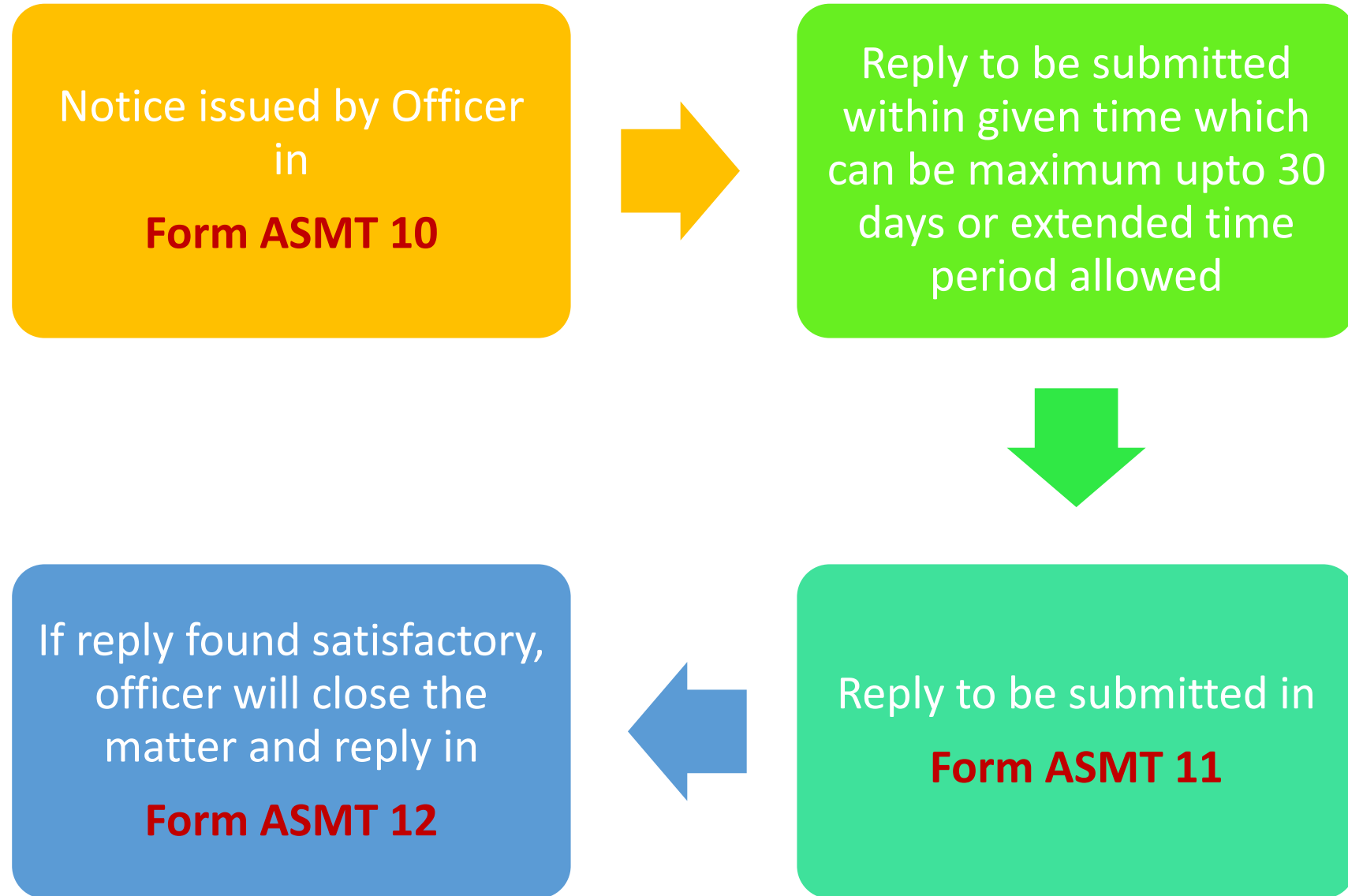
Taxpayer is not aware of who is his jurisdictional officer – whether State GST or Central GST ?

PROCEDURAL ASPECT OF NOTICE



Time line ,Form of Reply,
Principles of Natural
Justice

SCRUTINY OF RETURNS : Sec 61 read with Rule 99



SCRUTINY OF RETURNS : Sec 61 read with Rule 99

STANDART NOTIFIED Form ASMT 10 and Form ASMT 11

FORM GST ASMT - 10

[See rule 99(1)]

Reference No.:Date:

To _____

GSTIN:

Name :

Address :

Tax period - F.Y. -

Notice for intimating discrepancies in the return after scrutiny

This is to inform that during scrutiny of the return for the tax period referred to above, the following discrepancies have been noticed:

<<text>>

You are hereby directed to explain the reasons for the aforesaid discrepancies by -----
- (date). If no explanation is received by the aforesaid date, it will be presumed that you have nothing to say in the matter and proceedings in accordance with law may be initiated against you without making any further reference to you in this regard.

Signature

FORM GST ASMT - 11

[See rule 99(2)]

Reply to the notice issued under section 61 intimating discrepancies in the return

1. GSTIN		
2. Name		
3. Details of the notice	Reference No.	Date
4. Tax Period		
5. Reply to the discrepancies		
Sr. No.	Discrepancy	Reply

6. Amount admitted and paid, if any -

Act	Tax	Interest	Others	Total

7. Verification-

I _____ 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.

Signature of Authorised Signatory

Name

Designation / Status -----

SCRUTINY OF RETURNS : Sec 61 read with Rule 99

STANDART NOTIFIED Form ASMT 12

FORM GST ASMT-12
[See rule 99(3)]

Reference No.: _____ Date: _____

To
GSTIN
Name
Address

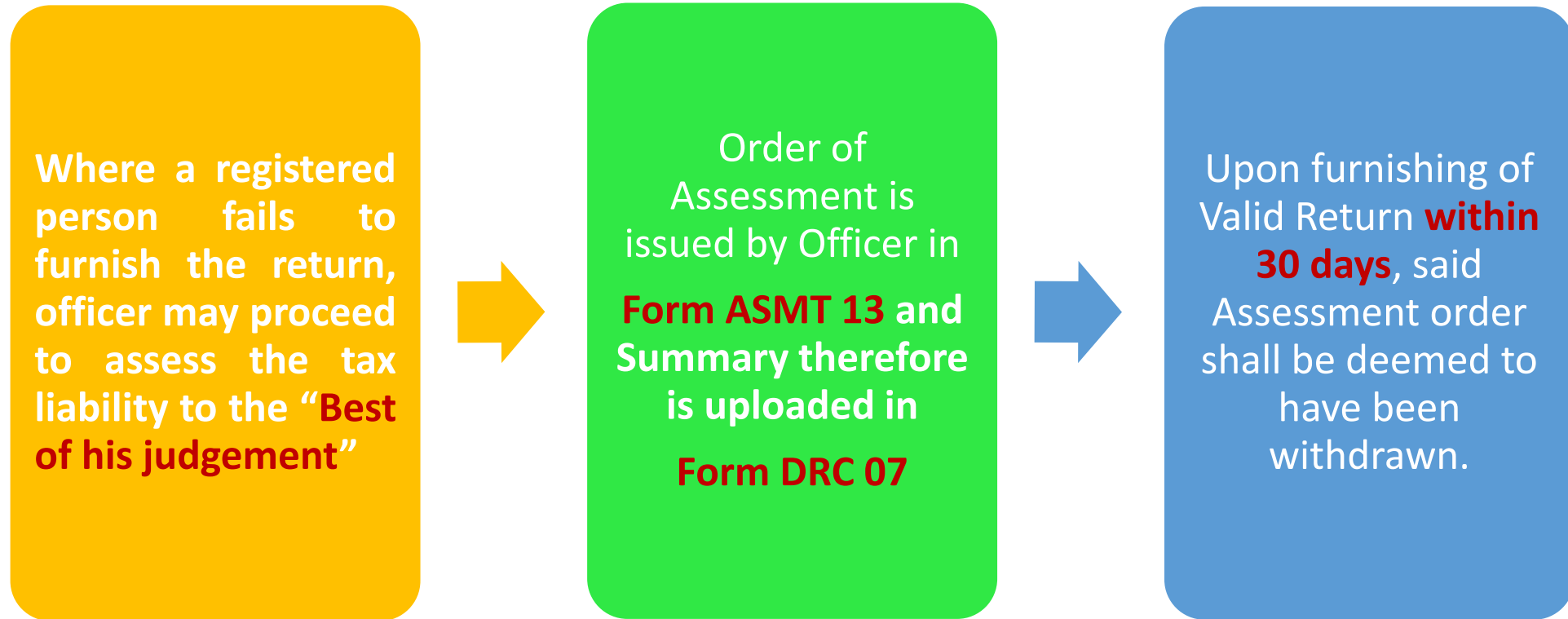
Tax period - _____ F.Y. - _____
ARN - _____ Date - _____

Order of acceptance of reply against the notice issued under section 61

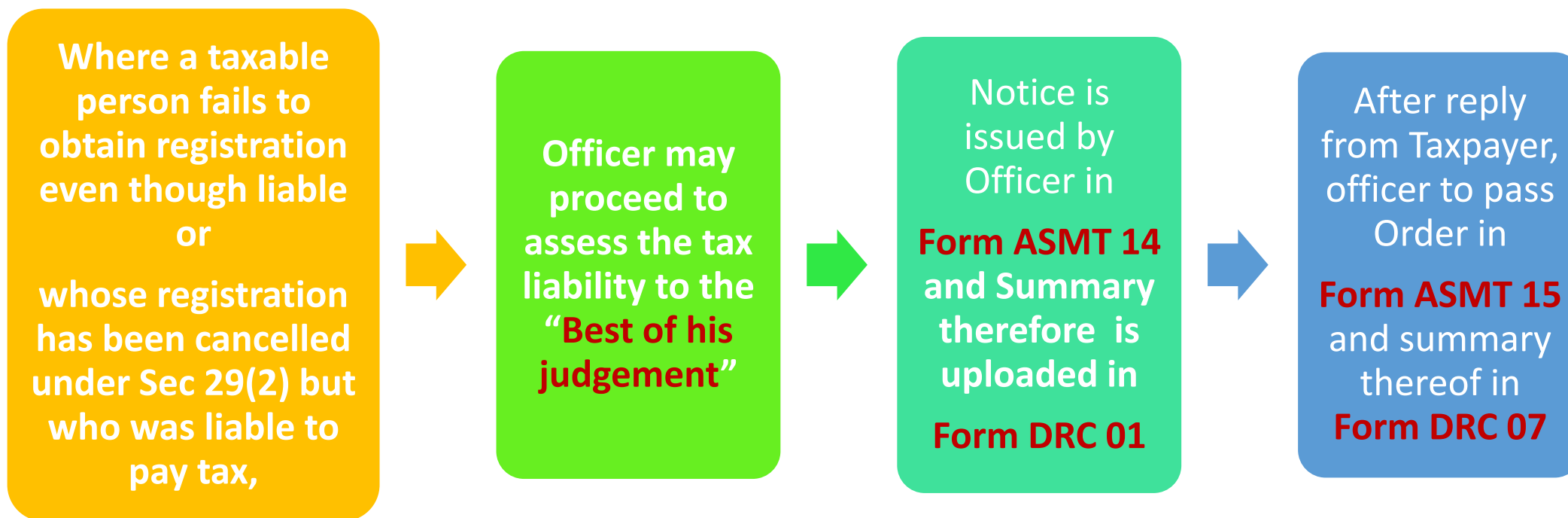
This has reference to your reply dated ----- in response to the notice issued vide reference no. ----- dated --- . Your reply has been found to be satisfactory and no further action is required to be taken in the matter.

Signature
Name
Designation

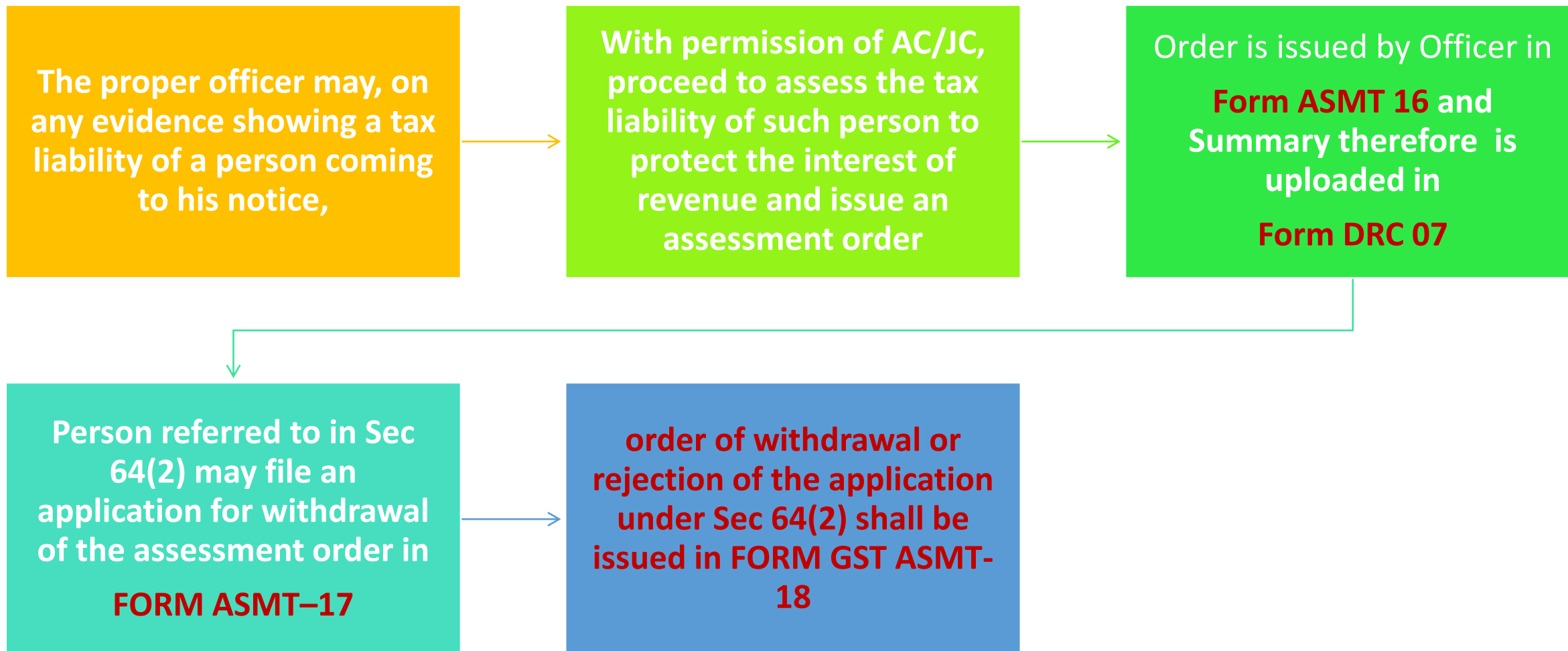
ASSESSMENT OF NON FILERS : Sec 62 read with Rule 100(1)



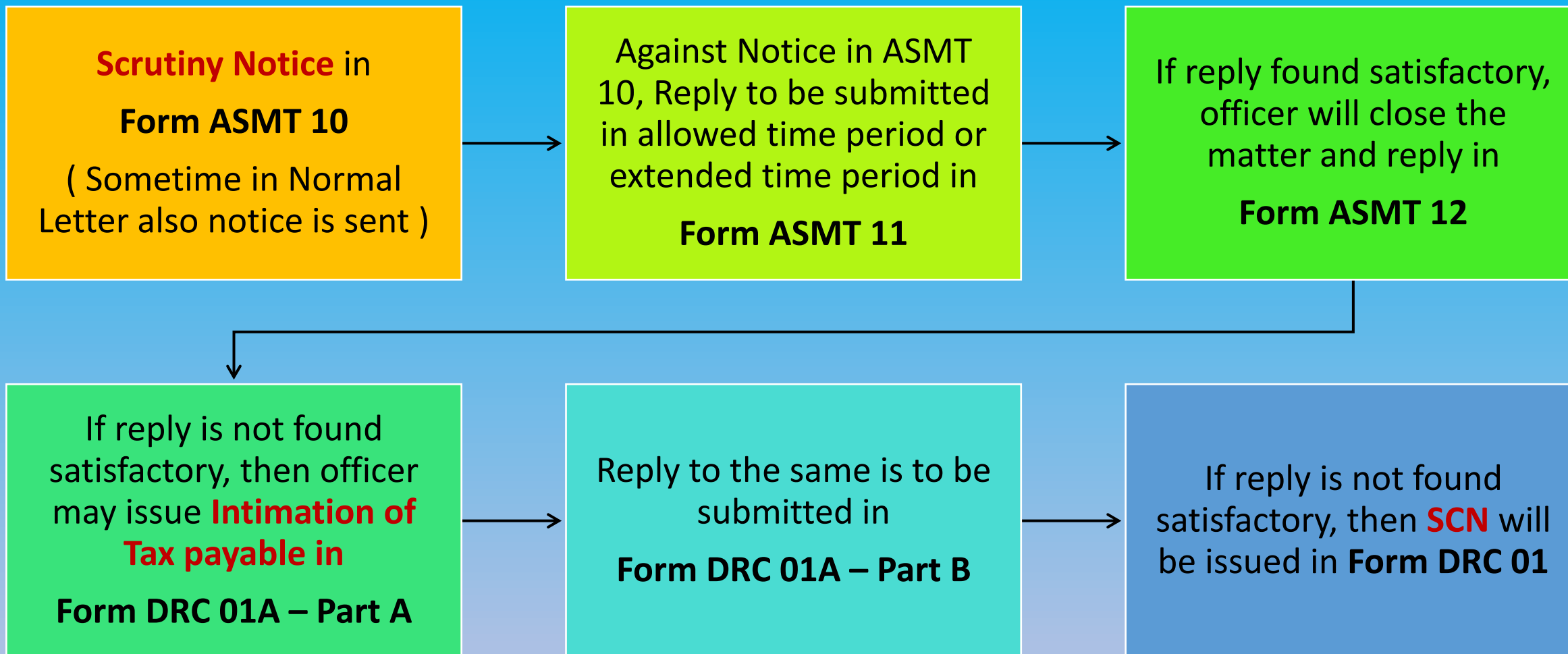
ASSESSMENT OF UNREGISTERED PERSON : Sec 63 read with Rule 100(2)



ASSESSMENT OF SPECIAL CASES : Sec 64 read with Rule 100(3)

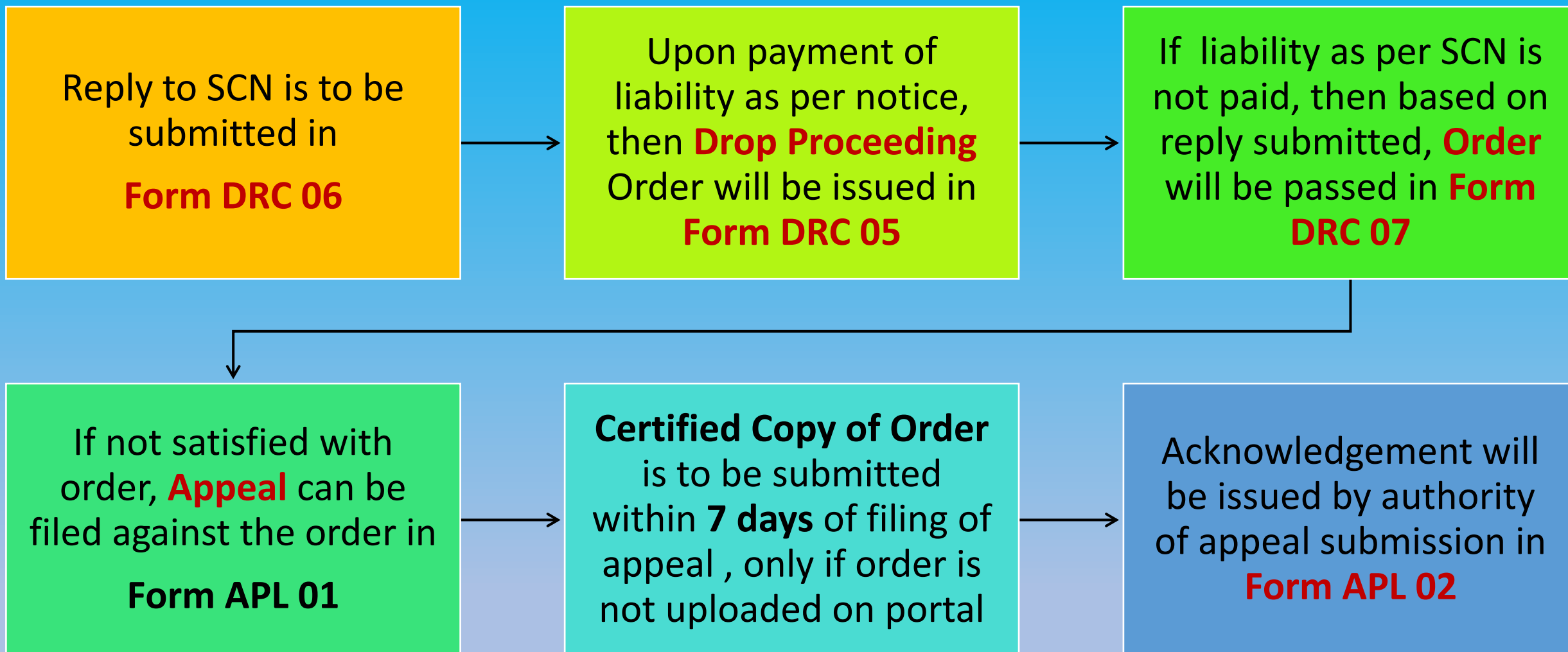


FLOW OF => NOTICEREPLYINTIMATIONORDERAPPEAL



Note - This is general adjudication procedure/Form sequence observed /followed. One should refer GST Law / Rules before replying to any notice. This chart is only for understanding purpose and not to be taken as advice

FLOW OF => NOTICEREPLYINTIMATIONORDERAPPEAL



Note - This is general adjudication procedure/Form sequence observed /followed. One should refer GST Law / Rules before replying to any notice. This chart is only for understanding purpose and not to be taken as advice

MODES OF SERVICE OF NOTICE : SEC 169

Modes in which department can send Notices / Order / Summon

By **giving** or tendering it directly

By Registered **Post** or Speed post or courier with acknowledgment due

By sending on **email** provided in registration

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

By publication in a **newspaper** circulating in the locality

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

❖ RECOMMENDATION:

Taxpayer to maintain "Tracking Sheet" of Notices received, containing details of -

"Date of notice, date of receipt of notice, (envelop to be kept in record), authority who has sent it, mode of receipt of notice, details of reply and date of submission of reply etc"



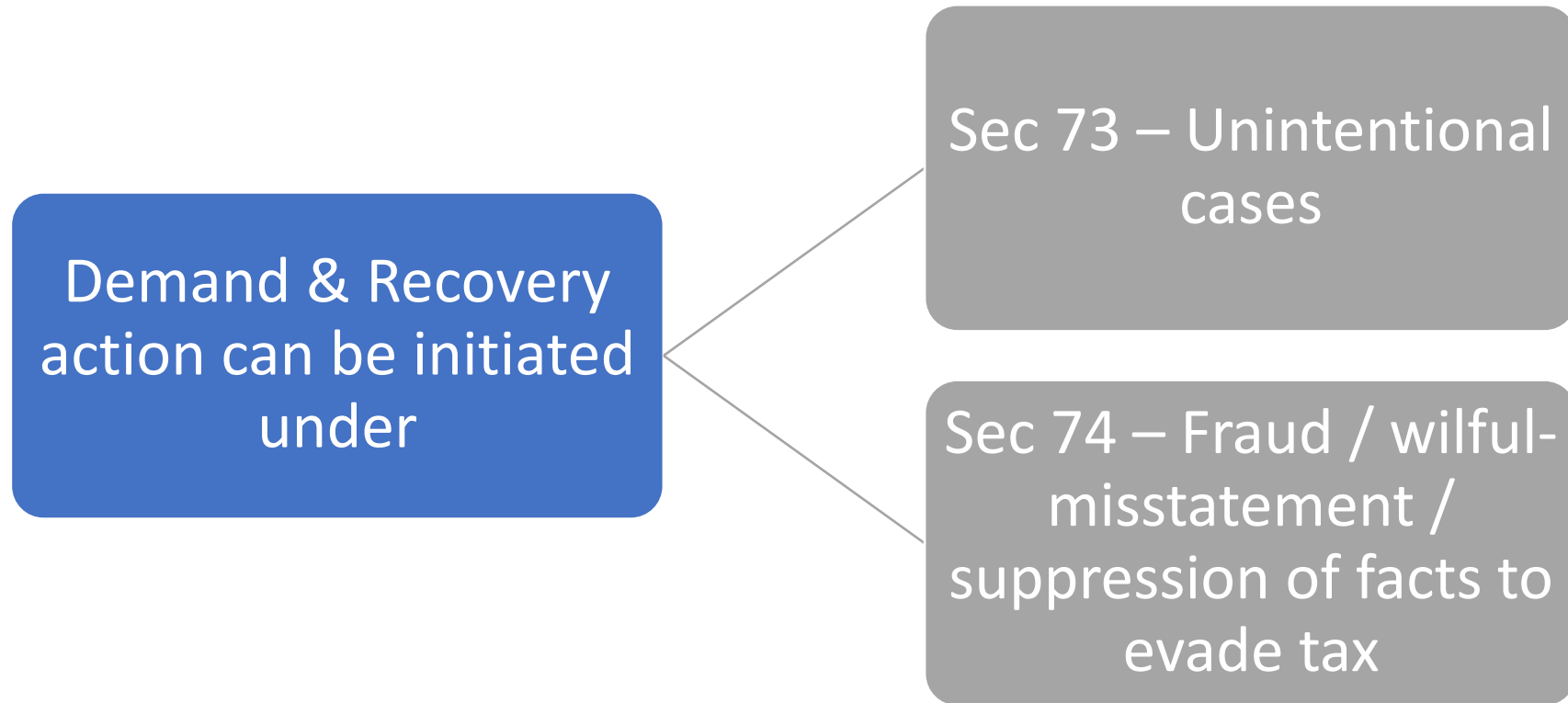
**A law is valuable,
not because
it is a law, but
because there is right in it.**

– HENRY WARD BEECHER

Show Cause Notice - SCN

is considered as first stage of litigation

DEMAND AND RECOVERY - SEC 73 Vs 74



DEMAND AND RECOVERY – SEC 73

- **Notice can be issued under section 73 in case of – Any Tax**
 - ✓ Has not been paid or short paid or
 - ✓ Erroneously refunded, or
 - ✓ where ITC has been wrongly availed or utilised
 - ✓ **For any reason, other than** - the reason of fraud / wilful-misstatement / suppression of facts to evade tax
- **Time limit to issue NOTICE** - The proper officer shall issue the order **within 33 month** from the due date for furnishing of annual return for the financial year or from the date of erroneous refund
- **Time limit to issue ORDER** - The proper officer shall issue the order **within 3 years** from the due date for furnishing of annual return for the financial year or within three years from the date of erroneous refund

Time limit for issuance of order for FY 2017-18 under Section 73(9) of CGST ACT 2017, for recovery of tax not paid or short paid or of ITC wrongly availed or utilised is extended upto 30th Sep 2023 [As per Notification No 13/2022–Central Tax Dated 5th Jul 2022]

DEMAND AND RECOVERY – SEC 74

- **Notice can be issued under section 74 in case of – Any Tax**
 - ✓ Has not been paid or short paid or
 - ✓ Erroneously refunded, or
 - ✓ Where ITC has been wrongly availed or utilised
 - ✓ **By any reason of - of Fraud / Wilful-misstatement / Suppression of Facts** to evade tax
- **Time limit to issue NOTICE** - The proper officer shall issue the order **within 54 month** from the due date for furnishing of annual return for the financial year or from the date of erroneous refund
- **Time limit to issue ORDER** - The proper officer shall issue the order **within 5 years** from the due date for furnishing of annual return for the financial year or from the date of erroneous refund
- **Meaning of Suppression** – It means,
 - ✓ Non-declaration of facts / information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or
 - ✓ Failure to furnish any information on being asked for, in writing, by the proper officer

DEMAND AND RECOVERY – SEC 74

Particulars	If proceedings under Sec 73, penalty will be equal to --% of Tax	If proceedings under Sec 74, penalty will be equal to --% of Tax
Voluntary payment of Tax + Interest + Penalty, before service of Notice	* Nil (upon payment of T + I, officer will not issue notice)	15% (upon payment of T+I+P, officer will not issue notice)
Payment of Tax + Interest + Penalty, within 30 days of issue of Notice	* Nil (upon payment of T + I, all proceeding shall be deemed to be closed)	25% (upon payment of T+I+P, all proceeding shall be deemed to be closed)
Payment of Tax + Interest + Penalty, within 30 days of Communication of Order (under Sec 73, 10% penalty is there, if amount is not paid within 30 days after Show Cause Notice)	10% or Rs 10,000 whichever is higher	50%
Payment of Tax + Interest + Penalty, after above mentioned period	10% or Rs 10,000 whichever is higher	100%

* **Note** - penalty at 10% shall be payable where any amount of self-assessed tax or any amount collected as tax, has not been paid within a period of 30 days from the due date of payment of such tax. Refer Circular No. 76/50/2018-GST dated 31st Dec 2018 issued in this regards.

DEMAND AND RECOVERY – SEC 74

Circular No. 76/50/2018-GST dated 31st Dec 2018

Issue	Clarification
<p>2. Whether penalty in accordance with section 73 (11) of the CGST Act should be levied in cases where the return in FORM GSTR-3B has been filed after the due date of filing such return?</p>	<ol style="list-style-type: none"> 1. As per the provisions of section 73(11) of the CGST Act, <u>penalty is payable in case self-assessed tax or any amount collected as tax has not been paid within a period of thirty days from the due date of payment of such tax.</u> 2. It may be noted that a show cause notice (SCN for short) is required to be issued to a person where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised for any reason under the provisions of section 73(1) of the CGST Act. The provisions of section 73(11) of the CGST Act can be invoked only when the provisions of section 73 are invoked. 3. The provisions of section 73 of the CGST Act are generally not invoked in case of delayed filing of the return in FORM GSTR-3B because tax along with applicable interest has already been paid but after the due date for payment of such tax. It is accordingly clarified that penalty under the provisions of section 73(11) of the CGST Act is not payable in such cases. It is further clarified that since the tax has been paid late in contravention of the provisions of the CGST Act, a general penalty under section 125 of the CGST Act may be imposed after following the due process of law.

GENERAL PROVISIONS – SEC 75

- **Opportunity of Being Heard** - An opportunity of hearing shall be granted
 - ✓ where a request is received in writing from the person chargeable with tax/penalty, or
 - ✓ where any adverse decision is contemplated against such person

M/S MOHAN AGENCIES V. STATE OF U.P. AND ANOTHER [WRIT TAX NO. 58 OF 2023 DATED FEBRUARY 13, 2023]

The Hon'ble Allahabad High Court has set aside the order passed by the Revenue Department, on the grounds that the opportunity of personal hearing was not given to the assessee, as the same was not opted by the assessee in reply to the Show Cause Notice.

Held that : providing the opportunity of hearing would ensure observance of rules of natural justice and allow the Respondent to pass appropriate and reasoned orders in order to serve the interest of justice and allow a better appreciation to arise at the appeal stage. Remitted the matter back to the Revenue Department.

GENERAL PROVISIONS – SEC 75

- **Stay Order Period to be excluded** - Where the service of notice / issuance of order is stayed by an order of a court or Appellate Tribunal, the period of such stay shall be excluded in computing the period specified in Sec 73(2) / 73(10) or Sec 74(2)/ 74(10), as the case may be
- **Adjournment of Hearing** - The proper officer shall, if sufficient cause is shown by the person chargeable with tax, grant time to the said person and adjourn the hearing for reasons to be recorded in writing. Provided that **no such adjournment shall be granted for more than three times** to a person during the proceedings
- **Speaking Order** – Order should set out the facts and the basis of decision taken by officer.
- **Order should not overtake Notice** - The amount of tax, interest and penalty demanded in the order shall not be in excess of the amount specified in the notice and no demand shall be confirmed on the grounds other than the grounds specified in the notice

GENERAL PROVISIONS – SEC 75

- **Speaking Order** – Order should set out the facts and the basis of decision taken by officer.
- Hon'ble Supreme Court of India in the case of **SHRI SWAMIJI OF SHRI ADMAR MUTT AND OTHERS V. THE COMMISSIONER, HINDU RELIGIOUS AND CHARITABLE ENDOWMENTS DEPT. AND ORS., [REPORTED IN (1979) 4 SCC 642]** that *“Reason is the soul of the Law, and when the reason of any particular law ceases, so does the Law itself”*
- Hon'ble Bombay High court in case of **ARCHANA TEXTILE CORPORATION VS THE STATE OF MAHARASHTRA AND ORS [WRIT PETITION NO. 11022 OF 2022]** has set side the Show Cause Notice and Assessment Order for lapse of not providing all the details along with the Show Cause Notice.

GENERAL PROVISIONS – SEC 75

- **Interest** - The interest on the tax short paid or not paid shall be payable whether or not specified in the order determining the tax liability
- **Deemed Completion of Proceeding on completion of time limit** - The adjudication proceedings shall be deemed to be concluded, if the order is not issued within 3 years as provided for in Sec 73(10) or within 5 years as provided for in Sec 74(10).
- **Time limitation in case, issue is pending in Appeal:** An issue on which the Appellate Authority/ the Appellate Tribunal/the High Court has given its decision which is prejudicial to the interest of revenue in some other proceedings and an appeal to the Appellate Tribunal or the High Court or the Supreme Court against such decision of the Appellate Authority or the Appellate Tribunal or the High Court is pending, the period spent between the date of the decision of the Appellate Authority and that of the Appellate Tribunal or the date of decision of the Appellate Tribunal and that of the High Court or the date of the decision of the High Court and that of the Supreme Court shall be excluded in computing the period referred to in Sec 73(10) or Sec 74(10) where proceedings are initiated by way of issue of a show cause notice under the said sections

GENERAL PROVISIONS – SEC 75

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

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

- **No Double Penalty** - 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.
- It is mandatory that the proper officer shall issue a speaking order and shall set out all relevant facts and basis of his decision in the Order issued u/s 73(9) / 74(9). The proper officer cannot determine an amount of tax, interest and penalty in excess of the amount specified in the SCN and also the grounds shall not go beyond what is mentioned in the SCN.

GENERAL PROVISIONS – DEMAND AND RECOVERY – RULE 142

- **SCN to be sent along with Summary**– Officer is required to issue SCN under Sec 73/74 along with summary thereof in **Form DRC 01**, specifying therein the details of the amount payable.
- **Intimation before SCN / Pre consultation:** The proper officer ***may**, before service of notice to the person chargeable with tax, interest and penalty, under Sec 73(1) / 74(1), as the case may be, communicate the details of any tax, interest and penalty as ascertained by the said officer, in **Part A of FORM GST DRC-01A**.

[Where the person has made partial payment of the amount communicated to him as per DRC 01A or desires to file any submissions against the proposed liability, he may make such submission in **Part B of FORM GST DRC-01A**.]

[*Note - Issuance of intimation in Form DRC 01A has been made optional through the Rule amendment Notification No. 79/2020 of Central Tax dated 15-10-2020]

- **Intimation of Voluntary Payment or Payment on receipt of DRC 01A:** Taxpayer shall inform the proper officer of such payment in **FORM GST DRC-03** and the proper officer shall issue an acknowledgement, accepting the payment made by the said person in **FORM GST DRC-04**.

GENERAL PROVISIONS – DEMAND AND RECOVERY – RULE 142

- **Payment within 30 days of SCN u/s 73, 74 or within 7 days of notice u/s 129(3):** Taxpayer shall intimate the proper officer of such payment in **FORM GST DRC-03** and the proper officer shall issue an order in **FORM GST DRC-05** concluding the proceedings in respect of the said notice.
- **Reply to SCN:** Reply to SCN u/s 73(9) / 74(9) / 76(3) shall be furnished in **FORM GST DRC-06**
- **Order to be issued along with Summary:** Summary of Order u/s 52, 62, 63, 64, **73, 74**, 75, 76, 122, 123, 124, 125, 127, 129, 139 shall be uploaded electronically in **FORM GST DRC-07**, specifying therein the amount of tax, interest and penalty, as the case may be, payable by the person concerned. Said summary order shall be treated as 'Notice for Recovery'

FIRST APPEAL PROVISION – SEC 107

▪ TIME LIMIT FOR TAXPAYER:

- Any person aggrieved by any decision or order passed by an adjudicating authority may appeal to such Appellate Authority
- **within Three months** from the date on which the said decision or order is communicated to such person.

▪ TIME LIMIT FOR DEPARTMENT:

- 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,
- 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.

FIRST APPEAL PROVISION – SEC 107

- **DELAY CONDONATION:**
 - 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.**

- **TAX DEPOSIT OF ADMITTED LIABILITY AND PRE DEPOSIT:** No appeal shall be filed, unless 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 10% 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.

- **DEEMED STAY FROM RECOVERY ON PAYMENT OF TAX ADMITTED AND PRE-DEPOSIT:** Where the appellant has paid the TAX ADMITTED AMOUNT AND PRE DEPOSIT, the **recovery proceedings for the balance amount shall be deemed to be stayed.**

FIRST APPEAL PROVISION – SEC 107

- **Opportunity of Being Heard** - Appellate Authority shall give an opportunity to the appellant of being heard
- **Adjournment of Hearing** - Appellate Authority shall, if sufficient cause is shown, grant time to time to parties and adjourn the hearing for reasons to be recorded in writing. Provided that **no such adjournment shall be granted for more than three times** to a party during the proceedings
- **Additional Grounds of Appeal** - 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 willful or unreasonable.
- **Speaking Order** – 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**.
- **Time limit of determination to authority** - 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.

FIRST APPEAL PROVISION – Rule 108

- **Form of Appeal** - An appeal to the Appellate Authority shall be filed in **FORM GST APL-01** electronically and **provisional acknowledgement** shall be issued to the appellant immediately

Where the decision/order appealed against is uploaded on GST Portal	<ul style="list-style-type: none"> ➔ Final acknowledgment, indicating appeal number, shall be issued in FORM GST APL-02 by the Appellate Authority and ➔ the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal.
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where the decision / order appealed against is not uploaded on GST portal,	<ul style="list-style-type: none"> ➔ Appellant shall submit a self-certified copy of the said decision / order within a period of 7 days from the date of filing of FORM GST APL-01 and a final acknowledgment, indicating appeal number, shall be issued in FORM GST APL-02 by the Appellate Authority and ➔ the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal. ➔ where the said self-certified copy of the decision/ order is not submitted within a period of 7 days from the date of filing of FORM GST APL-01, the date of submission of such copy shall be considered as the date of filing of appeal.
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- 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.**

APPEALS TO APPELLATE TRIBUNAL– SEC 112

▪ TIME LIMIT FOR TAXPAYER:

- Any person aggrieved by an order passed against him u/s 107 or 108 may appeal to the Appellate Tribunal against such order
- within ***within Three months** from the date on which the order sought to be appealed against is communicated to the person preferring the appeal

The Appellate Tribunal may, in its discretion, refuse to admit appeal where the tax or ITC involved or the difference in tax or ITC involved or the amount of fine, fee or penalty determined by such order, does not exceed Rs 50,000/-

* The start of "three months period" u/s 112(1), shall be considered to be the later of the following dates:-

(i) date of communication of order; or

(ii) the date on which the President or the State President, as the case may be, of the Appellate Tribunal after its constitution under section 109, enters office.

- Vide CGST (Ninth Removal of Difficulties) Order, 2019 issued under C.B.I. & C. Order No. 9/2019-C.T., dated 3.12.2019.

APPEALS TO APPELLATE TRIBUNAL– SEC 112

▪ TIME LIMIT FOR DEPARTMENT:

- The Commissioner may, on his own motion, or upon request from the Commissioner of State tax, call for and examine the record of any order passed by the Appellate Authority or the Revisional Authority for the purpose of satisfying himself as to the legality or propriety of the said order and
- may, by order, direct any officer subordinate to him to apply to the Appellate Tribunal ***within six months** from the date on which the said order has been passed for determination of such points arising out of the said order as may be specified by the Commissioner in his order.

* The start of “Six months period” u/s 112(3), shall be considered to be the later of the following dates:-

(i) date of communication of order; or

(ii) the date on which the President or the State President, as the case may be, of the Appellate Tribunal after its constitution under section 109, enters office.

- Vide CGST (Ninth Removal of Difficulties) Order, 2019 issued under C.B.I. & C. Order No. 9/2019-C.T., dated 3.12.2019.

APPEALS TO APPELLATE TRIBUNAL– SEC 112

▪ MEMORANDUM OF CROSS OBJECTION:

- On receipt of notice that an appeal has been preferred under this section, the party against whom the appeal has been preferred **may**,
- notwithstanding that he may not have appealed against such order or any part thereof, **file**,
- **within forty-five days of the receipt of notice**, a memorandum of cross-objections, verified in the prescribed manner, against any part of the order appealed against and such memorandum shall be disposed of by the Appellate Tribunal, as if it were an appeal presented within the time specified in sub-section (1).

▪ DELAY CONDONATION FOR TAXPAYER:

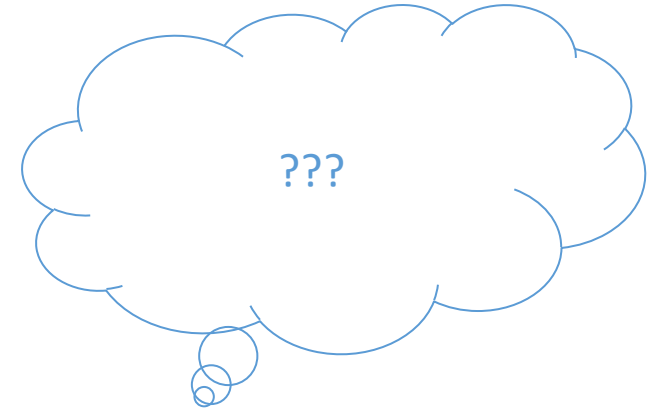
- ✓ Appellate Tribunal may admit an appeal **within 3 months** after the expiry of period referred u/s 112(1), or
- ✓ permit the filing of memorandum of cross-objections within 45 days after the expiry of period referred to u/s112(5)
- ✓ if it is satisfied that there was sufficient cause for not presenting it within that period.

APPEALS TO APPELLATE TRIBUNAL– SEC 112

- **TAX DEPOSIT OF ADMITTED LIABILITY AND PRE DEPOSIT:** No appeal shall be filed, unless 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 25% of the remaining amount of tax in dispute**, in addition to the amount paid under Section 107(6), arising from the said order, subject to a maximum of fifty crore rupees, in relation to which the appeal has been filed.

- **DEEMED STAY FROM RECOVERY ON PAYMENT OF TAX ADMITTED AND PRE-DEPOSIT:** Where the appellant has paid the TAX ADMITTED AMOUNT AND PRE DEPOSIT, the **recovery proceedings for the balance amount shall be deemed to be stayed** till the disposal of appeal.

- **APPEAL FEES:** Every application made before the Appellate Tribunal,-
 - (a) in an appeal for rectification of error or for any other purpose; or
 - (b) for restoration of an appeal or an application, shall be accompanied by such fees as may be prescribed.



Few cases, where order is set asides on
procedural laps / Principal of Natural
Justice

ORDER PASSED WITH SHORTER TIME

- HON'BLE HC OF BOMBAY - SHEETAL DILIP JAIN VS THE STATE OF MAHARASHTRA & ORS [WRIT PETITION (L) NO.17591 OF 2022]
 - ✓ Only 7 days were given to reply to SCN and on 8th Day order was passed by authority.
 - ✓ Observation by Hon'ble HC –
 - We are constrained to note that **such orders without application of mind** are being passed contrary to the basic provisions of the Act and the Rules framed thereunder.
 - **These acts/omissions of Respondents' officers is adding to the already overburdened dockets of the Court.**
 - **Valuable judicial time is wasted** because such unacceptable orders are being passed by Respondents' officers.
 - **The officers do not seem to understand or appreciate the hardship** that is caused to the general public.

ORDER PASSED WITH SHORTER TIME

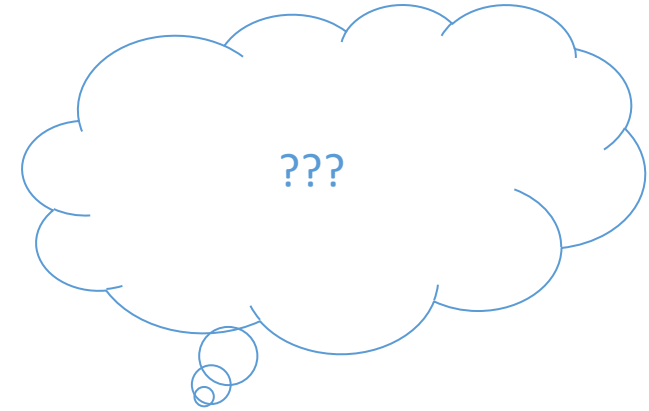
- HON'BLE HC OF BOMBAY - SHEETAL DILIP JAIN VS THE STATE OF MAHARASHTRA & ORS [WRIT PETITION (L) NO.17591 OF 2022]
 - ✓ Only 7 days were given to reply to SCN and on 8th Day order was passed by authority.
 - ✓ Observation by Hon'ble HC –
 - In this case, in our view, it will only be fit and proper that Respondents are saddled with costs.
Respondents shall pay a sum of Rs.10,000/- as donation to PM Cares Fund and this amount shall be paid within two weeks from the date this order is uploaded
 - A copy of this order shall be forwarded to the CBIC and to the Chief Commissioner of State Tax, Maharashtra, so that they could **at least hold some kind of training and/or orientation session/course, etc. to apprise and educate its officers on the prevailing law and rules framed thereunder and also explain to them what 'principles of natural justice' mean.**

ORDER PASSED WITHOUT SIGNATURE

- **HON'BLE HC OF BOMBAY - RAMANI SUCHIT MALUSHTE VS UNION OF INDIA AND ORS [WRIT PETITION 9331 OF 2022]**
 - ✓ **The order for cancellation of Registration** dt 14th Nov 2019 which is appealed against, **is not signed by the officer** who has issued the order. The said order is merely uploaded on the GST Portal without any signature.
 - ✓ The signature was affixed for the first time only on 19 May 2021 when Petitioner had to get an attestation from Respondent No.4 for the purposes of filing appeal
 - ✓ Thus, **the limitation period for filing the appeal against the Order for Cancellation of Registration dated 14 November 2019 never began** because the Order was not signed in accordance with the rules.
 - ✓ Alternatively, the limitation period began only from 19 May 2021 which is the date on which the signature of the Respondent No.4 was put on the order for the purposes of “attestation”.

ORDER PASSED WITHOUT SIGNATURE

- **HON'BLE HC OF BOMBAY - RAMANI SUCHIT MALUSHTE VS UNION OF INDIA AND ORS [WRIT PETITION 9331 OF 2022]**
 - ✓ Respondent stated that petitioner cannot take stand of not receiving the signed copy because the unsigned order was admittedly received by petitioner electronically
 - ✓ In our view, **unless digital signature is put by the issuing authority that order will have no effect in the eyes of law.**
 - ✓ In the circumstances, we have to agree with petitioner's stand that **only on the date on which the signature of Respondent No.4 issuing authority was put on the order dated 14th November 2019 for the purpose of attestation, time to file appeal would commence.**
 - ✓ In the circumstances, we hereby quash and set aside the impugned order.



Provisional Attachment

- 1) Where, after the initiation of any proceeding under Chapter XII (Sec 59 to 64), Chapter XIV (Sec 67 to 72) or Chapter XV (Sec 73 to 84) , the **Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue** it is necessary so to do, he may, by order in writing, **attach provisionally, any property, including bank account**, belonging to the taxable person or any person specified in sub-section (1A) of section 122, in such manner as may be prescribed.
- 2) Every such provisional attachment shall **cease to have effect after the expiry of a period of one year** from the date of the order made under sub-section (1).

RULE 159 – PROVISIONAL ATTACHMENT TO PROTECT REVENUE IN CERTAIN CASES



- Where the Commissioner decides to attach any property, including bank account as per Sec 83, he shall pass an order **in FORM GST DRC-22** to that effect mentioning therein, the details of property which is attached.
- The Commissioner shall send a copy of the order of attachment in FORM GST DRC-22 to the concerned Revenue Authority or Transport Authority or any such Authority to place encumbrance on the said movable or immovable property, which shall be removed only on the written instructions from the Commissioner to that effect.
- Any person whose property is attached may file an **objection in FORM GST DRC-22A** to the effect that the property attached was or is Not liable to attachment, and the Commissioner may, after affording an opportunity of being heard to the person filing the objection, **release the said property by an order in FORM GST DRC- 23.**



ATTACHMENT

- **Followings grounds must exist for resorting to provisional attachment of property u/s Sec 83 of the Act:**
 - There must be pendency of a proceeding against a taxable person u/s 83
 - The **Commissioner must have formed the opinion** that provisional attachment of the property belonging to the taxable person is necessary for the purpose of protecting the interest of the Government revenue.
 - For forming an opinion u/s 83, it is important that **Commissioner must exercise due diligence and duly consider as well as carefully examine** all the facts of the case, including the nature of offence, amount of revenue involved, established nature of business and extent of investment in capital assets and reasons to believe that the taxable person, against whom the proceedings referred in section 83 are pending, may dispose of or remove the property, if not attached provisionally.
 - The **basis, on which, Commissioner has formed such an opinion, should be duly recorded on file.**

ATTACHMENT

- **Followings grounds must exist for resorting to provisional attachment of property u/s Sec 83 of the Act:**
 - It is reiterated that
 - ✓ the power of provisional **attachment must not be exercised in a routine/mechanical** manner and
 - ✓ careful examination of all the facts of the case is important to determine whether the case(s) is fit for exercising power under section 83.
 - ✓ The collective evidence, based on the proceedings/ enquiry conducted in the case, must indicate that prima-facie a case has been made out against the taxpayer, before going ahead with any provisional attachment.
 - ✓ **The remedy of attachment being, by its very nature, extraordinary, has to be resorted to with utmost circumspection and with maximum care and caution.**
- Thereafter order in Form DRC 22 to be passed with DIN and send to concerned authority and copy thereof to taxpayer

INSTRUCTION NO : CBEC-20/16/05/2021 GST / 359 dated 23.02.2021 – PROVISIONAL ATTACHMENT

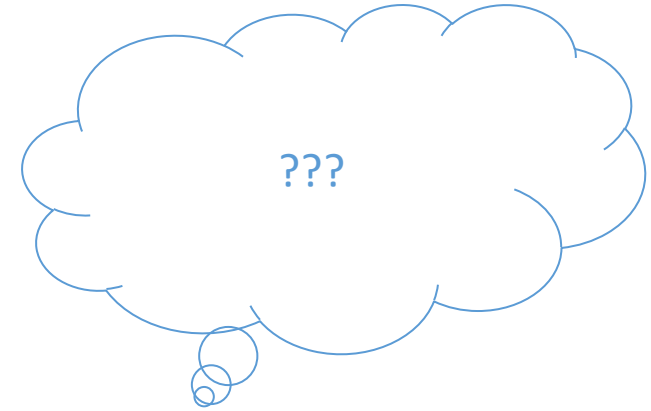
- Provisional attachment normally should not be invoked in cases of technical nature.
- It should be ensured that the value of property attached provisionally is not excessive.
- Movable property should normally be attached only if the immovable property, available for attachment, is not sufficient to protect the interests of revenue.
- As far as possible, it should also be ensured that such attachment does not hamper normal business activities of the taxable person. This would mean that raw materials and inputs — for production or finished goods should not normally be attached by the Department.
- In cases where movable property, including bank account, belonging to taxable person has been attached, such movable property may be released if taxable person offers, in lieu of movable property, any other immovable property which is sufficient to protect the interest of revenue. Such immovable property should be of value not less than tax amount in dispute and free from any charge, liens, mortgages, property tax fully paid up to date and not involved in any legal dispute. The taxable person must produce the original title deeds and other necessary information relating to the property, for the satisfaction of the concerned officer.

CASE LAWS : PROVISIONAL ATTACHMENT

- ❖ **RADAR KRISHNA INDUSTRIES V. STATE OF HIMACHAL PRADESH** (Civil Appeal No 1155 of 2021 - Arising out of SLP(C) No 1688 of 2021)
- ✓ Provisional attachment only after the formation of opinion based on tangible material : SC
- The provisional attachment was ordered against the appellant while invoking section 83 of the GST Act. The appellant instituted a writ petition challenging the orders of provisional attachment. The High Court dismissed the said writ petition on the ground that provisional attachment could not be challenged in a petition under Article 226 on the ground that an alternative and efficacious remedy of an appeal under section 107 was available. It filed an appeal against the order.
- ✓ **The Honorable Supreme Court observed** that the High Court has erred in dismissing the writ petition on the ground that it was not maintainable. Moreover, the power to order a provisional attachment of property of taxable person including a bank account is draconian in nature and conditions which are prescribed by statute for a valid exercise of power must be strictly fulfilled. The exercise of power for ordering a provisional attachment **must be preceded by a formation of an opinion by the Commissioner that it is necessary so to do for purpose of protecting the interest of government revenue.**

CASE LAWS : PROVISIONAL ATTACHMENT

- ❖ **RADAR KRISHNA INDUSTRIES V. STATE OF HIMACHAL PRADESH** (Civil Appeal No 1155 of 2021 - Arising out of SLP(C) No 1688 of 2021)
 - Before ordering a provisional attachment, the Commissioner must form an opinion on basis of tangible material that the assessee is likely to defeat the demand if any, and that therefore, it is necessary so to do.
 - **The SC held that in the instant case, there was a clear non-application of mind by the Joint Commissioner.** There was a breach of the mandatory requirement of Rule 159(5) and Commissioner was clearly misconceived in law in coming into the conclusion that he had discretion on whether or not to grant an opportunity of being heard. **The Commissioner shall be duty-bound to deal with objections to attachment by passing a reasoned order which must be communicated to the taxable person** whose property would be attached. Therefore, it was held that the appeal would be allowed and order of High Court was liable to be set aside and **the writ petition filed by the appellant under Article 226 of Constitution shall stand allowed by setting aside the order of provisional attachment**



Seizure, Arrest, Summon...

Inspection, Search and Seizure – SEC 67:

- **Sec 67(5) Copies of documents seized:**
- ✓ The person from whose custody any documents are seized under sub-section (2)
- ✓ **shall be entitled to make copies** thereof or take extracts therefrom in the presence of an authorised officer at such place and time as such officer may indicate in this behalf,
- ✓ except where making such copies or taking such extracts may, in the opinion of the proper officer, prejudicially affect the investigation

SEC 69 – POWER TO ARREST

- 1) Where the Commissioner has **reasons to believe** that a person has committed any offence specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) of section 132 which is punishable under clause (i) or (ii) of sub-section (1), or sub-section (2) of the said section, he may, by order, authorise any officer of central tax to arrest such person.
- 2) Where a person is arrested under sub-section (1) for an offence specified under sub-section (5) of section 132, the officer authorised to arrest the **person shall inform such person of the grounds of arrest and produce him before a Magistrate within twenty four hours.**
- 3) Subject to the provisions of the Code of Criminal Procedure, 1973 (2 of 1974),-
 - (a) where a person is arrested under sub-section (1) for any offence specified under sub-section (4) of section 132, he shall be admitted to bail or in default of bail, forwarded to the custody of the Magistrate;
 - (b) in the case of a non-cognizable and bailable offence, the Deputy Commissioner or the Assistant Commissioner shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers and be subject to the same provisions as an officer-in-charge of a police station.

Bail is Rule...Jail is Exception...!!

SUPREME COURT IN ITS JUDGEMENT DATED 16TH AUG 2021 IN CASE OF **SIDDHARTH VS THE STATE OF UTTAR PRADESH & ANR.**

[CRIMINAL APPEAL NO.838 OF 2021. ARISING OUT OF SLP(CRL.) NO.5442/2021]

“ We may note that **Personal Liberty is an important aspect of our constitutional mandate.** The occasion to arrest an accused during investigation arises when custodial investigation becomes necessary or it is a heinous crime or where there is a possibility of influencing the witnesses or accused may abscond. **Merely because an arrest can be made because it is lawful, does not mandate that arrest must be made.** A distinction must be made between the existence of the power to arrest and the justification for exercise of it. **If arrest is made routine, it can cause incalculable harm to the reputation and self-esteem of a person.** If the Investigating Officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout cooperated with the investigation **we fail to appreciate why there should be a compulsion on the officer to arrest the accused** ”

Summon – SEC 70 read with Rule 132:

- (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.
- (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.
- Standardised Format of Summon is specified vide Circular No 128/47/2019 GST dated 23rd Dec 2019
- As per Sec 122(3)(d) – Any person who fails to appear before the officer of central tax, when issued with a summon for appearance to give evidence or produce a document in an inquiry, shall be liable to a penalty which may extend to Rs 25,000/-

SUMMONS

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

To

.....

(Name and address)

WHEREAS, I,..... am making inquiry in connection withunder the Central Goods and Services Tax Act, 2017.

AND WHEREAS, I consider your attendance necessary to

(a) give evidence and / or

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

1.

2.

3.

NOW, THEREFORE, in exercise of powers vested in me under Section 70 of the Central Goods and Services Tax Act, 2017, I do hereby summon you to appear before me in person on (date) at (time) at the office of.....(office address).

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

Given under my hand and seal of office to-day the.....day of(month), 20...(year) at(place of issue).

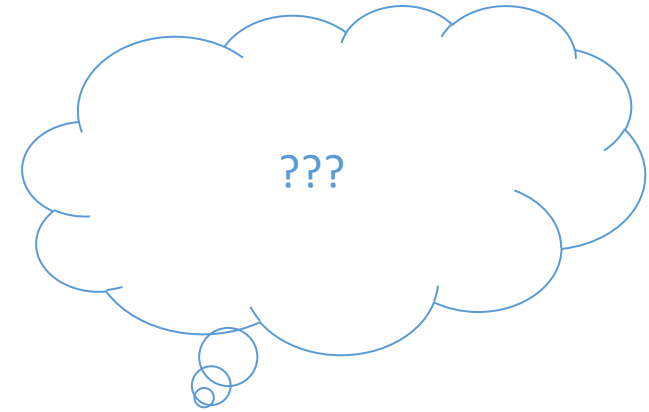
Name

Signature

Designation.....

Seal of Office.





Requirement on DIN

REQUIREMENT OF DIN

- Keeping government objective of **accountability and transparency** , Document Identification Number – DIN system was introduced on all communication / notices from GST Department from 23rd Dec 2019 . It would also provide the taxpayer a digital facility to verify any communications and its genuiness.
- **Any communication** from GST or Custom or Central Excise department **without a computer generated DIN, would be treated as invalid and shall be deemed to be as if it has never been issued.**
- In exceptional circumstances, notice can be issued without DIN, on satisfaction of below condition:
 - ✓ Exceptional reason to be recorded in writing in the file. Such exceptional reason can be :
 - Technical difficulties in generating DIN or
 - When communication is to be made at short notice/urgent situation & authorised officer is outside the office.
 - ✓ Such communication/notice should expressly state that, it has been issued without a DIN.
 - ✓ Said communication is regularised within 15 working days of its issuance - (i) by post facto approval of superior officer (ii) mandatorily generating DIN after post facto approval

REQUIREMENT OF DIN

- **Circular No 122/41/2019** GST dated 5th Nov 2019 and **Circular No 128/47/2019** GST dated 23rd Dec 2019
- Format of DIN is as under:

The format of the DIN shall be **CBIC-YYYY MM ZCDR NNNNNN** where,

- (a) **YYYY** denotes the calendar year in which the DIN is generated,
- (b) **MM** denotes the calendar month in which the DIN is generated,
- (c) **ZCDR** denotes the Zone-Commissionerate-Division-Range Code of the field formation/Directorate of the authorized user generating the DIN,
- (d) **NNNNNN** denotes 6 digit alpha-numeric system generated random number.

- Importance of DIN :

charge to ensure its successful implementation. **It is reiterated that any specified document that is issued without the electronically generated DIN shall be treated as invalid and shall be deemed to have never been issued.** Therefore, it is incumbent upon all officers concerned to strictly adhere to these instructions.



#ITC MISMATCH....

Tax not paid by

Supplier....

Supplier is not in

Existence

*Section 16. Eligibility and conditions for taking input tax credit.-

(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,-

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

¹[(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37;]

(b) he has received the goods or services or both.

²[**Explanation.-** For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services-

²[**Explanation.**- For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services-

(i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person;]

³[(ba) the details of input tax credit in respect of the said supply communicated to such registered person under section 38 has not been restricted;]

(c) subject to the provisions of ⁴[section 41 ⁵[***]], the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and

(d) he has furnished the return under section 39:



REPLY POINTER TO - ITC MISMATCH NOTICES

POINTER FOR SUBMISSION

ITC cannot be denied merely due to non-reflection of invoices in GSTR-2A

Sec 16(2)(aa) of CGST Act is made effective w.e.f. 1st January, 2022 vide Notification No. 39/2021-C.T., dated 21st December, 2021 . **Before that, there was no condition in Sec 16 relating to GSTR 2A**

Accordingly, GSTR-2A cannot be taken as a basis to deny the ITC in accordance with Section 41, Section 42, Rule 69 of CGST Rules, 2017. It is submitted that the condition for avilment of credit is provided under section 16(2) of the CGST Act, 2017, do not state that credit availed by the recipient needs to be reflected in GSTR-2A.

No mechanism and infrastructure provided for dealing with ITC mismatch cases by Government, as per provided in Sec 38(2) – [GSTR 2] and Sec 39(1) - [GSTR 3] of CGST Act 2017 :

In absence of any requirement to file GSTR-2 and GSTR-3, the matching mechanism prescribed under Section 42 read with Rule 69 would also get deferred and become inoperative.

Also vide Notification No 18/2022 CT dated 28th Sep 2022, GSTR 2/3 provisions were omitted with effect from 1st Oct 2022. Therefore, therefore when facility for matching was not provided, as required till 30th Sep 2022, ITC can not be denied.





REPLY POINTER TO - ITC MISMATCH NOTICES

POINTER FOR SUBMISSION

Amendment in Sec 16(2), Sec 37, Sec 38, Sec 39 and Sec 41 of CGST Act 2017 suggest, there was no enough authority under act to government to disallow ITC, if not paid by supplier and reflected in GSTR 2A

Press Release dated 4th May 2018

Below is relevant extract of Press release dealing with ITC mismatch:

“(iv) No automatic reversal of credit: There shall not be any automatic reversal of input tax credit from buyer on non-payment of tax by the seller. In case of default in payment of tax by the seller, recovery shall be made from the seller however reversal of credit from buyer shall also be an option available with the revenue authorities to address exceptional situations like missing dealer, closure of business by supplier or supplier not having adequate assets etc.”

From the above press release, one can understand government intention that buyer will not be directly held responsible for nonpayment of tax supplier. Recovery will be made from seller in case of tax default and buyer will be noticed only in exceptional situation like missing dealer.



Para 18.3 of minutes of 28th GST Council Meeting dated 21st July 2018

Below is relevant extract of minutes of GST Council meeting dealing with ITC mismatch:

“There would be no automatic reversal of input tax credit at the recipient's end where tax had not been paid by the supplier. Revenue administration shall first try to recover the tax from the seller and only in some exceptional circumstances like missing dealer, shell companies, closure of business by the supplier, input tax credit shall be recovered from the recipient by following the due process of serving of notice and personal hearing”.

From the above recommendation of GST Council meeting, authorities are first required to take action against defaulting seller.



REPLY POINTER TO - ITC MISMATCH NOTICES

POINTER FOR SUBMISSION

Doctrine of Impossibility – “Lex non Cogit Ad impossibilia”

It means the law does not compel a man to do anything vain or impossible. Law requires nothing impossible.

In this regards, Reliance can be placed on decision of Hon’ble Delhi High Court in the case of **ARISE INDIA LTD. V. COMMISSIONER OF TRADE AND TAXES [TS-314-HC- 2017(DEL)-VAT]**, has held that,

“the purchasing dealer is being asked to do the impossible, i.e. to anticipate the selling dealer who will not deposit with the Government the tax collected by him from those purchasing dealer and therefore avoid transacting with such selling dealers. Therefore, there was need to restrict the denial of ITC only to the selling dealers who had failed to deposit the tax collected by them and not to punish bona fide purchasing dealers. The latter cannot be expected to do the impossible.”

CASE LAWS : TAX NOT PAID BY SUPPLIER



❖ **D.Y. Beathel Enterprises v. State Tax Officer, Tirunelveli (W.P.(MD)No.2127 of 2021)**

- ✓ ITC availed by buyer can't be reversed for non-deposit of tax by seller without examining & initiation of recovery proceedings against seller: Madras HC.
- The petitioners were traders in Raw Rubber Sheets and they purchased goods from the seller. **The sale consideration was paid only through banking channels** including the tax component. They claimed ITC on basis of returns filed by sellers. **Later, during the inspection, the department observed that seller failed to pay any tax to the Government. The department, without involving the seller, passed an order levying the entire liability on the petitioners. They challenged the order and filed a writ petition.**
- The department submitted that the petitioners had availed input tax credit on the premise that tax had already been remitted to the Government, by their sellers. When it turned out that the sellers have not paid any tax and the petitioners could not furnish any proof for the same, the department was entirely justified in proceeding to recover the same from the petitioners.



CASE LAWS : TAX NOT PAID BY SUPPLIER



❖ **D.Y. Beathel Enterprises v. State Tax Officer, Tirunelveli (W.P.(MD)No.2127 of 2021)**

- ✓ ITC availed by buyer can't be reversed for non-deposit of tax by seller without examining & initiation of recovery proceedings against seller: Madras HC.
- **The Honorable High Court observed that the department does not appear to have taken any recovery action against the seller.** When it came out that the seller has collected tax from the purchasing dealers, the omission on the part of the seller to remit the tax in question must have been viewed very seriously and **strict action ought to have been initiated against him.**
- **The examination of the seller is a necessary step. Thus, the orders against the petitioners were liable to be quashed and matter remitted back and enquiry should be made against the seller.**



CASE LAWS : ITC DENIED – NON-EXISTING SUPPLIER



❖ **LGW INDUSTRIES LIMITED & ORS. (CALCUTTA HIGH COURT) (WPA No. 23512 of 2019 (DOJ: 13/12/2021))**

✓ ITC can not be denied to recipient if supplier is found non existence, in case of genuine transactions

○ **FACTS** - GST authorities on inquiry, they came to know that the **suppliers from whom the petitioners/buyers are claiming to have purchased the goods in question are all fake and non-existing** and the bank accounts opened by those suppliers are on the basis of fake documents **and petitioners' claim of benefit of input tax credit are not supported by the relevant documents.** Further grounds of denying the ITC benefit to the petitioners by the respondents are that the **registration of suppliers in question has already been cancelled** with retrospective effect covering the transactions period in question.

○ **PETITIONER CONTENTION** - **Transactions in question are genuine** and valid by relying upon **all the supporting relevant documents** required under law. Petitioners with their due diligence have verified the genuineness and identity of the suppliers in question and more particularly the **names of those suppliers as registered taxable person were available at the Government portal showing their registrations as valid and existing at the time of transactions in question**



CASE LAWS : ITC DENIED – NON-EXISTING SUPPLIER



❖ **LGW INDUSTRIES LIMITED & ORS. (CALCUTTA HIGH COURT) (WPA No. 23512 of 2019 (DOJ: 13/12/2021))**

- **PETITIONER CONTENTION** - Petitioners further submit that **all transactions were through banks and petitioners are helpless if at some point of time** after the transactions were over, if the respondents concerned finds on enquiries that the aforesaid suppliers (RTP) were fake and bogus and on this basis petitioners could not be penalised unless the department/respondents establish with concrete materials that the transactions in question were the outcome of any collusion between the petitioners/purchasers and the suppliers in question. **Petitioners further submit that all the purchases in question invoices-wise were available on the GST portal in form GSTR-2A**
- **COURT FINDINGS** - These writ petitions are disposed of by **remanding these cases to the respondents concerned to consider afresh the cases** of the petitioners on the issue of their entitlement of benefit of ITC in question **by considering the documents which the petitioners want to rely** in support of their claim of genuineness of the transactions in question **and shall also consider as to whether payments on purchases in question along with GST were actually paid or not** to the suppliers (RTP)



CASE LAWS : ITC DENIED – NON-EXISTING SUPPLIER



❖ **LGW INDUSTRIES LIMITED & ORS. (CALCUTTA HIGH COURT) (WPA No. 23512 of 2019 (DOJ: 13/12/2021))**

- **COURT FINDINGS** - Also to consider as to whether the transactions and purchases were made before or after the cancellation of registration of the suppliers. If it is found upon considering the relevant documents that all the transactions in question are genuine and supported by valid documents and transactions in question were made before the cancellation of registration of those suppliers , **in that event the petitioners shall be given the benefit of input tax credit in question.**

These cases of the petitioners shall be disposed of in the light of observation made above and by passing a reasoned and speaking order after giving effective opportunity of hearing to the petitioners and by dealing with the judgments petitioners want to rely at the time of hearing of the cases, within eight weeks from the date of communication of this order.





INTEREST IMPLICATIONS - TAX PAID ON TIME, BUT RETURN FILED LATE

■ SEC 50(1): INTEREST ON DELAYED PAYMENT OF TAX

Originally Drafted Provision:

Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made there under, but **fails to pay the tax** or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council.

Proviso added vide Notification No. 16/2021'Central Tax dt. 01.06.2021

_Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be payable on that portion of the tax which is paid by **debiting the electronic cash ledge**

- **HON'BLE JHARKHAND HIGH COURT IN CASE OF - M/S NARSINGH ISPAT LIMITED VS UNION OF INDIA [W.P (T) NO. 177 OF 2021]**
 - ✓ **Interest Liability under GST can't be raised without initiating adjudication process**
 - ✓ In the present case, the **Proper Officer has issued the statement in Form GST DRC-01A** upon the petitioner intimating him to pay the amount of tax ascertained along with the amount of applicable interest in full by 05.02.2020
 - ✓ **However, no show-cause notice** under section 73(1) was issued thereafter. Instead, the Summary of the Order was issued in Form GST DRC-07 on 26.02.2020 indicating interest payable
 - ✓ **Thus, Respondents have failed to follow the principles of natural justice.** As such, writ petition succeeds only on the point of failure to follow the principles of natural justice
 - ✓ **Since there is no delay in payment of the tax, interest is not chargeable for late filing of GSTR-3B for which, a late fee has been prescribed** under Section 47 of the Act which the petitioner had duly paid.

INTEREST IMPLICATION - TAX PAID BUT DELAY IN FILING GSTR 3B/DRC 03



▪ HON'BLE JHARKHAND HIGH COURT IN CASE OF - M/S NARSINGH ISPAT LIMITED VS UNION OF INDIA [W.P (T) NO. 177 OF 2021]

- ✓ It is submitted that for delayed filing of GSTR 3B, late fee at best can be demanded which is already discharged. **Interest u/s 50(1) is compensatory in nature.** Therefore, once the amount is deposited in Electronic Cash Ledger in accordance with Sec 49 particularly Explanation thereto, money goes to the Government Exchequer and therefore, no interest for the period thereafter can be demanded.
- ✓ If the money is being enjoyed by the Government, the amount cannot be said to be so as to attract Section 50(1). When a person had paid tax in accordance with Section 49, no interest is attracted since the amount is already paid. Interest can be demanded for the amount withheld as it is always compensatory in nature
- ✓ Interest u/s 50(1) being compensatory in nature, it can be demanded for the amount withheld by the registered person or if the amount remains unpaid or the registered persons fails to pay the tax



- **HON'BLE JHARKHAND HIGH COURT IN CASE OF - M/S NARSINGH ISPAT LIMITED VS UNION OF INDIA [W.P (T) NO. 177 OF 2021]**
 - ✓ **The impugned Summary of the Order contained in Form GST DRC-07** dated 26.02.2020 in the respective writ petitions relating to different tax periods in question **are accordingly quashed.**
 - ✓ Respondents are at liberty to issue proper show-cause notice in terms of Section 73(1) of JGST Act, 2017 with opportunity to the petitioner to file response thereto before passing any adjudication order.
 - ✓ It is open to the petitioner to raise the question of leviability of interest on delayed filing of GSTR-3B relying upon its plea that the amount of tax has been duly deposited in the Electronic Cash Ledger by the due date. Needless to say, if such a plea is raised, the Adjudicating Authority shall consider it in accordance with law.

INTEREST IMPLICATION - TAX PAID BUT DELAY IN FILING GSTR 3B/DRC 03

▪ HON'BLE GUJRAT HIGH COURT IN CASE OF - M/S VISHNU AROMA POUCHING PVT LTD Vs UNION OF INDIA [CIVIL APPLICATION NO. 5629 of 2019]

- ✓ It was submitted that the petitioner had duly filed the return for the month of August, 2017 and had also deposited that tax payable for such period; however, on account of glitches in the system such amount could not be credited to the Government account.
- ✓ The situation therefore, is that though the petitioner had **discharged the tax liability aggregating Rs 128.63** crores (rounded off), such liability was not shown as discharged in the electronic liability register only on account of glitches and crashing of the system on 20th and 21st September, 2017.
- ✓ Consequently, despite the fact that the petitioner had discharged the tax liability in time, it was still treated as a defaulter because all the figures in GSTR- 3B for August 2017 are zeros owing to system failure.
- ✓ The errors in uploading the return were not on account of any fault on the part of the petitioner but on account of error in the system.

▪ HON'BLE GUJRAT HIGH COURT IN CASE OF - M/S VISHNU AROMA POUCHING PVT LTD Vs UNION OF INDIA [CIVIL APPLICATION NO. 5629 of 2019]

- ✓ It was submitted that the **petitioner had thereafter immediately approached the respondent authorities** for resolving the issue; however it was on account of the default on the part of the respondent authorities that the error could be corrected only in October, 2019.
- ✓ However, it was only by the communication dated 7.3.2019, that the petitioner was informed that the Central Board of Excise and Customs had issued Circular No. 26/26/2017-GST dated 29.12.2017 wherein it has been specified that the tax payer may adjust the amount not paid or short paid or excess paid in the GSTR-3B of the previous month in the return of the following tax period
- ✓ On successful credit of the amount to the concerned Government account maintained in the authorised bank, a Challan Identification Number is generated by the collecting bank, and the same is indicated in the challan as laid down under subrule (6) of rule 87 of the CGST Rules.

- HON'BLE GUJRAT HIGH COURT IN CASE OF - M/S VISHNU AROMA POUCHING PVT LTD Vs UNION OF INDIA [CIVIL APPLICATION NO. 5629 of 2019]
 - ✓ Thus, the petitioner had duly discharged the tax liability of August, 2017 within the period prescribed therefor; however, it was only on account of technical glitches in the System that the amount of tax paid by the petitioner for August 2017 had not been credited to the Government account.
 - ✓ Consequently, the petitioner would not be liable to pay any interest on such tax amount for the period from 21.9.2017 to October, 2019.



ITC INTEREST NET OR GROSS ?

At What Percentage ?

Manner of Calculation of Interest ?

INTEREST PAYABLE IN CASE OF ITC AVAILED WRONGLY, ONLY IF IT IS UTILSIED.

[Sec 50(3) , (Notification No 09/2022–Central Tax Dated 5th Jul 2022)]:

- Section 50 (3) amended With Retrospective effect from 1st July 2017, to provide that **the Interest is payable if Input tax credit Wrongly availed and utilised.**
- If taxpayer has availed wrong ITC but he has not utilised the same, then No Interest is payable
- This provision is **amended retrospectively w.e.f. 01.07.2017** to avoid disputes for the past period.
- Also, Rule 88B(3) is inserted to prescribe the manner for calculation of interest in such cases by
Notification No 14/2022–Central Tax Dated 5th Jul 2022.
- **Also interest rate is reduced to 18% from 24%.**

Manner of CALCULATION OF INTEREST ON DELAYED PAYMENT OF TAXES

[Notification No 14/2022 -Central Tax, Dated 05/07/2022]

- **Rule 88B** Inserted in CGST Rules 2017, to prescribe the manner of calculation of interest in case of late filing of return, late payment of tax or utilization of incorrect ITC.

Particulars	Period for Calculation of Interest
In case of Late filing of Return →	On amount of Taxes paid through cash ledger , <u>from</u> due date of filing return to the date of filing the return
In Case of Tax Unpaid/Short Paid →	<u>From</u> the date on which such Tax was due <u>To</u> the date of payment of such Tax
In case of Wrongly ITC Availed and Utilised →	<p><u>From</u> the date of Utilisation of such ITC <u>to</u> the Date of Reversal/Payment of such ITC.</p> <ul style="list-style-type: none"> ○ <u>Date of utilization of such input tax credit shall be taken to be due date of return or actual date of filing whichever is earlier.</u> ○ Interest Tax Credit shall be treated as utilized the day when the balance in Electronic Credit Ledger falls below the input tax credit wrongly availed



ITC IMPLICATION IF NOT PAID WITH IN 180 DAYS



ITC IMPLICATION IF NOT PAID WITH IN 180 DAYS

○ Second Proviso to Sec 16(2):

*Provided further that **where a recipient fails to pay** to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days **from the date of issue of invoice** by the supplier, an amount equal to the input tax credit availed by the recipient **shall be added to his output tax liability**, along with interest thereon, in such manner as may be prescribed:*

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.

POINTER FOR SUBMISSION

Failure to Pay: Said provision is applicable in case of “Failure to Pay within 180 days”. It means there must be obligation to pay within 180.

It means there must be express condition between the supplier and the recipient to remit the dues within a period of 180 days and the failure thereof can be said to invite the implication of the said proviso.

Therefore it can be contended that ‘the express contract which allow to remit the dues beyond the period of 180 days’ is outside the ambit of the subject proviso.

Rules are inconsistent/in conflict with Proviso: Said proviso require that, said ITC should be added in Output Tax Liability.

As per Sec 2(82) —output tax in relation to a taxable person, means the tax chargeable under this Act **on taxable supply of goods or services** or both made by him or by his agent but excludes tax payable by him on reverse charge basis

However, as per amended Rule 37, amended GSTR 3B and Circular No Circular No.170/02/2022-GST dt. 06.07.2022, said ITC is required to be reversed.

ITC IMPLICATION IF NOT PAID WITH IN 180 DAYS

POINTER FOR SUBMISSION

○ Rule 37: (Old provision till 30th Sep 2022):

1) A registered person, who has availed of input tax credit on any inward supply of goods or services or both, but fails to pay to the supplier thereof, the value of such supply along with the tax payable thereon, within the time limit specified in the second proviso to sub-section(2) of section 16, shall furnish the details of such supply, the amount of value not paid and the **amount of input tax credit availed of PROPORTIONATE to such amount not paid to the supplier in FORM GSTR-2** for the month immediately following the period of one hundred and eighty days from the date of the issue of the invoice:

Provided that

Provided further that

(2) The amount of input tax credit referred to in sub-rule (1) **shall be added to the output tax liability** of the registered person for the month in which the details are furnished.

(3) The registered person shall be liable to pay interest at the rate notified under sub-section (1) of section 50 for the period starting from the date of availing credit on such supplies till the date when the amount added to the output tax liability, as mentioned in sub-rule (2), is paid.

Regulation can not be complied in the absence of Failure to implement GSTR 2:

Said regulation requires that, details are required to be furnished in Form GSTR 2.

However GSTR 2 was never implemented after July 2017 and provision for the same is omitted w.e.f 1.10.2022

Accordingly when no mechanism of GSTR 2 is provided, compliance of said regulation is impossible.

ITC IMPLICATION IF NOT PAID WITH IN 180 DAYS

- **Rule 37: (Substituted vide N/N 19/2022 CT dated 28th Sep 2022, w.e.f 1st Oct 2022):**

*(1) A registered person, who has availed of input tax credit on any inward supply of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, but fails to pay to the supplier thereof, the amount towards the value of such supply along with the tax payable thereon, within the time limit specified in the second proviso to sub-section(2) of section 16, **shall pay an amount equal to the input tax credit availed** in respect of such supply along with interest payable thereon under section 50, while furnishing the return in FORM GSTR-3B for the tax period immediately following the period of one hundred and eighty days from the date of the issue of the invoice:*

Provided that

Provided further that

(2) Where the said registered person subsequently makes the payment of the amount towards the value of such supply along with tax payable thereon to the supplier thereof, he shall be entitled to re-avail the input tax credit referred to in sub-rule (1).]

ANALYSIS: In amended regulation, one important deviation is absence of word “Proportionate”.

Rule 37(1) as in existence prior to 01.10.2022 provided that only an amount proportionate to the invoice value that remains unpaid after the period of 180 days is required to be added.

The amended Rule 37(1) misses the word ‘proportionate’. And therefore can department say that the entire credit is required to be reversed even if only a proportionate amount remains unpaid at the end of 180 days ?



SEC 16(4) CONDITION



ITC NOT AVAILED IN TIME LIMIT OF SEC 16(4)

POINTER FOR SUBMISSION

○ Sec 16(4):

A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the thirtieth day of November following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier

Sec 16(2) override all provisions of Sec 16 including Sec 16(4):

Sec 16(2) start with non-obstante clause.

*“Sec 16(2) - Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,-
(a)... (b)... (c)... (d)....”*

It means that – In spite of anything contained in the entire Sec. 16 including Sec 16(4) , a registered person shall be entitled to ITC if he satisfies the four conditions given therein

Due to In-operation of GSTR 2 and 3, Last date to claim ITC as per Sec 16(4) becomes due date of Annual Return

Originally Sec 16(4) had reference to GSTR 3, which after matching, supplier was aware of ITC availed in return and pending.

However, subsequent amendment to Rule 61(5), categorizing GSTR 3B as return, has not achieved desired objective to find out missing ITC by matching mechanism and it was provided in GST Law till 30th Sep 2022

Hence it can be contended that a retrospective amendment in Rule 61(5) to make GSTR – 3B a return u/s 39 cannot be read while interpreting Sec. 16(4) and hence the last date to avail the ITC would be the date of filing of the annual return



ITC NOT AVAILED IN TIME LIMIT OF SEC 16(4)

POINTER FOR SUBMISSION

Vested Right can not be taken by Subsequent amendment to Rule 61(5):

GSTR – 3B initially was not a return u/s 39. Rule 61(5) was amended to provide that GSTR – 3B is a return u/s 39 vide Notification No 49/2019 dated 9th Oct 2019

Therefore vested right created before the date of the said amendment to avail the ITC (wherein the restrictions were not linked to GSTR – 3B but to GSTR -3) cannot be taken back. Reliance is placed on Hon'ble Supreme Court decisions in the case of Dai Ichi Karkaria Ltd. 1999 (112) E.L.T. 353 (S.C.) and Eicher Motors Ltd. 1999 (106) E.L.T. 3 (S.C.).

ITC Taken in Books. Sec 16(4) is not referring to credit in Electronic Credit Ledger

Sec. 16(4) provides for the restrictions for the taking of the ITC and not the reflection of the same in GSTR – 3B for getting the said amount credited in the electronic credit ledger. Thus it can be said that as long as the registered person has availed the ITC in the books of accounts, before the cut-off date prescribed u/s 16(4), the same can be said to be in order.

Violation of Article 19(1)(g) of Constitution

Denial of ITC to the buyer of goods or services, severely impacts its working capital and therefore substantially diminishes its ability to continue business. Therefore, it is a serious affront to his right to carry on his trade or business guaranteed under Article 19(1)(g) of the Constitution. Also denial of ITC as per sec 16(4), causes the deprivation of our enjoyment of the property, which result in violativation of the provision of Article 300A of the Constitution of India.





E Way Bill Related Issues



E WAY BILL PENALTY INCREASED TO 200%

CASE	TAXABLE GOODS WILL BE RELEASED ON PAYMENT OF	EXEMPTED GOODS WILL BE RELEASED ON PAYMENT OF
Case where owner of goods comes forward for payment of Tax/Penalty	Penalty equal to 200% of tax	Penalty equal to 2% of Value of goods or Rs 25000, Whichever is less
Case where owner of goods does not comes forward for payment of Tax/Penalty	Penalty equal to 50%* of Value of Goods OR 200% of tax , whichever is higher	Penalty equal to 5% of Value of goods or Rs 25000, Whichever is less

- Transporter has been given an option to get his conveyance released upon payment of applicable penalty or Rs. 1 lakh whichever is less

E WAY BILL – PROCEEDING CAN NOT ISSUED U/S 129 FOR SPECIFIED MINOR DISCREPANCIES [Circular No. 64/38/2018-GST dated 14th Sep 2018]

- **No penalty u/s 129 in specified cases** – In case a consignment of goods is accompanied with an invoice or any other specified document and also an e-way bill, proceedings under section 129 of the CGST Act may not be initiated, inter alia, in the following situations:
 - a) **Spelling mistakes in the name of the consignor or the consignee** but the GSTIN, wherever applicable, is correct;
 - b) **Error in the pin-code** but the address of the consignor and the consignee mentioned is correct, subject to the condition that the error in the PIN code should not have the effect of increasing the validity period of the e-way bill;
 - c) **Error in the address of the consignee** to the extent that the locality and other details of the consignee are correct;
 - d) **Error in one or two digits of the document number** mentioned in the e-way bill;

E WAY BILL – PROCEEDING CAN NOT ISSUED U/S 129 FOR SPECIFIED MINOR DISCREPANCIES [Circular No. 64/38/2018-GST dated 14th Sep 2018]

- **No penalty u/s 129 in specified cases** – In case a consignment of goods is accompanied with an invoice or any other specified document and also an e-way bill, proceedings under section 129 of the CGST Act may not be initiated, inter alia, in the following situations:
 - e) **Error in 4 or 6 digit level of HSN** where the first 2 digits of HSN are correct and the rate of tax mentioned is correct;
 - f) **Error in one or two digits/characters of the vehicle number**

- **Penalty of Rs 1000** : In case of the above situations, penalty to the tune of Rs. 500/- each under section 125 of the CGST Act and the respective State GST Act should be imposed (Rs.1000/- under the IGST Act) in FORM GST DRC-07 for every consignment

CASE LAWS : EWAY BILL – Valuation discrepancy

❖ **K.P. Sugandh Ltd. v. State of Chhattisgarh (WPT No. 36 of 2020)**

❖ Discrepancies in valuation of goods cannot be the ground for detention of goods under transport: Chatt HC.

- **The petitioner was a manufacturer of Pan Masala and Tobacco Products.** It dispatched goods to its customer and **issued a tax invoice as well as an e-way bill generated** and handed the same to the incharge of the conveyance. **The vehicle was intercepted by the officials of the Department** and asked for the details of the consignment. The driver at the time of interception produced before the authorities the relevant invoice bill and also produced the e-way bill.
- **The authorities seized the vehicle and the goods on the grounds of there being discrepancies in the valuation of the goods** and thereafter detained the vehicle and the goods. Thereafter the petitioner moved an application for release of the vehicle. Without considering any of the contentions raised by the petitioner, the authorities assessed the tax payable on the goods and the penalty for the purpose of releasing the goods and the vehicle. It filed a writ petition to seek relief.

CASE LAWS : EWAY BILL – Change in Route



- ❖ **K.P. Sugandh Ltd. v. State of Chhattisgarh ((WPT No. 36 of 2020))**
- ❖ Discrepancies in valuation of goods cannot be the ground for detention of goods under transport: Chatt HC.
 - **The Honorable High Court observed that the authorities detained goods of the petitioner under transport, as well as the vehicle on the ground that there were discrepancies in valuation of goods being transported, i.e., valuation, did not seem to have been properly conducted. However, undervaluation of goods in the invoice couldn't be a ground for the detention of goods and vehicles for a proceeding to be drawn under section 129. Therefore, the Court directed the authorities to release the goods belonging to the petitioners based on the invoice bill as well as the e-way bill**
- ❖ **KARNATAKA TRADERS VS STATE OF GUJARAT (GUJARAT HC) [R/Special Civil Application No. 19549 of 2021 (DOJ: 09/12/2021)]**
- Goods in transit cannot be confiscated for change route or undervaluation of goods unless authority justified to evade payment of tax



CASE LAWS : EWAY BILL – Typographical /Clerical Error



❖ Godrej Consumer Products Ltd. Vs.. ACST&E-Cum- GIB/HP/ Godrej Consumer/11-02-2020/HC-67

- Incorrect distance mentioned in the EWB due to typographic error resulting in expiry of the validity period
- **Held: Typographic error may be treated as a minor one and in such case**, if the demand and penalty have been levied by the proper officer u/s 129, the same need to be refunded to the supplier.

❖ Umiya Enterprise Vs.. Assistant State Tax Officer, 2020-VIL-50-KER

- Detention of goods on the ground that tax on invoice shown as CGST: SGST as against IGST but e-way bill declared correct tax as IGST
- **Held: The High Court observed that a clerical error on the invoice will not prejudice the Revenue.** Since there is no question of evasion of tax; goods to be released on executing a simple bond instead of issuing bank guarantee for the demand raised.



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“Every Big Change is HARD at first,

MESSY in the Middle and

GORGEIOUS at the End”

– Robin Sharma



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