# GST ASMT-10 to GSTAT

Organized by

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# ASSESSMENTS UNDER GST

Sections 59–64 | Overview

Sec. 59

## Self-Assessment

Every registered person shall self-assess taxes payable and furnish return

Sec. 60

## Provisional Assessment

Taxable person may request assessment on provisional basis if unable to determine value/rate

Sec. 61

## Scrutiny of Returns.

Proper Officer may scrutinize return and related particulars to verify correctness

Sec. 62

## Assessment of Non-filers.

Assessment of non-return filers by Proper Officer to the best of his judgement

Sec. 63

## Unregistered Persons

Assessment of persons liable to be registered or unregistered persons

Sec. 64

## Summary Assessment

Summary assessment in certain special cases to protect interest of revenue

# SECTION 59 — Self-Assessment

**Sec. 59**

***Statutory Provision***

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

## KEY ELEMENTS

**Who?**

Every registered person under the CGST Act is required to self-assess.

**What?**

Taxes payable under this Act shall be self-assessed by the registered person himself.

**How?**

By furnishing a return for each tax period as specified under Section 39.

## PRACTICAL ASPECTS

**Foundation of Compliance**

Self-Assessment is the bedrock of GST compliance. The taxpayer is primarily responsible for determining his own tax liability.

**No involvement of Dept.**

The department does not assess taxes in the first instance. Assessment is the obligation of the registered person.

**Cross-reference**

Linked to Section 39 (Furnishing of Returns) — GSTR-1, GSTR-3B, GSTR-9 as applicable.

# SECTION 60 — PROVISIONAL ASSESSMENT

Sec. 60

***Statutory Provision [Sec. 60(1)]***

*"Subject to the provisions of sub-section (2), where the taxable person is unable to determine the value of goods or services or both or determine the rate of tax applicable thereto, he may request the proper officer in writing giving reasons for payment of tax on a provisional basis and the proper officer shall pass an order, within a period not later than 90 days from the date of receipt of such request, allowing payment of tax on such provisional basis."*

| STEP 1 | STEP 2 | STEP 3 | STEP 4 | STEP 5 |
|---|---|---|---|---|
| Taxable Person unable to determine value or rate of tax | Written Request to Proper Officer with reasons | Proper Officer passes order( Provisional) within 90 days | Payment of Tax on Provisional Basis | Final Assessment order [Sec. 60(2)] & Refund/Demand |

### Sec. 60(3) — Final Assessment

The proper officer, after taking into account such information as may be required and after allowing the person concerned an opportunity of being heard, shall pass the final assessment order within 6 months from the date of the provisional order. This period may be extended by Joint Commissioner / Additional Commissioner for further period of 6 months and by Commissioner for such further period not exceeding 4 years.

### Interest on Differential Tax

Where the tax finally assessed is higher than provisional tax: interest is payable from first day after the due date of payment of tax in respect of the supply till the actual date of payment. Where final tax is lower, refund shall be granted and interest @ 6% p.a. is payable on such refund if not granted within 60 days.

### Bond/Security

Under Sec. 60(2), the proper officer may require taxable person to execute a bond with security for the amount of tax difference as may be decided. Bond format prescribed under Rule 98 of CGST Rules, 2017.

# SECTION 61 — SCRUTINY OF RETURNS

Sec. 61

*Statutory Provision [Sec. 61(1)]*

*"The proper officer may scrutinize the return and related particulars furnished by the registered person to verify the correctness of the return and inform the registered person of the discrepancies noticed, if any, in such manner as may be prescribed and seek his explanation thereto."*

The Proper officer shall communicate discrepancy via FORM GST ASMT-10.

### Sec. 61(2) — Taxpayer's Response

- If the explanation furnished by registered person is found acceptable, the proper officer shall inform him accordingly and no further action shall be taken in that behalf.
- Acceptance of explanation → matter is dropped → No assessment order required.
- Taxpayer should submit response within 30 days of the notice or such extended period as may be permitted by the officer .
- Registered person shall file reply in FORM GST ASMT-11.

### Sec. 61(3) — No Satisfactory Explanation

- If the registered person fails to provide explanation, or the explanation provided is found unacceptable,
- The proper officer shall initiate appropriate action including those under Section 65 (Audit), Section 66 (Special Audit) or Section 67 (Inspection, Search & Seizure),
- OR proceed to determine tax liability under Section 73 or Section 74 as the case may be.
- FORM GST ASMT-12 is issued by proper officer for acceptance or for further action.

# SECTION 62 — ASSESSMENT OF NON-FILERS OF RETURNS

Sec. 62

***Statutory Provision [Sec. 62(1)]***

*"**Notwithstanding** anything to the contrary contained in section 73 or section 74 or section 74A, where a registered person fails to furnish the return under section 39 or section 45 even after the service of a notice under section 46, the proper officer may proceed to assess the tax liability of the said person to the best of his judgement taking into account all the relevant material which is available or which he has gathered and issue an assessment order within a period of 5 years from the date specified under section 44 for furnishing of the annual return for the financial year to which the tax not paid relates."*

## Trigger Condition

- Registered person FAILS to furnish retrun -u/s 39 (GSTR-3B) or u/s 45 (Final Return)
- Even after service of return defalter Notice under Section 46 in Form GSTR-3A
- Section 46 notice: 15-day time given to file return

## Officer's Power

- Proper Officer assesses tax liability to BEST OF HIS JUDGEMENT
- Takes into account all relevant material available or gathered
- Issues formal Assessment Order ( ASMT-13) within 5 years from due date u/s 44 for annual return

## Section 62(2) — Withdrawal

- Where the registered person furnishes a valid return within 60 days of service of the assessment order,
- The said assessment order shall be deemed to have been WITHDRAWN
- Interest u/s 50 & Late fee u/s 47 shall still be applicable on such return
- Further extended period of 60 days ( beyond first 60 days) is available subject to payment of Additional Late Fees

# SECTION 63
# — ASSESSMENT OF UNREGISTERED PERSONS

Sec. 63

***Statutory Provision [Section 63]***

*"**Notwithstanding** anything to the contrary contained in section 73 or section 74 or section 74A, where a taxable person fails to obtain registration even though liable to do so or whose registration has been cancelled under sub-section (2) of section 29 but who was liable to pay tax, the proper officer may proceed to assess the tax liability of such taxable person to the best of his judgement for the relevant tax periods and issue an assessment order within a period of 5 years from the date specified under section 44 for furnishing of the annual return for the financial year to which the tax not paid relates."*

## TWO CATEGORIES OF PERSONS COVERED

### Category 1 — Persons FAILING to obtain registration though LIABLE to do so

- Person is required to register u/s 22 or 24 of CGST Act but has not obtained registration
- Proper Officer may make best judgement assessment for relevant tax periods
- Notice u/s 63 (in ASMT-14)
- Assessment order to be issued within 5 years from due date u/s 44 for annual return
- Rule 100 of CGST Rules — Assessmnent order in FORM GST ASMT-15

### Category 2 — Persons whose registration has been CANCELLED u/s 29(2) but were liable to pay tax

- Cancellation of registration under Sec. 29(2): suo moto cancellation by proper officer
- Despite cancellation, if person was liable to pay tax during the period — can be assessed
- Best judgement assessment for the relevant tax periods even post-cancellation
- Assessment order within 5 years from due date u/s 44 for relevant financial year
- Opportunity of being heard to be given before passing order (natural justice)

# SECTION 64 — SUMMARY ASSESSMENT IN CERTAIN SPECIAL CASES

**Sec. 64**

***Statutory Provision [Sec. 64(1)]***

*"The proper officer may, on any evidence showing a tax liability of a person coming to his notice, with the previous permission of Additional Commissioner or Joint Commissioner, proceed to assess the tax liability of such person to protect the interest of revenue and issue an assessment order, if he has sufficient grounds to believe that any delay in doing so may adversely affect the interest of revenue:*
*Provided that where the taxable person to whom the liability pertains is not ascertainable and such liability pertains to a supply of goods, the person in charge of such goods shall be deemed to be the taxable person liable to be assessed and pay tax thereon."*

## Prerequisites

- Evidence showing tax liability coming to notice of proper officer
- Previous permission of Additional Commissioner or Joint Commissioner is MANDATORY
- Sufficient grounds to believe that DELAY may adversely affect interest of revenue
- Summary — no detailed enquiry/hearing before assessment

## Special Proviso

- Where taxable person is NOT ASCERTAINABLE and liability relates to supply of goods,
- Person in charge of such goods shall be deemed to be the taxable person
- He shall be liable to be assessed and pay tax thereon
- E.g.: Goods in transit without proper documentation — person in charge of goods assessed

## Sec. 64(2) — Withdrawal

- On application made by taxable person within 30 days of receipt of order,
- The Additional Commissioner or Joint Commissioner may WITHDRAW the assessment order
- Withdrawal allowed if such order is erroneous
- Normal proceedings u/s 73 or 74 or 74A shall then be initiated

⚠️ Key: Summary Assessment under Sec. 64 is an EMERGENCY power — it does not replace regular assessment u/s 73/74./74A Prior permission of AC/JC is mandatory.

# CGST RULES 2017 & PRESCRIBED FORMS



| Section | Rule / Form | Form No. | Purpose / Particulars | By Whom |
|---|---|---|---|---|
| **Sec. 60** | Rule 98 | GST ASMT-01 | Application for Provisional Assessment | Taxable Person |
| **Sec. 60** | Rule 98 | GST ASMT-02 | Notice for seeking additional information / clarification / documents | Proper Officer |
| **Sec. 60** | Rule 98 | GST ASMT-03 | Reply to notice seeking additional information | Taxable Person |
| **Sec. 60** | Rule 98 | GST ASMT-04 | Order of Provisional Assessment | Proper Officer |
| **Sec. 60** | Rule 98 | GST ASMT-05 | Furnishing of Bond and Security | Taxable Person |
| **Sec. 60** | Rule 98 | GST ASMT-06 | Application for Final Assessment Order | Taxable Person |
| **Sec. 60** | Rule 98 | GST ASMT-07 | Final Assessment Order | Proper Officer |
| **Sec. 60** | Rule 98 | GST ASMT-08 | Application for release of Bond | Taxable Person |
| **Sec. 61** | Rule 99 | GST ASMT-10 | Notice for intimating discrepancies in the return | Proper Officer |
| **Sec. 61** | Rule 99 | GST ASMT-11 | Reply to the notice of discrepancy | Registered Person |
| **Sec. 61** | Rule 99 | GST ASMT-12 | Order dropping proceedings / communicating action | Proper Officer |
| **Sec. 62** | Rule 100 | GST ASMT-13 | Assessment Order for non-filer of return (Best Judgement) | Proper Officer |
| **Sec. 63** | Rule 100 | GST ASMT-14 | Notice for Assessment of unregistered person showing cause | Proper Officer |
| **Sec. 63** | Rule 100 | GST ASMT-15 | Assessment Order for unregistered/non-registered person | Proper Officer |
| **Sec. 64** | Rule 100 | GST ASMT-16 | Summary Assessment Order | Proper Officer |
| **Sec. 64** | Rule 100 | GST ASMT-17 | Application for withdrawal of summary assessment order | Taxable Person |
| **Sec. 64** | Rule 100 | GST ASMT-18 | Order of withdrawal / rejection of summary assessment order | AC / JC |

# COMPARATIVE ANALYSIS — SECTIONS 59 to 64

| Feature | Sec. 59<br>Self-Assessment | Sec. 60<br>Provisional | Sec. 61<br>Scrutiny | Sec. 62<br>Non-filer | Sec. 63<br>Unregistered | Sec. 64<br>Summary |
|---|---|---|---|---|---|---|
| **Who initiates?** | Registered Person | Taxable Person (on request) | Proper Officer | Proper Officer | Proper Officer | Proper Officer (with prior permission) |
| **Trigger** | Mandatory compliance — each return period | Unable to determine value / rate | Discrepancy found in return | Non-filing even after Sec. 46 notice | Non-registration or suo motu cancellation u/s 29(2) | Evidence of liability; delay may harm revenue |
| **Prior Notice?** | N/A | Written request by taxpayer | ASMT-10 Notice | Sec. 46 Notice - GSTR-3A (mandatory) | ASMT-14 SCN | No prior notice; prior permission of AC/JC required |
| **Time Limit (Order)** | As per return due date | Provisional: 90 days; Final: 6 months (extendable) | No specific limit u/s. 61 ( Time limits applicable to Sec.65 to 67 and SCN would apply) | 5 years from due date u/s 44 | 5 years from due date u/s 44 | No separate limit; governed by urgency |
| **Withdrawal possible?** | N/A | Final assessment replaces provisional | Order dropped if explanation accepted | Yes — within 60 ( + addl.60) days of order by filing valid return and payment of Interest, late fees, addl.fees | No provision for withdrawal | Yes — within 30 days; by AC/JC |
| **Key Form** | GSTR-3B / GSTR-1 | ASMT-01 to 08 | ASMT-10 to 12 | ASMT-13 | ASMT-14 & 15 | ASMT-16 to 18 |
| **Overrides Sec. 73/74/74A?** | No | No | No — Initiation of notice under section 73/74/74A if unresolved | Yes — Notwithstanding Sec. 73/74/74A | Yes — Notwithstanding Sec. 73/74/74A | Yes — Special emergency power |

## Sec. 61 – Issue 1

**Whether the Department can initiate or continue proceedings under Section 73 on the very same discrepancies after scrutiny proceedings under Section 61 have been concluded and the taxpayer's explanation has already been accepted through issuance of FORM GST ASMT-12?**

**Judgement in Favour of Taxpayer:**

***Goverdhandham Estate Pvt. Ltd. v. State of Rajasthan***

*[2025] 170 taxmann.com 727 (Raj.) / [2025] 108 GST 543 / [2025] 95 GSTL 264*

The Rajasthan High Court held that once the explanation furnished against discrepancies under ASMT-10 is accepted and proceedings are closed through ASMT-12, further proceedings under Section 73 on the same discrepancies are impermissible.

***Joint Commissioner v. Goverdhandham Estate Pvt. Ltd.***

*[2025] 170 taxmann.com 728 (SC) / [2025] 108 GST 536 / [2025] 95 GSTL 263*

The Supreme Court dismissed the Department's SLP and affirmed the above principle.

***Kemexel Ecommerce Pvt. Ltd. v. Sales Tax Officer***

*[2025] 180 taxmann.com 218 (Delhi) / [2025] 112 GST 774 / [2026] 104 GSTL 116*

The Delhi High Court held that acceptance of reply through ASMT-12 creates a statutory embargo against reopening proceedings on identical grounds.

## Sec. 61 – Issue 2

**Whether issuance of FORM GST ASMT-10 under Section 61 read with Rule 99 is a mandatory procedural requirement before initiating proceedings under Section 73 where the proposed demand arises from discrepancies noticed during scrutiny of returns?**

**Judgement in Favour of Taxpayer:**

***Pepsico India Holdings Pvt. Ltd. v. Union of India*** *[2025] 178 taxmann.com 743 (Gauhati)*

The Court held that where proceedings arise from discrepancies identified during scrutiny of returns, the statutory process under Section 61 including issuance of ASMT-10 must be followed before invoking Section 73.

***Amex Services v. Dy. Comm., State Tax, Assansol Charge*** *[2024] 163 taxmann.com 242 (Calcutta)*

The Court held that failure to provide ASMT-10 deprived the taxpayer of an effective opportunity to respond and consequently vitiated proceedings on grounds of violation of principles of natural justice. The order under Section 73(9) was kept in abeyance.

**Judgment in Favour of Revenue:**

***Mandarina Apartment Owners Welfare Association v. Commercial Tax Officer***

*[2024] 164 taxmann.com 803 (Madras)*

The Madras High Court held that scrutiny proceedings and adjudication proceedings operate independently and issuance of ASMT-10 is not a mandatory precondition in all circumstances before invoking Section 73.

# Sec. 61 – Issue 3

**Whether the powers under Section 61 permit the Proper Officer to travel beyond discrepancies in returns and undertake examination of valuation issues, market comparisons, or matters not arising directly from return data and related particulars?**

**Judgement in Favour of Taxpayer :**

***Sri Ram Stone Works v. State of Jharkhand***

*[2025] 174 taxmann.com 475 (Jharkhand) / [2025] 98 GSTL 424*

The Court held that Section 61 scrutiny is restricted to discrepancies in returns and related particulars and cannot extend to comparison of sale prices with market values.

# Audits under GST

| ~~(Audit removed)~~ Reconciliation statement u/s 35(5) | Audit by Tax Authorities u/s 65(1) | Special Audit u/s 66(1) |
|---|---|---|
| • GSTR-9C | • By Commissioner or any officer authorized by him | • By GST department in specific matters through Chartered Accountant or Cost Accountant |

# Audit - Meaning

**As per Sec. 2(13) of the CGST Act – Audit means -**

Examination of records, returns and other documents maintained or furnished by the registered person under this Act or Rules made thereunder or under any other law for the time being in force to:-

- Verify the correctness of turnover declared
- Taxes paid,
- refund claimed
- and input tax credit availed.

# Section 65. Audit by tax authorities.-

- The Commissioner or any officer authorised by him, by way of a general or a specific order, may undertake audit of any RP for such period, at such frequency and in such manner as may be prescribed.
- Audit Team of Officers to visit the place of business of the RP or in their office with at least 15 days prior notice in **FORM GST ADT-01**
- Audit to be completed within a period of 3 months from the date of commencement of the audit:
- Can be extended upto 6 months for reasons to be recorded in writing
- **"commencement of audit"** shall mean :
- the date on which the records and other documents, called for by the tax authorities, are made available by the RP
- or the actual institution of audit at the place of business, **whichever is later.**
- The period of Audit u/s 65(1) shall be a financial year or part thereof or multiples thereof.( Rule 101(1))

# …Section 65. Audit by tax authorities.-

- During the course of audit, the authorised officer may require the registered person, -
- (i) to afford him the necessary facility to verify the books of account or other documents as he may require;
- (ii) to furnish such information as he may require and render assistance for timely completion of the audit.
- On conclusion of audit, the proper officer shall, within 30 days, inform the RP, whose records are audited, about the findings, his rights and obligations and the reasons for such findings.
- **Discrepancies/observation Letter** may be issued by the Officer, which can be replied by the RP before conclusion of the Audit.( Rule 101(4))
- Audit Findings – **Form GST-ADT-02**
- Where the audit results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the proper officer may initiate action under section 73 or section 74 or section 74A.

# Sec. 65 – Issue 1

**Whether an audit report issued under Section 65 can be challenged where the taxpayer has furnished a detailed reply to the discrepancy notice, but the audit authorities finalize the audit without considering the explanation or without granting proper opportunity of hearing?**

**Judgement in Favour of Assessee:**

**M/s PBL Transport Corporation Pvt. Ltd. v. Assistant Commissioner (ST)**

*[2024 158 taxmann.com 552 (Andhra Pradesh)]*

The Hon'ble Andhra Pradesh High Court held that failure to consider the taxpayer's reply to discrepancy notices before finalization of audit proceedings amounts to violation of principles of natural justice and renders the audit report unsustainable.

# Sec. 65 – Issue 2

**Whether the Department can conduct audit proceedings under Section 65 against a taxpayer whose GST registration already stands cancelled?**

**Judgment in Favour of Taxpayer:**

**M/s Tvl. Raja Store v. Assistant Commissioner** *[2023 153 taxmann.com 657 (Madras)]*

The Madras High Court held that audit under Section 65 cannot be conducted against an unregistered person after cancellation of registration. The Department may instead invoke proceedings under Sections 73 or 74 for determination of tax liability.

**Judgement in Favour of Revenue:**

**M/s Ashoka Fabricast Pvt. Ltd.** *[2024 162 taxmann.com 719 (Rajasthan)]*

The Rajasthan High Court held that Section 29(3) of CGST Act provides cancellation does not affect liability for prior period and the power to conduct audit survives even after cancellation of registration where the taxpayer was duly registered during the relevant period for which audit is sought to be conducted. In the present case, the judgment of M/s Tvl. Raja Store (Supra) has been considered and overruled based on the facts of the present case.

# Sec. 65 – Issue 3

**Whether closure of audit proceedings u/s 65 without adverse findings bars subsequent investigation, inquiry, scrutiny, or adjudication proceedings for the same tax period?**

**Position under Law:**

- Section 65 does not expressly provide finality or immunity against future proceedings merely because audit was concluded without adverse observations.
- The Department may still initiate:
  - Scrutiny under Section 61,
  - Investigation under Section 67,
  - Demand proceedings under Sections 73 or 74,
  - Intelligence-based investigations, if fresh material or independent information subsequently emerges.
- If the same parameter is specifically covered under the Audit Report, the Jurisdictional/Investigating Officer, being unaware of the said Audit Report may issue another notice for the same parameter. However, after consideration of the Audit Report, the department may drop the proceedings based on the verification of the Audit Report and the same parameter.
- However, repeated proceedings on identical facts without fresh material may be challenged on grounds of Change of opinion, Abuse of process, Revenue harassment, Violation of Section 6(2)(b), wherever applicable.

# Sec. 65 – Issue 4

**Whether Central GST authorities can initiate audit proceedings u/s 65 for the same financial years and subject matter where audit proceedings and adjudication have already been undertaken by State GST authorities?**

**<u>Judgement in Favour of Taxpayer:</u>**

**Abdur Rouf Khan v. Superintendent of Central Tax, Kolkata**

*[2025 177 taxmann.com 604 (Calcutta)]*

The Calcutta High Court held that where audit had already been conducted for **FY 2018-19 to 2021-22** and adjudication orders under Section 73 had already been passed by State GST authorities, there was no scope for Central GST authorities to undertake another audit under Section 65 for the same period. The Court restricted the proposed audit only to **FY 2017-18** and **FY 2022-23** only, which was not covered already by the State authorities.

**Relevant Statutory Provision:**

**Section 6(2)(b) of the CGST Act, 2017**

Provides that where proceedings on a subject matter have been initiated by officers under SGST/UTGST Act, proceedings on the same subject matter should not be initiated under the CGST Act.

# Sec. 65 – Issue 5

**Whether audit proceedings under Section 65 and investigation proceedings under Section 67 (Inspection, Search and Seizure) or proceedings by Anti-Evasion authorities can simultaneously continue against the same taxpayer for the same tax period and subject matter?**

**Judgement in Favour of Taxpayer:**

**R. P. Buildcon (P.) Ltd. v. Supdt., CGST & C. Ex.** *[2022 144 taxmann.com 108 (Calcutta)]*

The Calcutta High Court held that once audit proceedings under Section 65 had already commenced, such proceedings should be taken to their logical conclusion and simultaneous proceedings initiated by the Anti-Evasion Wing and Range Office for the same period should not continue further. The Court directed the Department to complete the audit proceedings and restrained further continuation of notices issued by the Anti-Evasion Wing and Range Office for the same tax period.

**Judgement in Favour of Revenue:**

**Suresh Kumar P.P. v. Deputy Director, DGGI** *[2020 120 taxmann.com 173 (Kerala)]*

The Kerala High Court held that audit proceedings under Section 65 are independent of investigation proceedings under Section 67 and therefore both proceedings may continue simultaneously. **SLP against the above judgment was dismissed by the Supreme Court *[2021] 125 taxmann.com 61 (SC)]***, thereby affirming the principle that audit and investigation proceedings can run concurrently.

**Judicial Position:** Divergent judicial views presently exist.

# Section 66. Special Audit.

- If at any stage of scrutiny, inquiry, investigation or any other proceedings before him, any officer not below the rank of Assistant Commissioner, having regard to the nature and complexity of the case and the interest of revenue, is of the opinion that :
  - the **value** has not been correctly declared or
  - the **credit availed** is not within the normal limits,
- he may, with the prior approval of the Commissioner, direct such RP by a communication in writing to
- get his records including books of account examined and audited by a chartered accountant or a cost accountant as may be nominated by the Commissioner.
- Special Audit report to be submitted within 90 days ( extension of 90 days-subject to approval and reasons)

# … Section 66. Special Audit.

- Spl Audit is notwithstanding that the accounts of the RP have been audited under any other provisions of this Act or any other law for the time being in force.

- The RP shall be given an opportunity of being heard in respect of any material gathered on the basis of special audit which is proposed to be used in any proceedings against him

- The **expenses of the examination and audit** of records including the remuneration of such chartered accountant or cost accountant, shall be determined and **paid by the Commissioner** and such determination shall be final.

- Where the special audit results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the proper officer may initiate action under Section 73 or Section 74 or Section 74A.

# Sec. 66 – Issue 1

**Whether Special Audit under Section 66 can be ordered where no proceedings are pending against the taxpayer?**

**Legal Position:**

Section 66 requires formation of opinion by the Proper Officer during the course of proceedings regarding:

- Complexity of accounts,
- Doubts about correctness of value,
- Abnormal utilization of ITC,
- Multiplicity of transactions.

If no proceedings are pending, such as:

- No scrutiny under Section 61,
- No inquiry under Section 70,
- No inspection/investigation under Section 67,
- No adjudication proceedings, then Section 66 cannot be invoked.

**Conclusion:**

Department cannot ordinarily invoke Special Audit in absence of pending proceedings. Such invocation may be challenged as being without jurisdiction.

# Sec. 66 – Issue 2

**Whether Special Audit under Section 66 can be directed where refund claims involve complex calculations and alleged incorrect availment?**

**Legal Position:**

Where refund proceedings under Section 54 are pending and:

- computational complexity exists,
- reconciliation is difficult,
- allegations of incorrect refund computation arise, the Proper Officer may invoke Section 66.

Refund adjudication itself constitutes “proceedings” for purposes of Section 66.

# Section 73 – Issue of SCN


**For any reason <u>other than</u>** fraud or any wilful-misstatement or suppression of facts

show cause as to why he should not pay the amount specified in the notice

Along with interest under sec 50 and a penalty leviable under the provisions of this Act or the Rules made thereunder.

- Where it appears that

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

# Section 74 – Issue of SCN


**By reason of fraud or** any wilful-misstatement or suppression of facts to evade tax

show cause as to why he should not pay the amount specified in the notice

Along with interest payable thereon under sec 50 and a **penalty equivalent to the tax** specified in the notice.

- Where it appears that:

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

# Section 73(2), (10)– Time limit

- SCN should be issued at least **3 months prior** to the time limit specified for passing the order determining amount of tax, interest and penalty payable

- The order referred has to be passed within **3 years** from the due date of furnishing the Annual return for the F.Y. to which such tax not paid/ short paid etc relates to
- Or **3 years** from date of erroneous refund

- Thus effectively the time limit for issuance of SCN is **2 years and 9 months** from annual return / erroneous refund

# Statement in Lieu of a Full Notice 73(3),(4)

- Mr. X, a taxpayer, receives a SCN for F. Y. 2021-22 for wrong availment of ineligible credit (ITC on Motor Car). Let us assume that, the same mistake has continued in the years 2022-23 and 2023-24.
- In this situation, as a SCN would have already been served for the year 2021-22, the Department will not be required to issue a full-fledged SCN again for the subsequent years.
- A ‘statement of demand’ containing the reference of the previous SCN and details of tax demanded or ITC to be reversed for the period in question can be issued along with the summary of demand in Form GST DRC-02.
- However, this statement of demand will be held as valid “show cause notice” only if the grounds relied upon for the said tax periods are the same as are mentioned in the earlier notice for the first year. This is an option and not mandatory but considered as a facility to ensure ease of making demands for ‘further period’ on identical issues.

# Section 73(5),(6),(7) – Payment of tax before issuance of SCN

- The person chargeable with tax may, **before service of notice** under sub-section (1) or, as the case may be, the statement under sub-section (3),
- pay the amount of tax **along with interest payable thereon** under section 50 on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer **and inform the proper officer in writing** of such payment

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

- Where the proper officer is of the opinion that the amount paid under sub-section (5) **falls short of the amount actually payable,**
- he shall proceed to issue the notice as provided for in subsection (1) in respect of such amount which falls short of the amount actually payable.

# Section 73(8),(9), (11) - Payment of tax after issuance of SCN

- Where any person chargeable with tax under sub-section (1) or sub-section (3) pays the said tax along with interest payable u/s 50
- **within 30 days of issue of SCN,**
- **no penalty** shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.

- The proper officer shall, after considering the representation, if any, made by person chargeable with tax,
- determine the amount of tax, interest and a **penalty equivalent to 10% of tax or Rs. 10,000, whichever is higher**, due from such person and issue an order in Form DRC-07 alongwith summary of the order

- Notwithstanding anything contained in sub-section (6) or sub-section (8),
- penalty under subsection (9) shall be payable
- where any amount of self-assessed tax or any amount collected as tax
- has **not been paid within 30 days from the due date of payment of such tax.**

# Sec. 73(6) & Sec. 73(7) – Issue

**Illustration 1 – Short Payment Before Issuance of SCN (Section 73(6))**

| Particulars | Tax Liability (₹) | Interest Liability (₹) |
|---|---:|---:|
| Liability Identified | 1,00,000 | 10,000 |
| Amount Paid Before Issuance of SCN | 90,000 | 9,000 |
| Short Payment / Balance Liability | 10,000 | 1,000 |

**Whether benefit under Section 73(6), non-issuance of SCN for the amount voluntarily paid, can still be availed despite partial short payment?**

**<u>Legal Position:</u>**

- Section 73(5) permits voluntary payment of tax along with applicable interest before issuance of SCN.
- Section 73(6) provides that upon such payment, no notice shall be issued in respect of the amount so paid.
- Therefore, SCN may still be issued under Section 73(7) for:
  - Balance tax of ₹10,000,
  - Balance interest of ₹1,000.
- Penalty exposure may survive only on the unpaid portion and not on the amount already voluntarily discharged.

# Sec. 73(6) & Sec. 73(8) – Issue

**Illustration 2 – Payment After Issuance of SCN Within 30 Days (Section 73(8))**

| Particulars | Tax Liability (₹) | Interest Liability (₹) |
|---|---|---|
| Liability Determined in SCN | 2,00,000 | 20,000 |
| Amount Paid Within 30 Days of SCN | 2,00,000 | 18,000 |
| Short Payment / Balance Liability | NIL | 2,000 |

**Whether benefit of waiver of penalty under Section 73(8) can be denied due to short payment of interest despite full payment of tax within prescribed period?**

**<u>Legal Position:</u>**

- Section 73(8) grants immunity from penalty where:
  - Tax along with applicable interest is paid within 30 days of issuance of SCN.
- Since interest liability was not fully discharged:
  - Technical compliance of Section 73(8) remains incomplete.
- Department may contend that:
  - penalty waiver is unavailable due to incomplete payment of statutory dues.
- However, taxpayer may argue:
  - substantial compliance exists,
  - shortfall is marginal and procedural,
  - penalty should not be imposed where tax stands fully discharged and there is no revenue loss.

# Important Distinction

| Particulars | Late Filing of Return | Delayed Payment of Tax |
|---|---|---|
| Nature of Default | Delay in furnishing GSTR-3B | Delay in discharge of self-assessed tax |
| Relevant Provision | Section 47 | Section 73(11) |
| Nature of Levy | Late Fee | Penalty |
| Trigger | Delay in filing prescribed return | Non-payment of self-assessed tax or tax collected within prescribed time |
| Purpose | Compensates procedural non-compliance | Penalizes non-payment / retention of Government revenue |
| Automatic Levy | Generally automatic on delayed filing | Requires invocation of Section 73 proceedings |
| Requirement of SCN | Not required for system late fee | Generally linked with proceedings under Section 73 |
| Circular No. 76/50/2018-GST | Not directly relevant | Clarifies that delayed filing with payment of tax + interest generally does not attract Section 73(11) penalty |
| Interest Liability | Separate and additional | Separate and compensatory under Section 50 |
| Litigation Position | Mostly procedural | Depends on facts, disclosure, intent, and nature of delay |

# Whether DRC-07 alone will suffice u/s73(9)?

- Form DRC-07 alone can't make an assessee liable to pay any tax, interest or penalty. **Shree Ram Agrotech v. State of Jharkhand [2023] 152 taxmann.com 82 (Jharkhand)**

- The petitioner received a recovery notice based on alleged summary order, which was based on DRC-07. However, the petitioner was not provided with show cause notice or detailed adjudication order in terms of Section 73 of GST Act.

- The Honorable High Court noted that the adjudication order was not available on records of the GST department. Since no detailed adjudication order, as required under section 73(9) was passed, the petitioner was not liable to pay any tax, interest or penalty only on basis of said Form DRC-07.

- The Court also noted that Form DRC-07, alone cannot make an assessee liable to pay any tax, interest or penalty and this ground was not considered by the Appellate Authority.
- Rule 142(5) also provides that summary of the order u/s 73 or 74 shall be uploaded electronically in Form DRC-07

## Can penalty be levied for delayed filing of return ?

- **Issue** : Whether penalty in accordance with Sec 73(11) should be levied in cases where GSTR-3B has been filed belatedly?
- **Clarification** : 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
- Circular No. 76/50/2018-GST dtd 31.12.2018

# Sec 74(2) read with Sec 74(10) – Time limit to issue SCN

- SCN should be issued at least **6 months prior** to the time limit specified for passing the order determining amount of tax, interest and penalty payable

- The order referred has to be passed within **5 years** from the due date of furnishing the Annual return for the F.Y. to which such tax not paid/ short paid etc relates to
- Or **5 years** from date of erroneous refund

- Thus effectively the time limit for issuance of SCN is **4 years and 6 months** from annual return / erroneous refund

# Section 74(5),(6) & (7) – Payment of tax before issuance of SCN

- The person chargeable with tax may, **before service of notice** u/s74(1),
- pay the amount of tax along with interest payable thereon under section 50
- and **a penalty equivalent to 15%** of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer
- and inform the proper officer in writing of such payment

- The proper officer, on receipt of such information,
- **shall not serve any notice** u/s 74(1) in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder

- Where the proper officer is of the opinion that the amount paid u/s74(5) **falls short of the amount actually payable**,
- he shall proceed to issue the notice as provided for in subsection (1)
- in respect of such amount which falls short of the amount actually payable.

# Section 74(8) - Payment of tax after issuance of SCN

- Where any person chargeable with tax under sub-section (1) pays the said tax along with interest payable under section 50 and **a penalty equivalent to 25%** of such tax
- **within 30 days of issue of the notice**, all proceedings in respect of the said notice shall be deemed to be concluded.

Where a person is chargeable with tax not paid/short paid etc and is issued a notice/statement under this section for reasons of fraud etc., misses the opportunity to pay tax along with interest and penalty equivalent to 15% of tax, before the issue of SCN,

- he has another chance to discharge tax alongwith interest payable under section 50 and penalty equivalent to 25% of tax within 30 days of issuance of SCN. All proceedings in respect of the said SCN shall be deemed to be concluded.

# Section 74(9) & (11) – Adjudication Order

- The proper officer shall, after considering the representation, if any, made by the person chargeable with tax,
- determine the amount of tax, interest and penalty due from such person and issue an order.

- Where any person served with an order issued u/s 74(9)
- pays the <u>tax along with interest</u> payable thereon under section 50 <u>and</u> **a penalty equivalent to 50% of such tax**
- **within 30 days of communication of the order**, all proceedings in respect of the said notice shall be deemed to be concluded.

# Explanation 1 to Sections 73 & 74

- The expression "all proceedings in respect of the said notice" shall not include proceedings under section 132 (punishment for Offences)

- Where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons,
- (Notice is issued on the person Chargeable with tax)
- and such proceedings against the main person have been concluded under section 73 or section 74,
- the proceedings against all the persons liable to pay penalty under sections 122 and 125 are deemed to be concluded.

# Scenario 1: Separate SCNs Issued

- **Facts:**
- Recipient R (main person) receives SCN under Section 74 for wrongful ITC of ₹10 lakhs
- Supplier S receives a **separate, independent SCN** under Section 74/122 for issuing invoice without supply
- R pays tax + interest + penalty → proceedings against R concluded
- **Implication:**
- Explanation 1(ii) **does NOT apply** (not "same proceedings")
- Penalty proceedings against S **continue independently**
- Department can adjudicate and impose penalty on S under Section 122

# Scenario 2: Single SCN to Both Parties

- **Facts:**
- One SCN issued to both Recipient R and Supplier S under Section 74
- R pays tax + interest + penalty → proceedings concluded against R
- **Implication:**
- Explanation 1(ii) **applies** (same proceedings)
- Penalty proceedings against S are **deemed concluded** by operation of law

# Explanation 2 to Sec. 73 & 74 - Meaning of Suppression

For the purposes of this Act, the expression "suppression" shall mean

- non-declaration of facts or information which a taxable person is required to declare
- - in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or
- failure to furnish any information on being asked for, in writing, by the proper officer.

**Whether non-disclosure of document summary in GSTR-1 amounts to suppression of facts ?**

# Suppression of facts…

- In the GSTAT ruling in the case of **Sterling and Wilson (P.) Ltd. v. Commissioner, Odisha [183 taxmann.com 374 / 106 GSTL 84]**, the Hon'ble GSTAT, Principal Bench, New Delhi, addressed the issue raised on the scope and applicability of Section 74 vis-à-vis Section 73 of the CGST Act, 2017 in circumstances where fraud, wilful misstatement or suppression of facts is absent.

**<u>The following legal propositions clearly emerge from the judgment of the Hon'ble GSTAT</u>:**

- Where transactions are duly recorded in the books of accounts, mere discrepancies or non-reflection in periodic returns do not amount to fraud or suppression for the purposes of invoking Section 74 of the CGST Act, 2017.

- The burden lies on the department to establish the existence of fraud, wilful misstatement, or suppression with intent to evade tax before invoking Section 74.

- In the absence of such ingredients, the proceedings can at best fall within the ambit of Section 73 of the CGST Act, 2017.

- Where the issue arises due to reconciliation issues, interpretational difficulty, or procedural limitations, the appropriate course is re-determination of liability after granting opportunity to the taxpayer.

# Intention to evade tax ?

- Hon'ble Mumbai CESTAT in the case of **M/s. Sands Hotel Pvt Ltd Vs. CCE, Mumbai (2009) 16 STR 329** held that mere detection of non-payment of taxes cannot be said to be suppression of facts with an intent to evade payment of taxes. Knowledge that tax was payable but still not paid is essential. Larger period cannot be invoked.

- Hon'ble Mumbai CESTAT in the case of **Kirloskar Power Equipments Ltd (2010) 17 STR 377** has held that where assessee are under a bonafide belief about non liability of Service tax, penalty u/s 76,77,78 of the Finance Act,1994 cannot be imposed.

- Hon'ble Mumbai CESTAT in the case of **Jagdish Oil Mills Vs CCE, Aurangabad (2010) TIOL 359** has held that while confirming the penalty, the adjudicating authority has to go into the merits to establish suppression of the material facts with an intention to evade the payment of service tax

## Invocation of Extended Period ?

- **G R Infra Projects Ltd. vs State of MP ( SC) 189 taxmann.com 764[19-08-2026]**
- Where State issued SCN dated 13.06.2025 for 2018-19 after annual return due date was extended to 31.12.2020 and limitation period, after excluding COVID period of 1 year 2 months, expired on 28.02.2025, <u>SCN was time-barred</u> under general provision and interference with such notice on ground of limitation was justified
- Where assessee received a show cause notice invoking extended period u/s 74 on grounds of fraud or concealment without specifying material facts or particulars, and <u>State sought to rely on a counter affidavit to justify allegations</u>, <u>such notice was invalid</u> as its **validity must stem from inherent content, rendering extended period invocation and consequent proceedings unsustainable.**

# …Invocation of Extended Period ?

- **Tata Steel Ltd. vs. Union of India [2026] 189 taxmann.com 520 (SC)[25-08-2026]**
- Where SCN for ITC mismatch and short payment for periods 2018-2019, 2019-2020 and 2020-2021 was issued on 13.06.2025 after expiry of limitation, statutory outer limit including COVID exclusion ended on 28.02.2025, and CAG audit communications in 2024 did not extend statutory deadlines, notice was time-barred and invocation of omitted explanation of 'suppression of facts' to extend limitation was not tenable.
- Where department initiated demand proceedings alleging ITC taken without documents and suppression but show cause notice contained only bare assertions without foundational facts required for extended limitation, such notice and resultant order were invalid.
- However liberty was granted to initiate fresh proceedings under section 74 with necessary foundational facts before prescribed date.

# Extended time limits as per SC, considering Covid extension

| Financial Year | Last Date for Filing Annual Return (Section 44) | Normal 3-Year Limitation (Without COVID Extension) | Period Falling Within COVID Exclusion | Extended Limitation Period for order u/s 73 (After COVID Exclusion) | Final Due Date for order under Section 74 |
|---|---|---|---|---|---|
| **2018-2019** | 31.12.2020 | 31.12.2023 | 1 year 2 months (approx. 14 months within the 3-year period) | 28.02.2025 | 28.02.2027 |
| **2019-2020** | 31.03.2021 | 31.03.2024 | 11 months (within the 3-year period) | 28.02.2025 | 28.02.2027 |
| **2020-2021** | 28.02.2022 | 28.02.2025 | Nil (limitation commenced only on 28.02.2022, after exclusion period ended) | 28.02.2025 (unchanged) | 28.02.2027 |

# Section 73 vs Section 74 (Time Limit)

| Year | Due Date for Annual Return | Section 73 | | Section 74 | | Remarks |
|---|---|---|---|---|---|---|
| | | Time limit to pass order | Time limit to issue SCN | Time limit to pass order | Time limit to issue SCN | |
| 2017-18 | 31.12.2018 | 31.12.2021 | 30.09.2021 | 31.12.2023 | 30.06.2023 | Original time limit based on due date for filing Annual return, as per Sec. 44 |
| | 05.02.2020 (for certain states) | 31.12.2023 | 30.09.2023 | 05.02.2025 | 05.08.2024 | Due date for filing Annual returns for 2017-18 last extended vide NN 6/2020 CT Dt.03.02.2020. Time limits under Sec. 73 extended vide NN 9/2023 CT Dt. 31.03.2023 |
| | 07.02.2020 (for certain states) | 31.12.2023 | 30.09.2023 | 07.02.2025 | 07.08.2024 | Due date for filing Annual returns for 2017-18 last extended vide NN 6/2020 CT Dt.03.02.2020. Time limits under Sec. 73 extended vide NN 9/2023 CT Dt. 31.03.2023 |

# Section 73 vs Section 74 (Time Limit)

| Year | Due Date for Annual Return | Section 73 | | Section 74 | | Remarks |
|---|---|---|---|---|---|---|
| | | Time limit to pass order | Time limit to issue SCN | Time limit to pass order | Time limit to issue SCN | |
| 2018-19 | 31.12.2019 | 31.12.2022 | 30.09.2022 | 31.12.2024 | 30.06.2024 | Original time limit based on due date for filing Annual return, as per Sec. 44 |
| | 31.12.2020 | 30.04.2024 | 31.01.2024 | 31.12.2025 | 30.06.2025 | Time limits under Sec. 73 extended vide NN 56/2023 CT Dt. 28.12.2023. Due date for annual return for 2018-19 last extended upto 31.12.2020 vide NN 80/2020 CT Dt. 20.10.2020 |
| 2019-20 | 31.12.2020 | 31.12.2023 | 30.09.2023 | 31.12.2025 | 30.06.2025 | Original time limit based on due date for filing Annual return, as per Sec. 44 |
| | 31.03.2021 | 31.08.2024 | 31.05.2024 | 31.03.2026 | 30.09.2025 | Due date for filing Annual return for 2019-20 last extended vide NN 4/2021 CT Dt.28.02.2021. Time limits under Sec. 73 extended vide NN 56/2023 CT Dt. 28.12.23 |

# Section 73 vs Section 74 (Time Limit)

| Year | Due Date for Annual Return | Section 73 | | Section 74 | | Remarks |
|---|---|---|---|---|---|---|
| | | Time limit to pass order | Time limit to issue SCN | Time limit to pass order | Time limit to issue SCN | |
| 2020-21 | 31.12.2021 | 31.12.2024 | 30.09.2024 | 31.12.2026 | 30.06.2026 | Original time limit based on due date for filing Annual return, as per Rule 80 |
| | 28.02.2022 | 28.02.2025 | 30.11.2024 | 28.02.2027 | 31.08.2026 | As per sub-rule (1A) of Rule 80, vide Notification 40/2021 C T Dt. 29.12.2021 |
| 2021-22 | 31.12.2022 | 31.12.2025 | 30.09.2025 | 31.12.2027 | 30.06.2027 | Original time limit based on due date for filing Annual return, as per Rule 80 |
| 2022-23 | 31.12.2023 | 31.12.2026 | 30.09.2026 | 31.12.2028 | 30.06.2028 | Original time limit based on due date for filing Annual return, as per Rule 80 |


# Penalty - Section 73 vs Section 74

| Sr. | Action by taxpayer | Amount of penalty payable | |
|---|---|---|---|
| | | Section 73 | Section 74 |
| 1. | Tax amount, along with interest, paid before issuance of notice | Sec 73(5) - No penalty and no notice shall be issued | Sec 74(5) - 15% of the tax amount payable as penalty and no notice shall be issued |
| 2. | Tax amount, along with interest, paid within 30 days of issuance of notice | Sec 73(8) - No penalty All proceedings deemed to be concluded | Sec 74(8) 25% of the tax amount payable as penalty. All proceedings deemed to be concluded |
| 3. | Tax amount, along with the interest, paid within 30 days of communication of order | Sec 73(9) - 10% of the tax amount or Rs. 10,000, whichever is higher | Sec 74(11) 50% of the tax amount payable as penalty. All proceedings deemed to be concluded |
| 4. | Tax amount, along with the interest, paid after 30 days of communication of order | Sec 73(10) - 10% of the tax amount or Rs. 10,000, whichever is higher | Sec.74(1) 100% of the tax amount |

# Monetary limits for SCN issuance (Circular No. 31/05/2018-GST & Circular No. 254/11/2025-GST)

| CGST Officer | Monetary limit of CGST | Monetary limit of IGST | Monetary limit of CGST & IGST |
|---|---|---|---|
| Superintendent of Central Tax | Not exceeding Rupees 10lakhs | Not exceeding Rupees 20 lakhs | Not exceeding Rupees 20 lakhs |
| Deputy or Assistant Commissioner of Central Tax | Above Rupees 10 lakhs and not exceeding Rupees 1 crore | Above Rupees 20 lakhs and not exceeding Rupees 2 crore | Above Rupees 20 lakhs and not exceeding Rupees 2 crore |
| Additional or Joint Commissioner of Central Tax | Above Rupees 1 crore without any limit | Above Rupees 2 crore without any limit | Above Rupees 2 crore without any limit |

# Insertion of new Sec 74A: Determination of Tax pertaining to FY 24-25 and Onwards:

- The introduction of Sec 74A outlines the procedures and penalties related to the non-payment, short payment, erroneous refund, or wrongful utilization of ITC (ITC).
- Key provisions include:

**SCN and Threshold**

- The proper officer is required to serve a notice/SCN to the taxpayer
- if any tax has not been paid or short paid or erroneously refunded or where ITC has been wrongly availed or utilized.
- However, no notice is required to be issued if the tax discrepancy for a FY < Rs,1000.

**Timeline for Issuance of Notice**

- **Notices** must be issued within **42 months** from the due date for furnishing the annual return for the FY to which such discrepancy pertains or from the date of the erroneous refund.

# …Insertion of new Sec 74A: Determination of Tax Issues for FY 24-25 Onwards:

**Additional Statements**

- In cases where SCN is already issued for a particular FY, Proper Officer can issue statements for periods not covered by the initial notice, and these statements are considered as notices if they rely on the same grounds.

**Penalties Based on Nature of Discrepancy**

- \- For any reason, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax, the penalty is
  **10% of the tax due or**
  **10,000 whichever is higher.**

  \- For reason of fraud or any wilful-misstatement or suppression of facts to evade tax, **the penalty is 100% of the tax due.**

# …Insertion of new Sec 74A: Determination of Tax Issues for FY 24-25 Onwards:

**Order Issuance Timeline**

- Orders must be issued within 12 months from the date of issuance of the notice, extendable by 6 months under specific conditions.

**Voluntary Payment Options**

- \- Available in cases <u>other than the reason of</u> fraud or any wilful-misstatement or suppression of facts to evade tax

  \- Taxpayers can avoid penalties by voluntarily <u>paying the tax and interest before the notice is issued</u> u/s 74A(8) <u>or within 60 days of such notice</u>.

  \- Consequentially, all proceedings in respect of the said notice shall be deemed to be concluded.

# …Insertion of new Sec 74A: Determination of Tax Issues for FY 24-25 Onwards:

- Penalties for reasons of **fraud or any wilful-misstatement or suppression of facts to evade tax** (Sec 74A(9)),
- In such cases the option for paying tax along with interest and penalties are as under, for avoiding 100% penalty :

| | |
|---|---|
| Before issuance of notice | • Tax + Interest + <br> • Penalty @ 15% of tax |
| Within 60 Days of Notice Issuance: | • Tax + Interest + <br> • Penalty @ 25% of tax |
| Within 60 Days of Order Communication: | • Tax + Interest + <br> • Penalty @ 50% of tax |

## …Insertion of new Sec 74A: Determination of Tax Issues for FY 24-25 Onwards:

- Consequentially, based on respective timelines and payment of tax alongwith applicable interest and penalty, all proceedings in respect of the said notice shall be deemed to be concluded.

- Short Payment Notice: If the aforesaid amounts of tax paid alongwith applicable interest and penalty fall short of the amount actually payable, the officer can issue a notice for the shortfall.

- Penalty for non payment of Self-Assessed Tax or tax collected but not paid within 30 days of due date: Notwithstanding anything contained in Sec 74A(8), penalty will be imposed if self-assessed tax or collected tax is not paid within thirty days of the due date.

# Clarifications - Circular No. 31/05/2018-GST as amended by Circular No.169/01/2022-GST

- The central tax officers of Audit Commissionerates and Directorate General of Goods and Services Tax Intelligence(hereinafter referred to as "DGGI") shall exercise the powers only to issue show cause notices.
- A show cause notice issued by them shall be adjudicated by the competent central tax officer of the Executive Commissionerate in whose jurisdiction the noticee is registered.
- In case there are more than one noticees mentioned in the show cause notice having their principal places of business falling in multiple Commissionerates, the show cause notice shall be adjudicated by the competent central tax officer in whose jurisdiction, the **principal place of business of the noticee from whom the highest demand** of central tax and/or integrated tax(including cess)has been made falls.

# Requirement of Issuance of SCN

- Company 'A' due to some inadvertent error fails to pay the tax within the prescribed period.
- On discovery, Company 'A' discharges the tax liability however, fails to pay the interest u/s. 50(1) of the CGST Act.
- Is there any requirement of SCN demanding interest u/s. 73/74 read with section 50(1)?  No, covered u/s Sec.75(12)

# Issue of SCN – HC Judgement

- In L C Infra Projects (P.) Ltd. v. Union of India [2019] 109 taxmann.com 141/75 GST 751 (Kar.), Karnataka HC held that:

*"The issuance of Show Cause Notice is sine qua non to proceed with the recovery of interest payable thereon under Section 50 of the Act and penalty leviable under the provisions of the Act or the Rules. Undisputedly, the interest payable under Section 50 of the Act has been determined by the third respondent-Authority without issuing Show Cause Notice, which is in breach of principles of natural justice. It is trite law that any order passed by the quasi-judicial authorities in contravention of the principles of natural justice, cannot be sustained.*

*Similarly, after determination of the interest liable to be paid by the petitioner, no notice has been issued before attaching the bank account of the petitioner. There is a lapse on the part of the third respondent-Authority. The notion of the third respondent Authority that Section 75(12) of the Act empowers the authorities to proceed with recovery without issuing Show Cause Notice is only misconceived. The said Section is applicable only to the self-assessment made by the assessee and not to quantification or determination made by the Authority."*

# Few considerations with respect to SCN

- **Validity of Show Cause Notice:**
- *As per Section 160(2) of CGST Act2017,the service of any notice, order or communication shall not be called in question, if the notice, order or communication, as the case may be, has already been acted upon by the person to whom it is issued or where such service has not been called in question at or in the earlier proceedings commenced, continued or finalized pursuant to such notice, order or communication.*

- This section deals with a situation that when a show cause notice has been issued and the taxpayer has also **acted on basis of such notice and has not questioned** it in any earlier proceedings commenced, then in such cases the validity of SCN cannot be questioned

# …Few considerations with respect to SCN

- SCN should be issued along with documents relied upon by the department. (Relied upon documents- RUDs). If RUDs are provided subsequent to issue of SCN then date of receipt of RUDs shall be taken as date of receipt of SCN.

- **RUDs should not be merely made available for inspection but copies of RUDs have to be furnished**.(*PGO Processor Pvt. Ltd.* v. *CCE* 2000 taxmann.com 92 (Raj.)

- The show cause notice is the foundation on which the department has to build up its case. **If the allegations in the show cause notice are not specific and are on the contrary vague**, lack details and/or unintelligible, then it is sufficient to hold that the noticee was not given proper opportunity to meet the allegations indicated in the show cause notice. *CCE, Bangalore v. Brindavan Beverages (P.) Ltd. 2007 taxmann.com 728 (SC).*

# …Few considerations with respect to SCN

- **Summary Notice under DRC-01 is not a substitute for proper SCN required to be issued under Section 74: *Sidhi Vinayak Enterprises v. State of Jharkhand HC-W.P.(T) No. 1071 of 2022 With W.P.(T) No. 1091 of 2022)***
- The department conducted search in the premises of the petitioner for irregular availment of ITC. Pursuant to search conducted by department, two summary of SCN in Form DRC-01 were issued. The petitioner submitted reply but the reply was rejected and summary of order was issued imposing tax and penalty.
- It filed writ petition against the notice & order and contended that both SCN as well as summary have to be issued. The department submitted that the petitioner participated in the proceedings by furnishing a reply in Form GST DRC-06 and therefore, there was no denial of principles of natural justice.
- The Hon'ble HC noted that even though petitioner submitted reply, the department can't take benefit of said action as summary of SCN can't be considered as SCN as mandated under section 74(1).
- In the instant case, the proceeding suffered from material irregularity and hence not sustainable being contrary to section 74(1) and subsequent proceedings/ impugned orders cannot sanctify same.
- Rule 142(1)(a)-notice to be served u/s 74 alongwith summary thereof in DRC-01 ( argument on section 160 is taken up in this judgement)

# …Few considerations with respect to SCN

- **Non-issuance of notice under Section 61 would not affect validity of proceedings initiated under Section 74:** ***Allahabad HC (Nagarjuna Agro Chemicals (P.) Ltd. v. State of U.P. -WRIT TAX No. - 336 of 2023)***

- The petitioner had submitted returns for period 2019-20. The GST department had not issued any notice under Sec 61 but initiated proceedings under Sec74 against petitioner on certain grounds with regards to classification

- The department had passed order whereby tax previously paid was found short and a demand had been raised for the short fall alongwith interest and penalty. A writ petition was filed against the assessment order and it was contended that the department must have pointed out deficiency in the returns submitted by the petitioner so as to give it an opportunity to rectify the return before proceeding under Section 74 of the Act.

- The Honorable High Court noted that the scrutiny proceedings of return as well as proceeding under Sec 74 are two separate and distinct exigencies.

# …Few considerations with respect to SCN

- **HC stayed operation of demand-cum-show cause notice issued by dept. without issuing Form GST ASMT-10 *(Pepsico India Holdings (P.) Ltd. v. Union of India WP(C)/6960/2023 – Gauhati HC)***
- The petitioner company was served with a demand-cum-show cause notice under Sec 73(1) alleging that there was an un-reconciled ITC amount as reflected in GSTR-9C for F.Y. 2017-18 and petitioner was liable to reverse wrongly availed and utilized ITC along with applicable interest and penalty.
- The petitioner filed writ petition against it and contended that mandatory conditions precedent required for invoking provisions of section 73(1) for issuance of impugned demand-cum-show cause notice were absent in instant case since Form GST ASMT-10 was not issued.
- The Honorable High Court noted that in instant case, Form GST ASMT-10 was not issued to petitioner. Therefore, prima facie the act of issuance of impugned Demand-cum-SCN under Sec 73(1) by proper officer was without compliance of Sec61 r.w. Rule 99.

# …Few considerations with respect to SCN

- **The Andhra Pradesh HC has held that intimation under Form DRC 01A should mandatorily be issued before issuing a SCN when the tax period pertinently covers the period during which it was a mandatory requirement *(M/s. New Morning Star Travel Writ Petition No.12850 of 2022)***
- The HC observed that prior to amendment in the impugned provision, it was mandatory for the PO to intimate the details of tax, interest and penalty ascertained in Part A of the FORM GST DRC 01A
- The HC emphasized that the SCN pertained to the tax period from 01 July 2017 to 31 March 2021 and thereby covered both the pre-amendment period as well as the post-amendment period. Pertinently, pre-amendment period. In view of the above, the HC held that since no action was taken by the AC after initially issuing DRC 01A, it was obligatory upon the DC to ensure that GST DRC 01A was issued prior to proceeding with the SCN.
- Post amendment in the impugned provision, the mandatory requirement of issuing intimation under GST DRC 01A was made discretionary upon the assessing authority. **( Rule 142(1A) amended wef.15-10-2020 making issuance of DRC 01A as optional) .The word ‘ shall’ substituted by ‘may’.**

# …Few considerations with respect to SCN

- **Many field formations have initiated proceedings under section 74(1) for the alleged evasion of GST on the issue of secondment of employees** –based on *Supreme Court judgment in CC, CE & ST, Bangalore (Adjudication) v. Northern Operating Systems (P.) Ltd. 2022 (61) G.S.T.L 129*, considering that GST RCM was liable to paid on such arrangement.
- **Instruction No. 05/2023-GST** has been issued wherein it has been clarified that Section 74(1) cannot be invoked merely on account of non-payment of GST, without specific element of fraud or wilful mis-statement or suppression of facts to evade tax.
- Therefore, only in the cases where the investigation indicates that there is material evidence ( based on factual matrix) of fraud or wilful misstatement or suppression of fact to evade tax on the part of the taxpayer, provisions of section 74(1) of CGST Act may be invoked for issuance of show cause notice, and such evidence should also be made a part of the show cause notice.
- Stay has been granted by Karnataka High Court and Punjab and Haryana High Court on same issue of remuneration paid to seconded employees - Metal One-Delhi HC also granted stay.

## Can a single SCN and composite adjudication order validly cover multiple fin. yrs / tax periods under Sec. 73/74 CGST Act?

- **Conflicting High Court views:**
- **Against multi-year SCN (majority trend):**
  - **Madras HC** – *Ms RA & Co* (2025); *Instakart Services* (2025)
  - **Bombay HC (Goa Bench)** – *Milroc Good Earth Developers* (2026)
  - **Karnataka HC** – *Emmanuel Constructions* (2025) and earlier 2024–25 ruling
  - **Delhi HC** – 2026 judgment quashing consolidated SCN under Section 74
  - **Ratio:**
    - GST scheme is **period-wise**: separate returns, separate limitation for each FY.
    - Consolidated SCN/order **frustrates statutory limitation** and is a **jurisdictional defect**.
    - Such SCN and consequential orders are **void ab initio**; department must issue **year-wise notices**.
- Uno Minda Limited (Seating Division) vs The Jt. Comm. of GST and Central Excise (W.P.No.27776 of 2024 & WMP.Nos.30287 & 30288 of 2024)-Madras HC set aside the show cause notice clubbing the multiple years, and directed to the revenue for issuance of yearwise Show cause notice, which will enables taxpayer benefit of Amnesty scheme proposed.

## ….Can a single SCN and composite adjudication order validly cover multiple fin. yrs / tax periods under Sec. 73/74 CGST Act?

- **Lenient / revenue-friendly view:**
  - **Delhi HC** – *Ambika Traders / Vallabh Textiles* line (2025–26)
  - **Ratio:**
    - No express statutory bar on consolidated SCN, especially in **fraud/suppression** cases.
    - Limitation must still be satisfied **year-wise**, but a single notice can aggregate multiple FYs.
- **CBIC stance (2025 circular):**
  Acknowledges conflicting judgments; emphasises that **limitation for each FY must be respected**, even if a composite SCN is used.

# Demand & Recovery forms

| Form Type | Rule | Available for | Description |
|---|---|---|---|
| DRC-01 | 142(1)(a) | Proper Officer | Summary of SCN |
| DRC-02 | 142(1)(b) | Proper Officer | Summary of statement under sections 73(3)/74(3) |
| DRC-03 | 142(2) | Taxpayer | Intimation of payment made voluntarily or made against the show cause notice (SCN) or statement |
| DRC-04 | 142(2) | Proper Officer | Acknowledgement of acceptance of payment made voluntarily |
| DRC-05 | 142(3) | Proper Officer | Drop Proceedings Order |
| DRC-06 | 142(4) | Taxpayer | Reply to SCN |
| DRC-07 | 142(5) | Proper Officer | Summary of order |

# Demand & Recovery forms

| Form Type | Rule | Available for | Description |
|---|---|---|---|
| DRC-08 | 142(7) | Proper Officer | Summary of Rectification /Withdrawal Order |
| DRC-09 | 143 | Proper Officer | Order for recovery through specified officer under section 79 |
| DRC-13 | 145(1) | Proper Officer | Notice to a third person under section 79(1) (c) |
| DRC-14 | 145(2) | Proper Officer | Certificate of Payment to a Third Person |

# Demand & Recovery forms

| Form Type | Description |
|---|---|
| DRC-01A | Communication of the details of tax, interest and penalty, as ascertained by Proper Officer- before issuance of SCN [ Rule 142(2A)- Part A ] |
| DRC-01B – (system generated) | Difference in liability reported in statement of outward supplies and that reported in return (GSTR-1/IFF exceeds GSTR-3B) ( Rule 88C) |
| DRC-01C – (system generated) | Online Compliance Pertaining to ITC mismatch (ITC claimed in GSTR-3B exceeds GSTR-2B) ( Rule 88D) |
| DRC-01D | Intimation for amount recoverable under section 79 (Rule 142B) |

# Section 75 - General provisions relating to determination of tax

- (1) Where the service of notice or 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.
- (2)Where any Appellate Authority or Appellate Tribunal or court concludes that the notice issued u/s 74(1) is not sustainable for the reason that the charges of F/WM/SOF to evade tax has not been established against the person to whom the notice was issued, the **proper officer shall determine the tax payable by such person, deeming as if the notice were issued u/s 73(1)**
- *Where any Appellate Authority or Appellate Tribunal or court concludes that the penalty u/s 74A(5)(ii) is not sustainable for the reason that the charges of* F/WM/SOF *to evade tax has not been established against the person to whom the notice was issued,* ***the penalty shall be payable by such person, u/s 74A(5)(i)*****.**

## …sec75(2) - Commissioner CGST & CX vs. Power Tech Global (P.) Ltd. [2026] 189 taxmann.com 832 (GSTAT - KOLKATA)[05-08-2026]

- Where assessee had disclosed availment of ITC on outward supply of MEIS duty credit scrips in GSTR-3B and department was aware of such transactions, there was no concealment of facts or intention to evade tax, and therefore fraud, wilful misstatement or suppression could not be alleged merely because assessee claimed retrospective benefit of amendment to Rule 43, making invocation of section 74(1) unsustainable and requiring fresh determination of tax liability.
- Consequently, we direct the proper officer of the Revenue contemplated U/s 75(2) of the CGST Act, 2017 to determine the tax liability of the taxpayer herein within the statutory period after providing an opportunity of hearing to the taxpayer.
- Supreme Court judgements followed :
- ***Anand Nishikawa Co. Ltd.*** **v.** ***CCE*** **(2005) 7 SCC 749**, the Hon'ble Supreme Court in paragraph 26 of the judgment succinctly held that the "suppression of facts" must be construed strictly, it does not mean any omission and the act must be deliberate and wilful to evade payment of duty.
- **Tata Iron & Steel Co. Ltd. v. Union of India & Ors** [1988 (35) ELT 605 (SC)], this Court held that when the classification list continued to have been approved regularly by the department, it could not be said that the manufacturer was guilty of "suppression of facts"

# Section 75 - General provisions relating to determination of tax

- (3) Where any order is required to be issued in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a court, such order shall be issued within 2 years from the date of communication of the said direction
- (4) An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person
- (5) The PO 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.
- (6) The PO, in his order, shall set out the relevant facts and the basis of his decision.

# Section 75 - General provisions relating to determination of tax

- (7) The amount of tax, interest and penalty demanded in the order shall not be in excess of the amount specified in the notice and **no demand shall be confirmed on the grounds other than the grounds specified in the notice**.

- (8) Where the Appellate Authority or Appellate Tribunal or court modifies the amount of tax determined by the proper officer, the amount of interest and penalty shall stand modified accordingly, taking into account the amount of tax so modified.

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

# Section 75 - General provisions relating to determination of tax

- (10) The **adjudication proceedings shall be deemed to be concluded**, if the order is not issued within 3 years as provided for in Sec 73(10) or within 5 years as provided for in Sec 74(10) or as provided u/s 74A(7).

- (11) An issue on which the Appellate Authority (AA) or the Appellate Tribunal (AT) or the High Court (HC) has given its decision which is <u>prejudicial to the interest of revenue in some other proceedings and an appeal to</u> the AT or the HC or the SC against such decision of the AA or the AT or the HC is pending,
- the <u>period spent between</u> the date of the decision of the AA and that of the AT or the date of decision of the AT and that of the HC or the date of the decision of the HC and that of the SC shall be <u>excluded</u> in computing the period referred to in Sec 73(10) or Sec 74(10) where proceedings are initiated by way of issue of a SCN under the said sections.

# Section 75 - General provisions relating to determination of tax

- (12) Notwithstanding anything contained in section 73 or section 74, **where any amount of self-assessed tax** in accordance with a return furnished under section 39 remains **unpaid**, either wholly or partly,
- or any amount of <u>interest</u> 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 Sec 37, but not included in the return furnished under Sec 39.

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

# Section 76 - Tax collected but not paid

- *"…every person who has collected from any other person any amount as representing the tax under this Act, and has not paid the said amount to the Government, shall forthwith pay the said amount to the Government, irrespective of whether the supplies in respect of which such amount was collected are taxable or not."*

- Any amount of tax collected under the said Act must be paid to the government.
- If the amount is unpaid, the proper officer may issue a SCN
- **There is no time limit to issue SCN u/s 76 !!!**
- 100% penalty is leviable alongwith Interest u/s50
- Time limit to issue order – 1 year from the date of notice
- The person who has borne the incidence of tax, may apply for refund u/s 54

## Section 77 - Tax wrongfully collected and paid

- *"77. (1) A registered person who has paid the Central tax and State tax or, as the case may be, the central tax and the Union territory tax on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall be refunded the amount of taxes so paid in such manner and subject to such conditions as may be prescribed."*

- Inter-state transaction considered as intra-state by the registered person (CGST/SGST discharged instead of IGST) – refund available subject to conditions prescribed

# …Sec 77 - Tax wrongfully collected and paid

- *"(2) A registered person who has paid integrated tax on a transaction considered by him to be an inter-State supply, but which is **subsequently held** to be an intra-State supply, shall not be required to pay any interest on the amount of Central tax and State tax or, as the case may be, the Central tax and the Union territory tax payable."*

- Intra-state transaction considered as inter-state by the registered person (IGST discharged instead of CGST/SGST) – no interest on delayed payment of CGST/SGST later on
- Similar provisions u/s 19 of IGST Act

- As per Para 3.2 of Circular No. 162/18/2021-GST dated 25.09.2021

*it is clarified that the term **"subsequently held"** in section 77 of CGST Act, 2017 or under section 19 of IGST Act, 2017 covers both the cases where the inter-State or intra-State supply made by a taxpayer, is **either subsequently found by taxpayer himself** as intra-State or inter-State respectively or where the inter-State or intra-State supply made by a taxpayer is **subsequently found/ held** as intra-State or inter-State respectively **by the tax officer** in any proceeding. Accordingly, refund claim under the said sections can be claimed by the taxpayer in both the above-mentioned situations, provided the taxpayer pays the required amount of tax in the correct head.*

# Section 160- Assessment proceedings, etc., not to be invalid on certain grounds

- **Proceedings are not invalid merely due to procedural defects**
  Any assessment, reassessment, adjudication, review, revision, appeal, rectification, notice, summons, or similar proceedings under the GST law will not become invalid only because of any mistake, defect, or omission, provided that such action is substantially in compliance with the intent, purpose, and requirements of the Act.

- The Service of any notice, order, or communication cannot subsequently be challenged on the ground of improper service where the recipient has already acted upon such communication or failed to raise such objection during earlier stages of proceedings.

# Section 161- Rectification of errors apparent on the face of record

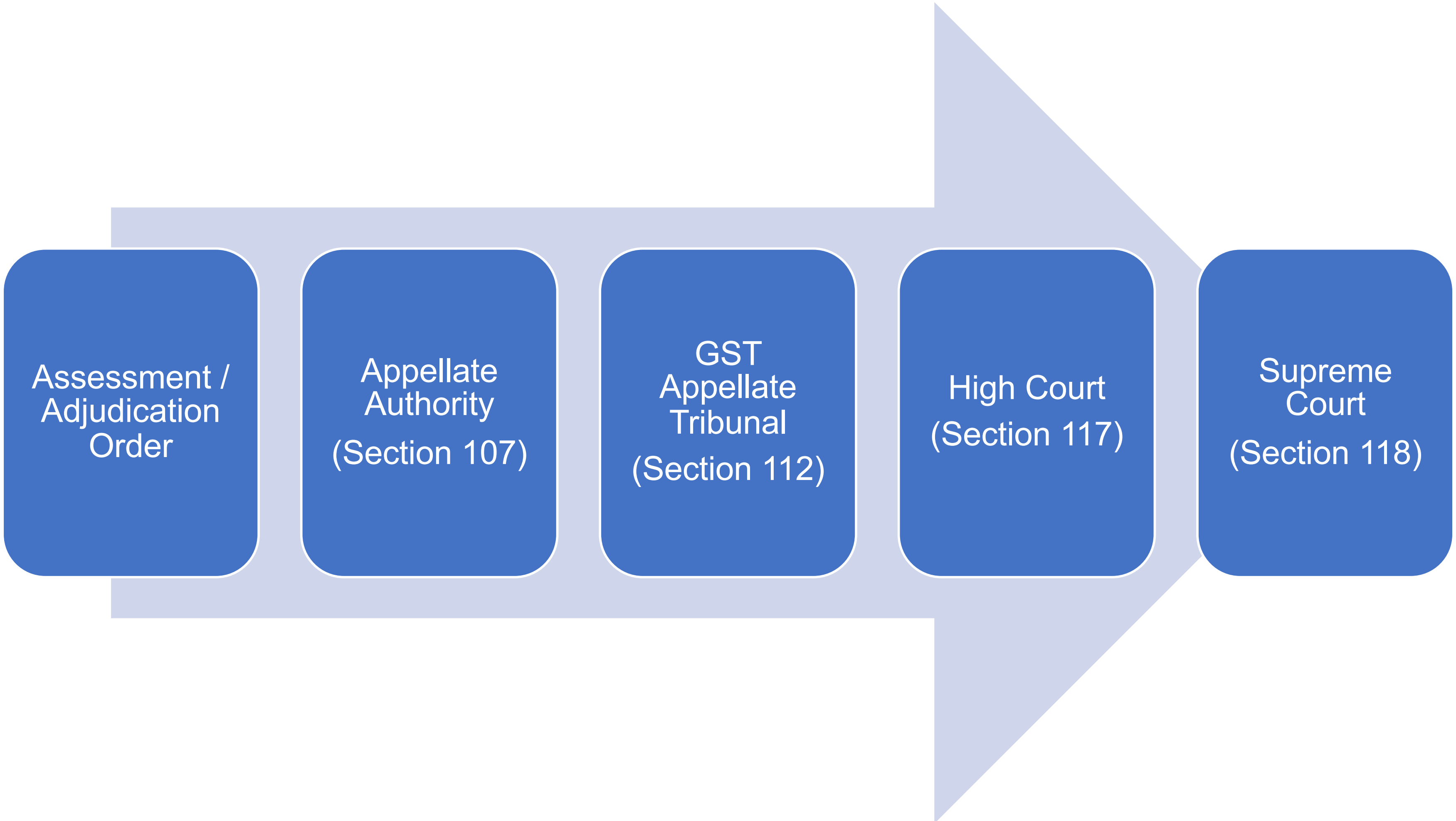
- Any authority that has issued any decision or order or notice or certificate or any other document, under the provisions of this Act may rectify an error apparent on the face of record in such decision or order or notice or certificate or any other document either:
  - on its own motion, or
  - brought to the notice by an officer appointed under the GST Act, or
  - brought to the notice by the affected person.
  - within **3 months** from the date of issue of such decision or order or notice or certificate or any other document.

- Rectification of an error apparent on the face of record cannot be carried out after expiry of **6 months** from the date of issue of the decision, order, notice, certificate, or other document.

- The 6-month time limit does not apply where the rectification is limited to clerical or arithmetical errors arising from an accidental slip or omission.

- When the rectification adversely affects any person, the principles of natural justice shall be followed by the authority carrying out such rectification.

# GST Litigation Hierarchy



# Section 107 - Appeals to Appellate Authority

- **Who can file an appeal under the GST law?**
  - Any person who is aggrieved by any decision or order of an adjudicating authority (under the GST Act) can make an application to the higher authority (known as appellate authority) for granting relief against the unfavourable order.

- **What is the time limit for filing an appeal by the appellant?**
  - As per *Section 107(1) of the CGST Act, 2017*, an appeal must be filed by the appellant within **3 months** from the date on which the said decision or order is communicated to the appellant.

- **Is there a provision for condonation of delay in filing an appeal?**
  - As per *Section 107(4) of the CGST Act, 2017*, the Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the prescribed period, allow it to be presented within a further period of **one month**.

# Section 107 - Appeals to Appellate Authority

- **Can an appeal be filed by any GST officer against an order issued in favour of the taxpayer by another GST officer ?**
  - As per *Section 107(2) of the CGST Act, 2017*, the **Commissioner** may, on his own motion, or upon request from the Commissioner of State tax or the Commissioner of Union territory tax, **direct any officer** subordinate to him to **appeal** to the Appellate Authority against the order passed.
  - The time limit for the same is **six months** from the date of communication of the decision or order. An extension of one month may be granted by the appellate authority if it feels that there was sufficient cause which prevented the said appeal from being filed within the prescribed period.
- **Which is the form for filing GST Appeals?**
  - Appeals to **first Appellate Authority** are to be filed using FORM **GST APL-01**

# Section 107 - Appeals to Appellate Authority

- **Can appeals be filed against all types of orders ?**

  As per *Section 121 of the CGST Act, 2017*, not all orders passed by adjudicating authorities can be appealed against. In following cases, appeals cannot be filed -

  – 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** (extension of time limit of payments required to be made under the GST Act)

# Section 107 - Appeals to Appellate Authority

- **Is the appellant required to make any payments for filing an appeal?**

  As per *Section 107(6),* no appeal shall be filed unless the appellant has paid –

  - in **full,** such part of the **amount** of tax, interest, fine, fee and penalty arising from the impugned order, as is **admitted by him**
  - a sum equal to **10%** of the remaining **amount of tax in dispute** arising from the said order in relation to which the appeal has been filed (subject to a **maximum** of **Rs.20 crore**)

- It is important to note that the maximum limit of Rs.20 crores is prescribed in the CGST Act. Therefore, In case of orders demanding tax under **CGST/SGST**, the maximum limit will be **Rs. 40 crores**. The same applies to orders issued for demanding tax under the head **IGST**, whereby the maximum limit will be Rs.**40 crore**.

- In appeals against orders u/s 129(3) relating to **detention, seizure and release of goods** and conveyances in transit, an amount equal to **25%** of the penalty amount must be paid before an appeal is filed. ( Applicable upto 30-09-2025)

- **10%** of penalty demanded will be required to be paid in cases where there is no tax liability but only penalty is demanded in the order. ( Applicable w.e.f. 01-10-2025)

- The amount of pre deposit can be paid through either **the cash ledger or the credit ledger**.

# Section 107 - Appeals to Appellate Authority

- **What happens to the pre-deposit amount if the appellant withdraws and does not re-file the appeal?**
  - In case the appeal is withdrawn and not re-filed, the **pre-deposit amount** is **set off** against the total demand of the order and the balance amount of demand becomes payable by the appellant.

- **Is the amount of pre-deposit paid at the time of filing the appeal, refundable?**
  - Yes, if the **appellant wins** the appeal and the **final amount payable** as per the appellate order **is less than the amount pre-deposited.**

# Section 107 - Appeals to Appellate Authority

- **Is there any time limit within which the decision on an appeal must be made?**

  - *Section 107(13) of the CGST Act, 2017* states that 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.
  - Also, *1st proviso to Section 107(13)* states 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.
  - However, it is important to note that this time limit is only **advisory** in nature and the appellate authority is **not bound** to decide on an appeal strictly within this time limit.

- **Can an appeal be withdrawn?**

  - As per *Rule 109C of the Central Goods and Service tax Rules, 2017*, the appellant may file an application for withdrawal of appeal in **Form GST APL 01/03W** before issuance of **show cause notice** under *Section 107(11) of the CGST Act, 2017* or before the issuance of an **order** under the same section.
  - However, if the **final acknowledgement** of the appeal in Form **GST APL-02** has been issued, then the appeal can be withdrawn only **subject to the approval** of the said appellate authority and the appellate authority shall decide on the withdrawal within 7 days from the date of such application. *(1st Proviso to Rule 109C)*

# Section 169 - Service of Order

**Statutory Modes of Service [Section 169(1)]**

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

**(a)** By giving or tendering it directly or through a messenger/courier to the addressee, taxable person, authorised representative, advocate, tax practitioner, employee, or adult family member.

**(b)** By **registered post, speed post or courier** with acknowledgement due to the last known place of business or residence.

**(c)** By sending a communication to the **e-mail address** provided at the time of registration or as amended from time to time.

**(d)** By making it **available on the common portal.**

**(e)** By publication in a **newspaper** circulating in the locality where the person last resided, carried on business or personally worked for gain.

**(f)** Where the above modes are not practicable, by **affixing it at a conspicuous place** at the last known place of business or residence, or on the notice board of the concerned officer/authority.

# Can Delay in Filing GST Appeal be Condoned Beyond the Statutory Period?

**Whether the Appellate Authority under Section 107 of the CGST Act, 2017 has the power to condone delay in filing an appeal beyond the prescribed period of three months and the additional one-month condonable period, upon showing sufficient cause?**

**<u>Favourable Judicial Pronouncements</u>**

✅ **V.R. India Trader v. State of Rajasthan**

*2024 (168 taxmann.com 639) (Rajasthan HC)*

- ❑ Limitation commences from the **date of actual communication** of the order and not merely from the date of passing.
- ❑ Appellate Authority must ascertain and record the date of communication before rejecting an appeal as time-barred.
- ❑ Dismissal without such determination is unsustainable.

✅ **S.K. Chakraborty & Sons v. Union of India**

*2024 (159 taxmann.com 259) (Calcutta HC)*

- ❑ Held that **Section 5 of the Limitation Act, 1963** applies to GST appeals.
- ❑ Section 107 does not expressly exclude the applicability of the Limitation Act.
- ❑ Delay beyond the period prescribed under Section 107(4) may be condoned where sufficient cause is established.

# Can Delay in Filing GST Appeal be Condoned Beyond the Statutory Period? (Contd..)

✅ **Ashok Ghosh v. State of West Bengal**

*2025 (180 taxmann.com 175) (Calcutta HC)*

- Reaffirmed that delay beyond the statutory period can be condoned on showing sufficient cause.
- Time limits under Section 107(4) held to be **directory and not mandatory**.
- Matter remanded to Appellate Authority for consideration of condonation application on merits.

✅ **Sharp Tanks and Structurals (P.) Ltd. v. Deputy Commissioner (GST)**

*[2025] 178 taxmann.com 519 (Madras)*

- Limitation under Section 107 starts from the date of **communication** of the order and not merely from the date of uploading on the GST portal.
- Mere portal upload does not amount to effective communication to the taxpayer.
- Where the order was not properly communicated, the limitation period for filing appeal does not commence.
- Department directed to communicate the order afresh and permit the assessee to avail the appellate remedy.

## Can Delay in Filing GST Appeal be Condoned Beyond the Statutory Period? (Contd..)

- ✅ **Luxmi Traders vs. Union Territory of Chandigarh [2026] 188 taxmann.com 812 (Punjab & Haryana)[21-07-2026]**
- Where show cause notice or order in original was served only by uploading it under the **'View Additional Notices and Orders'** tab on GST portal without acknowledgment or reply by assessee, such upload did not constitute valid service and ex parte proceedings were liable to be restored to the stage of issuance of show cause notice and in cases were appeals were dismissed on grounds of limitation, such appeals were to be restored on its original numbers
- <u>Instruction No.02/2026/GST-II</u> dated 01.06.2026, as per which an intimation of SCN and demand orders issued by the proper officers under Sections 73, 74, 74A or 122 of the Haryana GST Act, 2017 is <u>required to be sent by post</u>.
- On visiting the petitioner's dashboard/account on the GST portal, <u>there is no flash of any penal proceedings contemplated or pending against the petitioner</u>; thereafter, even if one clicks on the tab 'Services' (not Notices or Orders), it leads to the popping up of several sub-tabs like 'Registration', 'Ledgers', 'Returns', 'Payments', 'User Services', 'Refunds', 'e-Way Bill System' and 'Track Application Status', none of which even give a slight indication as to issuance of any notice to the petitioner with regard to any contemplated penal proceedings.

## Can Delay in Filing GST Appeal be Condoned Beyond the Statutory Period? (Contd..)

- For the modes prescribed under Section 169(1)(*a*), Section 169(1)(*b*), Section 169(1)(*e*), Section 169(1)(*f*), there is a deeming fiction under Section 169(2) and Section 169(3) of the Act of 2017, whereas **there is no deeming fiction for the service of order/notices by the modes prescribed under Section 169(1)(*c*) (e-mail) and Section 169(1)(*d*) (Common Portal).**
- What is sent by e-mail is merely an intimation that a SCN/order has been uploaded on the Common Portal. **Unless the notice/order is sent by e-mail** on the address furnished at the time of registration, the respondents cannot take shelter of Section 169(1)(*c*) of the Act of 2017.
- In cases **where the SCN has been responded to by the person concerned** ( as per Section 160(2)), and after contest, the order-in-original is passed by the competent authority, the order-in-original cannot be challenged merely due to defect in service of SCN/order on the taxpayer by uploading it on the Common Portal.

# Can Delay in Filing GST Appeal be Condoned Beyond the Statutory Period? (Contd..)

**Unfavourable Judicial Pronouncements**

❌ **Singh Enterprises v. CCE**

*[2008] 12 STT 21 (Supreme Court)*

- Appellate authority cannot condone delay beyond the period specifically prescribed in the statute.
- Where legislation prescribes a maximum condonable period, authorities cannot extend limitation further.

❌ **Asst. Comm. (CT) LTU, Kakinada v. Glaxo Smith Kline Consumer Health Care Ltd.**

*[2020] 116 taxmann.com 417 (SC)*

- The Supreme Court held that where a fiscal statute prescribes a limitation period along with a specific condonable period, the appellate authority cannot condone delay beyond the outer limit prescribed by the statute.
- High Courts, while exercising jurisdiction under Article 226, should not ordinarily bypass or dilute the statutory limitation framework.

# Can Delay in Filing GST Appeal be Condoned Beyond the Statutory Period? (Contd..)

❌ **Map Overseas v. Union of India**

*[2025] 177 taxmann.com 859 (Bombay)*

- Appeal filed beyond the statutory period of **120 days** was held to be time-barred.
- Plea of non-communication of the adjudication order was rejected for lack of evidence.
- High Court declined to invoke Article 226 to extend the limitation period.
- Held that statutory timelines under Section 107 must be strictly followed and cannot be circumvented through writ proceedings.

❌ **Ravi Plumbing and Construction v. Union of India**

*[2026] 183 taxmann.com 444 (Gujarat)*

- Appeal filed beyond the statutory period of 120 days was held to be not maintainable.
- Technical glitches, lack of login credentials, or portal access issues were not accepted as valid grounds for condoning delay beyond the prescribed period.
- Held that neither the Appellate Authority nor the High Court can condone delay beyond the maximum period prescribed under Section 107 of the CGST Act.

**<u>Current Position</u>**

- **Divergent High Court views exist on the applicability of Section 5 of the Limitation Act to GST appeals. The issue continues to remain a matter of judicial debate.**

# Section 108 - Powers of Revisional Authority

- Under *Section 108 of the CGST Act, 2017*, the Revisional Authority may, **on his own motion, or upon information received by him** or on request from the Commissioner of State tax, or the Commissioner of Union territory tax call for and examine the record of any proceeding of a subordinate officer.

- The Revisional Authority can revise an order of a subordinate officer if he considers it **erroneous and prejudicial to the interest of revenue** and the order is:
  - (a) Illegal or improper; or
  - (b) Has not taken into account certain material facts (whether available at the time or not); or in consequence of an observation by the Comptroller and Auditor General of India (CAG).
  - The RA may stay the operation of such order for such period as he deems fit, and must give the person concerned an opportunity of being heard before passing a revised order.

# Section 108 - Powers of Revisional Authority

- The Revisional Authority shall not exercise any power u/s 108(1), if—
  - (a) the order has been subject to an **appeal** u/s 107 or u/s 112 or u/s 117 or u/s 118; or
  - (b) the period specified u/s 107 (2) (i.e. **6 months** for Dept. Appeal) has not yet expired or more than **3 years** have expired after the passing of the decision or order sought to be revised; or
  - (c) the order has already been taken for **revision** under this section at an earlier stage; or
  - (d) the order (i.e revision order) has been passed in exercise of the powers u/s 108 (1):

  - Provided the RA may pass an order **on any point not raised or decided in a prior appeal**, before the expiry of a period of **1 year from the date of the OIA** or before the expiry of a period of **3 years from the OIO**, whichever is later.

# Section 112 - Appeals to GST Appellate Tribunal (GSTAT)

- **Who can file an appeal to GSTAT?**
  - Any person aggrieved by an order of the *First Appellate Authority (Section 107)* or *Revisional Authority (Section 108)* may appeal to GSTAT under *Section 112(1) of the CGST Act, 2017*.
  - The Commissioner may also direct a departmental officer to file an appeal against the above orders.

- **What is the time limit for filing an appeal to GSTAT?**
  - As per *Section 112(1) of the CGST Act, 2017*, an appeal must be filed within **3 months** from the date on which the order is communicated to the appellant.
  - For appeals against orders communicated **before 1 April 2026**, the CBIC has granted a special extended window: appeals may be filed up to **30 June 2026** (vide Notification S.O. 4220(E) [F. NO. A-50/7/2025-GSTAT-DoR] dated 17.09.2025). Time limit further extended to **31-07-2026 by notification dated 30-06-2026.**

- **Is there a provision for condonation of delay in filing an GSTAT appeal?**
  - Under *Section 112(6)*, GSTAT may condone delay for a further period of **3 months** if it is satisfied there was sufficient cause for the delay.

# Section 112 - Appeals to GST Appellate Tribunal (GSTAT)

- **Can tax authorities file appeals to GSTAT?**
  - As per *Section 112(3) of the CGST Act, 2017*, the Commissioner may, on his own motion or on request from the State/UT Commissioner, direct any officer subordinate to him to file an appeal to the GSTAT. The time limit for the department is **6 months** from the date of order, with a further condonation of **3 months** for sufficient cause. The departmental appeal must be filed in **FORM GST APL-07**.

- **Can Cross objections be raised by the other party ?**
  - Cross-objections by the other party (respondent) can be raised in Form GST APL-06 within **45 days** of receipt of notice of such appeal being filed by the aggrieved person.

- **What form is used for filing a GSTAT appeal?**
  - Appeals by the taxpayer are filed electronically on the GSTAT portal in **FORM GST APL-05**. Upon filing, a **provisional acknowledgement** (APL-02A Part A) is issued immediately. After Registrar scrutiny, a **final acknowledgement with the appeal number** (APL-02A Part B) is issued.

# Section 112 - Appeals to GST Appellate Tribunal (GSTAT)

- **What is the fee for filing a GSTAT appeal?**

  - The fees for filing of appeal or restoration of appeal shall be **Rs 1,000** for every **Rs 1 lakh** of tax or ITC involved or the difference in tax or ITC involved or the amount of fine, fee or penalty determined in the order appealed against, subject to a maximum of **Rs 25,000** and a minimum of **Rs 5,000** ( These fees are on total demand  of C+S+I and not Act wise)

  - The fees for filing of an appeal in respect of an order not involving any demand of tax, interest, fine, fee or penalty shall be **Rs 5,000**.

# Section 112 - Appeals to GST Appellate Tribunal (GSTAT)

- **Can appeals be filed against all types of orders?**
  - As per *Section 112(1)*, appeals to GSTAT lie only against orders of the **First Appellate Authority (Section 107)** or the **Revisional Authority (Section 108)**.
  - Further, as per *Section 121 of the CGST Act, 2017*, no appeal lies against the following orders:
  - An order directing **transfer of proceedings** from one officer to another
  - An order pertaining to **seizure or retention** of books of account, registers and other documents
  - An order sanctioning **prosecution** under the Act
  - An order passed under **Section 80** (granting instalment payment of tax)

- **Can GSTAT refuse to admit an appeal of low value?**
  - Under *Section 112(2)*, GSTAT has discretion to refuse admission of an appeal where the amount of tax, ITC, fine, fee or penalty involved does not exceed **Rs. 50,000**. This is a discretionary power, not an absolute bar.

# Section 112 - Appeals to GST Appellate Tribunal (GSTAT)

- **What pre-deposit is required for filing an appeal to GSTAT?**
  - As per *Section 112(8) of the CGST Act, 2017* (amended by Finance (No. 2) Act, 2024 w.e.f. 1.11.2024), no appeal shall be entertained unless the appellant has paid:
  - In full (**100%**), the amount of tax, interest, fine, fee and penalty **admitted** by him; and
  - **10% of the remaining amount of tax in dispute** (in addition to the 10% already deposited at the first appeal stage), making the cumulative pre-deposit **20% of the disputed tax**.
  - The cap is **Rs. 20 crore each for CGST and SGST** (total Rs. 40 crore for CGST + SGST orders), reduced from Rs. 50 crore by the Finance (No. 2) Act, 2024.
  - For penalty-only orders (no tax demand), **10% of the penalty** must be deposited as pre-deposit (introduced by Finance Act, 2025, w.e.f. 1.10.2025).

# Section 112 - Appeals to GST Appellate Tribunal (GSTAT)

- **What is the effect of making the pre-deposit?**
  - As per *Section 112(9) of the CGST Act, 2017*, once the pre-deposit is paid, recovery of the **entire remaining disputed amount is automatically stayed** until disposal of the appeal. No separate stay application is required.

- **Is the pre-deposit refundable if the appeal is allowed?**
  - If the appellant succeeds and the final amount payable as per the GSTAT order is less than the amount pre-deposited, the excess is refundable. As per *Section 115 of the CGST Act*, interest is payable on the pre-deposit from the date of payment until the date of refund at the rate specified under Section 56. However, **refund is not automatic** — the appellant must actively file a refund claim after the order.

- **Can an appeal be withdrawn from GSTAT?**
  - An application for withdrawal must be filed in **FORM GST APL-05W** (taxpayer) or **APL-07W** (department) before the final order is passed.
  - If the appeal has not yet been admitted (final acknowledgement not issued), withdrawal is immediate. If it has been admitted, withdrawal is subject to **GSTAT approval, to be decided within 15 days**. Any re-filed appeal must respect the original limitation period.

# …GSTAT Appeals

- Multiple SCN – Single OIO – Single OIA- Single GSTAT Appeal
- Multiple SCN – Multiple OIO – Single OIA- Multiple GSTAT Appeal
- Single SCN-Single OIO- Multiple Persons- Multiple Appeals

# GSTAT

| Type of Bench | Appeals heard |
| --- | --- |
| **Principal Bench** | Exclusively: (i) Place of supply issues; (ii) Anti-profiteering (Section 171); (iii) OIDAR/online gaming (Sections 14/14A IGST); (iv) ISD (Section 20 CGST); (v) Cases with identical question of law pending before 2+ State Benches; (vi) Other notified categories. |
| **State Bench** | All other appeals against Section 107 / 108 orders not reserved to Principal Bench (most routine GST disputes). |
| **Single-member Bench** | Appeals where: (i) tax/ITC/fine/fee/penalty ≤ ₹50 lakh; and (ii) no question of law involved; and (iii) President's approval obtained. |

# Section 112 - Appeals to GST Appellate Tribunal (GSTAT)

- **Who can represent a party at GSTAT?**
  - As per *Section 116 of the CGST Act, 2017*, parties may appear in person or through an **authorised representative**, which includes:
  - A relative or a regular employee of the appellant
  - An advocate enrolled under the Advocates Act, 1961
  - A Chartered Accountant, Cost Accountant, or Company Secretary holding a valid certificate of practice
  - A retired officer of the Commercial Tax Department of any State/UT, Government of India, or CBIC, holding a Gazetted post not below Group B
  - A Tax Return Preparer or GST Practitioner as approved under the Act

- **Is there a time limit within which GSTAT must decide an appeal?**
  - As per *Section 113 of the CGST Act, 2017*, GSTAT shall, where possible, hear and decide every appeal within **one year** from the date of filing. This time limit is **advisory in nature** and is not a strict statutory deadline. Periods during which the order is stayed by a court or tribunal are excluded from computation.

# Section 112 - Appeals to GST Appellate Tribunal (GSTAT)

- **What happens after GSTAT passes its order?**
  - GSTAT may **confirm, modify, or annul** the decision or order appealed against. It may also **remand the matter** back to the authority below. The order of GSTAT is binding on the parties unless challenged before the High Court or the Supreme Court.

- **Can an order of GSTAT be challenged further?**
  - Under *Sections 117 and 118 of the CGST Act, 2017*,
  - any person aggrieved by a GSTAT order may file an appeal to the **High Court** on a **substantial question of law** within 180 days of communication of the order.
  - Appeals against orders of the Principal Bench lie directly to the **Supreme Court**.

# Section 112 - Appeals to GST Appellate Tribunal (GSTAT)

- **Can additional evidence be produced before GSTAT?**
  - As a general rule, **no fresh evidence** is admissible before the Appellate Tribunal. The appeal is decided on the record that was before the original adjudicating authority and the first appellate authority. This rule is codified in *Rule 112 of the CGST Rules, 2017*.

- **When is additional evidence exceptionally permitted?**
  - GSTAT may allow additional evidence to be produced only in the following limited circumstances:
  - **(a) Evidence refused by lower authority:** Where the party was prevented from producing the document or witness before the adjudicating or first appellate authority, and that authority **refused to admit** it without sufficient cause.
  - **(b) Inadequate opportunity:** Where the party was not given a **reasonable opportunity** to produce the evidence at the earlier stage.
  - **(c) Good cause shown:** Where the Tribunal is satisfied that there is **sufficient cause** for the admission of additional evidence in the interests of justice. This is a residuary ground and is applied sparingly.

- **What is the procedure when GSTAT admits additional evidence?**
  - If GSTAT allows additional evidence, it must **record its reasons in writing** for doing so. The Tribunal may also direct the **lower authority to re-examine the matter** in light of the fresh evidence.

# THANK YOU !!

# Questions ???

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