

BRAHMAPUR TAX CONFERENCE



PROGRAMME SCHEDULE

Sunday 30th June 2024

08:00 am 09:30 am	Registration, Breakfast, Fellowship
09:30 am 11:15 am	Inaugural Session
11:30 am 01:30 pm	1st TECHINICAL SESSION
	Topic:- GST Litigation and its Solution
	Speaker:- CA Rajendra Arora, New Delhi
	Chairman:- Adv. M. Srinivas Rao, PP, AIFTP
	Topic Introduce by : Adv. C. R. Dash

RCM Availed incorrectly in GSTR-3B

S.No	Description	SGST	CGST
1	2	3	4
1	ITC in the current FY as per Table 8A of GSTR-09	56933	56933
2	ITC from ISD (GSTR-2A/6G of GSTR-09)	0	0
3	ITC from import (GSTR-2A/8G of GSTR-09)	0	0
4	ITC availed against Inward Supplies liable to Reverse Charge (RCM) 4A(3) [other than 4A(1) & 4A(2)]	2039345	2039345
5	Reversals in Table 4B of GSTR-3B	11446	11446
6	ITC carried forward from current FY to subsequent FY, Table 8C of GSTR-09	0	0
7	ITC Available for use in the current FY (S.No. 1+2+3+4-5-6)	2084832	2084832
8	ITC availed in current FY as per 4C of GSTR-3B	2221897	2221897
9	Net excess ITC availed (S. No. 8-7)	137065	137065

3.1 Details of Outward supplies and inward supplies liable to reverse charge

	Nature of Supplies	Total Taxable value(₹)	Integrated Tax(₹)	Central Tax(₹)	State/UT Tax(₹)	Cess(₹)
	(a) Outward Taxable Supplies (Other Than Zero Rated, Nil Rated and Exempted)	3,40,00,000.00	61,20,000.00	0.00	0.00	0.00
	(b) Outward Taxable Supplies (Zero Rated)	0.00	0.00	0.00	0.00	0.00
1	(c) Other Outward Supplies (Nil Rated, Exempted)	0.00	0.00	0.00	0.00	0.00
	(d) Inward Supplies (Liable to Reverse Charge)	3,62,23,350.00	21,62,989.00	21,78,697.00	21,78,697.00	0.00
-	(e) Non-GST Outward Supplies	0.00	0.00	0.00	0.00	0.00

4. Eligible ITC

Details	Integrated Tax(₹)	Central Tax(₹)	State/UT Tax(₹)	Cess(₹)
(A) ITC Available(Whether in Full or Part)	29,61,893.50	22,33,343.00	22,33,343.00	0.00
(1) Import of goods	0.00	0.00	0.00	0.00
(2) Import of services	630.00	0.00	0.00	0.00
(3) Inward supplies liable to reverse charge (other than 1 & 2 above)	21,62,809.00	20,39,345.00	20,39,345.00	0.00
(4) Inward supplies from ISD	0.00	0.00	0.00	0.00
(5) All other ITC	7,98,454.50	1,93,998.00	1,93,998.00	0.00
(B) ITC Reversed	0.00	11,446.00	11,446.00	0.00
(1) As per rules 42 & 43 of CGST Rules	0.00	0.00	0.00	0.00
(2) Others	0.00	11,446.00	11,446.00	0.00
(C) Net ITC Available (A-B)	29,61,893.50	22,21,897.00	22,21,897.00	0.00
(D) Ineligible ITC	0.00	0.00	0.00	0.00
(1) As per section 17(5)	0.00	0.00	0.00	0.00
(2) Others	0.00	0.00	0.00	0.00

RCM was to be claimed in Table 4(A)(3) and claimed in Table 4(A)(5). Probable Solutions

Correct it in GSTR-9.

If not then



Explain and give written submission as inadvertent mistake in reply to ASMT-10 or DRC01A or DRC-01. Attach all RCM Challans and month-wise tabular calculation. If still not agreed then



Provide Notarized
Affidavit or Indemnity
Bond. If still not
agreed then



Provide CA Certificate

PY ITC taken in CY. Reported incorrectly in GSTR-9

S.No	Description	IGST	GS	STR-9 Table 8C for PY (55,435+1,74,497 = 2,29	,932)
1	2	5	Pt. III	Details of ITC for the financial year	ır
1	ITC in the current FY as per Table 8A of GSTR-09	570111	Sr.No	Details	Integrated Tax(₹)
2	ITC from ISD (GSTR-2A/6G of	0		1	4
	GSTR-09) ITC from import (GSTR-2A/8G		8	Other ITC related information	
3	of GSTR-09)	0	Α	ITC as per GSTR-2A (Table 3 & 5 thereof)	12,26,669.22
	ITC availed against Inward		В	ITC as per sum total of 6(B) and 6(H) above	9,96,736.60
4	Supplies liable to Reverse Charge (RCM) 4A(3) [other than 4A(1) & 4A(2)]	2162809	С	ITC on inward supplies (other than imports and inward supplies liable to reverse charge but includes services received from SEZs) received during the financial year but availed in the next financial year upto specified period	55,435.00
5	Reversals in Table 4B of GSTR-3B	0	D	Difference [A-(B+C)]	1,74,497.62
_	ITC carried forward from	0	E	ITC available but not availed	0.00
6	current FY to subsequent FY, Table 8C of GSTR-09	0	F	ITC available but ineligible	0.00
	ITC Available for use in the	070000	G	IGST paid on import of goods (including supplies from SEZ)	0.00
7	current FY (S.No. 1+2+3+4-5-6)	2732920	Н	IGST credit availed on import of goods (as per 6(E) above)	0.00
8	ITC availed in current FY as	2961894	I	Difference (G-H)	0.00
	per 4C of GSTR-3B		J	ITC available but not availed on import of goods (Equal to I)	0.00
9	Net excess ITC availed (S. No. 8-7)	228974	K	Total ITC to be lapsed in current financial year (E + F + J)	0.00

Comparison from Portal 2018-19 Point 4 ITC

Cumulative S	hortfall
IGST	
14	
0.00	
0.00	
0.00	
-90,000.60	
-2,45,865.66	
-43,883.28	
-43,883.28	
-3,13,354.62	
-3,14,938.62	
-3,21,402.42	
-57,017.42	
-2,29,932.62	
-2,29,932.62	

PY ITC taken in CY was to be reported in GSTR-9 - PY Table 8C, Table 13 & in CY GSTR-9 Table 6M

If PY GSTR9 is Incorrect, Correct it in GSTR-9 of CY. If not then



Explain and give written submission as inadvertent mistake while reporting in GSTR-9 in reply to ASMT-10 or DRC01A or DRC-01. Attach GSTR-9 of PY. If still not agreed then



Provide Comparison table (Be vigil here and check that no additional demand shall raise). If still not agreed then



Provide
Notarized
Affidavit or
Indemnity Bond.
If still not agreed
then



Provide CA Certificate

GST की राह में, आपका दोस्त

ITC Availed from the dealer cancelled retrospectively

GSTR-1/3B Filed?

Invoices/GR copy/Payment Proof Available

Cross Examination of Documents

Sec. 16(2) of the CGST Act, 2017

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

ITC to be reversed on non-business transactions & exempt supplies

Calculate ITC Availed on common supplies as per Rule 42

Calculate ITC Availed on exempt supplies

Calculate the Turnover of exempt supplies

Calculate ITC Availed on common supplies as per Rule 43

Calculate ITC Availed on non-business transactions

Give special importance to Credit notes entered in Table 5 of GSTR-9 (Whether Credit notes pertains to Exports without payment of tax or for exempt supply) Accordingly

GST की राह में, आपका दोस्त

Eligible ITC mentioned as Ineligible in the SCN

Commodity/Service	HSN code	SGST	CGST	IGST	CESS	Total
2	3	4	5	6	7	8
Motor Vehicles	8702; 8703; 8711	2946	2946	0	0	5892
Motor Vehicle Insurance Service	997134	1481	1481	0	0	2962
Iron & Steel	7214; 7227; 7228	111996	111996	0	0	223992
Marble	2515	10297	10297	0	0	20594
Sand	2505	84757	84757	0	0	169514
Airlines travel	996425; 996426	31947	31947	0	0	63894
Works contractors	9954	43698	43698	0	0	87396
Cement	2523	5086	5086	0	0	10172
Plywood	4412	3150	3150	0	0	6300

Wrong HSN mentioned by the Supplier while filing his GSTR-1. (HSN in invoice is different)

Goods used in manufacturing

One HSN can have multiple meaning

HSN for insurance – Can be goods insurance also 9954 works contract is Office building maintenance charges

Used in course and furtherance of Business

Where petition challenged orders denying input tax credit due to bogus inward supplies from non-existent firms not receiving actual goods despite initial registration, High Court upheld revenue's action, ruling that mere registration is insufficient when supplier is non-existent, deciding against assessee/petitioner

[2024] 162 taxmann.com 770 (Allahabad)

HIGH COURT OF ALLAHABAD - Rajshi Processors v. State of U.P.

Where assessee filed reply to of demand giving disclosures under each of heads mentioned in SCN, since proper officer had not considered same while passing impugned order and merely stated that reply of assessee was unsatisfactory, impugned order was to be set aside and matter was to be remanded to proper officer for readjudication

[2024] 161 taxmann.com 260 (Delhi)

HIGH COURT OF DELHI - A. B. Traders v. Commissioner of Delhi Goods and Service Tax

Where revenue issued a notice under Section 73 (1) stating assessee failed to had failed to produce any evidence from which it could be ascertained that suppliers had paid tax to Government on those supplies (which are disclosed/ admitted by suppliers in their statement in GSTR-I) and that assessee had availed and utilized Input Tax Credit (ITC) in contravention of Section 16(2)(c), however assessee provided certificates from CAs confirming suppliers' tax discharge, but revenue rejected them without inquiry, leading to an erroneous demand confirmation, therefore order confirming demand against assessee was to be set aside

[2024] 162 taxmann.com 156 (Calcutta)

HIGH COURT OF CALCUTTA - Lokenath Construction (P.) Ltd. v.Tax/Revenue, Government of West Bengal

Where demand was raised against assessee disallowing input tax credit as assessee had not shown bank payment proof of invoices and in reminder letter issued assessee was given opportunity to personally appear, assessee was ready to produce all proofs of payments, impugned order was to be set aside and matter to be remanded

[2024] 161 taxmann.com 676 (Delhi)

HIGH COURT OF DELHI - Amit Upadhyay v. Sales Tax Officer AVATO

Where show cause notice was issued to assessee on grounds i.e. under declaration of output tax; reconciliation of GSTR-01 with GSTR-09; Reconciliation of E-way bill turnover with GSRT-01; excess claim of Input Tax Credit etc. and a detailed reply was furnished by assessee giving response under each of heads with supporting documents, however impugned order was passed raising demand and penalty against assessee recording that reply was not properly filed/explained, same could not be sustained

[2024] 163 taxmann.com 28 (Delhi)

HIGH COURT OF DELHI - Mitsubishi Electric India (P.) Ltd. v. Union of India

Where assessee filed GSTR 1 return for 2017-18 with an inadvertent error of duplicate invoices and despite assessee's reply to show cause notice mentioning that correct details were contained in GSTR 3B, revenue imposed tax liability and assessee's said explanation was disregarded as unacceptable by revenue merely on ground that assessee did not amend GSTR 1 statement on or before March 2019, in view of documents submitted by assessee, order imposing tax liability was to be set aside and matter was required to be reconsidered

[2024] 161 taxmann.com 234 (Madras)

HIGH COURT OF MADRAS - A. Ansari Abu Agencies v. Superintendent of GST and Central Excise

Validity of the provision

- R. S. Infra-transmission Ltd v. State of Rajasthan 2018-VIL-644-RAJ
- Aastha Enterprises v. State of Bihar [2023]153taxmann.com491(Patna)
- Arise India Limited and Ors. v. Commissioner of Trade and Taxes, Delhi and Ors. 2017-VIL-544-DEL (SLP dismissed by Apex Court reported at 2018-VIL-01-SC)
- Aastha Enterprises v. State of Bihar [2023]153taxmann.com491(Patna)

Veracity of the evidence

- Sundesh Springs Pvt. Ltd. 2009(238)E.L.T.329(Tri.-Del.)
- Motabhai Iron & Steel Industries 2014(302)E.L.T.69(Tri.-Ahmd.)[Affirmed in 2015(316)ELT374(Gujarat High Court)]
- Commissioner of Central Excise vs. Garima Enterprises 2009 (239)E.L.T.254(P&H.)

Burden of proof

- Gargo Traders vs. The Joint Commissioner, Commercial Taxes (State Tax) & ORS.
 2023-VIL-360-CAL
- The State of Karnataka vs. ECOM Gill Coffee Trading Private Limited 2023-VIL-20-SC
- Sooraj Mull Baijnath Inds. Pvt. Ltd. 2014(309)E.L.T.577(Tri.-Del.)
- Ranjeev Alloys Limited 2009 (236)E.L.T.124(Tri.-Del.) [Maintained in 2009(247)ELT27(P&HHC)]
- Balaji Exim vs. Commissioner, CGST and ORS. 2023-VIL-181-DEL
- LGW Industries Limited & Ors. Vs. Union of India & Ors. 2021-VIL-868-CAL
- Kanungo & Co. 1983(13)E.L.T.1486(S.C.)

Supplier allegedly commits fraud

- Uni Deritend Ltd. vs. Commissioner of C.Ex., Mumbai-III 2011(272)E.L.T.312(Tri.-Bom
- Commissioner of C.Ex., Delhi-II vs. R. S. Industries 2008(228)E.L.T.347(Del.)
- Centricast Enterprises vs. Commissioner of C.Ex., Ahmedabad 2007(219)E.L.T.680(Tri.-Ahmd)
- Commissioner of C.Ex., Pondicherry vs. Spic Pharmaceuticals Division 2006 (199)E.L.T.686(Tri.-Mad)

- Summary Where goods were accompanied by a tax invoice and an expired e-way bill, and delay was due to vehicle breakdown, High Court quashed tax and penalty orders, ruling that merely not extending e-way bill validity is insufficient for a penalty under Section129(3) without intent to evade tax
- [2024] 163 taxmann.com 193 (Allahabad)
- HIGH COURT OF ALLAHABAD Prahlad Rai Vijay Kumar v. State of U.P.
- Detailed Goods accompanied by tax invoice and e-way bill which had expired prior to interception Explanation given for delay was vehicle breakdown Authorities imposed tax and penalty under Section129(3) of UP GST Act **HELD**: Mere technical breach of not extending e-way bill validity cannot be sole ground for penalty in absence of mens rea to evade tax No intention to evade tax established Impugned orders quashed and tax/penalty directed to be refunded [Section 129(3) Central GST Act, 2017/Uttar Pradesh GST Act, 2017] [Paras 5 and 6]

- Summary Where High Court had held that goods owned by purchaser could not be confiscated on account of absence of consignor at given address without giving purchaser opportunity to establish bona fide purchase, order of High Court should not be interfered
- 2023] 157 taxmann.com 649 (SC)
- SUPREME COURT OF INDIA Deputy Assistant Commissioner-1 (ST) v. Arhaan Ferrous and Non Ferrous Solutions (P.) Ltd
- In favour of assessee
- Detailed In impugned order High Court had held that revenue could not have confiscated goods belonging to
 purchaser on account of absence of consignor at given address without giving purchaser an opportunity to
 establish bona fide purchase as goods were duly covered under e-way bill and invoice High Court directed
 provisional release of goods but gave liberty to revenue to initiate independent action against purchaser under
 section129 On SLP filed before Supreme Court, HELD: Matter was not to be interfered and SLP was to be
 dismissed [Section130, read with section129, of CGST Act, 2017/Andhra Pradesh GST Act, 2017] [Para 1]

- Summary Goods could not be delivered within validity period of e-way bill because of traffic blockage and while detaining goods, GST officer kept same in house of his relative instead of designated place; additional costs was imposed on Authorities in view of harassment faced by assessee
- [2022] 134 taxmann.com 241 (SC)
- SUPREME COURT OF INDIA Assistant Commissioner (ST) v. Satyam Shivam Papers (P.) Ltd.
- Detailed Goods were kept in house of a relative for 16 days by officer and not in designated place for safe keeping

 High Court set aside order levying tax and penalty and imposed costs of Rs. 10,000 on concerned officer HELD:
 Inference by officer that petitioner was attempting to evade tax was baseless Intent in keeping goods in private place was questionable High Court meticulously and correctly examined and found that there was no fault or intent to evade tax Goods in question could not be taken to destination within time for reasons beyond control of respondent-taxpayer on account of traffic blockage due to agitation State alone remains responsible for not providing smooth passage of traffic No question of law relating to operation and effect of section 129 was involved in instant case Considering department's conduct and harassment faced by taxpayer, costs of Rs. 59,000 was imposed in addition to costs of Rs. 10,000 imposed by High Court [Section 129 of CGST Act, 2017/Telangana GST Act, 2017] [Paras 8 and 9]

- Summary Where assessee imported goods from USA and its clearing agent, while sending goods from Customs Station to assessee's place of business, entered erroneous name and address of recipient in e-way bill, High Court was justified in quashing tax and penalty levied by lower authorities
- [2021] 133 taxmann.com 165 (SC)
- SUPREME COURT OF INDIA State of Madhya Pradesh v. Robbins Tunnelling and Trenchless Technology (India)
 (P.) Ltd
- Detailed Assessee imported certain goods from its parent company from USA Its clearing agent while shipping goods from Custom Station, Mumbai to assessee's place of business in Katni (Madhya Pradesh), generated e-way bill in which by mistake erroneously entered its own name in column of consignee Competent Authority detained aforesaid goods of assessee under transport due to wrong shipping address in e-way bill and levied tax and penalty Appellate Authority rejected appeal of assessee and affirmed order of tax and penalty levied by Competent Authority stating that in e-way bill name and address of recipient, while matching with Bill of Entry and Bill of Lading, was not same and such mistake could not be treated to be a clerical mistake High court held that Appellate Authority was not justified in rejecting appeal of assessee on ground that mistake committed while generating e-way bill was not a clerical mistake and quashed impugned orders HELD: SLP filed against judgment and order of High Court deserved to be dismissed [Section 129 of CGST Act, 2017 read with rule 138 of CGST Rules, 2017 Madhya Pradesh GST Act, 2017]

- Summary Where assessee's goods detained and seized on basis of statement given by driver of vehicle that he was transporting goods for second time with same documents, penalty u/s 129(3) of GST Act imposed, primary documents being MOV-01, wherein statement of driver recorded, not provided to assessee, respondent authorities not been able to indicate or prove any mens rea for evasion of tax, impugned orders were to be set aside
- [2024] 163 taxmann.com 108 (Allahabad)
- HIGH COURT OF ALLAHABAD K Y Tobacco Works (P.) Ltd. v. State of U.P.
- Detailed Assessee's goods were detained and seized on ground of statement given by driver of vehicle that he was transporting goods for second time with same documents Assessee challenged seizure order, penalty order under section 129(3) of UPGST Act and appellate order rejecting appeal Assessee submitted that relevant documents were present in vehicle and goods matched invoice and e-way bill It was further submitted that primary documents being MOV-01 wherein statement of driver was recorded had never been provided to assessee Even during hearing, only sheet of paper, containing statement given by driver was provided, which was of very little evidentiary value HELD: It was duty of authorities to ascertain that whether double movement of goods had taken place actually However, no such burden of proof had been discharged by respondent—authorities Moreover, respondent authorities had not been able to indicate or prove any mens rea for evasion of tax Therefore, impugned orders were to be set aside [Section 129(3) of CGST Act, 2017/Uttar Pradesh GST Act, 2017]

- Summary Where apart from an error with regard to address of consignee in e-way bill there were no other issues with said consignment, imposition of tax on assessee only on basis of technical error with regard to address of consignee that was wrongly written in e-way bill, was to be set aside as authorities were not able to indicate any mensrea on part of petitioner for evasion of tax
- [2024] 159 taxmann.com 271 (Allahabad)
- HIGH COURT OF ALLAHABAD Spirare Energy (P.) Ltd. v. State of U.P.
- Detailed Apart from an error with regard to address of consignee in E-way bill, there were no other issues with said consignment Invoice contained address Goods matched description in invoice and all other materials were proper Petitioner was aggrieved by order of Commissioner (Appeals) who had dismissed appeal filed by petitioner HELD: Imposition of tax was only on basis of a technical error with regard to address of consignee that was wrongly written in e-way bill Authorities failed to indicate any mens rea on part of petitioner for evasion of tax Imposition of tax was to be set aside Amount deposited by petitioner was to be refunded to it [Section 129 of CGST Act, 2017/Uttar Pradesh GST Act, 2017] [Paras 3 to 5]

- Summary GST: Where High Court quashed penalty imposed on petitioner for exceeding speed limit with Over Dimensional Cargo (ODC), ruling that speed alone cannot determine ODC classification and penalties require proof of mens rea or wilful intent to evade tax
- [2024] 162 taxmann.com 831 (Allahabad)
- HIGH COURT OF ALLAHABAD Ace Manufacturing Systems Ltd. v. State of U.P.
- Detailed Goods transported at higher speed than prescribed time limit Authorities imposed penalty on premise that since goods travelled faster, they cannot be classified as ODC Assessee/Petitioner challenged orders imposing penalty HELD: Allowed writ petition Speed cannot be sole criterion for determining ODC classification as per departmental circular Penalty cannot be imposed without establishing mens rea or wilful intent to evade tax Mere fact that goods travelled faster does not per se indicate intention to evade tax Imposition of penalty without substantive evidence of wilful misconduct is arbitrary and unjustified Impugned orders quashed [Section 129 of CGST Act, 2017/Uttar Pradesh GST Act, 2017] [Paras 7, 8, 9 and 10]

- Summary Where adjudication order, confirming tax and penalty due to vehicle number discrepancy in e-way bill, was challenged by assessee, it was to be set aside. Matter was decided in favour of assessee, as discrepancy was deemed clerical and without intent to evade tax, aligning with circular guidelines allowing minor errors
- [2024] 162 taxmann.com 901 (Allahabad)
- HIGH COURT OF ALLAHABAD Poddar Tyres Ltd. v. State of U.P.
- Detailed Assessee/Petitioner, registered dealer under GST Act, was engaged in manufacturing and sale of tyres During transit of goods from its Ludhiana unit to sale depot at Asansol, vehicle was intercepted and detained by mobile squad for mentioning wrong vehicle number in e-way bill Penalty equal to tax amount was imposed on assessee/petitioner under Section 129(3) of GST Act HELD: On appeal, penalty was upheld Allowing writ petition, High Court held that mentioning wrong vehicle number in e-way bill was minor clerical mistake and there was no intention to evade tax Since it was merely case of stock transfer, with goods accompanied by necessary documents, imposition of penalty was unsustainable Revenue did not bring any other material on record to show intention to evade tax, except wrong mention of part of vehicle registration number Orders imposing penalty set aside [Section 129(3) of CGST Act, 2017/Uttar Pradesh GST Act, 2017] [Paras 9 and 10]

ITC to be availed is less reflecting in SCN

Та	x Period				during the n 5)-4B(1)-4B		[as pe	er I			ted in <mark>GSTR-2</mark> PART-B](Exc				Show Compa	wissen Table	
		IGST	C	GST	SGST/UTG	ST	CESS	5	IGST		CGST	SGST	/UTGST		Snow Compa	rison rabie	
	1	2		3	4		5		6		7		8				
	Apr-18	33,660.00		0.00	0.	00	C	0.00	25,821.0	00	1,85,578.54	1,8	5,578.54				
	May-18	0.00	3,75	,542.00	3,75,542.	00	C	0.00	486.0	00	1,07,831.05	1,0	7,831.05				
	Jun-18	3,544.00	59	,402.00	59,402.	00	C	0.00	3,544.0	00	1,37,778.85	1,3	7,778.85	Show Ta	ble 8A of GSTR-9		
	Jul-18	-25,236.00	1,19	,926.00	1,19,926.	00	C	0.00	36.0	00	1,10,117.79	1,1	0,117.79				
	Aug-18	3,800.00	1,77	,939.00	1,77,939.	00	C	0.00	9,562.5	0	1,63,492.17	1,6	3,492.17				
	Sep-18	18,210.00	32	,223.00	32,223.	00	C	0.00	22,010.4	-2	67,930.67	6	7,930.67		Thorough	nly check	
	Oct-18	0.00	17	,487.00	17,487.	00	C	0.00	0.0	00	0.00		0.00		detailed dow Table 8A (if G		
	Nov-18	59,400.00	4	,961.00	4,961.	00	C	0.00	0.0	00	0.00		0.00				
	Dec-18	44,538.00	4	,798.00	4,798.	00	C	0.00	1,04,029.0	00	28,146.44	2	8,146.44				
	Jan-19	28,919.00	14	,521.00	14,521.	00	C	0.00	28,919.0	00	8,131.62		8,131.62				
	Feb-19	53,752.00	15	,323.00	15,323.	00	C	0.00	16,023.0)5	0.00		0.00		ly Total Monthly A (if GSTR9 not		
	Mar-19	1,04,711.00	21	,167.00	21,167.	00	C	0.00	1,45,302.4	-2	37,152.57	3	7,152.57	G31K-2	filed)		
	Total	3,25,298.00	8,43,	289.00	8,43,289.	00	o	о.оо з	3,55,733.3	9	8,46,159.70	8,46	5,159.70		,		
No		Issue			le No. in STR-3B	SGS	т (CGST	IGST		8. Other ITC related	informatio	n			Help ?	
1		2			3	4		5	6	T							
1	ITC availed	d in GSTR-3B		4A(3)+4A	A(5)	843	289	843289	9 0	5	Description		Integrated tax (₹)	Central tax (₹)	State/UT tax (₹)	Cess (₹)	
_	Tax declar	ed by the supplie			ive figures					<u> </u>	Description		Integrated tax (\)	Central tax (1)	State/ OT tax (1)	CC33 (\)	
2		plies made to yo	1	suppliers	-01 filed by	674	537	674537) (A	A) ITC as per GSTR-2A (T	able 3 &	₹3,55,697.39	₹8,46,159.70	₹8,46,159.70		
3	filed GSTR date	as the supplier l -01 after the cut	has -off	Cumulati of GSTR	ive figures -01 filed by after the		0	C	0	111	thereof)		(3,33,077.37	(0,10,133.10			
4	Excess ITC {S.No.2-S.I	availed S.No.1	(-)			168	752	168752	2 0								

Applicability of Circular No. 183

Limit - In excess of the that reported by the suppliers in GSTR-1 or IFF

Applicable for 2017-18 & 2018-19

Documents to be provided

Certificate – No specified format

Bank statement, Ledger, Purchase bill copy not required

Seller must have B2C Supply to the state in which recipient is situated during the relevant period (Its basic check by officers)

Applicability of Circular No. 193

Limit - In excess of the that reported by the suppliers in GSTR-1 or IFF

- No limit for 01.04.2019 08.10.2019
- 20% for 09.10.2019 to 31.12.2019
- 10% from 01.01.2020 to 31.03.2020
- 10% from 01.04.2020 to 31.12.2020
- 5% from 01.01.2021 to 31.03.2021
- 5% from 01.04.2021 to 31.12.2021

Documents to be provided

- Certificate No specified format
- Bank statement, Ledger, Purchase bill copy not required
- Seller must have B2C Supply to the state in which recipient is situated during the relevant period (Its basic check by officers)

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REGISTRATION

Provide all the documents as required in the SCN

Write point wise reply

Attach point-wise documents

Choose wisely whether application is Voluntary or MandatoryConsent letter can be given if parties are related

Notarized affidavit/Documents can be given in reply to SCN

Photos of PPOB can be given with Geo-tagging of property

Give an additional declaration stating all the facts like if there any difference in name in Aadhar, PAN & Property documents

Changes can be made in original application for registration while replying to SCN

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FORM GST DRC - 01 [See rule 100(2) & 142(1)(a)]

	nce	

GSTIN/Temporary Id : Name: Address :

Tax Period: AUG 2023 - DEC 2023

F.Y.- 2023-2024

Date - 10-01-2024

Act/ Rules Provisions - 122(3)(e)

Section / sub-section under which SCN is being issued - 122

Summary of Show Cause Notice

(a) Brief Fact of the Case : FAILED TO ISSUE E-INVOICE

(b) Grounds: FAILED TO ISSUE E-INVOICE

(c) Tax and other dues :

(Amount in Rs.

						(AIIIO	unit iii	ns.)			
Sr. No.	Tax Rate(%)	Turnover	Tax Period		Act	POS (Place of Supply)	Tax	Interest	Penalty	Others	Total
			From	То			1				
1	2	3	4	5	6	7	8	9	10	11	12
1	0	0.00	AUG 2023	DEC 2023	IGST	Other Territory	0.00	0.00	25,000.00	0.00	25,000.00
2	0	0.00	AUG 2023	DEC 2023	CGST	NA	0.00	0.00	25,000.00	0.00	25,000.00
3	0	0.00	AUG 2023	DEC 2023	SGST	NA	0.00	0.00	2 5,000 .00	0.00	25,000.00

Total				0.00	0.00	75,000.00	0.00	75,000.00

Show Cause Notice is attached.

Supporting documents attached by officer

SCN 1.pdf : SCN

Details of personal hearing and due date to file reply:

Sr. No.	Particulars	Details		
1	Date by which reply has to be submitted	10-02-2024		
2	Date of Personal Hearing	15-02-2024		
3	Time of Personal Hearing	3:33 pm		
4	Venue where Personal Hearing will be held			

E-Invoice

- SCN can be challenged as Penalty under all the sections is levied
- Check Aggregate Turnover on PAN during all the Previous years since inception of GST
- Check applicability of E-Invoicing

	NOTIFIED AATO WITH DATES
AATO	Date of E-Invoicing
Above Rs 500 Cr	01-10-2020
Rs 100 Cr to Rs 500 Cr	01-01-2021
Rs 50 Cr to Rs 100 Cr	01-04-2021
Rs 20 Cr to Rs 50 Cr	01-04-2022
Rs 10 Cr to Rs 20 Cr	01-10-2022
Rs 5 Cr to Rs 10 Cr	01-08-2023

- Check exemptions-Multiplex, Admission to the exhibition of cinematograph films in multiplex screens, SEZ, Banks insurance Co FI including NBFCs, GTA, Passenger Transport Services
- Check Nature of Transactions Exempted or Under RCM or B2C

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Wrong availment of ITC on account of Place of Supply



Short payment of Tax under CGST and SGST of Rs. 5,00,000/- each

CGST & SGST short paid by Rs. 5,00,000/- each and IGST excess paid Rs. 10,00,000/-

- An inadvertent error.
- Can be verified from GSTR-9 and GSTR-9C wherein the reasons for differences have also been explained.
- Per se, there is no short or non payment of tax rather there is a wrong payment of tax.
- Section 74 CANNOT be invoked as no short payment of tax.
- Refer Section 77 of CGST Act, 2017 and Section 19 of IGST Act, 2017.
- No penalty can be imposed.
- Section 19 of IGST Act, 2017 also exempts from payment of any interest on same.
- Refer circular 162/18/2021-GST
- Refer judicial pronouncement of Hon'ble Kerala High Court in the case of Saji S. Vs. Commissioner, State GST Department (Kerala High Court at Ernakulam) WP(C). No. 35868 of 2018

Commission to Foreign Agents

The registered person during the period under consideration had paid commission to its foreign agents to the tune of Rs. 1 Crore for export orders procured through them

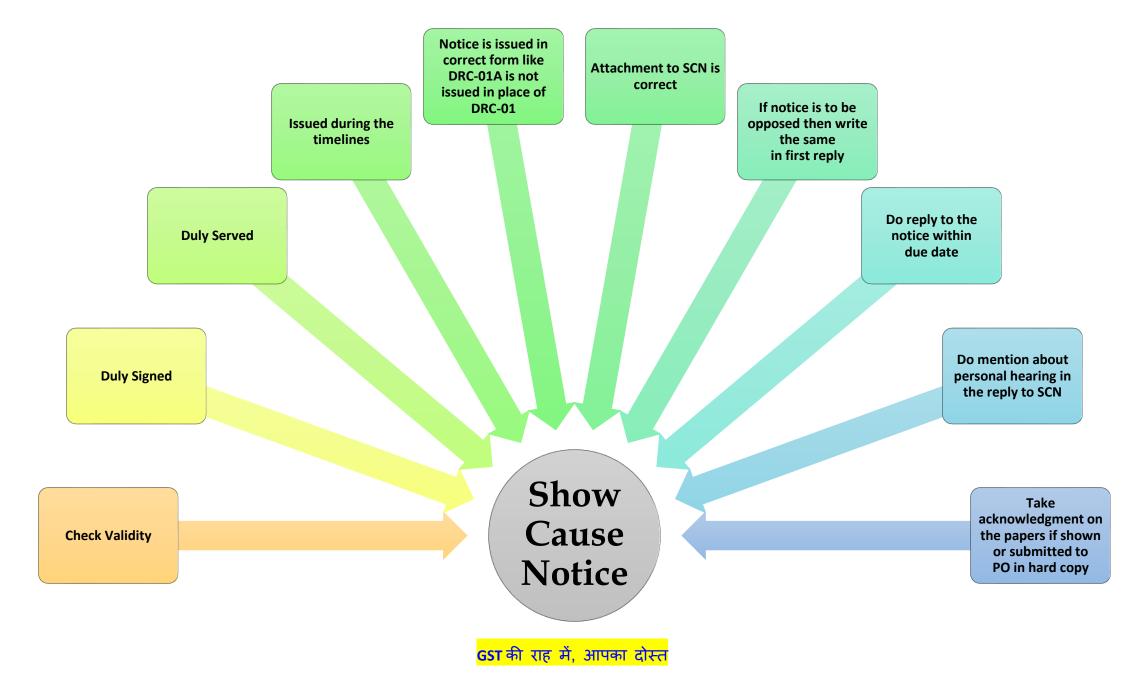
- Commission agents, for the purpose of GST, are intermediaries facilitating the supply of goods outside India.
- Section 2(13) of IGST "intermediary" means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account;
- PoS as per Section 13(8) (8) The place of supply of the following services shall be the location of the supplier of services, namely:— (b) intermediary services;
- Since the services are provided outside India by a person located outside India and not registered in India, the same is outside the jurisdiction of India and hence GST cannot be levied on same in accordance to Indian law and hence same is not taxable in India.
- Refer Advance Ruling by Authority for Advance Rulings for the State of Uttarakhand in the case of Dry Blends Food
 Private Limited Ruling No. 01/2022-23 wherein it was categorically held that the commission paid to foreign
 commission agents outside India is not subject to GST on reverse Charge Basis as the place of supply of same is
 outside India.

Wrongful invocation of Section 74

- Mere non-payment of taxes does not automatically tantamount to fraud or wilful misstatement or suppression of facts.
- It is incumbent on the authorities alleging fraud, to bring on record the tangible material supporting the allegation. Mere allegation is not sufficient enough and onus is on the person alleging fraud.
- The registered person further relies on following judicial pronouncements of Hon'ble Supreme Court:
 - i. Uniworth Textile Ltd. Vs. Commissioner of Central Excise, Raipur Civil Appeal No. 6060 of 2003 where the Hon'ble court held that the conclusion that mere-non-payment of duties is equivalent to collusion or wilful misstatement or suppression of facts is untenable and the burden is on revenue to prove allegations of wilful misstatement.
 - ii. Easland Combines v. CCE, Coimbatore 2003-TIOL-26-SC-CX, wherein the Hon'ble court categorically held that there should exist some positive act on the part of assessee and that mere non-payment of duty, in itself, does not prove the presence of fraud, collusion or wilful mis-statement or suppression.
 - iii. Cemphar Drugs 1989 (040) ELT 0276 (SC), wherein the Hon'ble court held that something positive other than mere inaction or failure on the part of the assesse or conscious or deliberate withholding of information when assessee knew otherwise, is required before it is saddled with the liability and the extended period.
 - iv. Continental Foundation Joint Venture 2007 (216) ELT 177 (SC), wherein the Hon'ble court stated that mere omission to give correct information is not suppression of facts unless it was deliberate and that incorrect statement cannot be equated with wilful misstatement.

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Master Circular No. 1053/02/2017-CX on Show cause notice, Adjudication and recovery dated 10.03.2017, clarified that:

"Show Cause Notice (SCN) is the starting point of any legal proceedings against the party. Issuance of SCN is a statutory requirement and it is the basic document for settlement of any dispute relating to tax liability or any punitive action to be undertaken for contravention of provisions of Central Excise Act and the rules made thereunder.

The issuance of show cause notice is a mandatory requirement according to the principles of natural justice which are commonly known as audi alteram partem which means that no one should be condemned unheard."

It lays down the entire framework for the proceedings that are intended to be undertaken and therefore it should be drafted with utmost care. A SCN offers the noticee an opportunity to submit his oral or written submission before the Adjudicating authority on the charges alleged in the SCN.

AUDIT U/S 65

- Refer Section 65 read with Rule 101
- Section 70 & 71 to give evidence or to produce a document or any other thing. Section 73 & 74 on demand of tax or other amounts. Section 122, 123 and 125 for not complying with the request of the department to facilitate conduct of Audit.
- May conduct audit at the place of business of the RP or in their office. Business Premises can be accessed as per Section 71(2).
- Prior Intimation RP shall be informed by way of a notice not less than fifteen working days prior to the conduct of audit in FORM GST ADT-01.
- Period financial year, or part thereof or multiples thereof to cover the retrospective period up to the previous audit or the limitation period specified in Section 73 or 74. [As per GSTAM-2019 by CBIC].
- Major Issue Issuance of Certificate of Commencement
- Section 65 Audit and Anti Evasion/Range Proceedings can not be run simultaneously <u>Case Law</u>
- Section 65 Audit and Section 67 Inspection are independent and can be persuaded simultaneously <u>Case Law</u>
- SCN can be issued even after initiation of Section 65 Audit Case Law
- As in the case of audit u/s 65, no demand of tax, even ad interim, is permitted on completion of the special audit under this section. In case any possible tax liability is identified during the audit, procedure u/s 73 or 74 as the case may be is to be followed.
- Unofficial demands Not to be fulfilled. Payment/Reversals on verbal Orders Ask him written orders
- Refer Various Audit Manuals and Audit Plan issued from time to time.

Important Aspects of Appeal

Rectification: process by which are seet

Order which contains an error is seet

order which contains and change is incorporated

• section 161

• original order and change is incorporated

Appeal: An appeal is a continuation of proceedings/ orders wherein the entire proceedings/orders are again left open for consideration by the Appellate Authorities.

- Section 107
- Appellate Jurisdiction
- Original order set aside. Appellate Authority Order supersedes

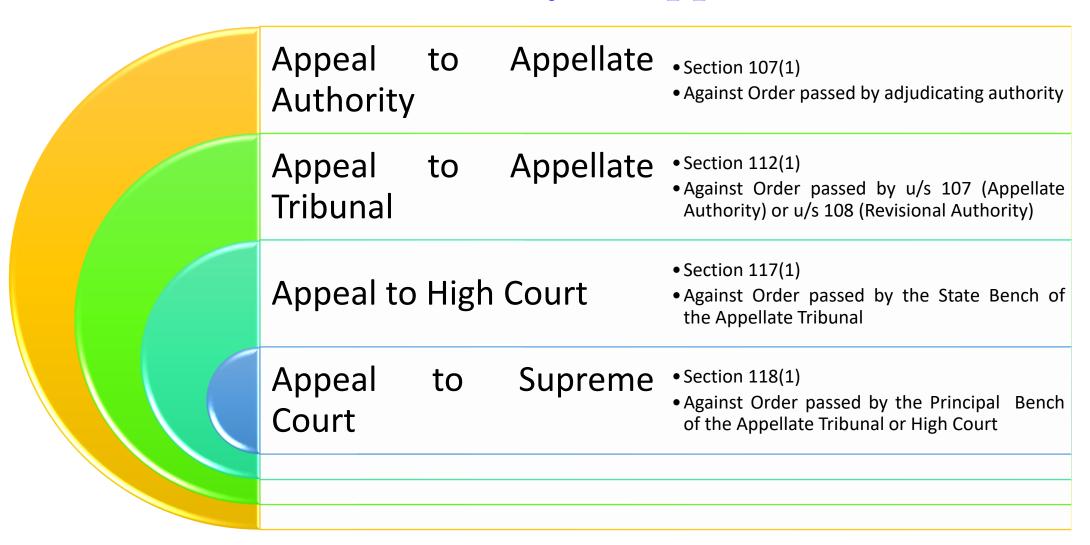
Appeal: Proceeding undertaken to have a decision reconsidered by bringing it to a higher authority [Black's Law Dictionary]

Revision: Revision.

After something An act of looking of view of · Section 108 · Revisional Surisdiction

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Hierarchy of Appeals



Section 120: Appeal not to be filed in certain cases

- 1. The Board may, issue orders or instructions or directions fixing such monetary limits, for regulating the filing of appeal or application by central tax officer.
- 2. Where, in pursuance of the orders under sub-section (1), the officer has not filed an appeal against any decision, it shall not preclude such officer from filing appeal in any other case involving the same questions of law.
- 3. Notwithstanding the fact that no appeal has been filed by the officer pursuant to the orders under subsection (1), no person, being a party in appeal shall contend that the officer has acquiesced (बिना विरोध किए कुछ भी मानने को सहमत होना) in the decision on the disputed issue by not filing an appeal.
- 4. The AT or court hearing such appeal shall have regard to the circumstances under which appeal or application was not filed by the officer in pursuance of the orders under sub-section (1).

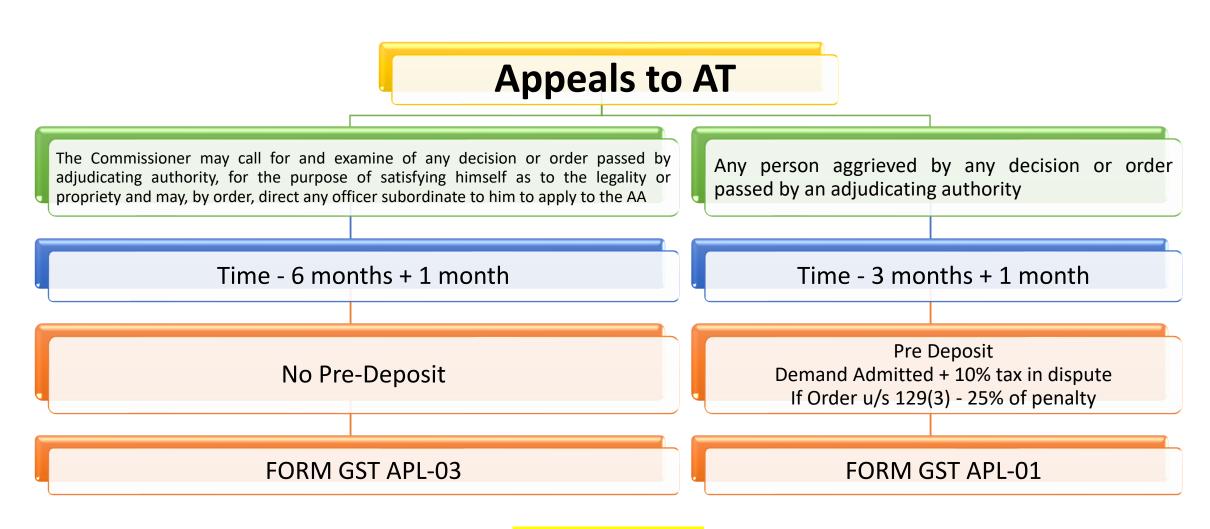
Section 121: Non-appealable decisions and orders

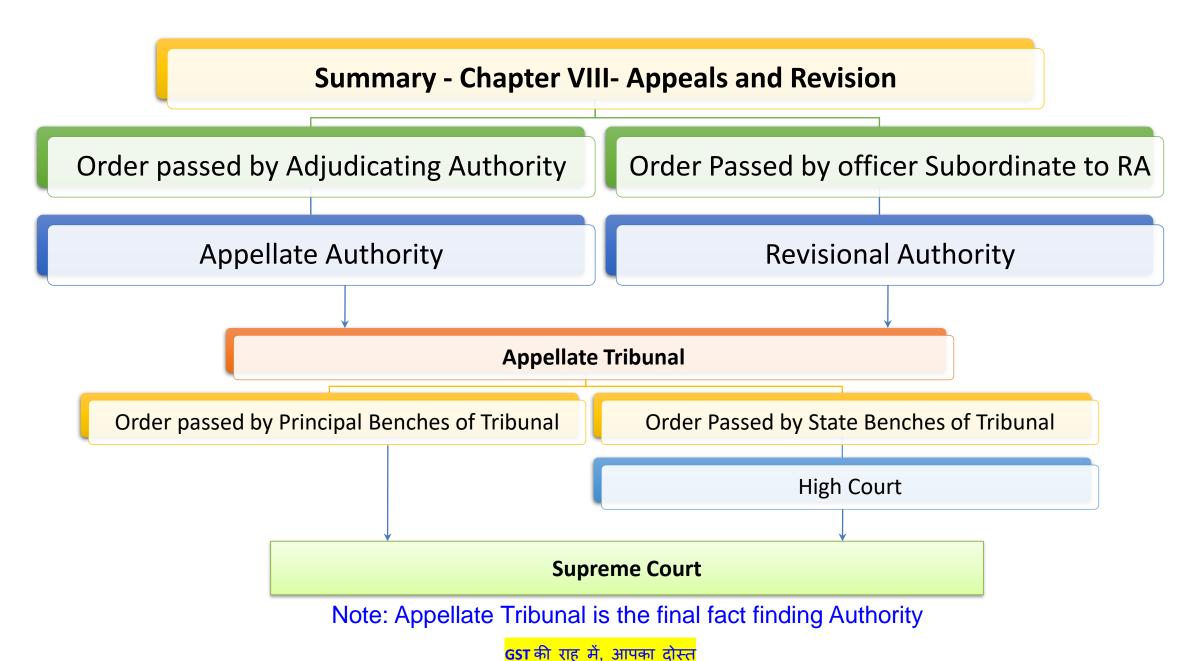
- Notwithstanding anything to the contrary in any provisions of this Act,
- No appeal shall lie against any decision taken or order passed by an officer of central tax if such decision taken or order passed relates to any one or more of the following matters, namely:—
- a. an order of the Commissioner or other authority empowered to direct transfer of proceedings from one officer to another officer; or
- b. an order pertaining to the seizure or retention of books of account, register and other documents; or
- c. an order sanctioning prosecution under this Act; or
- d. an order passed under section 80.

Section 80: Payment of tax and other amount in instalments.

It is applicable in case of Appellant only.

Section 107: Appeals to Appellate Authority





Rectification

Rule 161: Rectification of errors apparent on the face of record

Without prejudice to the provisions of section 160, and notwithstanding anything contained in any other provisions of this Act, any authority, who has passed or issued any decision or order or notice or certificate or any other document, may rectify any error which is 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 where such error is brought to its notice by any officer appointed under this Act or an officer appointed under the SGST Act or an officer appointed under the UTGST Act or by the affected person within a period of three months from the date of issue of such decision or order or notice or certificate or any other document, as the case may be:

Provided that no such rectification shall be done after a period of six months from the date of issue of such decision or order or notice or certificate or any other document:

Provided further that the said period of six months shall not apply in such cases where the rectification is purely in the nature of correction of a clerical or arithmetical error, arising from any accidental slip or omission:

Provided also that where such rectification adversely affects any person, the principles of natural justice shall be followed by the authority carrying out such rectification.

This principle should be adhered to in every proceedings, enforcements, interactions with the department like ASMT-10, Summons, Audit u/s 65, SCNs, inspection search and seizure u/s 67 or any other interaction

Rule 142(7) Where a rectification of the order has been passed in accordance with the provisions of section 161 or where an order uploaded on the system has been withdrawn, a summary of the rectification order or of the withdrawal order shall be uploaded electronically by PO in FORM GST DRC-08

Six ways of doing Service of notice in sequential manner

Giving directly to his address through courier or otherwise

Registered or Speed Post with Acknowledgement due

Sending E-mail

Making it available at Common Portal

Publication in Newspaper

Affixing at his place or notice board of officer

Section 169: Service of notice in certain circumstances

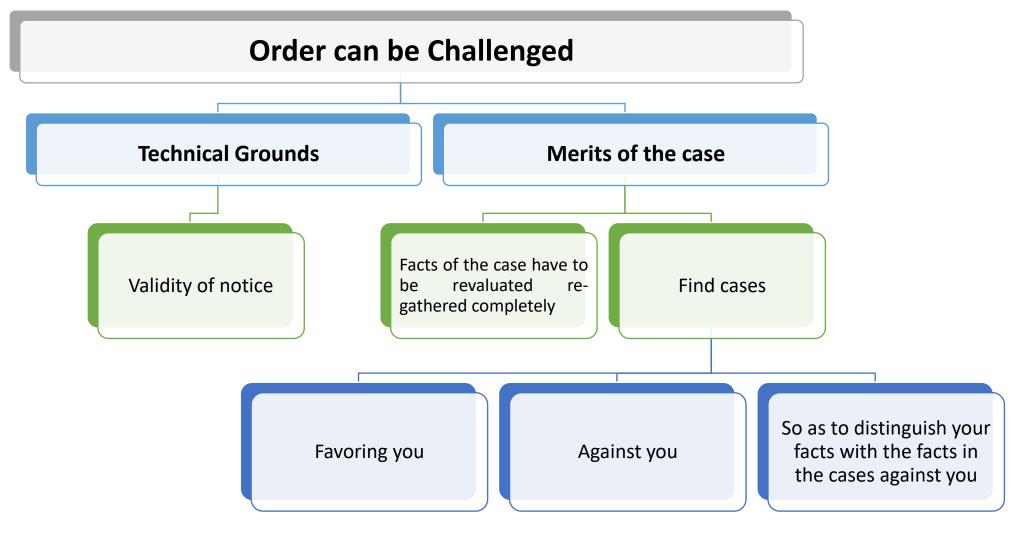
- 1. Any decision, order, summons, notice or other communication under this Act or the rules shall be served by any one of the following methods, namely:
 - a. by giving or tendering it directly or by a messenger including a courier to the addressee or the taxable person or to his manager or authorised representative or an advocate or a tax practitioner holding authority to appear in the proceedings on behalf of the taxable person or to a person regularly employed by him in connection with the business, or to any adult member of family residing with the taxable person; or
 - b. by registered post or speed post or courier with acknowledgement due, to the person for whom it is intended or his authorised representative, if any, at his last known place of business or residence; or
 - c. by sending a communication to his e-mail address provided at the time of registration or as amended from time to time; or
 - d. by making it available on the common portal; or

Section 169: Service of notice in certain circumstances

- e. by publication in a newspaper circulating in the locality in which the taxable person or the person to whom it is issued is last known to have resided, carried on business or personally worked for gain; or
- f. if none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence and if such mode is not practicable for any reason, then by affixing a copy thereof on the notice board of the office of the concerned officer or authority who or which passed such decision or order or issued such summons or notice.
- 2. Every decision, order, summons, notice or any communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed in the manner provided in sub-section (1).
- 3. When such decision, order, summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved.

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In case of SCN, while checking validity of Notice, it is also to be looked upon whether the adjudication has taken place according to Master Circular No. 1053/02/2017-CX

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What if Appeal could not be filed in 3+1 months?

Calcutta HC – Jalajoga vs. State of West Bengal [2024] 162 taxmann.com 635 (Calcutta)

Can be filed - Section 5 Limitation Act 1963

Allahabad HC – M/s Yadav Steels v. Additional Commissioner & Anr., reported in Neutral Citation – 2024-AHC 26169 (para 12) – cannot be filed

Supreme Court - Singh Enterprises vs Commissioner of Central Excise, Jamshedpur

What if Appeal could not be filed in 3+1 months?

Summary - Where petitioner had enclosed copy of impugned order as made available to it in GST portal while filing memo of appeal, non-submission of certified copy, was to be treated as mere technical defect; therefore, its submission should be allowed

[2022] 140 taxmann.com 162 (Orissa)
HIGH COURT OF ORISSA - Atlas Pvc Pipes Ltd. v. State of Odisha
W.P.(C) NO. 14163 OF 2022 JUNE 29, 2022
In favour of assessee

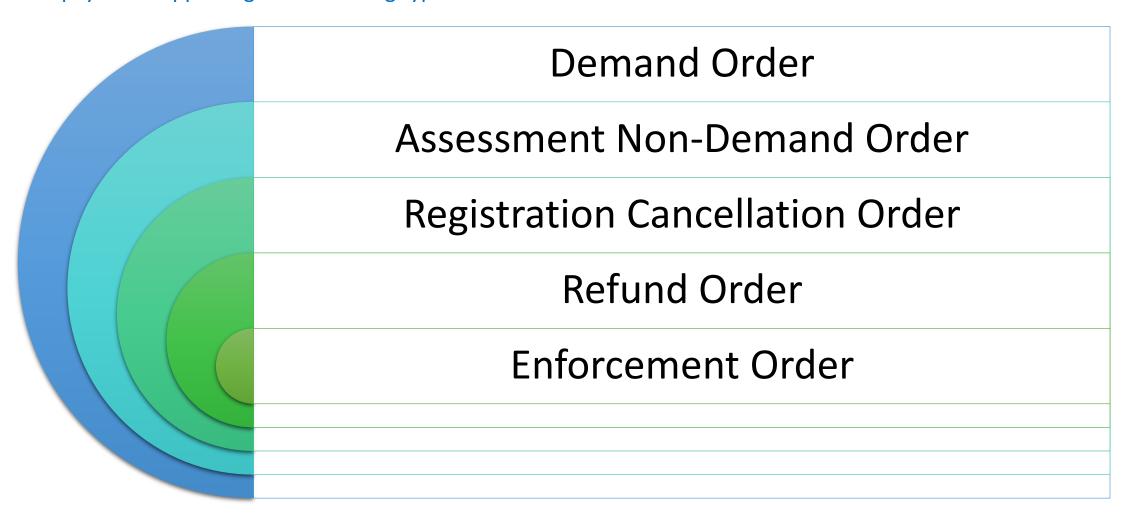
Detailed - Appeals to appellate authority - Certified copy of assessment order - Demand was raised for assessment year 2019-20 by department vide order dated 20-1-2021 - Appeal was filed within prescribed time period but assessee failed to submit certified copy of impugned order - Show cause notice dated 13-5-2022 was issued by appellate authority extending period for submission of certified copy of impugned order by seven days, i.e., on 21-5-2022 - Said notice was served upon petitioner on 20-5-2022 - After receiving such notice petitioner applied and obtained certified copy of impugned order on 23-5-2022 and submitted such copy on same day - On ground that it was beyond prescribed time, appellate authority vide order dated 23-5-2022 rejected appeal - HELD: Since petitioner had enclosed copy of impugned order as made available to it in GST portal while filing memo of appeal, non-submission of certified copy had to be treated as mere technical defect - Assessee was to be allowed to file certified copy as collected [Section 107, read with section 74 of CGST Act, 2017/Odisha GST Act, 2017 - Rule 108 of Odisha GST Rules, 2017 - Section 5 of Limitation Act, 1963 - Article 226 of Constitution of India] [Paras 6.11 to 10]

How to file Appeal

- How to filed Navigate to Services > User Services > My Applications > Application Type as Appeal to Appellate
 Authority > NEW APPLICATION button. Select the Order Type from the drop-down list.
- How to view status Navigate to Services > User Services > My Applications > Application Type as Appeal to Appellate Authority > From and To Date > SEARCH button.
- If Appeal filed is admitted, the GST Portal flags the balance disputed amount as non-recoverable.
- View all FAQ & Manual to file Appeal: https://tutorial.gst.gov.in/userguide/appeal/index.htm#t=appeal_manual.htm

Filing Of Appeal

A taxpayer can appeal against following types of Orders:



A taxpayer can appeal against following types of Assessment Demand Orders:

- Assessment order under section 62
- Assessment order under section 63
- Assessment order under section 64
- Acceptance or Rejection of application filed under section 64 (2)
- Withdrawal of Assessment order issued under section 64
- Order under section 125 imposing penalty
- Order under section 122, 125, 127 for dropping the penalty proceedings
- Order against remanded cases (DRC-07 also in case of remand under 73./74/76)
- Assessment Order for the proceedings under section 73/74 /76+Summary of the order
- Order for dropping the proceedings under section 73/74
- Rectification of Order
- Order of rejection of application for rectification
- Order for dropping proceedings U/s 63

A taxpayer can appeal against following types of Enforcement Orders:

- Order of Demand of Tax and Penalty
- Order of Confiscation of Goods and Conveyance and Demand of Tax, Fine and Penalty for proceeding under section
 129
- Order of Confiscation of Goods and Conveyance and Demand of Tax, Fine and Penalty for proceeding under section
 129
- Order of Rectification/modification in DRC-08 for MOV-09/11
- Order of Rectification/modification in DRC-08 for MOV-09/11

Summary of Circulars Issued on 26th June 2024 on Recommendations of 53rd GST Council Meeting

- 207/01/2024-GST Reduction of Government Litigation fixing monetary limits for filing appeals or applications by the Department before GSTAT, High Courts and Supreme Court
- 208/02/2024-GST Clarifications on various issues pertaining to special procedure for the manufacturers of the specified commodities.
- 209/03/2024-GST Clarification on the provisions of clause(ca) of Section10(1) of the IGST Act, 2017 relating to PoS
- 210/04/2024-GST Clarification on valuation of supply of import of services by a related person where recipient is eligible to full ITC.
- 211/05/2024-GST Clarification on time limit u/s 16(4) of CGST Act, in respect of RCM supplies received from URPs.
- 212/06/2024-GST Clarification on mechanism for providing evidence of compliance of conditions of Section 15(3)(b)(ii) of the CGST Act, 2017 by the suppliers
- 213/07/2024-GST Seeking clarity on taxability of re-imbursement of securities/shares as SOP/ESPP/RSU provided by a company to its employees.
- 214/08/2024-GST Clarification on the requirement of reversal of ITC in respect of the portion of the premium for life insurance policies which is not included in taxable value
- 215/09/2024-GST Clarification on taxability of wreck and salvage values in motor insurance claims.

Summary of Circulars Issued on 26th June 2024 on Recommendations of 53rd GST Council Meeting

- 216/10/2024-GST Clarification in respect of GST liability and ITC availability in cases involving Warranty/ Extended Warranty, in furtherance to Circular No. 195/07/2023-GST dated 17.07.2023
- 217/11/2024-GST Entitlement of ITC by the insurance companies on the expenses incurred for repair of motor vehicles in case of reimbursement mode of insurance claim settlement.
- 218/12/2024-GST Clarification regarding taxability of the transaction of providing loan by an overseas affiliate to its Indian affiliate or by a person to a related person.
- 219/13/2024-GST Clarification on availability of ITC on ducts and manholes used in network of optical fiber cables (OFCs) in terms of section 17(5) of the CGST Act, 2017
- 220/14/2024-GST Clarification on place of supply applicable for custodial services provided by banks to Foreign Portfolio Investors
- 221/15/2024-GST Time of supply on Annuity Payments under HAM Projects
- 222/16/2024-GST Time of supply in respect of supply of allotment of Spectrum to Telecom companies in cases where an option is given to the Telecom Companies for payment of licence fee and Spectrum usage charges in instalments in addition to an option of upfront payment.

Reversal of ITC on discount received – Section 15(3)

- Circular No. 212/06/2024-GST issued on 26.06.2024 provides Clarification on mechanism for providing evidence of compliance of conditions of Section 15(3)(b)(ii) of the CGST Act, 2017 by the suppliers
- Section 15(3)(b)(ii) of the CGST Act, 2017 is reproduced below:-
 - (3) The value of the supply shall not include any discount which is given—
 - (b) after the supply has been effected, if—
 - (i) such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and
 - (ii) ITC as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.
- Currently, there is no system functionality/ facility presently available on the common portal to enable the supplier or the tax officer to verify the compliance of the said condition of proportionate reversal of ITC by the recipient.
- Till the time a functionality/ facility is made available on the common portal, the supplier may procure a certificate from the recipient of supply, issued by the Chartered Accountant (CA) or the Cost Accountant (CMA)
- The said CA/CMA certificate may include details such as the details of the credit notes, the details of the relevant invoice number against which the said credit note has been issued, the amount of ITC reversal in respect of each of the said credit notes along with the details of the FORM GST DRC-03/ return/any other relevant document through which such reversal of ITC has been made by the recipient & to be treated as a suitable and .admissible evidence.
- Certificate issued by CA or CMA shall contain UDIN
- The amount of tax (CGST+SGST+IGST+Cess) involved in the discount given by the supplier to a recipient through tax credit notes in a FY is not exceeding Rs 5,00,000 then instead of CA/CMA certificate, the said supplier may procure an undertaking/ certificate from the said recipient that the said ITC attributable to such discount has been reversed by him, along with the details.
- Applicable Even for the past period, where ever any such evidence as per section 15(3)(b)(ii) of CGST Act in respect of credit note issued by the supplier for post-sale discounts is required to be produced.

Reversal of ITC on Account of Discount

If Credit Note Contains GST

If Credit Note is Financial Credit Note only

Section 16(4) – For RCM (Ex- Freight and Legal charges)

- Circular No. 211/05/2024-GST provides Clarification on time limit u/s 16(4) of CGST Act in respect of RCM supplies received from URPs.
- The relevant year of the invoice for the purpose of section 16(4) of CGST Act is the year in which the said supply was received and accordingly, the time limit for availment of ITC under section 16(4) of CGST Act is only upto the September/ November of the following FY, i.e. the FY following the FY in which the said services was received.
- As per section 16(2)(a)of CGST Act, no RP shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed.
- Rule 36(1)(b) of the CGST Rules,2017 prescribes that ITC shall be availed by a RP inter alia on the basis of an invoice issued in accordance with the provisions of clause (f) of sub-section (3) of section 31of CGST Act, subject to the payment of tax.
- Further, clause (f) of sub-section (3) of section 31 of CGST Act provides that a RP, who is liable to pay tax under sub-section (3) or sub-section (4) of section 9, shall issue an invoice in respect of goods or services or both received by him from the supplier who is not registered on the date of receipt of goods or services or both. Accordingly, where the supplier is unregistered and recipient is registered, and the recipient is liable to pay tax on the said supply on RCM basis, the recipient required to issue invoice as per section 31(3)(f)of CGST Act and pay the tax in cash on the same under RCM
- Section 16(4)of CGST Act, amended vide the Finance Act, 2022 (Sep to Nov)
- Accordingly, it is clarified that in cases of supplies received from unregistered suppliers, where tax has to be paid by the recipient under RCM and where invoice is to be issued by the recipient of the supplies in accordance with section 31(3)(f) of CGST Act, the relevant FY for calculation of time limit for availment of ITC under the provisions of section 16(4) of CGST Act will be the FY in which the invoice has been issued by the recipient u/s 31(3)(f) of CGST Act, subject to payment of tax on the said supply by the recipient and fulfilment of other conditions and restrictions of section 16 and 17 of CGST Act. In case, the recipient issues the invoice after the time of supply of the said supply and pays tax accordingly, he will be required to pay interest on such delayed payment of tax. Further, in cases of such delayed issuance of invoice by the recipient, he may also be liable to penal action u/s 122 of CGST Act.

Decisions of 53rd GSTCM - Section 16(4) effective from July 1, 2017

Link to Press Release

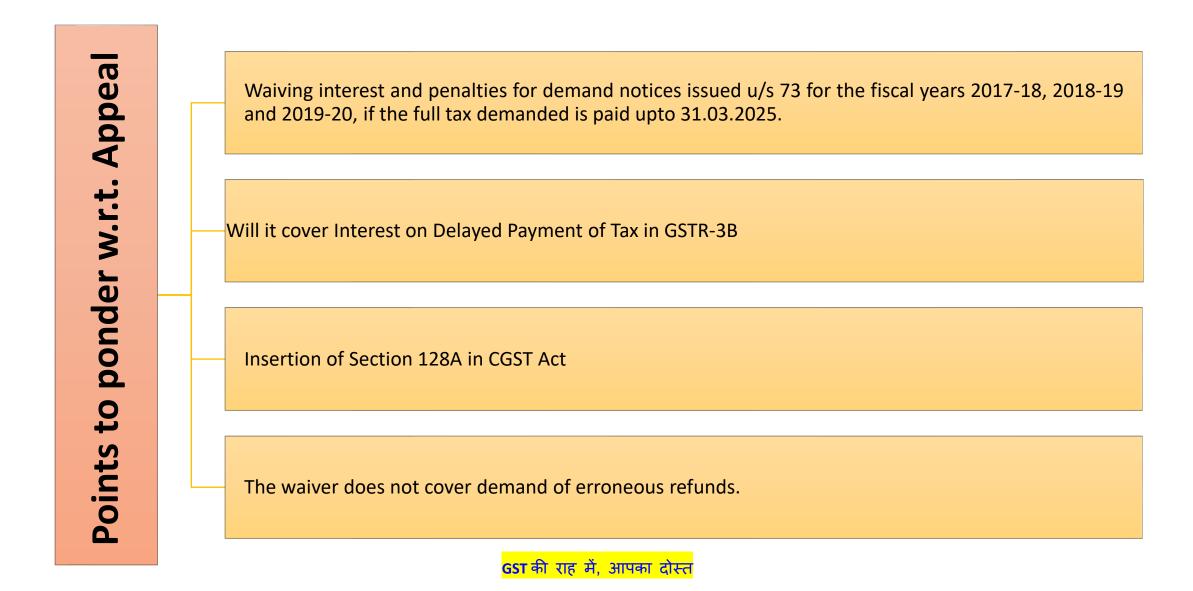
For FY 2017-18, 2018-19 & 2019-20 - 30.11.2021

- How to take relief before Notification?
- How to get it dropped from the 2019-20 SCN proceedings
- How to get it dropped from the DRC-07 already issued

Cancelled Dealer

 ITC Shall be allowed to him provided returns are filed by the RP within thirty days of the order of Revocation

Decisions of 53rd GSTCM



Decisions of 53rd GSTCM

Reduction of Government Litigation by Fixing monetary limits for filing appeals underGST:

Points to ponder w.r.t. Appeal

The Council recommended to prescribe monetary limits, subject to certain exclusions, for filing of appeals in GST by the department before GST Appellate Tribunal, High Court, and Supreme Court, to reduce government litigation. The following monetary limits have been recommended by the Council

GSTAT: Rs. 20 lakhs

High Court: Rs. 1 crore

Supreme Court: Rs. 2 crores

Decisions of 53rd GSTCM

Points to ponder w.r.t. Appea

Amendment in Section 107 and Section 112 of CGST Act for reducing the amount of pre-deposit required to be paid for filing of appeals under GST

The maximum amount for filing appeal with the appellate authority has been reduced from Rs. 25 crores CGST and Rs. 25 crores SGST to Rs. 20 crores CGST and Rs. 20 crores SGST.

Further, the amount of pre-deposit for filing appeal with the Appellate Tribunal has been reduced from 20% with a maximum amount of Rs. 50 crores CGST and Rs. 50 crores SGST to 10 % with a maximum of Rs. 20 crores CGST and Rs. 20 crores SGST

Decisions of 53rd GSTCM

Relaxation in condition of section 16(4) of the CGST Act:

In respect of initial years of implementation of GST, i.e., FYs 2017-18, 2018-19, 2019-20 and 2020-21:

With respect to cases where returns have been filed after revocation:

The GST Council recommended that the time limit to avail input tax credit in respect of any invoice or debit note under Section 16(4) of CGST Act, through any return in FORM GSTR 3B filed upto 30.11.2021 for the financial years 2017-18, 2018-19, 2019-20 and 2020-21, may be deemed to be 30.11.2021. For the same, requisite amendment in section 16(4) of CGST Act, retrospectively, w.e.f. 01.07.2017, has been recommended by the Council.

The GST Council recommended retrospective amendment in Section 16(4) of CGST Act, to be made effective from July 1, 2017, to conditionally relax the provisions of section 16(4) of CGST Act in cases where returns for the period from the date of cancellation of registration/ effective date of cancellation of registration till the date of revocation of cancellation of the registration, are filed by the registered person within thirty days of the order of revocation.

Decisions of 53rd GSTCM

Insertion of Section 11A in CGST Act for granting power not to recover duties not levied or short-levied as a result of general practice under GST Acts:

• The GST Council recommended inserting a new Section 11A in CGST Act to give powers to the Government, on the recommendations of the Council, to allow regularization of non-levy or short levy of GST, where tax was being short paid or not paid due to common trade practices.

Amendment of Rule 88B of CGST Rules, 2017 in respect of interest under Section 50 of CGST Act on delayed filing of returns, in cases where the credit is available in Electronic Cash Ledger (ECL) on the due date of filing the said return:

• The GST Council recommended amendment in rule 88B of CGST Rules to provide that an amount, which is available in the Electronic Cash Ledger on the due date of filing of return in **FORM GSTR-3B**, and is debited while filing the said return, shall not be included while calculating interest under section 50 of the CGST Act in respect of delayed filing of the said return.

Amendments in Section 73 and Section 74 of CGST Act, 2017 and insertion of a new Section 74A in CGST Act, to provide for common time limit for issuance of demand notices and orders irrespective of whether case involves fraud, suppression, willful misstatement etc., or not:

• Presently, there is a different time limit for issuing demand notices and demand orders, in cases where charges of fraud, suppression, willful misstatement etc., are not involved, and in cases where those charges are involved. In order to simplify the implementation of those provisions, the GST Council recommended to provide for a common time limit for issuance of demand notices and orders in respect of demands for FY 2024-25 onwards, in cases involving charges of fraud or willful misstatement and not involving the charges of fraud or willful misstatement etc. Also, the time limit for the taxpayers to avail the benefit of reduced penalty, by paying the tax demanded along with interest, has been recommended to be increased from 30 days to 60 days.



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Mobile: 9891112120

Email: gstrfbharat@gmail.com