

Assessment and Adjudication under GST Reply to the Recent Notices

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INCOME TAX BAR ASSOCIATION - AHMEDABAD

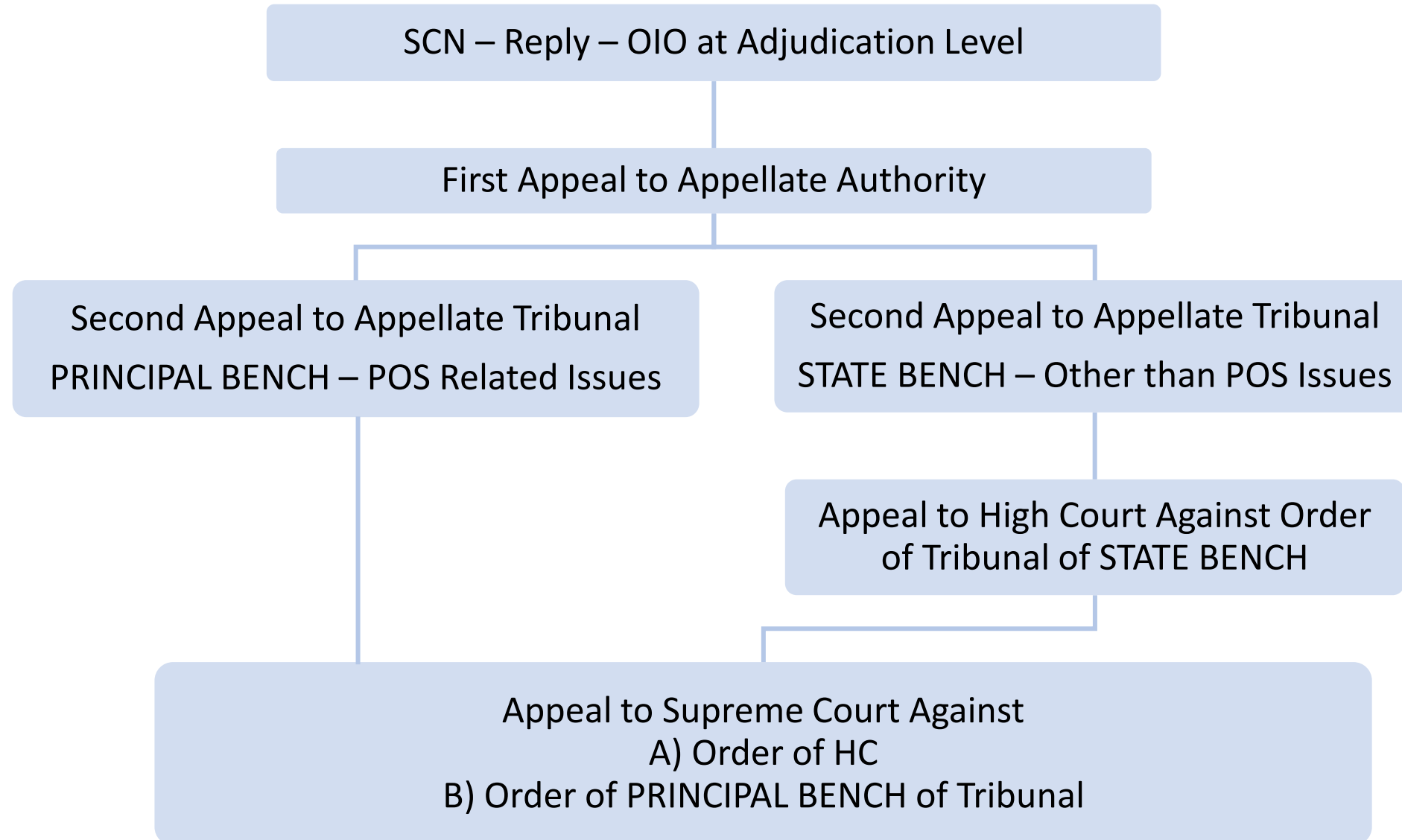
Assessment V/s Audit

- **Section 2(11) – “Assessment”** means determination of tax liability under this Act and includes self-assessment, re-assessment, provisional assessment, summary assessment and best judgment assessment;
- **Section 2(13) – “Audit”** means the examination of records, returns and other documents maintained or furnished by the registered person under this Act or the rules made thereunder or under any other law for the time being in force to verify the correctness of turnover declared, taxes paid, refund claimed and input tax credit availed, and to assess his compliance with the provisions of this Act or the rules made thereunder;

Assessment V/s Audit

	Section	
ASSESSMENT	59	Self-assessment
	60	Provisional assessment [Value / Rate]
	61	Scrutiny of returns
	62	Assessment of non-filers of returns [Best Judgement - within 5 years]
	63	Assessment of unregistered persons [Best Judgement - within 5 years]
	64	Summary assessment in certain special cases [protective assessment]
AUDIT	65	Audit by tax authorities
	66	Special audit [by Chartered or Cost Accountant] [Value / ITC]

Adjudication and Appeals



Scrutiny of Returns (Sec. 61)

Form	Particulars of the Form	By
ASMT-10	Notice for intimating discrepancies in the return after <u>scrutiny of returns</u> - Quantify Tax, Interest and any other amount, if possible	Officer
ASMT-11	Reply to the notice issued under section 61- <u>Within 30 Days</u> - Either Accept the demand OR furnish an explanation for the discrepancy -Accepted Demand can be Corrected in the Returns of the month in which It has been accepted	Tax Payer
ASMT-12	Order of acceptance of reply against the notice issued under section 61 [CAUTION: IT'S NOT A DEMAND ORDER]	Officer
OUTCOME UNDER S.61	– NO Direct Demand Order EITHER Additional Fact Finding process u/s 65, 66 or 67 as below A. Initiate departmental audit as per section 65 B. Initiate Special Audit as per section 66 C. Initiate inspection, search and seizure as per section 67 OR D. Issue show cause notice u/s 73 & 74 of the CGST Act	

Scrutiny of Returns (Sec. 61)

- Scrutiny of Returns may leads to
 - GSTR2B vs 3B Mismatch [Format]**
 - GSTR1 Vs 3B Mismatch
 - RCM Liability not paid
 - Interest Not paid while filling the returns belatedly
 - All GSTR-XX Covered?
 - GSTR-9 vis-à-vis GSTR-3B/GSTR-1
- Pre-adjudication Process
- Limited to Mismatch in Returns [and not DMS]
- Not to be invoked to verify the return with other Documents
- Not to be invoked to Call upon other documents to investigate

Audit by Tax Authorities (Sec. 65)

- To be conducted by Commissioner or Any officer authorised by him
- By General or Specific Order
- For Such a period
- At such a frequency
- At place of Business / At in the office of officer (Desk Audit)
- Inform at least before 15 working days
- To be completed within 3 months from “Commencement”
- Necessary Facility [Premise/Work area etc] is to be provided to the officer
- To furnish information as required to the officer

Audit by Tax Authorities (Sec. 65)

Form	Particulars of the Form	By
ADT-01	Notice for conducting audit	Officer
	Communication of any discrepancies observed	Officer
	Reply to be filled	Tax Payer
ADT-02	Audit Report under section 65(6) [Audit Observations]	Officer
	On conclusion,	
OUTCOME UNDER S.65	A. findings to be informed to RP within 30 days & B. Incase officer wants to adjudicate, Issue Show Cause Notice u/s 73 & 74 of the CGST Act	

Audit by Tax Authorities (Sec. 65)

- Like EA-2000 Audit??
- Not an Inspection / Search
- “Pre-Audit” or “Ledger scrutiny” of client by consultant
- Audit cannot conclude automatically resulting in a demand
- Spot Recovery can't be insisted upon
- Cant access full computer / Accounting software
- Outcome:
 - On conclusion, findings to be informed to RP within 30 days
 - Issue show cause notice u/s 73 & 74 of the CGST Act

DEMAND AND RECOVERY

Section 73 v/s 74

	Section 73	Section 74
To be Invoked	OTHER THAN for Fraud OR wilful mis-statement OR Suppression of Facts	FOR Fraud OR wilful-mis statement OR Suppression of Facts
Notice To be issued	Within 33 Months from the due date of Annual Return [3 months prior]	Within 54 Months from the due date of Annual Return [6 months prior]
Statement may be served	For continuing period, Statement can be served instead of Notice	
Reply to SCN		
Passing or Order Max by	Within 3 Years from the due date of Annual Return	Within 5 Years from the due date of Annual Return

DEMAND AND RECOVERY Penal Provisions

If Tax and Interest Paid	Form Issued	Section 73	Section 74
Voluntary Before SERVICE of SCN*	DRC-01A (Intimation)	NIL	15%
Within 30 days of ISSUING SCN**	DRC-01 (SCN)	NIL	25%
While Issuing Order in DRC-07		10% of Tax OR 10000 Whichever is Higher	100%
If Paid Within 30 days of COMMUNICATING of Order		10% of Tax OR 10000	50%
If Paid After 30 days of COMMUNICATING of Order		Whichever is Higher	100%

DEMAND AND RECOVERY - Time barred Limitation

As Amended in Union Budget 2024

FY	Extended Due Date or Original Date of GSTR9	Section 73		Section 74		Section 74A [Fraud / Non-Fraud Merged]	
		SCN to be ISSUED Max by [at least 3M before order]	Order to be ISSUED Max by [3 Years from Due date of G9]	SCN to be ISSUED Max by [at least 6M before order]	Order to be ISSUED Max by [5 Years from Due date of G9]	SCN to be ISSUED within 42 Month from Due Date of G9	Order to be ISSUED within 12 Month from date of SCN [#]
2017-18	5-Feb-20	30-Sep-23	31-Dec-23	5-Aug-24	5-Feb-25	-	-
2018-19	31-Dec-20	31-Jan-24	30-Apr-24	30-Jun-25	31-Dec-25	-	-
2019-20	31-Mar-21	31-May-24	31-Aug-24	30-Sep-25	31-Mar-26	-	-
2020-21	28-Feb-22	30-Nov-24	28-Feb-25	28-Aug-26	28-Feb-27	-	-
2021-22	31-Dec-22	30-Sep-25	31-Dec-25	30-Jun-27	31-Dec-27	-	-
2022-23	31-Dec-23	30-Sep-26	31-Dec-26	30-Jun-28	31-Dec-28	-	-
2023-24	31-Dec-24	30-Sep-27	31-Dec-27	30-Jun-29	31-Dec-29	-	-
2024-25	31-Dec-25	30-Sep-28	31-Dec-28	30-Jun-30	31-Dec-30	30-Jun-29	30-Jun-30

*In case Tax has been collected but not paid, No time limit u/s 76

** In case of erroneous refund, date of 3 / 5 years OR **42 Months** to be counted from date of Refund Order

*** When any Notice or Order Stayed by Court or Tribunal, such period will be excluded

12 Months of passing order can be extended by another 6 months by Commissioner / Additional / Joint Commissioner

DEMAND AND RECOVERY

Monetary Limit to Adjudicate the Notices U/s 73 / 74

Officer of Central Tax	Monetary Limit CGST + SGST + IGST
Superintendent of Central Tax	Up to Rs 20 Lakhs
Deputy or Assistant Commissioner of Central Tax	20 Lakhs to 2 Crores
Additional or Joint Commissioner of Central Tax	Above 2 Crore Rupee

*An officer of central tax may exercise the powers any other officer of central tax who is subordinate to him

DEMAND AND RECOVERY

Forms and Process Flow

Form	Particulars of the Form	By
DRC-01A PartA	Intimation of tax ascertained as being payable under section 73(5)/74(5) [Pre-notice consultations] – Optional for Officer	Officer
DRC-01A PartB	Reply to the communication for payment before issue of Show Cause Notice	Tax Payer
DRC-01A PartC	Intimation of Acceptance of Payment + Submission made	Officer
DRC-01	Show Cause Notice + Summary in DRC-01 for Tax, Interest and Penalty	Officer
DRC-02	Statement for “Periodical Demand” for Tax, Interest and Penalty	Officer
DRC-03	Intimation of payment made voluntarily or made against the show cause notice (SCN) or statement	Tax Payer
DRC-04	Acknowledgement of acceptance of payment made voluntarily	Officer
DRC-05	Intimation of conclusion of proceedings	Officer
DRC-06	Reply to the Show Cause Notice	Tax Payer
DRC-07	Summary of Order	Officer
DRC-08	Rectification of Order / Withdrawal of Order	Officer

SCN (DRC-01) Or Statement (DRC-02)

- Is it without incomplete investigation? On assumptions?
- Facts – Law – Quantification
- Summary of Amount payable along with DRC-01 / 02
- Ground for DRC-02 MUST be same as DRC-01
- Statement of summary hold as good value as SCN
- Onus on dept to prove any allegation

REPLY TO SCN – DRC-06

- Date of Receipt
- Time limit to reply
- Analysis of Issue with Client and Collection of further Details – COMPLETE FACTS
- Drafting
 - 75% for research 25% for drafting
 - In the Flow
 - Margin, Page numbering, Para numbering, Index if needed, Line spacing, on LH of Noticee, 3 sets properly tagged/stapled, Font, Justify
 - Language
 - Reply to every para – Alternate grounds – cover every issue – reference to law
 - Be specific, be firm but never hurt the ego
 - Don't use idioms and phrases
 - Annexures
- Accept / Deny Allegation OR Attack Question
- Cross Examination of third party / Cross examination of the Documents

REPLY TO SCN – DRC-06

- Basis for appeal
- Sequence of Reply to SCN
 - Brief background of the Tax Payer, revenue's case and amount proposed
 - Facts in dispute – Provide the actual fact with evidence
 - Interpretation in dispute – Reply with in detail background of law
 - Address each allegation
 - Alternate plea / submission for issues raised in SCN
 - Mention grounds are separate from each other
 - Prayer to Drop proceedings and to request for PH
- Personal Hearing
 - Compile short-notes / synopsis
 - LoA [Format]
 - Speak softly
 - Start with facts
 - Appearance – Should be presentable

Miscellaneous, BUT IMPORTANT (Safe-Guards)!

- Opportunity of being heard is granted only when request is made in Writing / Or before passing any adverse order [Sec. 75(4)]
- Max 3 adjournment for OBH [Sec. 75(4)]
- Order Should be “Speaking Order” [Sec. 75(6)]
- No New Grounds after issuance of SCN. Order can’t travel beyond the Notice [Grounds as well as Amount] [Sec. 75(7)]
- Adjudicating process is deemed to be completed if order not issued within time [Sec. 75(10)]
- If anything is self-assessed in return, direct recovery [Sec. 75(12)] [Instruction 01-2022 prescribes, one opportunity to be given]
- If Penalty imposed under 73/74, no other penalty (eg. under 122 / 125) [Sec. 75(13)]
- Max Interest @18% WEF 01-07-2017
- Modes of Delivery (Service of Notice) Section 169 vis-à-vis Instruction 04/2023

Miscellaneous, BUT IMPORTANT (Safe-Guards)!

- If Fraud / Wilful misstatement / Suppression Not found, adjudication proceedings will be automatically converted to Section 73. [Sec. 75(2)]
 - When Supplier didn't paid the tax / Supplier didn't filled 3B / Supplier filled NIL 3B – No FWS on the part of Recipient
- REPLY to Time barred / Bad Notices in Technical grounds will prove it RIGHT. Question the Notice before Answering it [Sec. 160(2)]
 - Challenging Extended period u/s 168A
 - Challenging the SCN if Mode of Delivery is wrong / Signature Not found
 - Challenging the SCN if Only DRC-01 issued without any Notice [Rule 142(1)]
- Burden of Proof for “Eligibility of ITC” is on “Tax Payer” [Sec. 155]
- Rectification of Errors apparent on the Face of Order can be done, within 3 months [Sec. 161]
- PH Cant be before submitting the reply – H T Media Ltd. V Union Of India [2023] 153 taxmann.com 339 (Delhi)
- 30 Days minimum time between SCN and Order (Scheme suggest lower penalty if paid within 30 days)
- Notice to be dropped for already closed matter in past in ASMT-12 or DRC-05
- Provisional Attachment Notice during SCN? [Sec. 83]

Penal Provisions (Introduced in Finance Bill 2024, Applicable From FY 24-25)

(Penalty payable at different stages of Adjudication)

		Cases Other than Fraud / Suppression / Willful misstatement - PENALTY		Cases of Fraud / Suppression / Willful misstatement - PENALTY	
If Tax and Interest Paid:	Form Issued	Section 73	Section 74A	Section 74	Section 74A
		Till 23-24	From 24-25	Till 23-24	From 24-25
Voluntary Before SERVICE of SCN	DRC-01A (Intimation)	NIL	NIL	15%	15%
Within 30 / 60 days of ISSUING SCN	DRC-01 (SCN)	NIL Penalty, if Tax + Interest paid within 30 Days	NIL Penalty, if Tax + Interest paid within 60 Days of SCN	25% Penalty, if Tax + Interest paid within 30 Days of SCN	25% Penalty, if Tax + Interest paid within 60 Days of SCN
While Issuing Order, Officer will levy	DRC-07	10% of Tax OR 10000 Whichever is Higher	10% of Tax OR 10000 Whichever is Higher	100%	100%
If Paid Within 30 / 60 days of COMMUNICATING of Order		10% of Tax OR 10000	10% of Tax OR 10000	50% Penalty, if Tax + Interest paid within 30 Days of Order	50% Penalty, if Tax + Interest paid within 60 Days of Order
If Paid After 30 / 60 days of COMMUNICATING of Order		Whichever is Higher	Whichever is Higher	100%	100%

Merger of Section 73 & 74 to Newly Inserted Section

74A (Applicable from FY 24-25)

- Amendment in Section 73 & 74 – Insertion of Section 74A
- Common time limit to issue SCN and to pass Order – irrespective of whether case involves fraud, suppression or willful misstatement etc!
- Net 42 Months from the Due date of Annual Return to issue SCN u/s 74A (9 months more time compared to “erstwhile 73”) (BUT, 12 months lesser compared to erstwhile 74)
- Once SCN issued, must to be closed within 12 months from the date of Issuance. (Doesn’t have any Single time barring date to pass the Order unlike it was there in 73 / 74) (Doesn’t have longer time if SCN issued early)
- Is it welcome move??! When adjudication is done, its done Once and for all
- Unlike 73 / 74, where is after issuance of SCN, Only 3 months / 6 months were available (If SCN given on last date), where adjudication was done in haste, Under 74A, 12 months clear GAP has been provided.
- Penalty remains Same, but the reduced penalty benefit extended till 60 days from SCN (erstwhile it was 30 days)
- Previously if Sec. 73 time limit was missed, than Field formation used to invoke Sec. 74, now this practice will be curbed.
- Both Fraud vs Non-fraud matters can be adjudicated in Single Notice
- Incase SCN Given for Fraud etc – but after reply, No such things found, then can be converted to Non-fraud case at Adjudication level only
- NO SCN if demand is less than 1000 Rs [Proviso to 74A(1)]

GST Amnesty for FY 17-18, 18-19 & 19-20

- Applicable For
 - SCN u/s 73 where order yet to be passed
 - OIO passed u/s 73 where appeal not filled / Appeal order yet to be passed
 - OIA passed by FAA where no order passed by GSTAT
 - Such SCN / OIO / OIA Converted from 74 to 73
- Relief – 100% of Interest & 100% of Penalty
- Other Terms and Conditions
 - No Appeal once opted for scheme [Go for Amnesty scheme v/s opt for appeal]
 - No splitting of Order
 - Department can file appeal against Such orders, and incase upward revision in order, differential amount also required to be paid within 3 months from the order of FAA, GSTAT, HC or SC
- Scheme is Not Applicable for
 - Demand of erroneous refund cases
 - If Any Appeal is pending at any stage and it's not withdrawn
- When Order is partially for erroneous refund and partially for others, Full Tax to be paid before applying for scheme. Interest and Penalty to be paid within 3 months from the date of SPL-05 / SPL-06
- When Order is partially for other years and partially for 17-18 to 19-20, Full Tax to be paid before applying for scheme. Interest and Penalty to be paid within 3 months from the date of SPL-05 / SPL-06

GST Amnesty for FY 17-18, 18-19 & 19-20

- When Order is partially for 16(4) and partially for other demands, amount of 16(4) is not required to be paid
- NO Separate Rectification Application is required for such 16(4) cases, It'll be automatically dropped during this process
- Along with Application for Amnesty, Appeal Withdrawal application to be attached, if appeal or writ is filled previously
- If No order issued within prescribed time, it's deemed to be accepted
- Incase Appeal filled and withdrawn, then applied for Amnesty, and rejected in Amnesty scheme, then Original Appeal which was withdrawn will be restored. Vis-à-vis New Appeal Can be filled against SPL-07 Rejection order, but such appeal will be limited to if scheme is applicable or not, no other grounds on Merit/Law can be kept.
- Dept can File the appeal against their own order. Incase of Upward revision in amount by Any Appellate Authority, Pay such additional Tax amount within 3 month to get the benefit of Int + Penalty. If not paid, such waiver will be void
- SPL-01 for whom? Is there any SCN still open u/s 73 for Amnesty period?
- Tax can be paid through Credit ledger? – yes (Except RCM / Erroneous Refund cases)

GST Amnesty for FY 17-18, 18-19 & 19-20

Sr No	Amnesty Form	STAGE	Note for each Stage	Payment to be done by	Application for Amnesty to be filled by / SCN to be issued by / Order to be issued within	Section	Rule
1	SPL-01	APPLICATION FOR AMNESTY WHEN - SCN Issued, Order Pending	Along with SPL-01 + DRC-03 + Withdrawal of Writ Order within 1 month	31-03-25	Within 3 months from the 31-3-25, i.e. 30-06-25	128A(1) (a)	164(1)
2	SPL-02	APPLICATION FOR AMNESTY WHEN - OIO Issued, Appeal order Not issued / Appeal Not filled at all	Along with SPL-02 + Tax Payment should be in Electronic Liability Ledger against demand Raised / if paid via DRC-03, File DRC-03A to set off such already paid amount against ELL + APL-1W (Appeal withdrawal order within 1 month)	31-03-25	Within 3 months from the 31-3-25, i.e. 30-06-25	128A(1) (b)	164(2)
3	SPL-02	APPLICATION FOR AMNESTY WHEN - OIA Issued		31-03-25	Within 3 months from the 31-3-25, i.e. 30-06-25	128A(1) (c)	164(2)
4	SPL-02	APPLICATION FOR AMNESTY WHEN - OIA Converted from 74 to 73 by FAA / GSTAT / HC / SC		Within 6 months from the date of such Conversion Order	Within 6 months from the date of such Conversion Order	Proviso to 128A(1)	164(2)
5	SPL-03	Notice when Application u/s 128A is liable for rejection	By Proper Officer		SCN to be issued within 3 months from the DATE OF RECEIPT OF APPLICATION		164(8)
6	SPL-04	Reply to the SCN			Reply to be filled within 1 month from the date of SCN		164(9)
7	SPL-05	Order for conclusion of proceedings as per section 128A - DROP ORDER	Pay Interest & Penalty for the "Erroneous refund" Portion & "Other than Scheme Period Portion" Liability within 3 months from DROP ORDER		- Order to be issued within 3 months from the date of receipt of Application, where SCN is not issued		164(10) & (11)
8	SPL-07	Order for Rejection of Application submitted under section 128A	File Appeal within 3+1 Month u/s 107 - Or get Original Appeal Restored		- Order to be issued within 3 months from the date of Reply to SCN received		
9	APL-01	Appeal Against Rejection Order			- Order to be issued within 4 months from the date of SCN where Reply to SCN not received		164(12)
10	SPL-06	Order for conclusion of proceedings as per section 128A - DROP ORDER by Appellate Authority	Pay Interest & Penalty for the "Erroneous refund" Portion & "Other than Scheme Period Portion" Liability within 3 months from DROP ORDER				164(15)
11	SPL -08	Undertaking that No Appeal will be filled against "Amnesty Rejection Order" to Restore the Original Appeal			Within 3 months from the issuance of Order by AA		164(15)(b) (ii)

GST Amnesty for FY 17-18, 18-19 & 19-20

- Practical Issues
 - What if there are Multiple Grounds in SCN / OIO / OIA and for only some of the Grounds, Tax Payer Wants to Opt for Amnesty?
 - Tax already paid against such Notice / Order before such Amnesty, eligible for scheme now?
 - File Appeal, Withdraw it and go for Amnesty, in sensitive cases, so that appeal can be restored, incase Amnesty is rejected

Special Procedure for 16(4) Relief

- Things to be taken care before applying:
 - Years Covered 17-18, 18-19, 19-20 & 20-21
 - 3B Should be filled before 30-09-2021
- Apply for Rectification on or before 07-Apr-2024
- Attach Annexure-A Along with that application
- Withdraw Appeal, if already filled
- The PO Shall pass the rectification Order within 3 months from the date of application

The Magic You are Looking for, is in the Work you are Avoiding!!

Thank You!

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