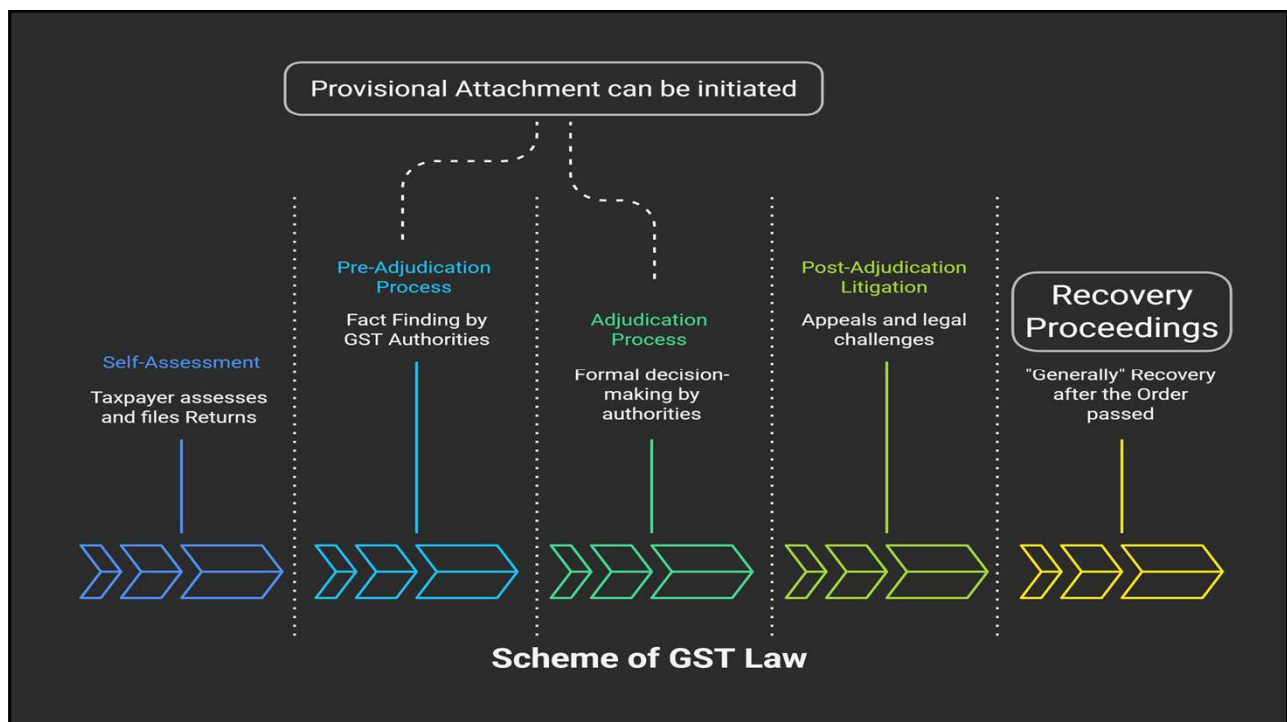


Assessment and Adjudication under GST Do's - Don'ts & Safeguards for Reply to SCN

CA. Deep Koradia

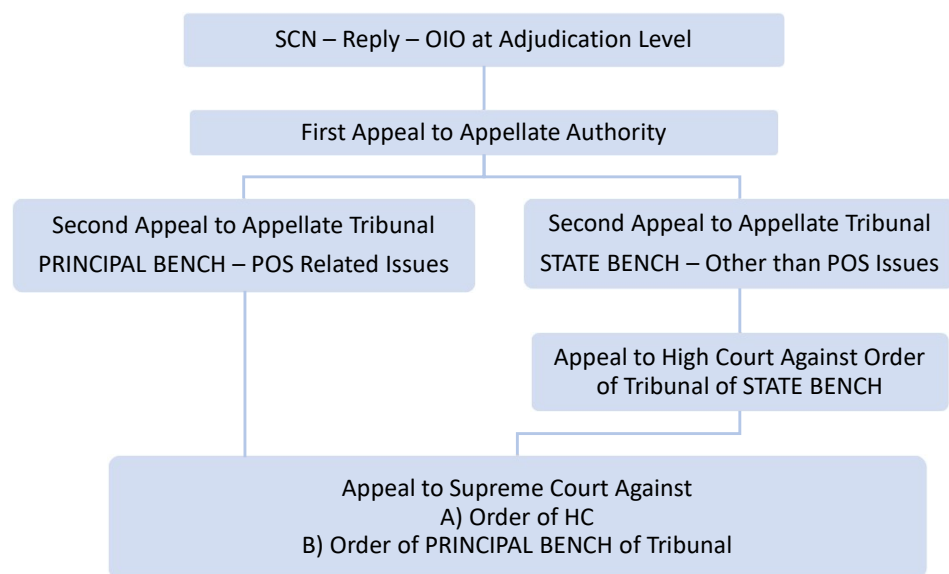
INCOME TAX BAR ASSOCIATION - AHMEDABAD



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 Whichever is Higher	50%
If Paid After 30 days of COMMUNICATING of Order			100%

* 10% Penalty if such amount is self assessed and not paid within 30 days [Sec 73(11)]

DEMAND AND RECOVERY - Time barred Limitation

		Section 73		Section 74		Section 74A [Fraud / Non-Fraud Merged]	
FY	Extended Due Date or Original Date of GSTR9	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
2025-26	31-Dec-26	30-Sep-29	31-Dec-29	30-Jun-31	31-Dec-31	30-Jun-30	30-Jun-31

*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

[^] As Extended via NN 56-2023 CT Dated 28-12-2023

[#] 12 Months of passing order can be extended by another 6 months by Commissioner / Additional / Joint Commissioner for FY 24-25 Onwards u/s 74A

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-03A	Application for adjustment of the amount paid through FORM GST DRC-03 against the order of demand	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

Form	Brief	Particulars of the Form	By	Rule	Section
DRC-07A	Demand under existing laws	Summary of the order creating demand under existing laws	Officer	142A	
DRC-08A		Amendment/Modification of summary of the order creating demand under existing laws	Officer	142A	
DRC-01D	Notice before recovery	Notice For Recovery - to pay the dues within 7 days	Officer	142B	78
DRC-09		Order of Recovery Through Specified Officer	Officer	143	79(1)(a)
DRC-10	Auction of already possessed property	Notice for Auction	Officer	144 / 144A	79(1)(b)
DRC-11		Notice to successful bidder to pay the amount within 15 Days	Officer	144 / 144A / 147(12)	79(1)(b)
DRC-12		Sale Certificate	Officer	144 / 144A / 147(12)	79(1)(b)
DRC-13	Recovery from third person	Notice to Third Person	Officer	145	79(1)(c)
DRC-14		Certificate of Payment to a third person	Officer	145	79(1)(c)
DRC-15	Court	Application before Civil Court Requesting execution for a decree	Officer	146	
DRC-16	Attachment and Auction of movable & immovable	Notice for Attachment and Sale of Movable / Immovable Property	Officer	147	79(1)(d)
DRC-17		Notice for Auction of Immovable / Movable Property	Officer	147	79(1)(d)
DRC-11 & 12		See above	Officer	147	79(1)(d)
DRC-18	Collector	Certificate to Collector or Deputy Commissioner of District to Recover as if it's arrears of Land Revenue	Officer	155	79(1)(e)
DRC-19	Magistrate	Application before Magistrate to Recover as if it's fine by the court	Officer	156	79(1)(f)
DRC-20	Instalment	Application to seek instalments to pay the dues	Tax Payer	158	80
DRC-21		Order of Acceptance / Rejection of Application for deferred payment in instalments	Officer	158	80
DRC-22		Provisional attachment of property under section 83	Officer	159	83
DRC-22A	Provisional Attachment	Application for filing objection against provisional attachment of property	Tax Payer	159	83
DRC-23		Restoration of provisionally attached property/bank account	Officer	159	83
DRC-24		Intimation to Liquidator for Recovery of Amount	Officer	160	
DRC-25		Intimation for Continuation of Recovery Proceedings for reduction or enhancement of demand	Officer	161	84
	Blockage of Credit Ledger	Order of Not allowing debit from the Electronic Credit ledger	Officer	86A	
		Restoration of allowing Debit from the Electronic Credit Ledger	Officer	86A	

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

- Is it without incomplete investigation? On assumptions?
- Facts – Law – Quantification
- “SCN” along with “Summary of Amount payable” in 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]
- After paying Tax + Int + [reduced]Penalty, All proceedings in respect of such notice shall be deemed to be concluded – EXCEPT Prosecution u/s 132 [Explanation to Sec 73 / 74 / 74A]

Penalty under GST at Different Stages of Adjudication

Stages of NOTICE		Penalty Till FY 2023-24		Penalty From FY 2024-25	
If Tax and Interest Paid:	Form Issued	Section 73 (Non Fraud Case)	Section 74 (Fraud Case)	Section 74A (Non Fraud Case)	Section 74A (Fraud Case)
If paid Voluntary Before SERVICE of SCN	DRC-01A (Intimation)	0%*	15%	0%*	15%
If Paid Within 30 / 60 days of ISSUING SCN	DRC-01 (SCN)	0%* If Tax + Interest paid within 30 Days	25% if Tax + Interest + Penalty paid within 30 Days	0%* If Tax + Interest paid within 60 Days	25% if Tax + Interest + Penalty paid within 60 Days
If Paid After 30 / 60 days of ISSUING SCN	DRC-01 (SCN)	10% of Tax OR 10000 Whichever is Higher (after 30 Days of SCN)	50% (after 30 Days of SCN)	10% of Tax OR 10000 Whichever is Higher (after 60 Days of SCN)	50% (after 60 Days of SCN)
While Issuing Order, Officer will levy	DRC-07	10% of Tax OR 10000 Whichever is Higher	100%	10% of Tax OR 10000 Whichever is Higher	100%
If Paid Within 30 / 60 days of COMMUNICATING of Order		10% of Tax OR 10000 Whichever is Higher	50% if Tax + Interest + Penalty paid within 30 Days	10% of Tax OR 10000 Whichever is Higher	50% if Tax + Interest + Penalty paid within 60 Days
If Paid After 30 / 60 days of COMMUNICATING of Order			100%		100%

* 10% Penalty if such amount is self assessed and not paid within 30 days [Sec 73(11)]

Merger of Section 73 & 74 to Newly Inserted Section 74A (Applicable from FY 24-25)

- 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)]

Major Issues in Recent Notices Issued

- Royalty RCM adjudicated u/s 74
- GSTR2A Vs 3B Difference vis-à-vis Circular 183-2022 read with circular 193-2022
- Reversal of ITC Due to Exempted Supplies [Rule 42 / 43]
- Cement, Steel, Sand, Granite etc's ITC's Reversal
- Motor Vehicle's ITC Reversal
- ITC Reversal due to Cancelled dealers, return defaulters & Tax non Payers
- GSTR-1 Vs GSTR-3B Difference
- ITC Disallowance due to 3B Filled after the date specified in 16(4)

**A person gets lucky, when his
PREPARATION meets The
OPPORTUNITY!!**

Thank You!

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