

Welcome to the Rohini CPE-SC

Friday, the 27 May, 2022



**Latest Amendments,
Provisional Attachment,
Notices, Summons, etc**

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Major Amendments – Finance Act, 2022

Major Amendments – F. A., 2022

Major Amendments by the Finance Act, 2022 in three lines

- Two way communication of availing ITC scrapped – ITC will be available based upon supplier's return and information → Supplier's dominance → Necessary amendment have been made in various section—38, 42, 42A, 43
- Eligibility of ITC u/s 16 & 17 will be filtered by Sec. 38 – Auto generated statement
- Deadlines for rectification of errors and omission revised to 30th Nov. of the following year

ITC Mechanism – F. A., 2021 + 2022

Conditions of availing ITC – Clause 100 read with 104

- Present Conditions for claiming ITC

Invoice as per Rule 46 duly signed	Receipt of goods or services
Payment within 180 days	Payment of output tax by Supplier

- Clause (aa) of Sec 16(2) inserted w.e.f. 01.01.2022

- Details of the invoice or debit note has been furnished by the supplier in GSTR-1; AND such details have been communicated to the recipient in the manner specified u/s 37

ITC Mechanism – F. A., 2021 + 2022

Rule 36(4) has also been amended w.e.f. 01.01.2022

- (4) No ITC shall be availed by a registered person in respect of invoices or debit notes the details of which are required to be furnished u/s 37(1) unless,-
- (a) details of such invoices or debit notes have been furnished by supplier in Form GSTR-1 or using the invoice furnishing facility (IFF); and
 - (b) details of such invoices or debit notes have been communicated to the registered person in Form GSTR-2B.

ITC Mechanism – F. A., 2021 + 2022

Steps for claiming ITC

Step 1	<u>Download GSTR-2B form</u> Generally it is available in the afternoon of 14th of every month
Step 2	<u>Reduce ineligible ITC under sec 17(5) or 17(2)</u> Such as motor car, food, health insurance, gift, capital expense relating to immovable property etc
Step 3	<u>Reduce goods received in next month from GSTR-2B form</u> Example - Invoice dt 30-01-2022 and also appearing in GSTR-2B of Jan-22 , however goods received on 05-02-2022, this ITC is to be claimed in GSTR-3B of Feb 2022)
Step 4	<u>Reduce ITC not relating to your business from GSTR-2B form</u> Example - A sells goods to B, but in GSTR-1 shows GSTIN of D → Here D needs to be remove ITC from his GSTR-2B
Step 5	<u>Add ITC not claimed in earlier period → becomes eligible now</u> Example - Invoice dated 10-01-2022 → Goods received in March 22 → ITC not taken in GSTR-3B of Jan-22 → Will be claimed in March-22

ITC Mechanism – F. A., 2022

Clause (ba) to sec 16(2) inserted – FA, 2022

(ba) Details of ITC in respect of the said supply communicated to such registered person u/s 38 has not been restricted

NOW the restrictions in ITC would be in sec 16, 17 and 38

Sec 38 – Clause 104

An auto generated statement containing the details of ITC shall be made available electronically to the recipients of such supplies

ITC Mechanism – F. A., 2022

Auto generated statement shall comprise

I	When ITC is available
II	When ITC is Restricted:
A	Certain classes of suppliers who are newly registered for specified transaction/ time. <i>[Conditions would be prescribed in the Rules]</i>
b	Suppliers who make defaults in payment of taxes for a specified time. <i>The default can happen where supplier does not file his GSTR-3B or when supplier does not pay taxes at all. [Conditions through Rules]</i>
c	If a suppliers has paid less output tax during the period below a certain limit (to prescribed in the Rules), the output tax which is paid shall not be available <u>to all his recipients as ITC</u> for such tax period. <i>For e.g., Mr X filed his GSTR-1 with output tax liabilities of Rs. 100 but filed his GSTR 3B with an amount of output tax of Rs. 80 (Govt prescribes limit of 10%). In this case the recipient of goods from Mr X will see ITC on supplies purchased from him in ineligible bucket)</i>

ITC Mechanism – F. A., 2022

Auto generated statement shall comprise

I When ITC is available

II When ITC is Restricted:

d Suppliers who have availed ITC of an amount that exceeds the amount of ITC which is available in the auto-generated statement for a tax period by a notified limit. [Similar to Rule 86B]

Suppose tolerance limit is 10%; auto-generated ITC is 1 lac; but recipient avails 1.3 lacs → ITC to be denied by 20,000

e In case of a registered person who has defaulted in discharging his tax liability under sec 49(12).

Sec 49(12) has proposed to provide for restriction on payment of output tax liability through electronic credit ledger in case of certain registered person or class of registered persons.

f The last clause of sec 38 provides for such class of persons who are prescribed by the Government.

Proposed Change in deadlines – FA, 2022

Clause	Sec	Nature	Original	Revised
100	16(4)	Taking of ITC	Due date of furnishing of return u/s 39 for Sept. following the end of F. Y. or furnishing of the relevant annual return, w.e.i. earlier.	30 th Nov. of the following F. Y. or furnishing of the relevant annual return, w.e.i. earlier.
102	34(2)	Reporting of credit note		
103	37(3)	Rectification in GSTR-1		
105	39(9)	Rectification in GSTR-3B		
112	52(6)	Rectification in GSTR-8 (TCS)		

- Since ITC is available based upon GSTR-2B, which is generated on 13th day of next month → Ideally, rectification in credit note and GSTR-1 should have been one month before the GSTR-3B

Major Amendments – Finance Act, 2021

Major Amendments – F.A., 2021

Amendment in the definition of supply

- A new clause (aa) in Sec 7(1) is being inserted → retrospectively with effect from 01.07.2017 →
- Supply would include →
 - (aa) the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration →
 - *Explanation* : For the purposes of this clause, it is hereby clarified that, *notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority*, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another

Major Amendments – F. A., 2021

Amendment in the definition of supply

- Supreme Court in the case of Calcutta Club for erstwhile VAT & Service tax regime → owing to the principle of mutuality which treats such clubs/associations and its members as the same person
- Would affect to Associations, AOP, Clubs, Cooperative Societies, etc
- Transactions with persons who are not members of association was always taxable. Current amendment is brought to tax transaction between members and associations.
- Retrospectivity in the Indirect Tax → if the tax has not been collected, then how to pay for last 4 years → mainly B2C supplies

Co-operative Societies

FAQs on levy of GST on the Co-operative society dt. 05.09.2017

	Nature of Collection	Taxability
1	Property Tax- Actual as per Municipal Corporation of Greater Mumbai (MCGM)	(i) Not taxable if collected as pure agent (i) However, if charges are collected by Society for Society's generator or to provide facility of drinking water or any other service, then such charges collected by society are liable to GST, subject to exemption of INR 7,500 p.m. per member.
2	Water Tax - Municipal Corporation of Greater Mumbai (MCGM)	
3	Non- Agricultural Tax- Maharashtra State Government	
4	Electricity charges	
5	Sinking fund - Mandatory under the Bye-laws of the Co-operative Societies	Attract GST, as these charges are collected by the RWA/Co-operative Society for supply of services meant for its members subject to exemption of INR 7,500 per month per member.
6	Repairs & maintenance fund	
7	Car parking charges	
8	Non occupancy charges	

Major Amendments – F. A., 2021

Amendment in Sec 75

- Sec 75 – General provisions relating to determination of tax.
- An explanation to section 75(12) of the CGST Act is being inserted
- Earlier, “self-assessed tax” was confined to tax payable u/s 39 i.e. GSTR-3B → Now also included tax payable as per GSTR-1
- This amendment is important for those who have filed their GSTR-1 without filing GSTR-3B or have not paid tax.
- Recovery through recovery provisions u/s. 79 → No installments u/s. 80

Also GSTR-1 and GSTR-3B could be filed in sequence

Sec 129 – Goods intercepted on the way – FA, 2021

Nature	Earlier	NOW
Where owner of goods <u>comes forward</u> for payment of such tax and penalty		
❖ Taxable Goods	Applicable tax and penalty equal to 100% of tax payable on such goods	Penalty equal to 100% of tax payable on such goods
❖ Exempted Goods	2% of the value of goods or INR 25,000/-, w.e.i. less.	
Where owner of goods does <u>NOT comes forward</u> for payment of tax and penalty		
❖ Taxable Goods	Applicable tax & penalty equal to 50% of value of goods reduced by tax paid thereon	Penalty equal to 50% of value of goods or 200% of tax payable on such goods, w.e.i. higher
❖ Exempted Goods	5% of the value of goods or INR 25,000/-, w.e.i. less.	

Sec 129 – Goods intercepted on the way – FA, 2021

Confiscation/Penalty was held to be unjustified

(i) No confiscation without an opportunity of being heard

- Shree Enterprises (Kar);
- Ranchi Carrying Corporation (U.P.)

(ii) Incomplete Part B of the E-way Bill or minor mistakes

- Kerala HC in Daily Express ; Krishnakumar ; Abco Trades (P) Ltd.
- Preethi Kitchen Appliances (P) Ltd. (Madras)
- Diamond Metal (All)
- Tirthamoyee Aluminium Products (Tripura)

(iii) Value on the e-way bill – Return journey after the job work

- H. Muhammad Kunju (Ker)

Sec 129 – Goods intercepted on the way – FA, 2021

Confiscation/Penalty was held to be unjustified

(iv) Under-valuation of goods on the e-way bill

- K. P. Sugandh Ltd. (Chhattisgarh)
- Karnataka Traders (Gujarat)

(v) Classification dispute cannot be raised

- Trinity Beverages (P) Ltd. (Kerala)

(vi) Travel through a different route – Mechanical detention

- Podaran Foods India (P) Ltd. (Kerala)
- Karnataka Traders (Gujarat)

(vii) Mere suspicion

- Devices Distributors (Ker)
- Satyam Shivam Papers Pvt. Ltd (Telang.)

Restaurant Services provided through e-commerce u/s 9(5) – w.e.f. 01.01.2022

- Services supplied by restaurant, eating joints etc. – *Other than* premises providing hotel accommodation service having declared tariff of any unit of accommodation above INR 7,500/- per unit per day or equivalent.
- It is immaterial whether restaurant is registered or not
- Includes cloud kitchens and centralized kitchens
- Circular No. 167/23/2021 dated 17 Dec. 2021

Restaurant Services provided through e-commerce u/s 9(5) – w.e.f. 01.01.2022

Taxability at a Glance

1.	Home delivery of restaurant food by ECO	ECO
2.	Eating or take away at restaurant by customer directly	Restaurant
3.	Home delivery by restaurants directly when customer orders by phone, email, website or app of restaurant (like dominoes)	Restaurant
4.	Items other than restaurant food delivered by ECO from such establishment (like breads, namkeen packets, etc)	Restaurant
5.	Catering or any other supply by such restaurant	Restaurant

Restaurant Services provided through e-commerce u/s 9(5) – w.e.f. 01.01.2022

- Hotel Services supplied by unregistered hotel/Guest House through ECO – Tax payable by ECO
- If Hotel is registered → Stay by itself; and food by ECO
- Sec 24 (Mandatory registration) includes: -
 - (iv) person who are required to pay tax u/s 9(5);
 - (ix) Persons who supply goods or services or both, other than supplies specified u/s 9(5), through ECO, who is required to collect TCS u/s 52;
 - (x) Every electronic commerce operator who is required to collect TCS u/s 52;

Important Changes in GST Rates– w.e.f. 1.1.2022

Entry No.		Old Rate	New Rate
Concessional Rates of Govt. Authorities & Govt. Entities withdrawn in specified cases			
3(iii)/N.No. 12- 9954	Historical monument, archaeological site, canal, dam or other irrigation works, pipeline, conduit or plant	12	18
3(vi)/N.No. 12- 9954	(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession; (b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or (c) a residential complex predominantly meant for self-use or the use of their employees	12	18

Important Changes in GST Rates– w.e.f. 1.1.2022

Entry No.		Old Rate	New Rate
3(vii)/N.No.12 - 9954	Predominantly earth work (that is, constituting more than 75% of the value of the works contract	5	18
3(ix), (x) / N. No. 12- 9954	Sub-contractors to main contractors of above services	12/5	18
3 and 3A / N. No. 11- Chapter 99	Composite supply of goods and services in which the value of supply of goods constitutes not more than 25% in relation to Article 243G and 243W	Nil	18
171 1A	Footwear of sale value not exceeding Rs. 1,000 per pair	5	12

Provisional Attachment

Provisional Attachment u/s 83

Circumstances – S. 83(1)

1) After institution of the proceedings under specified sections

- Up to 31.12.2021:

Attachment could be initiated during the pendency of any proceedings under section 62 (non-filer) / 63 (URD) / 64 (Spl. Cases) / 67 (inspection, search) / 73 / 74

- W. e. f. 01.01.2022

- Chapter XII [59-64 (Assessment)],
- Chapter XIV [67-72 (Inspection & Search)]
- Chapter XV [73-84 (Demand & Recovery)]

- For ex. Sec 61 (Scrutiny); or Sec 71 (Access to business premises); or Sec 70 (Summons) → Attachment possible

Provisional Attachment u/s 83

Circumstances – S. 83(1)

1. **After** institution of the proceedings under specified section
2. The Commissioner is of the opinion that
3. For the purpose of protecting the interest of the Government revenue it is necessary so to do, he may
4. by order in writing

What can be attached provisionally – S. 83(1)

1. Any property, including bank account, belonging to the taxable person or any person specified in Sec 122 (1A) [who retains the benefit or whose instance such transaction is conducted]
2. In the manner prescribed in Rule 159 - GST DRC-22

Provisional Attachment u/s 83

Period of Attachment

- Shall cease to have effect after the expiry of one year from the date of order u/s 83(1).
- After the expiry of one year, to protect the interest of government revenue, he may issue a fresh order upon compliance of the formalities in sec 83(1) [Bom. HC; Cal. HC; Guj. HC]

Who can order of attachment

- Commissioner [including officers with delegation]
- Whether the Principal Additional Director General, DGGI and Additional Director General, DGGI are competent to pass orders under sec 83 – Yes [*Amazonite Steel Pvt. Ltd - Cal HC*]

Provisional Attachment u/s 83

Objection to order of Attachment – Rule 159(5)

- Any person whose property is attached may file an objection in GST DRC-22A to the effect that the property attached was or is not liable to attachment, and
- The Commissioner may, after affording an opportunity of being heard to the person filing the objection, release the said property by an order

Summons issued under sec 70 of the GST Act cannot be construed as a notice affording an opportunity of hearing in terms of rule 159(5) *[KPN Travels India Ltd. (Mad. HC)]*

Provisional Attachment u/s 83

Wrong classification

AJE India (P) Ltd. 2021 (12) TMI 1047 (Bom HC)

- Provisional attachment of bank accounts cannot be done straightaway.
- Wrong classification of goods would not amount to infer the plea of evasion of tax.
- Merely because there is a proceeding under sec 67 (inspection) would not mean that the recourse to such a drastic power as under sec 83 would be automatic consequence, more so when the petitioner has co-operated with the investigation.

Provisional Attachment u/s 83

Radha Krishan Industries v State of H.P. - 2021 (4) TMI 837 dated 20.04.2021 (SC)

- The power to order a provisional attachment of the property of the taxable person including a bank account is **draconian in nature** and the conditions which are prescribed by the statute for a valid exercise of the power must be strictly fulfilled.
- When the Joint Commissioner orders under sec 83, he is acting as a delegate of the Commissioner in pursuance of the delegation effected u/s 5(3).
- Since appeal against the order of provisional attachment was not available u/s 107(1), writ petition before the HC is maintainable.

Provisional Attachment u/s 83

Radha Krishan Industries (SC)..... Contd..

- Before ordering a provisional attachment → must form an opinion on the basis of tangible material that the assessee is likely to defeat the demand → And it is necessary so to do for the purpose of protecting the interest of the government revenue.
- The expression “**necessary so to do for protecting the government revenue**” implicates that the interests of the government revenue cannot be protected without ordering a provisional attachment.

Provisional Attachment u/s 83

Radha Krishan Industries (SC) contd

- Under the provisions of rule 159(5), the person whose property is attached is entitled to dual procedural safeguards:
 - (a) An entitlement to submit objections on the ground that the property was or is not liable to attachment; and
 - (b) An opportunity of being heard.
- The Commissioner shall deal with the objections to the attachment
→ Pass a reasoned order → must be communicated to the person
- When a final order has been passed u/s 74(9), the proceedings u/s 74 are no longer pending, as a result of which the provisional attachment must come to an end.

Summon under Sec 70

Summon u/s 70

Power to summon persons to give evidence and produce documents.

70. (1) The proper officer under this Act shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry **in the same manner**, as provided in the case of a civil court under the provisions of the Code of Civil Procedure, 1908

(2) Every such inquiry referred to in sub-section (1) shall be deemed to be a “**judicial proceedings**” within the meaning of section 193 and section 228 of the Indian Penal Code

The Term Person has been defined u/s 2(84) & includes Individual, Firm, Company, Society etc.

Summon u/s 70

- Documents or things of a certain description must be in the possession or under the control of the person summoned.

2. You are hereby summoned under Section 70 of the CGST Act, 2017 to appear before me in person on 28.08.2020 at 11:30:00 AM in Engineers India Limited, Annexe Building, (5th Floor), Bhikaji Cama Place, R.K. Puram, New Delhi – 110066 to give evidence as you may be asked and to produce the documents and records mentioned in the schedule below for my examination failing which necessary action will be initiated as per law.

यदि आपने इस सम्मन का और जानबूझ कर बयान हेतु गवाही देने के लिए उपस्थित नहीं होने और/या उक्तदस्तावेजों एवं वस्तुएँ प्रस्तुत करने का अनुपालन न किया, तो भारतीय दण्ड संहिता की धारा 174 – 175 के प्रावधानों के अधीन आपको दण्डित किया जा सकेगा।

3. If you fail to obey with this summons and intentionally omit to attend to give evidence to make statement and / or to produce the documents and things, you will be liable to punishments under the provisions of sections 174-175 of the Indian Penal Code.

अपिसचिसCHEDULE

469. To tender the statement.
470. Sale & Purchase ledger with all invoices for FY 2017-18 to till date.
471. Input Tax Credit ledger for the FY 2017-18 to till date.
472. Bank Statements for the FY 2017-18 to till date.
473. Details of exports/ imports made.
474. Above details may also be emailed in excel format on anupam.kumar@gov.in.

Who is Proper Officer

Who is Proper Officer – Sec 2(91)

“Proper Officer” in relation to any function to be performed under this Act, means the Commissioner or the officer of the central tax who is assigned that function by the Commissioner in the Board

- For the purposes of Sub-section (1) of Section 70 –

Superintendent of Central Tax [Circular No. 3/3/2017 – GST dt. 05.07.2017]

(+)

Directorate General of Goods and Services Tax Intelligence (DGGI)

– On all India Basis

(+)

D.G. of Anti-profiteering & his authorised Officer [Rule 132]

FAQ dt. 15.12.2018 by the CBIC on Summons

Q 32. What are the responsibilities of the person so summoned?

A person who is issued summon is **legally bound** to attend **either in person or by an authorized representative** and he is bound to state the truth before the officer who has issued the summon upon any subject which is the subject matter of examination and to produce such documents and other things as may be required

However, the statement will be tendered by the person named in the Summons:

(1) Any person, may, otherwise than when required under this Act to appear personally for examination on oath or affirmation,, appear by an authorised representative.

[Suresh Balkrishna Jajra vs. UOI (2022) Raj HC]

FAQ dt. 15.12.2018 by the CBIC on Summons

Q 34. What are the guidelines for issue of summons?

The CBIC has issued guidelines from time to time to ensure that summons provisions are not misused in the field. Some of the important highlights of these guidelines are given below:

- Summons are to be issued **as a last resort** where assesses are not co-operating and this section should not be used for the top management [*Also FSM Education (P) Ltd. (2022) Bom. HC*]
- The **language** of the summons **should not be harsh** and legal which causes unnecessary mental stress and embarrassment to the receiver
- **Prior Written Permission** should be obtained by the Superintendents from A.C and above. **If it is not possible**, then it must be reduced in the writing and intimated to the officer.

FAQ dt. 15.12.2018 by the CBIC on Summons

Q 34. What are the guidelines for issue of summons?

Contd...

- In all cases, where summons are issued, the officer issuing summons should **submit a report or should record a brief** of the proceedings in the case file and submit the same to the officer who had authorized the issuance of summons;
- **Senior management officials** such as CEO, CFO, General Managers of a large company or a Public Sector Undertaking should not generally be issued summons at the first instance. They should be summoned only when there are indications in the investigation of their involvement in the decision making process which led to loss of revenue.

FAQ dt. 15.12.2018 by the CBIC on Summons

Q 35. Precautions to be observed for issue of summons?

- A summon for appearance should not be issued unless justified.
- **Normally**, summons should not be issued repeatedly. As far as practicable, the statement of the accused or witness should be recorded in minimum number of appearances.
- No person should be made to wait for long hours before his statement is recorded **except when** it has been decided very consciously as a matter of strategy.
- **Preferably**, statements should be recorded during office hours; however, **an exception** could be made regarding time and place of recording statement having regard to the facts in the case.

Circular No. 122/41/2019 – GST dt 05.11.2019

Generation of DIN.

- Generation and quoting of Document Identification Number (DIN) on any communication issued by the officers of the CBIC to tax payers and other concerned persons.
- No search authorisation, summons, arrest memo, inspection notices and letters issued in the course of any enquiry shall be issued by any officer under the Board to a taxpayer or any other person, on or after 08.11.2019 without a computer generated DIN being duly quoted prominently in the body of such communication.
- Any specified communication which does not bear DIN and is not covered by the exceptions mentioned in the circular no. 122/2019-GST shall be treated as invalid and shall be deemed to have never been issued.

FAQ dt. 15.12.2018 by the CBIC on Summons

Q 33. Consequences of non-appearance to summons?

- If a person does not appear on the date when summoned without any reasonable justification, he can be prosecuted u/s **174 of the IPC**
- If he absconds to avoid service of summons, he can be prosecuted u/s **172 of the IPC**
- In case he does not produce the documents or electronic records required to be produced, he can be prosecuted u/s **175 of the IPC**
- In case he gives false evidence, he can be prosecuted u/s **193 of IPC**
- In addition, if a person does not appear before a CGST/ SGST officer who has issued the summon, he is liable to a penalty up to Rs 25,000/- u/s **122(3)(d) of CGST/SGST Act**

Tendering of Statements in Proceedings

- Statement can be recorded during summon before a officer not below the rank of Superintendent.
- Statement should be voluntary and not under threat.
- The person should be told that he is bound to tell the truth and if he does not tell the truth, he may be prosecuted under section 193 of IPC for giving false evidence – It is not a threat
- Where statement is extracted through coercive and objectionable methods, the person giving the statement shall immediately send a notice of retraction of his statement explaining the grounds.

Installation of CCTV (Direction by SC)

Paramvir Singh Saini vs. Baljit Singh - 2020 (12) TMI 1222 (SC)

The U.O.I is directed to install CCTV cameras and recording equipment in the following offices where interrogation and holding of accused takes place in the same manner as it would in a police station:

- (i) Central Bureau of Investigation (CBI)
- (ii) National Investigation Agency (NIA)
- (iii) Enforcement Directorate (ED)
- (iv) Narcotics Control Bureau (NCB)
- (v) Department of Revenue Intelligence (DRI)
- (vi) Serious Fraud Investigation Office (SFIO)
- (vii) Any other agency which carries out interrogations and has the power of arrest.

Retraction of Statement

Yes - Within Reasonable Period ; as early as possible

Vinod Solanki Vs. U.I.O. 2009 (233) ELT 157 (S.C.)

- A person accused of commission of an offence is not expected to prove to the hilt that confession had been obtained from him by any inducement, threat or promise by a person in authority.
- Burden is on the prosecution to show that the confession is voluntary in nature and not obtained as an outcome of threat, etc. if the same is to be relied upon solely for the purpose of securing a conviction.

Balajee Perfumes 2017 (358) E.L.T. 87 (Del HC)

- Where the statements are subsequently retracted or resiled from, it becomes necessary for the Department to produce other evidence which is of an independent nature which corroborates the retracted statements.

Parallel enquiry proceedings under sec 70

G.K. Trading Company -2021 (1) TMI (All. HC)

Kuppan Gounder P.G. Natarajan 2021 (8) TMI 136 (Mad. HC)

- Scope of sec 6(2)(b) and sec 70 is different and distinct
- Former deals with any “proceedings on a subject matter/ same subject matter” by the other Authority [CGST or SGST] ; whereas, sec 70 deals with power to summon in an inquiry
- Proceedings u/s 70 is merely an inquiry by a proper officer.
- Therefore, the words “proceedings” and “inquiry” cannot be mixed up to read as if there is a bar for the respondent to invoke the power u/s 70 of the Act.

Other Points

- **Entitlement of the Counsel to present (tendering Statement)**

May be denied → During the course of summons, the tax payer's counsel would be allowed to be present within visible distance, but beyond hearing range. [*Vijay Sajnani-2017 (345) ELT 323-SC*]

- **Right of Cross Examination**

Yes; After making the Statement [*Balajee Perfumes 2017 (358) ELT 87 (Del HC); Lakshman Exports Ltd.- 2002 (143) ELT 21 (SC); Swadeshi Polytex Ltd. 2000 (122) ELT 641 (SC)*]

- **Entitlement to get copies**

Yes; Later on [*Jayachandran Alloys (P) Ltd., vs. (Writ Petition No.5501 of 2019) (Mad)*]

Other Points

- **Issuance of summons repeatedly**

If the person concluded the statement and furnished documents in his possession → Nothing more to be added → The Authorities should conclude the proceedings → May issue SCN [*Cornerstone School of International Studies 2021 (8) 518 (Mad. HC)*]

- **Apprehension of arrest during summon**

Summon can't be quashed [*JSK Marketing Ltd.- W.P (L) No.5000 of 2020 dated 16.02.2021 (Bom. HC)*]

- **Might have to travel even from Bangalore to Delhi**

Video conferencing denied [*P. V. Rao-2020 (11) TMI 716(Del. HC)*]

Notices

Notices under GST – ASMT-10

Name of Notice	Description	Reply or Action to be taken	Time limit to respond	Consequence of non-response
ASMT-10	Scrutiny notice - Notice for intimating discrepancies in the GST return after scrutiny along with tax, interest and any other amount payable in relation to such discrepancy, if any	Reply in ASMT-11 giving reasons for discrepancies in the GST returns	Within the time prescribed in the show cause notice or a maximum time of 30 days from the date of service of notice or such deadline notified	Proceed to assess the taxpayer based on information at hand – May lead to prosecution and penalty

Show Cause Notices under GST u/s 73 & 74

Form GST DRC-01	Summary of Show Cause Notice
Form GST DRC-01A	Intimation of tax ascertained as payable under sec 73(5)/74(5)
Form GST DRC-02	Summary of Statement
Form GST DRC-03	Intimation of payment made voluntarily or made against the show cause notice (SCN) or statement
Form GST DRC-04	Acknowledgement of acceptance of payment made voluntarily
Form GST DRC-05	Intimation of conclusion of proceedings
Form GST DRC-06	Reply to the Show Cause Notice
Form GST DRC-07	Summary of the order
Form GST DRC-07A	Summary of the order creating demand under existing laws
Form GST DRC-08	Rectification of Order

DRC-01 is different from Simple Notice

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

SCN Reference No. ----

Date ----

Summary of Show Cause Notice

- (a) Brief facts of the case :
- (b) Grounds :
- (c) Tax and other dues :

(Amount in Rs.)

Sr. No.	Tax rate	Turnover	Tax Period		Act	POS (Place of Supply)	Tax	Interest	Penalty	Others	Total
			From	To							
1	2	3	4	5	6	7	8	9	10	11	12

Determination of Tax under sec 73/74-Timelines

Vide GST Flier on Recovery of Tax issued by the CBIC

	Nature of case	Time for issuance of Notice	Time for issuance of Order
1	Normal Case u/s 73	Within 2 years and 9 months from the due date of filing of Annual Return for the FY to which the demand pertains or from date of erroneous refund	Within 3 years from the due date of filing of Annual Return for the FY to which the demand pertains or from date of erroneous refund
2	Fraud Case u/s 74	Within 4 years and 6 months from the due date of filing of Annual Return for the Financial Year to which demand pertains or from date of erroneous refund	Within 5 years from the due date of filing of Annual Return for the Financial Year to which the demand pertains or from date of erroneous refund
3	Amount collected as tax but not paid	No time limit	Within 1 year from the date of issue of notice
4	Non payment of self-assessed tax	No need to issue a show cause notice; Recovery proceedings can be started directly. Penalty, @ 10% of the Tax amount or Rs. 10,000/-, w.e.i. higher shall also be payable if the period of non-payment exceeds 30 days from the due date of payment of tax	

Determination of Penalty under sec 73/74

Vide GST Flier on Recovery of Tax issued by the CBIC

S. No.	Action by Tax Payer	Amount of Penalty payable (Normal Cases u/s 73)	Amount of Penalty payable (Fraud Cases u/s 74)	Remarks
1	Tax amount, along with interest, paid <u>before</u> issuance of Notice	No Penalty; and no Notice shall be issued	15% of Tax amount; and no Notice shall be issued.	Penalty under Normal cases shall also be not charged in cases where self-assessed tax or any amount collected as tax is paid (with interest) within 30 days from due date of payment
2	Tax amount, along with interest, paid <u>within 30 days of issuance</u> of Notice	No Penalty. All proceedings deemed to be concluded	25% of Tax amount. All proceedings deemed to be concluded	
3	Tax amount, along with interest, paid <u>within 30 days of Communication</u> of Order	10% of Tax amount or INR 10,000/-, whichever is higher	50% of Tax amount. All proceedings deemed to be concluded	
4	Tax amount, along with interest, paid <u>after 30 days of Communication</u> of Order	10% of Tax amount or INR 10,000/-, whichever is higher	100% of Tax amount	-

Notices under GST u/s 73 & 74

S.No.	Particulars	Section 73	Section 74
(1)	(2)	(3)	(4)
9	Who is Proper Officer [Vide Circular No. 3/3/2017-GST dt. 05.07.2017]	For the purposes of sub-sections (1), (2), (3), (5), (6), (7), (9) and (10) of sec 73 – Superintendent of Central Tax	For the purposes of sub-sections (1), (2), (3), (5), (6), (7), (9), (10) of sec 74- Deputy/Asstt. Commissioner of Central Tax

Notices under GST u/s 73 & 74

General provisions for determination of tax [Section 75]

- An **opportunity** of being heard shall be granted.
- **Adjournment** (*even if sufficient cause exists*) shall not be granted **more than 3 times** to a person during the proceedings.
- The proper officer, in his order, shall set out the relevant facts and the basis of his decision.
- The amount of tax, interest and penalty demanded in the order shall not be in excess of the amount specified in the SCN and no demand shall be confirmed on the grounds other than the grounds specified in the SCN.
- **Deemed conclusion:** Adjudication proceedings shall be deemed to be concluded, if the order is not issued within 3 years as provided for in sec 73(10) or within 5 years as provided for in sec 74(10) of the Act.

Precautions while replying the notice

- Verify, whether it is in prescribed Form.
- Find out whether the alleged default is committed by the recipient.
- If it is not so, write to issuing authority, to clarify.
- Do not assume anything and do not reply hurriedly.
- Facts of the case are very important and should be written down first, before writing reply.
- Reply point-wise
- Do not simply cite the case-law, but write the applicable facts and applicable ratio of the case cited.
- Prayer shall be explicitly mentioned, instead of merely mentioning that the Notice is bad in law.



Thank You!

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