



HOW TO HANDLE GST APPEALS EFFECTIVELY?

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Indirect Tax committee of NIRC of ICAI (2023-24)

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Common issues faced in notices/appeals

- GSTR 2A and 3B mismatch
- GSTR 1 and 3B mismatch
- Penalty
- Payment under protest
- Pre deposit
- Other common issues

Study and drafting of facts

- Detailed discussion with client
- Detailed study of the documents
- Disclosure in GST returns and other places
- Checking with third parties, wherever required

How to check notice/order

- Study of chain of documents
- Delivery of notice
- Timelines
- Provisions violated are mentioned?
- Grounds for invocation of Section 74 are mentioned?
- Section under which issued mentioned?
- Nature of offence mentioned?
- Replies given by taxpayers considered or not?
- Opportunity of being heard given or not?

Position of law

- Legal provisions on the subject matter
- Provisions in the relevant the time period and subsequent amendments
- Jurisprudence under GST law
- Jurisprudence under Service Tax, Excise, Customs and VAT
- Jurisprudence in other laws – Income Tax and others
- Jurisprudence under Foreign laws

Drafting

- Grounds of appeals
- Multiple grounds
- Names of grounds
- Synopsis
- Additional grounds at time of hearing
- Hearing to be granted

GSTR 2A and 3B mismatch

GSTR 2A and 3B mismatch

- Exact reason and period to be ascertained – whether supplier paid tax or not
- Not applicable to imports and RCM. Self auto-population facility for import BoEs (Circular No. 123/2019)
- Matching with Table 8A of GSTR 9
- Relaxation during covid period [Feb 2020 to Aug 2020 (NN 30/2020 CT) and Apr 2021 to June 2021 (NN 27/2021 CT)]

GSTR 2A and 3B mismatch

- Whether coming late in 2A calls for interest?
- Rate of interest – 18% as per Section 50(3) w.r.e.f. 01.07.2017
- Interest only on ITC availed and utilized. No interest on ITC availed but not utilized
- Closing balance in all heads of ITC to be checked (E.g.
 - ITC excess availed in IGST – Rs. **200**.
 - ITC available in E-credit ledger: CGST – 150 and IGST – 100 and SGST – 100. Total - Rs. **350**.

GSTR 2A and 3B mismatch

Period	Margin	Basis
FY 17-18, 18-19, 19-20 (Upto 09.10.2019)	Not defined	GSTR 2A
09.10.2019 to 31.12.2019	20%	GSTR 2A
01.01.2020 to 31.12.2020	10%	GSTR 2A/2B
01.01.2021 to 31.12.2021	5%	GSTR 2A/2B
01.01.2022 onwards	Nil	GSTR 2B

GSTR 2A and 3B mismatch

Suncraft Energy Private Limited (Calcutta High Court) - SLP dismissed by SC

ITC cannot be denied to recipient without due investigation of supplier

Gargo Traders (Calcutta High Court)

ITC cannot be denied to genuine buyer if GSTIN of supplier is cancelled retrospectively

Section 16(4) notice

- GSTR 3B filed after due date of September of next FY
- E.g. GSTR 3B for FY 2020-21 filed on 31 December 2021
- GSTR 3B not allowed to be filed without payment of tax
- Tvl. Kavin HP Gas Gramin Vitrak (Madras HC) – ITC allowed

GSTR 1 and 3B mismatch

- Invoice shown in GSTR 1 but not in GSTR 3B
- Credit note shown in GSTR 3B but not in GSTR 1
- Whether actual supply made or not?
- Late reporting in GSTR 1 and GSTR 3B
- Clerical mistake in GSTR 1
- Explanation to Section 75

Eicher Motors Limited (Madras HC)

- For payment of tax, filing the monthly returns is not required but the last date for filing monthly return is important.
- For payment of tax to the account of Government, filing of GSTR-3B is immaterial.
- Merely, for the default in filing the GSTR-3B, the utilisation of tax amount, which was already deposited into the account of Government, cannot be postponed.
- Once GSTR-3B is filed, the total tax would be quantified, by which it would be ascertained about the discharge of tax liabilities.
- If GST has been paid by generating GST PMT-06 before due date, no interest.
- Not followed Megha Engineering (Telangana HC)

Retrospective cancellation

Retrospective cancellation

- Reason for retrospective cancellation
 - Allegation of no goods/services supplied at all
 - Allegation of received from unregistered persons
- Effective date of cancellation to be checked. Pre effective date cancellation invoices – ITC available without dispute
- Whether goods/services actually received by recipient?
- Proof of receipt – Goods (Invoice/PO/E-way bill/LR/Toll tax/GRN), services (Invoice/PO/correspondence/proof)

Retrospective cancellation: Judgments

Gargo Traders (Calcutta High Court)

ITC cannot be denied to genuine buyer if GSTIN of supplier is cancelled retrospectively

Relied upon the judgement of M/s. LGW Industries Ltd. & ors. v. Union of India & ors. [WPA 23512 of 2019].

Other common issues for notices/appeals

- Common ITC reversal on Exempt supply
- 26AS and GST mismatch
- E-invoicing
- E-way bill and GSTR 3B mismatch
- Non-Filing of 3B by supplier
- Notices based on ineligible ITC in GSTR 2A but not in GSTR 3B
- ITC reversal on commercial CN and incentives
- Non-payment to vendors within 180 days

Interest payment

- When applicable and when not?
- Cash or ITC?
- Late reporting of invoices in GSTR 3B
- Debit notes
- ITC reversals

Penalties

Section 73 vs. Section 74

Section 73

- 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, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax,.....

Section 74

- Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilized by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax,.....

Section 73 vs. Section 74

Common cases where fraud cannot be alleged

- Interpretational issues (contradicting judgments of high courts/tribunal/favourable order in preceding period/favourable SCN/OIO)
- Facts already informed to department earlier
- Subsequent period SCN
- HSN classification
- Revenue neutrality (RCM, recipient eligible to claim ITC)
- Proper disclosure in financial statements

- **Separate grounds should be prepared for non-imposition of penalty**

Penalties

Stage	Section 73	Section 74
Before SCN	No penalty	15% of tax
Within 30 days of SCN	No penalty	25% of tax
Within 30 days of OIO	10% of tax	50% of tax
After 30 days of OIO	10% of tax	100% of tax

- No penalty on interest amount
- Penalty u/s Section 73 if paid after 30 days of SCN but before OIO?

NN 09/2023 – CT dated 31.03.2023

Time limit to issue order u/s 73(10) has been increased by invoking the provisions of Section 168A of the CGST Act, 2017.

Basis for extension ?

Period	Due date of GSTR 9	Old time limit u/s 73	New time limit u/s 73	Time limit u/s 74
2017-18	05.02.2020	30.09.2023	31.12.2023	05.02.2025
2018-19	31.12.2020	31.12.2023	30.04.2024	31.12.2025
2019-20	31.03.2021	31.03.2024	31.08.2024	31.03.2026

SCN – 3 months

SCN – 6 months

Payment under protest

- Meaning – Payment of tax without admitting liability
- Letter of protest to be given to department
- Letter can be given post payment as well
- DRC-03 – Section 73(5)/74(5) not to be selected
- Mention in reasons/ other remarks – ‘Under protest’
- In case, no proceedings undertaken by dept, send 2 reminder letters and then apply for refund

Pre-deposit

- Payment of pre-deposit using ITC
- Tax already paid before filing APL-01
- Under protest payment can be made as pre-deposit

Other common issues

- Non-acknowledgement of documents
- Payment made during investigation – Under protest
- Arrest only above 5 crs. Arrest memo must.
- Distribution of ISD vs Cross charge (Circ. No. 199/2023)
- GST on penalty/LD/notice pay
- Cross examination
- Cum-Duty benefit

Other common issues

- Time limit for SCN – Extension under Section 168A
- Jurisdiction (Cannon India)
- Vague charges in SCN (like unclear classification)
- AI generated notices
- Order going beyond SCN
- Supply of RUD's / non -RUD's

When and how to file writ in High Court -directly

- No alternate remedy available
- Filing after condonable delay period
- Challenge to the provision of statute
- Authorities acting in excess of their jurisdiction
- Gross violation of natural justice
- No response from department after repeated follow-ups
- Any other case (as per discretion of HC)



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Thank You

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