

E-Book

GST Assessment



The Institute of Chartered Accountants of India

(Set up by an Act of Parliament)

Southern India Regional Council

Chennai

E-Book

GST Assessment

**This e-book has been authored by
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THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
(Set up by an Act of Parliament)
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FOREWORD

In GST Law the term ‘assessment’ means a determination of tax liability under this Act and includes self-assessment, re-assessment, provisional assessment, summary assessment, and best judgment assessment.

To protect the interest of revenue, a GST officer can proceed to assess the tax liability of a person showing a tax liability with any evidence. The officer can also issue an assessment order if he has proof that the delay in assessment can adversely affect the interest of revenue.

Eventually, people having GST registration files GST returns and pay GST every month based on self-assessment of GST liability. However, the government at all times has the right to re-access or perform an assessment by itself and determine if there is a short payment of GST. Types of Assessment under GST.

1. Self- Assessment (Sec.59)
2. Provisional Assessment (Sec.60)
3. Scrutiny Assessment (Sec.61)
4. Best Judgement Assessment – non-filing of returns (Sec.62)
5. Summary Assessment (Sec.64)

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We are pleased to present before our members and other stakeholders this e-book, **GST Assessment** covering the following aspects:

On behalf of SIRC, I wish to place our sincere gratitude and appreciation to CA. Jatin Christopher, for sharing his rich experience and expertise on the GST Assessment amongst our members through this e-book. I also take the privilege of thanking CA. T. Krishna Kumar and CA. Gopalakrishnan S A for reviewing the basic draft of e-book and adding value to the substance of the e-book.

In an e-book publication meant for professional accountants like this there is a scope for further improvement on contents, presentation and coverage. Accordingly comments and suggestions on the e-book are welcome at sirc@icai.in

CA.China Masthan Talakayala
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Chapter 1: Introduction

1. There are many new procedures in GST law that taxpayers as well as tax administrators need to accept in order to proceed in this new law. Old practices that were long-standing are gone. Old procedures that were effective in collecting revenue is deleted. Central GST Act now contains many procedures borrowed from Central tax legislations that are complicated and appear to be unnecessary to do something that can easily be done in shorter and smarter ways. But GST Council has taken a collective decision that 'One Nation, One Tax' requires oneness in rules of procedure also. Therefore, there is need to understand what is 'new' in GST and accept this new way of tax administration.
2. Constitution of India needed to be amended to introduce GST in India. This itself shows that even Constitution (before amendment) was not sufficient to levy GST. That should give an idea of the kind of tax that GST is and that is the extent to which GST is different from earlier tax regime. If Constitution needed to be changed, tax administrators and taxpayers cannot escape change. To understand change required, study of the Central GST Act and Central Goods and Services Tax Rules, 2017 is required. Administrators of this new law need to consider the provisions of Central GST Act that deal with tax administration and by comparison note the difference that GST has introduced. Tax administrators also need to 'unlearn and relearn' administration of this new law.

Chapter 2: New in GST

Taxpayers to question notices

1. It is important to introduce Officers to one important restriction or ban on taxpayers in Central GST Act. Section 160(2) states that:

*“(2). The service of any notice, order or communication shall not be called in question, if the notice, order or communication, as the case may be, **has already been acted upon by the person** to whom it is issued or where such service **has not been called in question** at or in the earlier proceedings commenced, continued or finalized pursuant to such notice, order or communication.”*

2. From the above, it is clear that taxpayers are not allowed to raise questions about ‘legal correctness’ of any notice or communication from revenue authorities if either they ‘act upon’ the notice on merits or ‘fail to question’ legality of such notice at the earliest opportunity. Therefore, taxpayers are indirectly required to examine the notice and satisfy themselves about all aspects of ‘natural justice’ that was touched upon the previous chapter.
3. By questioning the legality of the notice even before replying on merits, taxpayer is not challenging the authority of the Proper Officer but only asking for his rights in law. To object this exercise of this basic right of taxpayer is to deny taxpayer’s Constitutional rights. And this will not be acceptable in law. Therefore, it is important for GST Officers to examine any questions raised about the legality of the notice and address all the concerns so that the rest of the proceedings are not rendered illegal.

Legally overlook errors in notices

4. Errors in notices can affect the correctness of the notice itself (as discussed in previous chapter). However, Central GST Act has a provision in section 160(1) where such errors in notices can be ‘legally overlooked’:

“(1) No assessment, re-assessment, adjudication, review, revision, appeal, rectification, notice, summons or other proceedings done, accepted, made, issued, initiated, or purported to have been done,

*accepted, made, issued, initiated in pursuance of any of the provisions of this Act shall be invalid or deemed to be invalid merely by reason or any mistake, defect or omission therein, if such assessment, re-assessment, adjudication, review, revision, appeal, rectification, notice, summons or other proceedings are **in substance and effect** in conformity with or according to the **intents, purposes and requirements of this Act** or any existing law.”*

5. From the above, it is clear that sufficient provision is made to legally overlook errors in the notices issued. But, this provision cannot be stretched too far for the adjudicating authority or appellate authority or Court to ‘fill in blanks’ as it would be against the principles of natural justice of sufficiently putting the party at notice about the allegations. For example, if the notice issued under section 74 alleges wilful non-payment of tax and refers to section 122 for imposing penalty although exact provision is section 122(2)(b) of the Central GST Act. Here, taxpayer cannot object to the legality of the notice for failure to mention in the notice the specific sub-section for imposing penalty as the circumstances for imposing penalty under each sub-section is different in section 122. Section 160(1) would come to rescue the notice because ‘in substance and effect’ the correct provisions of law are referred in the notice, that is, section 122 and the ‘intents, purposes and requirements’ of the Act are satisfied.

Limitation of actions

6. Limitation refers to time limit for all actions. Taxpayer’s have time limit for their actions, equally, tax authorities also have time limit for their actions. When revenue authorities issue a notice (under an appropriate section) calling for 8 years records, taxpayer would submit on 5 years records. The reason being, no tax demand can be raised beyond 5 years, even if tax evasion is

apparent. That is the significance of timeliness of all actions. Limitation is a legal requirement that comes from the concept of *res judicata* found in section 11 of Civil Procedure Code, 1908. It means, all actions including litigation must have finality at some point of time. In other words, nothing in law must remain open or pending indefinitely. In GST, every provision has a time limit and care must be taken to 'start' proceedings before the 'last date'. When there is no time limit then maximum time limit allowed to demand tax is under section 74 which is 5 years from the relevant 'start' date. Any proceedings that 'missed' the relevant start date will result in loss of revenue permanently and there is no power given to any higher authority to regularize the delay. Delay in GST is fatal to demand. Such limitation applies to taxpayer also and to file reply or appeal. And delay in filing reply may result in *ex parte* orders and delay in filing appeal may result in direct recovery. Time limits under each section is discussed under respective chapters (later) but, importance of time limit must be kept in mind.

Burden of proof

7. Another very important aspect in GST is 'onus of proof', that is, the responsibility to prove tax evasion or other liability. For example, tax may be assessed as 'works contract' and collected but later, tax authorities may issue re-assessment notice proposing tax as 'sale' denying deduction earlier allowed towards labour and like charges. In such a case, taxpayer would prepare detailed reply justifying tax treatment as a works contract and not as a sale along with various judgements in Tribunal or Courts. In GST, it is not sufficient for tax authorities to 'change their mind'. Onus of proof, means the responsibility now lies on tax authorities to not only make allegation of sale (in this example) but also provide all investigative evidence in this taxpayer's case like contract terms, statement on oath, justification against works contracts,

prove allegation of sale and then demand tax on sale. All these steps are discussed in detail in the chapter on show cause notice. But for now, Officers must bear in mind that 'onus of proof' lies on tax authorities in GST unlike earlier tax regime. If the allegations made by tax authorities is not satisfactorily proved, taxpayer is not required to 'prove his innocence'. All that taxpayer needs to do is attack the allegations made. So, the responsibility on tax authorities is far greater in GST and this is a deliberate procedure that is followed for long under Central tax legislations that is continued in GST.

Assessment not applicable

8. Assessment procedure is 'missing' because GST is a 'self-assessment' based tax. Taxpayer is responsible to determine supply, rate of tax, valuation, input tax credit, filing of returns and discharge of self- assessed tax. Practice of 'calling for books of accounts' by tax authorities is gone. There is no provision under which taxpayers may be issued a notice to produce books of accounts, purchase and sales invoices, credit register and other bills and vouchers for tax authorities to conduct assessment. Only to a very limited extent books of accounts can be examined after visiting business premises (not called to tax department) under section 65 during audit of taxpayer. Tax authorities must have a specific document or information that is required for investigation purposes which can be 'called for' under section 70 by issuing summons. This may be very surprising but even after introduction of GST in 2017, Officers are still seen issuing notices 'calling for books of accounts' and taxpayers are objecting to such notices under section 160(2) stating that there is no authority in law for Proper Officer to issue such notice.

Spot recovery not allowed

9. Spot recovery is unknown in GST. This is another area where Central GST Act

DOES NOT give authority to 'convince' taxpayer to pay up any liability without following the procedure of issuing notice under applicable provision of law (with all the aspects of onus of proof suitable established) and then adjudicating upon it. GST being a system driven tax, liability to pay (even if there is no doubt) should be created on the GSTN Portal through DRC7 summary of demand under rule 142 of Central GST Act Rules. And this summary requires reference details of adjudication order giving rise to this demand. Alternatively, if taxpayer deposits any tax in DRC3 voluntarily, that also requires reference details of proceedings as this form is also prescribed under rule 142 of Central GST Act Rules. No action under GST law can be undertaken secretly and by-passing the procedures establish by law. Care must be taken to avoid 'convincing' taxpayers to deposit tax without following the procedures.

Test purchase complicated

10. Test purchase is another procedure that is present in GST but not without conditions. It is permitted under section 67(12) of Central GST Act. That is, test purchase is only permitted after initiating proceedings for inspection under section 67. It is clear from section 67 (detailed discussed in respective chapter) that without an assignment from Additional Commissioner or Joint Commissioner of GST, no inspection can be conducted. Therefore, even to make a test purchase, assignment note for a full inspection is required. From this procedure, it is clear that test purchase cannot be undertaken routinely or suddenly.
11. When 'test purchase' is carried out, the only purpose permitted is **“to check the issue of tax invoice”** and not to conduct extended investigation about classification, valuation or other provisions of Central GST Act. For these

reasons, advance planning is required about identity of taxpayers to obtain assignment before undertaking test purchase. In GST, concept of test purchase is likely to be very different and more complicated for tax authorities to carry out. And for the procedures involved, any demand for tax or penalty based on findings during test purchase undertaken WITHOUT following the procedures under section 67, will not be sustainable in appeal. Procedure for drawing samples under section 154 should not confused with test purchase under section 67(12). Care must be taken to follow procedures prescribed in law.

Summons not reliable

12. Summons may be issued under section 70 to a person to appear and provide information or to produce a document. Proceedings to summon cannot not be undertaken routinely but only during the course of audit or investigation or other inquiry as per law. Person who is summoned is required to state information 'truthfully'. And transactions involving tax liability is not well known to top management or clerical staff in any organization. Care must be taken to issue summons to right person who may have knowledge relevant to proceedings taken up. If wrong person is summoned, such person can say "I do not know" which would still be a truthful statement.
13. Further, summons cannot be issued 'calling for books of accounts' as it would be a misapplication of section 70 and amount to a roving inquiry which is NOT permitted under this section. Section 70 permits to call for 'a document' which does not mean 'only one' document but refers to a 'specific' document. Calling for books of accounts clearly shows that there is no clarity on the specific document that is required in the proceedings.
14. Recording of statement is not permitting under section 65 or 67 of Central GST

Act. That is, where tax authorities visit business premises of taxpayer (to conduct audit or inspection) and see the need for some answers to be provided, there is no provision under section 65 or 67 for 'recording statement'. In such cases, summons under section 70 must be issued and then 'statement' recorded. Given the legalities involved, care must be taken NOT to use the process under section 70 routinely.

15. Now, once a statement has been recorded, the taxpayer is permitted to withdraw it or deny it. Section 136 states that statements recorded under section 70 will NOT be relevant if the person is available to be examined as a 'witness'. Once examination of witness is permitted, taxpayer must be allowed to 'cross examine' the witness about the statements made. Therefore, it is important to note that notice cannot be based almost entirely on the basis of a statements made by any person and it is only a weak evidence. And in the absence of additional corroborative evidence, statements alone are unreliable and have no value in tax evasion matters. There are many decisions of Apex Court and High Courts on this issue under various tax laws including Income-tax Act which will be relevant in GST evasion proceedings.

Credit blocking 'limited'

16. Blocking of credit under rule 86A of Central GST Act Rules is an important provision that is new in GST since it is a system-based tax. It is very interesting because credit appearing in the system against taxpayer's name and GSTIN is allowed to be 'blocked' even without issuing notice or adjudication or any proceeding. This is an emergency provision where prior approval must be given by Commissioner of GST on the file. Such use of emergency powers can be called in for questioning in later proceedings. It is important to note that blocking of credit for any reason other than the following 5 reasons is considered misuse of rule 86A:

- Supplier is non-existent;
- Supply (of goods or services) is non-existent;
- Tax amount is non-existent (or not paid to Government);
- Taxpayer (claiming credit) is non-existent; or
- Tax invoice (for claiming credit) is non-existent.

17. If not for these reasons, blocking of credit is illegal. But, it is seen that tax authorities have blocked credit even for cases such as mismatch of invoices. Further, Commissioner of GST is answerable for the use of this extreme measure of blocking as prior permission would be given 'on file' by Commissioner. Further, credit blocked MUST be 'unblocked' at the end of 1 year. Therefore, unless investigation is completed and show cause notice is issued, credit blocked must be unblocked on lapse of 1 year even in these 5 cases (listed above) involving suspected evasion.

Undisputed arrears

18. Amounts that are 'undisputed' such as self-assessed tax are permitted under section 75(12) to be recovered under section 79 of Central GST Act WITHOUT following any procedure of law such as issuance of notice or adjudication. As this is a self-assessment tax regime, once taxpayer has admitted liability in GSTR 3B returns, there is no further requirement to issue any notice for recovery of such admitted tax by following any suitable method available under section 79 of Central GST Act. Interest on such self-assessed tax is also stated to be an 'undisputed' arrear under section 75(12) of Central GST Act and this provision must be taken note of by tax authorities.

19. GST is not only stringent for taxpayers it is equally stringent for tax authorities to administer. With the background now available, it would be appropriate to discuss specific sections under Central GST Act and the

procedures 'as per' law that are applicable in each case.

Chapter 3: Authorities under GST

1. All power is vested by Constitution in Parliament and State Legislature to make laws. GST Council has been made a new authority for deliberation and consensus building among all States, UTs and Centre as a pre-legislative step so that once decision is taken in the Council, law-making will be uniform or at least, as agreed jointly. This will preserve concept of 'One Nation, One Tax'.
2. Now, authorities in GST are provided for in section 4 to 6 of Central GST Act. Central tax authorities have allocated powers under section 5 of the Central GST Act but State authorities are to be specifically empowered to take any action under specific sections of the Karnataka GST Act.
3. Another aspect of 'administrative discipline' followed by Central GST authorities may be found in circular 31/5/2018-GST dated 9 Feb 2018 (link is available in <https://www.cbic.gov.in/resources//htdocs-cbec/gst/circularno-31-cgst.pdf>). There is another earlier Central Excise circular which also contains the administrative discipline instructed in various decisions of Hon'ble Supreme Court in 1053/2/2017-CX dated 10 Mar 2017 (detailed in 26 pages with various instructive matters discussed including audit and inspection and link is available in <https://www.cbic.gov.in/resources//htdocs-cbec/excise/cx-circulars/cx-circulars-2017/circ1053-2017cx.pdf>).
4. These circular address aspects relating to "principles of natural justice" that must be present in all "proceedings in law" whether it relates to administrative actions like registration or adjudication functions. Proceedings relating to review, audit and inspection also cannot be undertaken without adhering to 'administrative discipline'.
5. Below is the table of Central GST authorities (www.cbic.gov.in/gst):

Notification	Issued Under	Scope	Remarks
2/2017-CT dt. 19 Jun 2017	Section 3 and 5 of CGST Act and section 3 of IGST Act	Appointment of Officers and vesting with powers of administration	Table I, II, III and IV provides the territory of administration, appellate and audit powers
14/2017-CT dt. 1 Jul 2017	Section 3 and 5 of CGST Act and section 3 of IGST Act	Officers of DG-GST (Intelligence), DG-GST and DG-GST (Audit)	All-India jurisdiction
39/2017-CT dt. 13 Oct 2017 (amended by 10/2018-CT dt. 23 Jan 2018)	Section 6(1) of CGST Act	Proper office for section 54 and 55	Corresponding to jurisdiction of taxpayer
79/2018-CT dt. 31 Dec 2018	Section 5(1) of CGST Act	Amend 2/2017-CT to empower Proper Officer to exercise powers under sections 73, 74, 75 and 75 of CGST Act	Corresponding to the territory notified under 2/2017-CT
4/2019-CT dt. 29 Jan 2019	Section 3 and 5 of CGST Act and section 3 of IGST Act	Amend 2/2017-CT to add 'Joint Commissioner of Central Tax (Appeal)'	Corresponding to the territory notified under 2/2017-CT
11/2017-Int dt. 13 Oct 2017 (amended by 1/2018-Int. dt. 23 Jan 2018)	Section 4 of IGST Act	Officers empowered to sanction refund under 54 and 55 of SGST Act / UTGST Act, to also sanction refunds under section 20 of IGST Act	Cross-empowerment of State / UT officers for purposes of IGST refunds
Circular 1/1/2017 dt. 26 Jun 2017	Section 2(91) of CGST Act and section 20 of IGST Act	Declaration of Proper Officers under various provisions of the Act	
Circular 3/3/2017-GST dt. 5 Jul 2017 (amended by 31/05/2018-GST dt. 9 Feb 2018)	Section 2(91) of CGST Act and section 20 of IGST Act	Declaration of Proper Officers under various provisions of the Act	
Circular 9/9/2017-GST dt. 18 Oct 2017	Section 2(91) of CGST Act and section 20 of IGST Act	Proper Officer for enrolling (and rejecting) of GSTP application	

Chapter 4: Communication and Service of Notice

[Refer section 169]

1. While it is important to issue notices to set the law in motion and the put taxpayer at notice about the proceedings proposed to be undertaken, unless such notices 'reach' taxpayer, all effort is wasted. Concept on reaching

communication to taxpayer is called 'service' of notice, that is, to verify whether the notice has been 'served' on the taxpayer.

2. Traditionally, notices would be sent by post. Postal communication did not get any confirmation of delivery. Posts could be lost or reach wrong person or never be delivered too. Non-service of notices is fatal to the entire proceedings. Taxpayer is interested to receive notices. Tax evaders may be interested NOT to receive notices. Tax administrators are interested in proper delivery of notices and before the time limit prescribed for its service. So, there are motivations on both sides that require 'undoubted service'. Registered post was the next and more reliable form of service. And service by a departmental courier delivering notices was followed called 'in person service' so that there are not doubts about service of notice. This method has its limitations and is used for very crucial matters. Then there is 'service by collection' where notice is served at tax department when taxpayer visiting the office, collects the notice and gives personal acknowledgement. This too has its limitations.
3. But GST has introduced 'service by email' and 'service on portal'. When taxpayer has submitted an 'authorized email' then as per Information Technology Act, 2005 service by email is valid service. Some taxpayers who have more than one GSTIN may not have given one email. With the availability of login access on GSTN portal, service on portal is also possible. This is applicable only to registered persons because unregistered persons will NOT have access to GSTN portal.
4. Section 169 of Central GST Act lays down the following options and 'any' of these which is most convenient may be used:
 - Service in person through a messenger
 - Service by courier addressed to taxpayer
 - Service by courier addressed to taxpayer's authorized employee

- Service by courier addressed to taxpayer's advocate or consultant
 - Service by courier addressed to taxpayer's family member
 - Service by registered post
 - Service by email to registered email
 - Service on portal under 'to do' tab
 - Service by publication in local newspaper
 - And when all the above fails, service by affixture on premises
5. It is important to again mention section 160(2) of Central GST Act regarding 'invalidity of service' where the proceedings will end if taxpayer questions the service of notice which includes:
- Service of notice
 - Service of notice validly
 - Service of notice validly under valid section
 - Service of notice validly under valid section by valid Officer
6. With this non-service cannot be challenged in appellate proceedings. But where *ex parte* orders are passed care must be taken to ensure that service of notices are well documented on the files. As discussed earlier about principles of natural justice, non-service of notice is a first step in putting party at notice before giving opportunity to defend on the allegation in such notice and to finally allow party to be heard. All these are parts of one principle of *audi alterem partem*.

Chapter 5: Section 61 – Scrutiny of Returns

[Refer rule 99 and form ASMT10, 11 and 12]

1. This section permits ‘scrutiny of returns’ by Proper Officer. Proper Officer is the one to whom the GSTIN is linked on the portal. Scrutiny is NOT to be undertaken by every GST officer (State or Centre). Only jurisdictional Proper Officer can undertake scrutiny. As per GSTN portal, returns filed by registered person will appear in the login of the jurisdictional Proper Officer. Action under this section is applicable only in case taxable person is ‘registered’ and no action under this section can be initiated if taxable person is ‘liable’ to be registered.
2. Returns – means returns actually filed in FORM GSTR 1, 3B and 9. All others like GSTR 2A or GSTR 9C are not ‘returns. Returns actually filed may be taken up for scrutiny. Reference may be had to section 46 of Central GST Act to know which are the returns that come within scope of this chapter.

Discrepancy – means questions that arise from examination of said ‘return’. Doubts arising in the mind of Proper Officer is NOT a discrepancy. Discrepancy is defined to mean *“an unexpected difference, esp. in two amounts or two sets of facts or conditions, which suggests that something is wrong and has to be explained ”* in Cambridge dictionary. Notice of discrepancy calling for explanation must be issued in ASMT10 by stating the discrepancy in simple and plain language without lengthy discussion about it. Format provided on GSTN portal must be used. Discrepancy includes clerical as well as analytical errors but does NOT include:

- a. queries about classification, exemption or valuation;
- b. comparative differences such as 2A v. 3B which requires reference to GSTR 2A which is not a return but an additional document. There is no

scope for such comparative verification in this section;

- c. logical investigation of non-payment of tax on reverse charge basis by taxpayer when freight charges are found to be incurred. Logically, this may be true but raising this question amount to 'looking for something that should have been in the returns'. That is not scrutiny but investigation; or
 - d. Intelligence gathered about bogus invoices which are appearing in GSTR 2A which are taken up for verification. That too, is not a case of scrutiny of returns.
3. Explanation – registered person is required to give explanation about the discrepancy. Important to note that by accepting the notice issued, registered person would have indirectly admitted the 'discrepancy'. This fact (of admitting discrepancy) would be very helpful in later proceedings (under other sections). Explanation is to be given by registered person in ASMT11. Further, it is not stated that 'satisfactory' explanation should be provided. Proper Officer is free to be dissatisfied with the explanation and proceed with further course of action. If explanation is satisfactory, then proceedings will be closed by passing an order in ASMT12;
4. Resolution – to the notice issued will either lead to admission and payment of dues (tax or credit or interest) and closure of scrutiny. Admitting but not discharging dues would lead to action under section 79 based on principle laid down in section 75(12) of Central GST Act. There may also be non-admission of discrepancy by registered person indicating that Proper Officer may put up the file to JC-ADC for initiating further action under section 65, 66, or 67 or even proceed to issue notice under section 73 or 74 of Central GST Act.
5. Actions to be followed:

- e. One ASMT10 for one or multiple returns. It is advisable to issue one ASMT10 per return and further ASMT10s may be issued if the same discrepancy is continuing;
 - f. All discrepancies need not be raised in one ASMT10. Each discrepancy may be raised completely and properly in separate ASMT10 without duplication or overlap or repetition;
 - g. Time limit for issuing ASMT10 is effectively 33 months from date of filing of said return. This date emerges from the last date by when show cause notice may be issued under section 73(2) of Central GST Act.
6. Actions NOT to be followed:
- a. Follow-up scrutiny is NOT admissible. Once ASMT11 is filed by registered person, it must conclude with ASMT12. Another round of ASMT10 is NOT advisable;
 - b. Detailed discussions about discrepancy involving personal hearing with registered person or authorized representative to be avoided;
 - c. Spot recovery of dues is NOT permitted under this section. Only if reply by registered person in ASMT11 admits liability, dues may be deposited through GSTR3B;
 - d. Payment of due in DRC3 could raise doubts about voluntary payment;
 - e. Demand of dues in DRC7 is NOT applicable under this section
 - f. Document titled 'endorsement' NOT to be issued. Formats prescribed in rules only to be followed for taking action. No legal value in using any additional wordings.
7. This section is not a substitute for 'assessment' of registered. GST being a self-assessment-based tax system, revenue authorities are required to ensure minimal intervention in examination of records. For this reason, various provisions are enacted and each provision is applicable in specific situations

only. General inquiry is not to be undertaken under this section.

Chapter 6: Section 62 – Assessment of Non-filers

[Refer rule 100 and form ASMT13 along with DRC7]

1. This section permits ‘best judgement assessment’ of NON-FILERS by Proper Officer. Proper Officer is the one to whom the GSTIN is linked on the portal. Scrutiny is NOT to be undertaken by every GST officer (State or Centre). Only jurisdictional Proper Officer can undertake scrutiny. As per GSTN portal, returns filed by registered person will appear in the login of the jurisdictional Proper Officer. Action under this section is applicable only in case taxable person is ‘registered’ and no action under this section can be initiated if taxable person is ‘liable’ to be registered.
2. Before taking any action under this section, notice under section 46 must be issued in FORM GSTR 3A allowing 15 days time for registered person who has NOT filed the returns to file a return. Any registered person who has NOT filed returns under section 39 (3B return), 44 (annual return) or 45 (final return) is covered by section 46. Please note that section 37 (GSTR 1 return) is NOT covered by section 46. Hence, NON-FILER for purposes of best judgement assessment under section 62 refers to (i) person who has a valid registration and (ii) has NOT filed GSTR 3B or GSTR 9 or GSTR 9C. Notice in GSTR 3A must be specific for ‘tax period’. ‘One-for-many’ is permitted, that is, one 3A for many tax period is not barred in law.
3. Once notice is issued in GSTR 3A, registered person is required to file a ‘valid return’. It is defined in section 2(117) to mean “*means a return furnished under sub-section (1) of section 39 on which self-assessed tax has been paid in full*”. Please note that even though there may be some actual turnover in the books of registered person, if a different turnover is shown in 3B and taxes paid on such turnover, it will be a valid return. It is NOT illegal for a valid return to be incorrect. Even a ‘nil’ return is a valid return. No further action

under section 62 can be taken once a valid return (even incorrect or nil return) is filed by registered person.

4. In case such an incorrect or nil return is filed by registered person, in response to notice under section 46, Proper Officer may take action under section 61 in respect of such return but with caution as intelligence obtained by Proper Officer to call for explanation in respect of discrepancy in such an incorrect or nil return filed must be 'from such return' and not 'outside such return'. If there is risk of revenue leakage, Proper Officer may take assignment for summary assessment under section 64 or audit under section 65. Choosing right section is important to take any action 'lawfully', Reference may also be had to circular no. 129/48/2019-GST dated 24 Dec 2019 (Circular No.GST-33/2019-20 dated 24 Dec 2019) where the standard procedure is issued by the Government.
5. Once 15 days' time permitted in notice under section 46 ends, without any further notice or information to registered person, best judgement assessment may be carried out WITHOUT ANY FURTHER NOTICE under this section or any other section (especially section 73 or 74 of Central GST Act). Best judgement assessment may be carried out based on the intelligence available with Proper Officer. Circular suggests that turnover available in GSTR 1 may be considered to determine tax liability and credit available in GSTR 2A may be adjusted to arrive at 'net tax liability'.
6. Although this approach may not be applicable in all cases as non-filers who have not filed GSTR 3B may not have filed GSTR 1 as it would most certainly give rise to action under this section. However, being a circular, it must be followed by Proper Officer so that there is not indiscipline in following instructions from Board. Please note that this circular is issued under section 168 of CGST Act which is a 'mandatory' administrative direction to all officers.

7. Best judgement carried out may be served to registered person (refer chapter 4 on Communication and Service of Notices) in ASMT13 along with DRC7. Please note, DRC7 is the demand order that will appear on the portal of registered person to pay and discharge this liability. No further information or intimation to registered person is required after best judgement assessment is carried out.
8. Best judgement assessment of tax liability involves few legal issues such as (i) basis for arriving at gross turnover keeping seasonal, cyclical and economic factors affecting trade of registered person (ii) growth rate of turnover should not be arbitrary and unreasonable (iii) benefit of credit to be allowed should not be different from growth rate considered for estimation of turnover and (iv) final determination of gross tax liability or net tax liability. There is no guidance available other than circular above in this regard but, care must be taken not to determine 'worst estimate' of tax liability when the law itself gives necessary guidance that 'best judgement' of tax liability must be carried out.
9. Once best judgement assessment is completed, registered person is permitted to file a 'valid return' within 30 days from date of order. Refer discussion in para 3 above on valid return which applies after order is passed. Where such a valid return (even incorrect or nil return) is filed by registered person is filed order passed under this section will be AUTOMATICALLY WITHDRAWN. There is no other proceeding that is required like application by registered person or hearing on such application and adjudication whether to withdraw or not. It is automatic. No further recovery action can be taken up if valid return (even incorrect or nil return) is filed by registered person.
10. Further, if 30 days is crossed, order passed becomes final and the only remedy available for the registered person is the file an appeal under section 107 to FAA on payment of 10 per cent pre-deposit. If registered person files

valid return (even it is correct and complete) because it is filed after 30 days from date of order, the order passed is NOT WITHDRAWN. Appeal to FAA is the only remedy to registered person. Please note that time to file appeal under section 107(1) is 3 months PLUS additional time to condone is 1 month under section 107(4) subject to sufficient cause being shown to FAA.

11. If order under this section is not withdrawn due to crossing of 30 days to file valid return, the demand raised in this best judgement order becomes FINAL AND WITHOUT APPEAL. And demand in DRC7 can be recovered under section 79 without any further notice or intimation to registered person as this amount is now an 'undisputed arrear' as there is no remedy to file appeal. Registered person may approach High Court and unless stay is granted, recovery action is not barred.
12. Please note that since this proceeding is assessment on 'best judgement' basis, there is no requirement for show cause notice and hence, there is no evidence to be produced for the basis adopted. However, keeping mind that there is probability that non-filing of returns is a default by registered person and no Court would willingly come forward to rescue a defaulter and demand may become recoverable (without legal remedy of appeal), it is suggested that best judgment assessment may be carried out in a fair and reasonable manner without any arbitrariness in estimation of such tax liability.
13. No proceedings can be initiated under this section can be initiated after 5 years from the due date of filing annual return. Although time limit to raise demands under section 73 is only 3 years and to issue a notice is 33 months from the relevant date, since proceedings under this section are not under section 73 or 74, time limit allowed here is the entire period covered under special circumstances in section 74 of Central GST Act.
14. Actions to be followed:

- a. Notice under section 46 is MUST before taking up proceedings;
- b. Order passed must be served on registered person;
- c. Valid return filed within 30 days must be accepted and order withdrawn automatically;
- d. Valid return filed after 30 days would result in recovery is appeal not filed within due date before FAA.

15. Actions NOT to be followed:

- a. Proceedings NOT applicable to unregistered persons even if their liability to tax is very clearly seen or supported;
- b. Without issuing GSTR 3A, no action under this section permitted;
- c. Show cause notice NOT required for these proceedings;
- d. Estimation of tax liability DOES NOT require evidence to support;
- e. Valid return filed cannot be questioned under this section;
- f. Service of notice should NOT be vague or uncertain as this would be important in any legal action brought by registered person.

Chapter 7: Section 63 – Assessment of Unregistered Persons

[Refer rule 100 and form ASMT14, 15 along with DRC1, 7]

1. This section permits ‘best judgement assessment’ of URDs (unregistered taxable persons) by Proper Officer. Proper Officer is the one to whom the GSTIN is linked on the portal. Scrutiny is NOT to be undertaken by every GST officer (State or Centre). Only jurisdictional Proper Officer can undertake scrutiny. This section is applicable in the case of two types of unregistered persons:
 - a. Taxable persons who ‘fails’ to obtain registration even though liable;
 - b. Taxable persons whose registration is cancelled under section 29(2).

This section will apply not only to cases where liability is on forward charge basis but also to cases where liability is on reverse charge basis.

2. In the first case, it must be understood that ‘failure’ to register is the criteria. Failure means “*situation or condition of not meeting a desirable or intended objective.*” without prior knowledge of requirement to register. Whereas ‘omission’ means “*failure to carry out or perform an act.*” There seems to be very little difference between ‘omission’ and failure. It is not possible to find out the reasons for non- registration by a person. One may claim ignorance about taxability of their transactions to be excused from this section. But, in a self- assessment tax regime, requirement to register cannot be excused due to ignorance but considered a duty of taxpayer. If responsibility to ‘intimate’ requirement of registration is placed on Proper Officer then, it would undermine self-assessment nature of this law. Therefore, from the point of balance of convenience, it is more likely that ‘all cases’ of non-registration comes within the operation of this section as ‘failure’ to obtain registration when there is a liability to tax;
3. In the second case, registration was obtained but due to any of the reasons

under section 29(2), the registration was cancelled (not suspended) and now some tax liability has come to light in the opinion of Proper Officer. If it is possible and taxable person is in communication with Proper Officer, proceedings under this section is not warranted as the tax liability is determined on the basis of an estimate and anyway, it cannot be determined without granting an opportunity to such taxable person before making the determination on best judgement basis. Instead, restoration of registration may be more expeditious for the reason that there is no reliance on estimations and credit would be admissible once taxable person is a registered person (subject to section 18(1) of Central GST Act).

4. In either case, the merits of initiating proceedings under this section involves legality about basis of findings-on-facts arrived at by Proper Officer as well as correctness of invoking this section to make a best judgement assessment of tax liability. It is also interesting that no other case (other than the two discussed above) can be brought under this section for determination of tax liability. But for the present, best judgement assessment as proposed by Proper Officer is required to be communicated to taxable person in ASMT14 along with DRC1. Please note that DRC1 is not same as DRC7 and DRC1 is summary accompanying show cause notice. Although notice in ASMT14 is NOT stated to be a show cause notice unlike one under section 73 or 74 of

Central GST Act, format of ASMT14 prescribed itself makes it clear that almost all ingredients of show cause notice are applicable and the Proper Officer cannot make 'estimates' about the tax liability (refer chapter on show cause notices for detailed discussion on structure to be followed for making allegations).

5. There is no guidance from the Government as to the methodology to be adopted. But the two cases (discussed above) for invoking action under this section itself provides good indication that Proper Officer is aware or and holds sufficient intelligence to warrant such action. There is not much room to allege arbitrariness in estimation of tax liability or unreasonableness of process, because ASMT14 contains all ingredients of a show cause notice. After granting a hearing, the tax liability will be determined and order passed in ASMT15 along with summary in DRC7.
6. Once order is passed in ASMT15, there is no provision for withdrawal of such order. And unless appeal is filed under section 107 before FAA, this order becomes final. Care must be taken to file appeal against this order within time so that tax liability determined on best judgement basis does not go into recovery for failure to file appeal within time permitted. Reference may be had to the discussion about 'finality of demand without remedy of appeal' in the context of section 62 for a more elaborate understanding of the implications of non-filing of appeal against order under this section within time permitted. Filing appeal before FAA is the only remedy against the order under this section.
7. No proceedings can be initiated under this section can be initiated after 5 years from the due date of filing annual return. Although time limit to

raise demands under section 73 is only 3 years and to issue a notice is 33 months from the relevant date, since proceedings under this section are not under section 73 or 74, time limit allowed here is the entire period covered under special circumstances in section 74 of Central GST Act.

8. Actions to be followed:

- a. Opportunity to be heard, MUST be granted to taxable person (this procedure is not required in case of best judgement assessment of non-filers under section 61);
- b. Estimation of tax liability DOES require evidence to support allegations;
- c. Order passed must be served on registered person. Service of notice should NOT be vague or uncertain as this would be important in any legal action brought by registered person.

9. Actions NOT to be followed:

- a. Proceedings NOT applicable to unregistered persons even if their liability to tax is very clearly seen or supported;
- b. Invoking this section in 'other cases' not covered by the section is NOT permitted and will be fatal to a demand.

Chapter 8: Section 64 – Summary Assessment

[Refer rule 100 and form ASMT16, 17, 18 along with DRC 7]

1. This section permits ‘summary assessment’ of both, registered and unregistered taxable persons. This is a very important provision but it has conditions which must be satisfied before initiating proceedings. Prior approval of Additional Commissioner or Joint Commissioner of GST is required for Proper Officer to take up any action under this section. In order to get such permission, the section requires that “*evidence showing tax liability*” must be available with Proper Officer and based on such evidence and other relevant consideration, Additional Commissioner or Joint Commissioner of GST would grant permission to Proper Officer.
2. Proper Officer is not required to disclose details of evidence relied upon to obtain permission to taxable person but, the permission granted to initiate proceedings cannot be denied. If permission itself was not obtained then, entire proceedings under this section will be bad in law. Once permission is granted, Proper Office must determine tax liability based on such evidence and not on best judgement basis. This is an important difference in this section compared to earlier sections because tax liability determined under summary assessment is very specific to the evidence that is collected and nothing more, even if logical or reasonable to include additional liability beyond the evidence.
3. Proper Officer will proceed with summary assessment in ASMT16 along with demand summary in DRC7 (and not DRC1, refer discussion about the difference between DRC1 and 7 in previous chapter). There is no

requirement for Proper Officer to issue any show cause notice but proceed with permission to determine tax liability. This is an emergency power to determine tax liability and then set the law in motion for taxpayer to come forward and address the tax liability determined or file appeal. It is important to note that proceedings under this section may be used in several instances and the section does not limit the applications.

4. As an emergency provision, summary assessment need not be undertaken in respect of well-established and registered taxable persons who are regularly filing returns. In respect of such persons, there are other provisions to investigate based on specific evidence that is come to attention of Proper Officer. It is therefore, important NOT to apply this provision when there is no justification for invoking emergency provisions under this section. It is for this reason that there is a check on the authority of Proper Officer in the form of 'prior' permission.
5. Once summary assessment is made, taxable person may make an application to the same Additional Commissioner or Joint Commissioner of GST who granted permission for Proper Officer to carry out proceedings under this section, for 'withdrawal' of order in ASMT17. This application should be filed within 30 days from date of order. If not filed within 30 days, the summary assessment order becomes final and the only remedy available for taxable person is to file appeal under section 107 of Central GST Act.
6. Additional Commissioner or Joint Commissioner of GST may dispose off application filed by passing order in ASMT18 by 'accepting or rejecting'

the request for withdrawal filed by taxable person. If the application for withdrawal of summary assessment is accepted then, the tax liability determined will be cancelled but that does not mean that the evidence relied upon to start these proceedings are unreliable or they vanish. It could be that the additional information that taxable person is able to produce in support of the 'grounds for withdrawal' along with further evidence, that the conclusions reached based on available evidence is overturned and tax liability may be dropped. It is also possible that without providing more reliable grounds and evidence, taxable person submits to proceedings under section 73 and 74 of Central GST Act that the Additional Commissioner or Joint Commissioner of GST is satisfied that full consideration would be given to the issue so that demand can be properly examined and established instead of using these emergency provisions which are likely to be less exhaustive. It is not the objective to pass summary assessments if eventually the tax liability determined is not sustained in appeal.

7. It is interesting that there is no time limit prescribed for disposal of such applications. As stated earlier, the only remedy for taxable person in case this summary assessment order becomes final is to file an appeal before FAA. If this withdrawal request is delayed beyond the time limit allowed for filing appeal before FAA, the taxable person will be liable for recovery action. There is no provision in law that time limit to file appeal under section 107 will be deferred until application for withdrawal of summary assessment is disposed-off by Additional Commissioner or Joint Commissioner of GST. Care must be taken not to forfeit remedy of appeal while awaiting disposal of withdrawal application. It is true that application for withdrawal of summary assessment will not be delayed causing prejudice to the taxable person, but time limits are serious, and its importance should not missed by taxable person.

8. No proceedings can be initiated under this section can be initiated after 5 years from the due date of filing annual return. Although time limit to raise demands under section 73 is only 3 years and to issue a notice is 33 months from the relevant date, since proceedings under this section are not under section 73 or 74, time limit allowed here is the entire period covered under special circumstances in section 74 of Central GST Act.
9. Actions to be followed:
 - a. Prior approval of Additional Commissioner or Joint Commissioner of GST must be taken by the Proper Officer to invoke this section;
 - b. Order may be passed against registered and unregistered taxable persons;
 - c. Orders may be passed in respect of tax liability on forward charge as well as reverse charge basis;
 - d. Time limit of 30 days must be kept in mind for acceptance of withdrawal application from taxable person;
10. Actions NOT to be followed:
 - a. As it is emergency powers, it must NOT be used routinely;
 - b. Tax liability must NOT be based on best judgement;
 - c. Delay in disposing-off withdrawal application should NOT cause prejudice to taxable person by way of loss of opportunity to

appeal before FAA and must be disposed-off quickly as there may not be much to contemplate on the withdrawal application;

- d. Service of notice should NOT be vague or uncertain as this would be important in any legal action brought by registered person.

Chapter 9: Section 65 – Audit by Department

[Refer rule 101 and form ADT1, 2, 3, and 4]

1. Audit by tax department is a feature in GST law where on a selective 'risk based' assessment, audit of records of registered person will be undertaken. It is true that 100 per cent audit is NOT contemplated. At the same time, selection of cases for audit is NOT to be undertaken in a rote and unstructured manner. Commissioner of GST would issue appropriate and timely guidelines as to the manner of selection of cases for audit.
2. The process of audit by tax department is very interesting for the reason that Proper Officer designated to carry out scrutiny of returns under section 61 is NOT the Proper Officer to carry out audit under section 65. However, under State administration, assignment note may be issued for same person to carry out the functions under both these provisions. However, the work may be assigned, the interesting aspect is that audit is a time-based approach under section 65 of Central GST Act.
3. Registered persons are selected for audit and the audit will be conducted at the business premises of the registered person. But, registered person who is selected for audit by tax department will be issued an intimation in FORM ADT1 calling for various information at least 15 days prior to the proposed visit. Surprise visits is NOT permitted under this section. It is noted that information already available on GSTN portal is also requested by audit officers. It is suggested that such information be accessed from GSTN portal and only information that is NOT available must be called for. It is also seen that various complex reports and calculations that are NOT regularly maintained are also requested and registered persons are not able to provide such information. It is suggested that information requested must be based on a thorough understanding of the business activities of the registered

person. With that, registered person will be able to appreciate the knowledge and understanding of the GST Officers about the business in addition to the law and its implications that they will be forthcoming in providing the required information.

4. Once the requested information is received, generally, a desk-review of the file is carried out to see if there is a requirement to visit and conduct audit of registered person. Where there is a justification to conduct an audit, GST Officers are able to visit the business premises where registration is obtained, and books and records are available. GST Officers are authorized to make general inquiries into transactions of supply or no-supply, classification, exemption, valuation, input tax credit, filing of returns and all other aspects of compliance with GST law. Section 65 allows general inquiry unlike other sections like 67 or 70 of Central GST Act where general information cannot be collected for verification.
5. During audit, GST Officers may verify information and records regularly maintained by registered person but **“not prepare special reports or information”** that are not normally maintained as part of accounts and records under section 35 of Central GST Act. Registered persons are free to “refuse” such requests and the same must be accepted as it is. If the said report or information is essentially for purposes of audit, audit officers may “collect accounting base data” like books of accounts or balance sheet from registered person and prepare any such report.
6. Audit under this section must be completed within 3 months from date of commencement. Date of commencement is defined to mean *“date on which records and other documents, called for by the tax authorities, are made available by the registered person or the actual institution of audit at the place of business, whichever is later”*. With special permission from Commissioner of

GST, audit can be extended by further 6 months. So, audit once commenced, cannot continue beyond 9 months maximum. Registered person will be informed in ADT2 of the “audit findings” after 30 days from date of completion. Registered person may submit a reply to the audit findings to clarify any misunderstanding of facts or omission to take into consideration certain documents on record or such other matters, GST Officers may finalize their findings. If those findings are NOT accepted by registered person and liability discharged, GST officers may proceed to issue show cause notice under section 73 or 74 of Central GST Act. It is important to note that, there is no provision for spot recovery of demand under departmental audit under section 65 of Central GST Act.

7. It is very interesting to note that under Central GST, based on circular 31/5/2018-GST dated 9 Feb 2018, audit and intelligence officers will proceed to issue show cause notice but they will not hear the case and conduct adjudication proceedings. After show cause notice is issued, file will be transferred to another wing in the department where audit and intelligence work is not undertaken called Executive Commissionerate, who will read the file, hear the registered person and then conduct the adjudication proceedings. This is to ensure that the same officer who came up with the findings, does not adjudicate the case. Registered person has a right to a ‘fair trial’ of this case and for this reason other officers will adjudicate on the show cause notice issued by audit officers. In State administration, suitable “separation of powers to ensure fair adjudication” would be prescribed by Commissioner of GST in due course.
8. If audit is NOT completed within the 3 months (and additional time of 6 months, if extended in writing by Commissioner of GST), the audit must be stopped. When time limits are clearly specified and power of Commissioner of

GST is also limited to maximum 9 months from date of commencement, delay beyond this time limit puts an end to the audit proceedings under this section of Central GST Act.

9. Registered person **“cannot request for audit under section 65”**, it depends on the risk-based audit selection system that will be followed. Based on certain risk factors, Proper Officer may put-up the file for approval to higher officers for selection of particular registered person to be audited under section 65 of Central GST Act.
10. There is another provision in section 66 of Central GST Act where during the course or any **“scrutiny, inquiry, investigation or other proceedings”**, a GST Officer is of the “opinion” that (i) value of supplies are not correctly declared or (ii) credit availed is not within normal limits, with “prior approval” of Commissioner of GST, instruct the registered person in ADT3 to get his accounts audited by a Chartered Accountant or Cost Accountant (‘auditor’). It is important to note that special audit for **“no other reason”** is permitted. Maximum time limit allowed is 90 days plus an additional 90 days as requested by registered person or such auditor. Such auditor must issue report to Assistant Commissioner of GST and fee for the audit will be paid by Commissioner of GST. Assistant Commissioner of GST will inform findings from such auditors’ report WITHOUT providing copy of report itself to registered person in ADT4. Opportunity to reply will be available. And if the findings are sustainable, show cause notice under section 73 or 74 of KSGT Act will be issued. Even here, there is no provision for spot recovery of demand.
11. Actions to be followed:
 - a. Guidelines issued by Commissioner of GST MUST be followed for selection of cases for audit;

- b. Registered persons selected for audit by tax department MUST be intimated at least 15 days prior to the proposed visit;
- c. Only information that is NOT available in the GSTN portal must be called for;
- d. Audit CANNOT continue beyond 9 months, delay beyond this time limit puts an end to the audit;
- e. Tax department may proceed to issue show cause notice under section 73 or 74 of Central GST Act if the audit findings are NOT accepted by registered person and liability discharged.

12. Actions NOT to be followed:

- a. Audit is NOT to be undertaken in an unstructured manner;
- b. Surprise visits is NOT permitted under this section;
- c. Spot recovery of demand under departmental audit is NOT permitted under this section.

Chapter 10: Section 67 – Inspection, Search and Seizure

[Refer rule 139, 140, and 141 and form INS1, 2, 3, 4 and 5]

1. Tax authorities are allowed access to ‘business premises’ of taxpayer but in specific circumstances. This means, routine visit to business premises under section 71 is NOT the same as inspection under section 67 of Central GST Act. It is important to understand circumstances when Proper Officer may undertake inspection of ‘place of business’ for search and seizure. Section 2(85) defines “place of business” as

“(a) a place from where the business is ordinarily carried on, and includes a warehouse, a godown or any other place where a taxable person stores his goods, supplies or receives goods or services or both; or

(b) a place where a taxable person maintains his books of account; or

(c) a place where a taxable person is engaged in business through an agent, by whatever name called.”

Taxable Person	Suppressed supply
	Credit in excess of entitlement
	Contravention of Act to evade tax
Any Person	Transports goods that escaped tax
	Owns or operates warehouse that escaped tax
	Stores goods or accounts for goods likely to evade tax

2. If taxable person’s place of business is to be inspected, either there must be belief that supply may be suppressed or credit claimed may be in excess of entitlement or such contravention may have taken place that results in evasion of tax. And if transporter or warehouse-keeper’s premises is to be inspected, either goods (transported or stored) are believed to have escaped tax or goods (stored or accounted) are believed to likely cause evasion of tax. Without fulfilling these preconditions, it is NOT possible to inspect place of business or warehouse as it would be illegal. Having seen the ‘preconditions’

for inspection to arise and 'where' this inspection can be carried out, it is important to under 'when' such inspection is permitted under section 67 of Central GST Act:

- a. Step 1: Joint Commissioner of GST (and not officer lower in rank) MUST have 'reason to believe' that preconditions stated are satisfied. Reason to believe, is more than suspicion in mind, but less than evidence on hand. This reason to believe must be in respect of the specific preconditions. Whether there was sufficient reasons to believe will be questioned in later proceedings or appeal but Officer is NOT required to produce evidence to support this belief at the same time it would NOT be sufficient if Officer were to have a doubt or opinion that evasion may have taken place or likely to take place. Care must be taken to balance these aspects because even a *bona fide* inspection also can be questioned and finding tax evasion does not mean inspection conducted cannot be questioned.
 - b. Step 2: Joint Commissioner MUST give authorization in INS1 any other Officer to proceed to conduct inspection of 'any' place of business if inspection is of taxable person or warehouse/ godown/ other place if inspection is of transporter/ operator/ owner. Definition of place of business may re- examined to make sure which are the places CAN be inspected and which are the places that CANNOT be inspected. Inspecting 'wrong place' will make entire findings illegal. Taxable person is not limited to 'registered person' but also to any person who is not registered.
3. GST Officer (duly authorized by Joint Commissioner of GST) may inspect and verify **“goods or documents or books or things”** that are relevant for purposes of further proceedings under Central GST Act. Inspection DOES

NOT mean roving inquiry to find something new. The reason to believe, that started the inspection proceedings must have some connection with the places and things that were inspected, and the findings made. If the findings had no direct nexus with the reasons to start these proceedings, there must at least be an indirect nexus. INS1 issued by Joint Commissioner provides the 'framework' for the inspection and although it may be broadly worded, it would be illegal if there was NO NEXUS with the proceedings and would NOT be sustainable. Fresh proceedings may be initiated to cover those unconnected aspects also but, present proceedings would NOT be able to cover everything. Care must be taken NOT to commit mistakes of jurisdiction in the proceedings itself.

4. During inspection, if GST Officer reaches an **"opinion"** that "goods liable for confiscation" or "documents, books or things liable for seizure" may be present then **"order of seizure in INS2"** must be issued by GST Officer. Opinion means *"explanation of the law and facts in a case and the reasoning applied to them to reach a determination."* It is not merely idea or thought or suspicion but a reasoned inference from available information or data. Seized articles may be carried by the GST Officer and retained in custody of tax department. If articles seized CANNOT be carried, **"order of prohibition in INS3"** may be issued by GST Officer and the articles left with owner or custodian. Articles covered by such order of prohibition must NOT be disposed or moved or dealt with in any manner without valid release being issued by GST Officer. Articles seized must be marked for identification in the presence of person from whom seizure was made. Seized articles may be permitted by **"provisional release order in INS4"** against security of bank guarantee may be issued by GST Officer. If seized articles are perishable or hazardous, **"order of release in INS5"** on payment of "market value of articles to be

released” may be issued by GST Officer. If payment is NOT made, Commissioner of GST may authorize sale of such seized articles and the amount realized adjusted against liability. Please note sale proceeds CANNOT be adjusted against “any other dues” of taxable person but dues arising from these proceedings only are adjustable. No proceedings can remain incomplete under any provision of Central GST Act especially not under this section. Proceedings must be concluded either by issuing show cause notice if there is any finding of revenue leakage or all material seized must be restored:

- a. Inspection carried out may involve (i) seizure of goods (ii) seizure of documents. Where show cause notice under section 74 is issued, all material (from the seizure) MUST be returned within 30 days from date of show cause notice as per section 67(3) of Central GST Act.
 - b. Goods cannot be retained after seizure without issuing show cause notice for more than 6 months. Where show cause notice is NOT issued within 6 months from date of order of seizure in INS2, goods MUST be returned back to person from whom goods were seized under section 67(7) of Central GST Act.
5. Care must also be taken that all the above procedures must be followed even when carrying out ‘test purchase’ (refer chapter on Procedures as per Law). Actions under section 68 deal with inspection of goods during transportation, as the procedures to be carried out are ‘during interception’, the same is not discussed in this material which is meant for desk-review activities of GST Officers. Actions under section 69 deal with power to arrest persons, as the procedure to be carried out depend on Code of Criminal Procedure, 1973 and other internal instructions, the same is not discussed in this material which is aimed at being brief and crisp for everyday use by GST Officers. Power to summon under section 70 is discussed in an earlier chapter (refer chapter on

Procedures as per Law)

6. There is another important provision in section 71 concerning 'access to business premises' that needs some discussion. Proceedings under section 67 and not applicable under section 71 of Central GST Act, they are two separate provisions. To access business premises under section 71, Joint Commissioner GST must grant **"authorization to any Officer"** to inspect the 'place of business'. Place of business is defined in section 2(85) and discussed earlier. Under section 71, inspection of "suspected warehouse or godown" is NOT permitted, that is permitted in section 67 of Central GST Act. Once place of business is specified for inspection, then **"only registered persons' premises"** come within the proceedings under this section, business premises of unregistered persons (even if they are liable to be registered) CANNOT be accessed by the GST Officer. Access to business premises of registered person is limited to accessing books and records in manual or computerized records.
7. Access may be gained under this section for "audit, scrutiny, verification and checks". Refer the discussion under the chapters on these topics for nature of proceedings to be carried out under those sections Books of accounts and related computerized data or reports may be accessed during such visits to business premises. Contracts and agreements, deed and documents, etc., cannot be inspected in proceedings under this section. Care must be taken to comply with the scope and extent of authority granted under this section. Any further information or documents required may be collected but under other provisions of Central GST Act as per the procedures prescribed under those respective provisions.
8. Actions to be followed:
 - a. Tax authorities MUST have sufficient reasons to believe that the taxable person's supply may be suppressed or credit claimed may be in

excess of entitlement or such contravention may have taken place that results in evasion of tax;

- b. Joint Commissioner MUST give authorization proceed to conduct inspection of 'any' place of business
- c. Proceeds from the sale of seized articles and the amount realized MUST be adjusted against only the liabilities arising from these proceedings;
- d. NO proceedings can remain incomplete under this section.

9. Actions NOT to be followed:

- a. Tax authorities MUST NOT inspect 'wrong place' as it will make entire findings illegal;
- b. Inspection under this section MUST NOT raise new inquiries;
- c. Sale proceeds MUST NOT be adjusted against "any other dues" of taxable person.

Chapter 11: Pre-notice Consultation

[Refer section 73(5) or 74(5), rule 142(1A) and form DRC1A]

1. Every taxpayer has a right in law to be given “final opportunity” to discharge dues “before any notice” is issued. This is a statutory requirement under section 73(5) and 74(5) of Central GST Act for taxpayer to be given an opportunity to discharge dues without penalty or reduced penalty to put an end to the dispute about the said dues.
2. Amount payable may be ascertained by taxpayer or by tax authority. As such, it is important for the computation of dues to be made by tax authority. Statement in DRC1A is the prescribed document to inform taxpayer about the tax, interest and penalty, if any, payable. Format of DRC1A requires “grounds and quantification” of ascertainment by tax authorities to be provided. This would “inform” taxpayer about the basis for such dues and based on this information, taxpayer may consider accepting to “pay dues without contest”.
3. Pre-notice consultations without disclosure of “grounds and quantification” will not be considered as legal and by-passing pre-notice consultation would leave the subsequent show cause notice as illegal. There have been decisions in earlier Central tax regime where the show cause notice was quashed for omission to complete pre-notice consultation proceedings. For this reason, pre-notice consultations are mandatory for tax authorities to follow and it is an enforceable right of taxpayer.
4. Once DRC1A is issued, taxpayer is permitted to make “submission” containing clarifications with regard to the “grounds” in respect of the said dues. If the submissions by taxpayer provide necessary clarification and resolve the issue then, tax authorities may take the same on record and conclude proceedings initiated. If the clarifications are not completely satisfactory, the taxpayer’s reply “accepting or rejecting” this final opportunity

would then allow tax authority to proceed with show cause notice under section 73(1) or 74(1) of Central GST Act.

5. Care must be taken that “submissions” in respect of DRC1A does NOT mean that taxpayer will submit detailed arguments. Tax authority is free to initiate these proceedings under 74(5) instead of 73(5) without disclosing the reasons for invoking section 74 of Central GST Act. Submissions by taxpayer in respect of DRC1A must be confined to “grounds” for the underlying dues to be raised and not on matters of law. These pre-notice consultation proceedings are NOT a substitute for detailed adjudication proceedings. It is an opportunity to “inform” the grounds and seek “response” from taxpayer on the dues involved. Taxpayer is free to “accept or reject” and then avail the “due process” of law in the form of show cause notice and adjudication.
6. Actions to be followed:
 - a. Include reference number of DRC1A in show cause notice so that it is clear to taxpayer, adjudicating authority and appellate authorities that pre-notice consultations have been conducted and taxpayer has “rejected” the opportunity to resolve the dispute.
 - b. Refer CBIC circular 1053/2/2017-CX dated 9 Feb 2017 and 31/5/2018-GST dated 10 Mar 2018 for detailed understanding of administrative discipline that is taken from various Court decisions.
7. Actions NOT to be followed:
 - a. Show cause notice MUST NOT be issued before issuing DRC1A
 - b. DRC1A MUST NOT be issued with “undisclosed” grounds for dues
 - c. DRC1A is NOT an adjudication proceeding but an intimation proceedings to allow taxpayer to avail the concessional treatment in section 73(5) or 74(5) of Central GST Act.

Chapter 12: Show Cause Notice

[Refer section 73, 74 and 76, rule 142 and form DRC1 and 2]

1. Every demand for tax or other sum under Central GST Act MUST be accompanied by a 'show cause notice'. Various sections prescribe that show cause notice is to be issued. When GSTN portal prescribes format of notice, generally, it DOES NOT refer to show cause notice. If prescribed notice is applicable then, notice may be issued in that format. But, if show cause notice is required to be issued, then points discussed in this chapter will be very helpful. Show cause notice is compulsory even if the demand for dues is obvious and there is no requirement for detailed hearing or discussion. After completion of pre-notice consultation (refer chapter 11), show cause notice is the first step to set the 'due process' of law into motion.
2. Show cause notice lays down the 'framework' for the rest of the life of that issue until it is finally resolved by Supreme Court. No adjudicating authority or appellate authority or Court can 'fill in any blanks' in the show cause notice. If something important is missed out from the show cause notice, the demand must be dropped in adjudication or appeal. And fresh show cause notice will have to be issued but time-limit prescribed may have passed and some part of the demand may become unrecoverable permanently.
3. Taxable person has a legal right to be 'put at notice' about violation of provisions of law. If taxable person claims that allegations are made by revenue authorities without being 'put at notice' all further proceedings

are illegal in the eyes of law. Notice is the first step for taxable person to put forward a defense. Violations is conclusion by applying law to facts. So, the facts of the taxable person as understood by the revenue authorities must be explained. Then, the law applicable to the facts based on certain way of interpreting the law must also be clearly put forward. This may give an idea about the 'ingredients' of a show cause notice. A show cause notice without all the necessary ingredients is liable to be quashed. Since adjudicating authority or appellate authority or Court is barred from filling any blanks, the provisions of section 160(1) of Central GST Act (refer chapter 2 on New in GST "taxpayers to question Notices") also cannot come to rescue of a show cause notice with 'fatal errors'. Hence, drafting show cause notice is very important.

4. Relevant date – means 'start date' from when demand relates to and 'end date' is 33 months from the start date (for normal demands) or 54 months from the start date (for demands involving fraud or wilful misstatement or suppression). These time-limits are taken from section 73(2) and 74(2) of Central GST Act.
5. DRC1/2 – is the summary prescribed in rule 142 to be 'accompany' a show cause notice. DRC1/2 are not the show cause notice. Show cause notice must be separately issued and this summary in DRC1/2 must be attached. There is a reference number for the show cause notice and another reference number of this summary and both must be served (refer chapter on communication and service of notice) to the taxable person.

6. Structure of show cause notice – must include all ‘ingredients’ that will sufficiently to be considered that taxable person is ‘put at notice’. There the key ingredients required are:

- a. Facts are defined to be *“Incident, act, event, or circumstance. A fact is something that has already been done or an action in process. It is an event that has definitely and actually taken place, and is distinguishable from a suspicion, innuendo, or supposition. A fact is a truth as opposed to fiction or mistake.”* and only undisputed



facts are to be stated as ‘fact’. Fact-in-issue is that fact which has a bearing on the issues involved in the show cause notice. Facts that are not relevant to the issues involved are not to be included in show cause notice. Undisputed facts do not require proof. But disputed facts or facts that are likely to be disputed need to be proved.

- b. Actions that give result in violations must be stated very clearly. What exactly has been done by taxable person must be specified so that taxable person can reply in defense whether the said actions have or have not been done and submit evidence to establish innocence. It is not sufficient to state ‘tax has not been paid’, that would be the result of

this action. Action itself needs to be proved. Duty to prove (also called onus of proof) lies on person making assertion. In other words, allegation of violation of law requires revenue authorities to substantiate the allegation with proof. Higher the violation, greater is the required proof. Proof may be of different types depending on the source and quality. Proof varies in degree but proof must establish allegation to the satisfaction of a Court and not just in the opinion of Proper Officer issuing show cause notice.

- c. Allegation on taxable person must also be specific. It is not sufficient to approximately lay the charges. That is, if output tax is payable, the actions of taxable person must be clearly specified in the show cause notice. It is not enough to state that 'taxable person has made supply liable to tax'. It must go into more specific details about 'form' of supply that is alleged to be made. And explain how that particular form stands satisfied in the 'facts' of the case. From the actions, the violations by taxable person will be emerge. That is, whether output tax is applicable which has not been discharged or whether output tax which is collected has not been deposited. Clue may be taken from the words stated in section 73 and section 122 to frame the exact nature of violations. General and unclear description of violations are also not sufficient requirement in law.
- d. Cause of action refers to the exact provision of law that has been contravened by the violation and the course that the law prescribes to be taken in view of the said violation due to the action of taxable person. This is a very important ingredient in the show cause notice. If any cause of action is omitted, even if the demand is valid, it cannot be confirmed by adjudicating authority or appellate authority or Court. If

show cause notice omits to demand interest and only demands tax then, even if it is finally decided that tax is payable, interest which is automatically applicable cannot be demanded.

- e. Opportunity for personal hearing is a very important Constitutional guarantee that must be allowed. Refusal to grant adjournment is not reasonable. 1, 2 or 10 days' notice are not permissible nor reasonable. Notice must allow time for party to reply as per the limit specified in the section or as considered reasonable. On reading section 73(2) with section 73(10), it can be understood that time limit of 3 months is the statutory minimum time from date of show cause notice till date of order
- f. Adjudication must be by an authority empowered under section 5 of Central GST Act. Hence, the show cause notice itself must state who will decide and adjudicate upon the said show cause notice. Normally, person issuing the notice is NOT the person adjudicating the show cause notice. The reason for this principle is that person issuing notice is likely to be biased against the person and adjudication proceeding could be unfair. However, if the assignment itself is for adjudication then, the same officer can issue the notice and adjudicate. There are many decisions of Apex Court in favour of taxpayer because allegation of bias or pre-decided mind is very serious and Court has directed someone else in the tax department to adjudicate. Reference may be had to CBIC circular 31/5/2018-GST dated 9 Feb 2018 which states in para 5 Central Audit and Intelligence officers may issue show cause notice but NOT adjudicate but, send that file to other officers as confirmed by Commissioner to adjudicate. This is another reason why the show cause notice must be drafted with care and attention to all

these legal principles.

7. Demand for tax on outward supply requires allegations to be specific not only regarding supply but the exact form of supply involved. Refer Chart A for indicative steps on demand for output tax towards supply and Chart B for demand for repayment of input tax credit. Please note that these charts are not exhaustive but only meant to be referred as an example or illustration of the detailed drafting mandatorily required.
8. Limitation is the maximum time-limit or the 'end date' by when show cause notice must be issued. If not show cause notice is issued late, then demand will not be legally possible. As well understood, there are two limitation period prescribed:
 - a. Normal period, for which the show cause notice may be issued under section 73 of Central GST Act. Care must be taken that show cause notice must be issued under section 73 and not merely as 'show cause notice'. The 'substance and effect' may be that of a show cause notice but unless stated to be under section 73, not even section 160(1) of Central GST Act can come to department's rescue; and
 - b. Extended period, for which show cause notice may be issued under section 74 of Central GST Act. Apart from the points under section 74, please note that show cause notice must also (i) allege and (ii) prove the 'special circumstances' required for a show cause notice under section 74. These 'special circumstances' are (i) fraud or (ii) willful misrepresentation or suppression of facts to evade tax. If show cause notice is issued under section 74 (due to allegation of special circumstances) and later during adjudication or appeal, special circumstances are not proved by revenue then, such a show cause notice will be 'deemed' to be show cause notice under section 73. Refer

section 75(2) which makes this clear and demand to be now made will stand automatically readjusted to (i) reduced period of demand (ii) with full extent of reduction of penalty in section 73.

9. Summary of demand is an additional document required to be issued under rule 142 of Central GST Act Rules. From this provision it will be clear that two documents are required (i) show cause notice and (ii) summary of demand. If only one of them is issued, the entire proceedings will fail and cannot be rectified.
10. Actions to be followed:
 - a. Show cause notice PLUS summary in DRC1/2 to be issued. Only DRC1/2 is not a show cause notice, it is only a summary;
 - b. Sections of law under which action is proposed must be correctly referred without omission as it can adversely affect final outcome;
 - c. All relevant evidence relied upon must be enclosed with show cause notice.
11. Actions NOT to be followed:
 - a. ENDROSEMENT is not an accepted form of notice. Reference to section 73 or 74 or 76 of Central GST Act is important to make such endorsements a valid 'show cause notice'. Hence, it is suggested to call such notices as 'show cause notice' itself instead of 'endorsement'
 - b. 1, 2 or 10 days' notice is not permissible nor reasonable. Notice must allow time for party to reply as per the limit specified in the section or as considered reasonable. On reading section 73(2) with section 73(10), it can be understood that time limit of 3 months is the statutory minimum time from date of show cause notice till date of order.

Chapter 13: Speaking Order

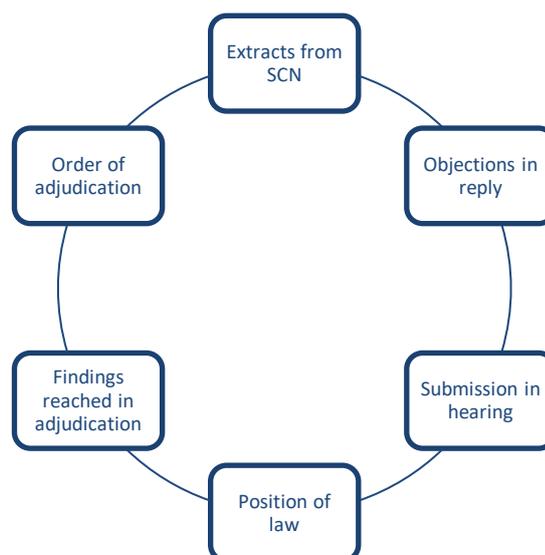
[Refer section 73(9) or 74(9) and 76(6), rule 142 and form DRC6, 7 and 8]

1. Order of adjudicating authority must be detailed as it is the start of a long journey to its destination where the interpretation of the law will be delivered through the process of appeal prescribed in Central GST Act. Order of adjudicating authority must carefully capture all the ingredients in the show cause notice, objections raised by the party, interpretation of law by adjudicating authority to reach final findings on facts-in-issue and pass the orders. This process is referred as 'speaking order' by adjudicating authority. Some key aspects to reiteration before going into the components of a speaking order:

- a. Show cause notice, which lays down the 'framework' of the entire demand must be discussed in the order with extracts. This will bring to the fore, the key issues that the adjudicating authority is called upon to reach a finding on facts and make a determination. Without this groundwork, it

would be impossible for appellate authorities to come quickly to the issues for their determination (in appeal, if any). It also requires that

key 'facts' and 'basis' be recorded in the show cause notice along with the 'grounds' which make up the boundaries within which the



adjudicating authority has to reach findings as per restriction placed in section 75(6) and 75(7) of Central GST Act. Adjudicating authority is barred from coming up with 'new grounds' for confirming demand. Grounds missed in the show cause notice CANNOT be introduced during adjudication proceedings to reach the final finding for supporting the demand. If grounds have been poorly considered in show cause notice and demand cannot be confirmed on the basis of those same grounds then, adjudication fails.

- b. Adjudication authority CANNOT modify show cause notice even if the demand is obvious and there are very strong grounds including decisions of higher Courts on the point. That is the main purpose of stating that **“show cause notice contains the framework for demand”** and there is NO AUTHORITY in the Central GST Act who has power to “fill in any blanks” in the show cause notice. There is NO scope to expand or alter or correct any deficiencies in the show cause notice. Although this material does not cover activities of FAA, it is important to bring to attention *second proviso* to section 107(11) of Central GST Act which states that not even FAA can confirm additional demand that comes to knowledge during the course of appeal proceedings. And even FAA is required to send the discovery of additional demand for issuance of new show cause notice.
- c. If show cause notice is quashed due to deficiencies, new show cause notice may be issued after correcting the deficiencies but the time limit or limitation for issuing show cause notice would NOT exclude this time spent in pursuing 'erroneous notice' and demand for period of 'time lost' will be lost irreversibly. And this is the further implication for which it is stated that “grounds of show cause notice” must be carefully

considered and should NOT be issued hurriedly without considering all these possibilities.

2. Order of adjudication may address the following aspects:
 - a. Extracts from the show cause notice need to be referred in the adjudication order so that it can be seen by every reader of the order that adjudicating authority was fully aware of the facts, actions and violations, allegations and evidence, cause of action proposed to be taken against the taxpayer under specific provisions of law and fact that adjudicating authority has been identified in the said show cause notice to hear the case.
 - b. Objections by taxpayer (more correctly called 'Noticee') must be recorded. Not only the fact whether objections 'were / were not' filed, but also in case it was filed, details of objections must be recorded. Entire objections need not be reproduced in the adjudication order, but salient features must be recorded. It would be helpful if taxpayer is asked to provide 'summary' of objections. This summary is not a substitute by only assistance to adjudicating authority for drafting speaking order. Objections may include decisions of Tribunal or Courts also, treatment of the same will be discussed shortly. Reply by taxpayer containing objections must be filed in DRC6 under rule 142(4) of Central GST Act Rules.
 - c. Hearing must be granted to the taxpayer as per section 75(4), either in person or through authorized representative as per section 116 of Central GST Act. During the hearing, taxpayer may provide the summary of objections already submitted or provide addendum to the objections raised earlier. Refer format of 'record of personal hearing' attached for reference. Adjudicating authority is expected to allow a fair

hearing and give full attention to the arguments being made. There is no requirement for adjudicating authority to reply or counter the objections raised but only hear the taxpayer or representative. However, please note that adjudication authority is free to ask questions to clarify the objections being conveyed or bring up points where objections are unsubstantiated and hearsay. Please note that all objections need not be accepted but are still points that are being raised. Questioning is not barred although such questioning should not become investigative. Powers of adjudicating authority are not listed in Central GST Act, but duty of adjudicating authority is to may be found in the show cause notice itself. It may be seen from section 75(6) and 75(7) of Central GST Act that the result to be achieved by adjudicating authority is to make a determination of the allegations made in the show cause notice and based only on the grounds raised in such show cause notice. Departmental representative may also be present during the hearing to counter the objections raised by taxpayer, if instructions are issued by Commissioner in this regard to the Proper Officer issuing show cause notice. Adjudicating authority is not to speak for the tax department but remain objective and unbiased. If departmental representative is present and submits any counter-objections, the same may also be recorded in the record of personal hearing. Both sides must be heard together and not separately, this is any important aspect to be kept in mind about the hearing. Record of personal hearing may be signed, and copies delivered to all parties present against acknowledgement.

- d. Position of law must be discussed in the adjudication order making regular reference to provisions referred in the show cause notice. A discussion is required as to the legal interpretation that the

adjudicating authority considers relevant on the issue involved to support the findings reached in the next part of the adjudication order. Care must be taken NOT to refer to circulars issued under section 168 of Central GST Act for the reason that Commissioner’s circulars are binding on departmental officers and if adjudicating authority ‘relies’ on the circular, it would mean that the decision is given to the circular and adjudicating authority is merely making a show of a fair hearing. If adjudicating authority agrees with the reasoning or interpretation provided in the circular, then that reasoning or interpretation can be reproduced and adjudication carried out. Case laws referred in the objections may be listed with the ratio of those decisions stated. It must be examined if those decisions are overruled by later decisions of higher Courts and discussed in this part of the order. Any additional decisions relevant to the case may be introduced in the order at this point which provides the correct position of law applicable to the present case.

- e. Findings of adjudicating authority is where ‘conclusion are reached’ about the **“facts”** of the case, **“basis”** on which allegations were made in the show cause notice and **“grounds”** raised for cause of action under the specified provisions of law. Findings by adjudicating authority is on (i) facts (ii) basis and (iii) grounds. Please note that if facts of the case are correct but the basis on which conclusions reached in show cause notice are not correct then, the adjudicating authority CANNOT make corrections, improvements or adjustments to support the demand. If facts and basis is agreeable by adjudicating authority but grounds in show cause notice are not agreeable then, demand cannot be confirmed.

Show cause notice		
Facts	Basis	Grounds
x	x	x
x	x	✓
x	✓	✓
✓	✓	✓

- f. From the foregoing, please note that only if adjudicating authority is agreeable on all the factors in the show cause notice, can demand raised be confirmed in order. Once adjudicating authority accepts that all the facts are agreeable then, these factors (facts, basis and grounds) become the view of the adjudicating authority for purposes of later proceedings in appeal or review. Utmost care must be taken to ensure that adjudicating authority records 'findings' on all these factors in reaching conclusion. And if adjudicating authority is not in a position to agree with these factors in the show cause notice, demand in the show cause notice must be DROPPED, even if there are **“other grounds”** which may support the demand. That is the main purpose of stating that **“show cause notice contains the framework for demand”** and adjudicating authority must pass orders containing all these aspects and that makes up the 'speaking order'.
- g. Based on all the above, adjudicating authority is required to pass 'orders' determining whether the demand raised in the show cause notice is payable by taxpayer or is dropped in favour of taxpayer. This statement must be made in a clear and short para which is the conclusion of the adjudication process. It must cover tax or credit, interest and penalty.
3. Adjudication must be completed before “end date” as applicable under section 73(10) or 74(10) of Central GST Act. If it is adjudication in kept pending beyond this date then, as per section 75(10) the proceedings will be “deemed to be concluded” and no adjudication is permitted to be carried out after this “end date”. Tax authorities must take care that the proceedings slip beyond this date. Tax authorities to also note that where the same issue is pending in “some other proceeding” which is pending before any appellate authority

(Tribunal or Court) then, as per section 75(11) the present show cause notice may be kept pending and the end date prescribed will be “kept in abeyance” until disposal of that case by the appellate authority. Once that case is decided then, the time limit under section 73(10) or 74(10) will be started. Refer discussion in chapter on New in GST under the sub-title ‘call book’ cases.

4. Taxpayer must be served this order (refer chapter regarding communication and service of notice) along with demand in final determination of liability in DRC7 under rule 142(5) of Central GST Act Rules to be uploaded online along with reference number of adjudication order. Please note that summary in DRC7 will be automatically be considered as per rule 142(6) a notice for recovery under section 79 of Central GST Act. Please note that even if interest is missed out in the order, interest is still payable as per section 75(9) of Central GST Act. In other words, if any other amount is missed out in the order, taxpayer is NOT liable to pay other than that demanded. Please note section 78 allows 3 months from date of order for any recovery action to be initiated under section 79 of Central GST Act. That is the time for taxpayer to file appeal under 107(1) or for rectification under 161 of Central GST Act. Before any recovery action is initiated (without any further notice to taxpayer), care must be taken that section 107(4) allows 1 month for condonation of delay, if allowed by FAA, for filing appeal. Hence, any recovery action within 3 months is not admissible but recovery action in the fourth month must be taken with due care about appeal being filed by taxpayer. Please also note that in order to file appeal, taxpayer is required to submit ‘certified copy of order’ under rule 108(3) of Central GST Act Rules. Hence, application for issue for certified copy of order may be received by adjudicating authority and this may indicate that appeal in ‘under process’. In any case,

recovery efforts may be ineffective if appeal is filed and for this reason finality of demand must be ensured by adjudicating authority.

5. In case there is any 'mistake apparent on record' then, on a request by taxpayer or voluntarily, adjudicating authority may rectify the mistakes within 3 months under section 161 (and not beyond 6 months) from date of such order and upload a revised summary in DRC8 under rule 142(8) of Central GST Act Rules. It is important to note that 'mistake apparent on record' DOES NOT refer to 'reconsideration of the facts or law' to change the conclusions reached in the adjudication order. That would be review of the decision taken which is not permitted and the remedy for aggrieved taxpayer is to file appeal under section 107 of Central GST Act. However, if there is a mistake apparent on record, adjudicating authority may take that into consideration and pass the correction by a supplement and upload the revised demand in DRC8 on the portal.
6. While confirming demand, interest and penalty may be applicable, care must be taken to apply the appropriate provisions of Central GST Act:
 - a. Interest is payable under section 50(1) for non-payment of tax and section 50(3) for erroneous credit. *Proviso* to section 50(1) [NOT YET NOTIFIED] states that interest is payable on 'net tax' and not 'gross tax'. That is, tax liability after adjusting available input tax credit is 'net tax' whereas before adjustment is 'gross tax' liability. Please note that ineligible credit taken may be liable for repayment before utilization or after utilization. When ineligible credit is demanded before its utilization, section 50(3) DOES NOT apply as section 42 is NOT NOTIFIED. But, if ineligible credit is demanded but has already been utilized, demand must be made for the output tax 'unpaid' by utilization of such ineligible credit. Care must be taken to demand interest on the right amount

under the right section of Central GST Act.

- b. Penalty is applicable under several sections of Central GST Act. It is not the purpose of this material to list all the provisions but sufficient to bring attention to this fact. Care must be taken to confirm demand for penalty under the right section of Central GST Act. Here, it is important to refer to section 126 which provides 'general discipline' about imposing penalty. Although show cause notice may propose imposition of penalty, adjudication order must consider the guidelines in section 126 and reach a finding based "**degree and severity**" of violation. NO PENALTY in case of minor breaches and voluntary compliance by taxpayer. Section 126(4) states that adjudicating authority must also passing 'speaking order' for the purpose of imposing penalty after showing that the 'mitigating factors' have been applied and still imposing of penalty is justified.

7. Actions to be followed:

- a. Reply to show cause notice to be received in DRC6;
- b. Hearing must be granted, and adjournments must also be granted for bona fide reasons as these are rights of taxpayer in adjudication;
- c. Order of adjudication to be passed with summary in DRC7;
- d. Speaking order must discuss demand and separately also discuss reasons for imposing penalty also;

8. Actions NOT to be followed:

- a. Repeated adjournment are NOT to be entertained where sufficient reasons for seeking adjournment are not provided;
- b. Empty non-speaking orders are NOT admissible as such orders are considered incomplete;
- c. Order of adjudication confirming demand must NOT be based on new

grounds other than those in show cause notice.

9. Whenever rights of a person are being affected by the passing of an order. Principles of natural justice must be followed (refer chapter regarding New in GST for discussion about this concept). Administration without following these principles will leave the demand unrecoverable as the proceedings are illegal. GST requires Officers to accept this new way of administration even though actions of tax authorities is in the interests the Nation. That alone does not justify or allow disregard to the principles required to be followed. Following the procedures in the Central GST Act and Rules are necessary and once prescribed procedures are followed, taxpayer cannot claim that the demand is illegal. Principles of natural justice are in-built in the above procedures of adjudication and passing 'speaking order'.

Chapter 14: Special Provisions in GST

Incorrect Notices

1. Central GST Act lays lot of emphasis on following the procedures prescribed. One of the most important special provisions in GST is that notices must be issued under the correct sections of Central GST Act. Notices should not be issued under incorrect section references as it will be considered that **“no proceedings are initiated”** if the section reference is not correct. From the previous chapters, it would be quite clear as to the nature of proceedings to be initiated under each section. Show cause notice for demand of tax must be issued under section 73 or 74 or 76 of Central GST Act including demand of interest and imposition of penalty.
2. Now, various other sections require compliance by taxpayers such as invoice must be issued under section 31, accounts and records need to be maintained under section 35, input tax credit must be claimed in accordance with section

16(2) within the time permitted under section 16(4) in the return to be filed under section 39, e-way bill must be issued under section 68, etc. In case any non-compliance is noted, show cause notice CANNOT DIRECTLY be issued under section 31 or 34 or 39 or 68. Show cause notice MUST ALWAYS be issued under section 73 or 74 of Central GST Act otherwise notices issued under the compliance provisions will not start any proceedings under Central GST Act. Even rejection of refund requires a notice under section 54 of Central GST Act read with rule 92(3) of Central GST Act Rules.

3. In fact, even to impose penalty under section 122 or 125 of Central GST Act, show cause notice cannot be issued under section 122 or 125 but MUST BE issued under section 73 or 74 of Central GST Act.

Protective notice

4. Refunds may be granted or rejected depending on eligibility to the claim. But, where there is some doubt after sanction of refund, show cause notice may be issued under section 73 of Central GST Act immediately demanding repayment of “erroneous refund granted”. This is a proper procedure to sanction refund yet leave room for an ongoing case in higher Courts to pass a final decision. In other words, if Hon’ble High Court has allowed appeal in favour of taxpayer to claim refund but SLP before Hon’ble Supreme Court is admitted without grant of stay. In such cases, refund claimed cannot be rejected as HC decision is in favour of taxpayer but, time required for SC decision is not certain and only 3 years (from date of refund sanction) is permitted in case refund becomes recoverable. In such cases, show cause notice is immediately issued to ‘protect interests of revenue’. And such show cause notice is not adjudicated immediately but kept pending. Please note that section 73(10) specifies that show cause notice cannot be issued after 3 years from the date of refund order but does not state by when the show

cause notice must be adjudicated. Once such a protective notice is issued, tax department can wait until final decision is taken by SC. And if the decision of SC is in favour of revenue then, adjudication may be completed of all protective notices. This is a legally allowed special procedure that may be noted.

Call-book cases

5. There can be several instances where show cause notice is issued but adjudication is not possible because similar issue (of same taxpayer or any other taxpayer) is pending before Tribunal or Court. Passing adjudication orders without the benefit of the authoritative interpretation in the case pending consideration of Tribunal or Court would not be in accordance with judicial discipline. For this reason, show cause notice issued is kept pending with approval of Joint Commissioner or Additional Commissioner of GST. This is permitted in section 75(11) of Central GST Act. Please note that if show cause notice is NOT issued pending decision of Tribunal or Court then, the maximum time limit prescribed under section 73 or even under section 74 of Central GST Act would be passed and the demand would be 'time barred'. In such cases, show cause notices are issued but adjudication orders are not passed. To keep the notices pending is called "**call book cases**" where cases will be called back from this book or diary one the decision of Tribunal or Court is passed and the interpretation to be taken in adjudication is known. There is an old master circular under Central Excise law that is continue to be followed by Central GST Officers, both these circulars are attached for reference.

Payment 'under protest'

6. Non-payment of demand attracts interest and due to the high rates of interest, taxpayer may want to "**deposit**" the disputed amount. Section 107(6) and

112(8) of Central GST Act provide for payment of 10 per cent or 20 per cent of disputed tax. But, the remainder of the disputed tax will be liable to the high rates of interest prescribed under section 50 of Central GST Act in case the final decision of Tribunal or Court is goes against taxpayer. Time spent in litigating the case is NOT to be reduced while arriving at interest. Taxpayer is concerned about risk of interest if final decision takes few years to be pronounced. To be protected from the risk of interest, taxpayers come forward to deposit more than statutory minimum amount of disputed tax. When tax deposited is finally liable to be refunded if the decision of Tribunal or Court is in favour of taxpayer then, deposited amount is liable to be repaid with interest at the rate specified in section 56 from the date when the deposit was made until the date of refund as per section 115 of Central GST Act. This and several other instances where there is threat of recovery action, taxpayer may come forward to pay the amount demanded but without accepting liability. Such deposit of amount is called **“payment under protest”**. Amounts paid under protest are liable to be refunded without the limit of 2 years specified in section 54 of Central GST Act.

7. Only payments made under section 107(6) and 112(8) are eligible for interest at the time of refund under section 115 of Central GST Act but if payments are made under protest, such payments will not be under the 2 year time limit for claiming refunds specified in section 54 of Central GST Act. There is no procedure for payment under protest but this is a long- standing practice where Courts have directed petitioners to deposit the disputed amount so that there is no doubt of recovery of disputed amounts of revenue and the legal issue involved may be addressed. When amounts are deposited under protest, tax authorities must investigate under appropriate provisions of law, issue show cause notice, adjudicate on such show cause notice and come to a final

disposal of the dispute relating to such deposit made. This is referred as **“vacating protest”** and once protest is vacated, time limit to claim refund applies and will be 2 years from date of order vacating the protest.

8. Protest may be vacated by actual order of adjudication relating to the disputed involving deposit under protest but also by equitable discharge of the protest in incidental proceedings. That is, where there is an order or decision by a superior authority that such amounts are liable to be paid or taxpayer decides to withdraw the dispute and concedes to the liability or taxpayer claims credit of the amount deposited in his electronic cash ledger and utilizes the same.

Collection in ‘name’ of tax

9. Where tax is NOT applicable, taxpayer is NOT permitted to charge and collect tax from customers. But, where tax is NOT applicable and taxpayer collect any amount **“in the name of tax”** then, the same amount is liable to be paid to the Government under section 76 of Central GST Act. Please note that amounts collected in the name of tax must be deposited **“in cash and not credit”**. That is, taxpayer is NOT permitted to collect tax when tax is NOT applicable. And in case tax is collected, such amount must be paid fully and only in cash without adjusting with any input tax credit balance.
10. If any amount of tax is collected in the name of tax in the course of any proceedings as per law, even then there is no provision for ‘spot recovery’. Section 76(2) of Central GST Act requires that show cause notice must be issued. Please note this show cause notice is NOT under section 74 but under 76 itself. When show cause notice is issued under section 76, please also note that there is **“no time limit”** for recovery of such amounts. Show cause notice under section 74 has 5 years’ time limit but show cause notice under section 76 does not have any time limit. Further, penalty for collecting amount in the name of tax is “equal to tax” as per section 76(2) of Central GST Act. Care must

be taken not to impose penalty under section 122 for demands under 76 of Central GST Act. This is any other special provision in Central GST Act that must be noted.

Unjust enrichment

11. Unjust enrichment means, no person should take advantage of another. If a taxpayer pays tax and collects this tax from customers. Afterwards if this tax is not applicable, taxpayer claims refund. Now, if the tax authority sanctions refund to taxpayer then, such taxpayer will be enriched at the cost of customer. Refund in this case, is to be given to customer. Section 54(1) of Central GST Act very clearly states **“any person”** may claim refund if such person has paid tax which is not payable.
12. In GST, when taxable person pays tax, there is a presumption in section 49(9) of Central GST Act that this tax amount has been collected and paid from customers. Any taxable person who claims refund, is required to prove to refund sanctioning authority that the burden of this tax paid is **“not passed on to customers”**. This is also called “proving absence of unjust enrichment”. Section 54(8) of Central GST Act contains some instances where such proof is NOT required because there is no customer where the tax could be charged. This is very important concept applicable to GST that must be examined whenever question of giving refund arises. It is for this purpose that there is special fund created where refund that is sanctioned but unjust enrichment is not satisfactorily proved then, the amount of refund cannot be retained by revenue department but transferred to Consumer Welfare Fund under section 57 of Central GST Act.

Provisional bank attachment

13. Central GST Act permit pre-adjudication attachment of bank account or property of taxpayer to protect interest of revenue. Even before show cause

notice is issue and even before adjudication order is passed, with the prior approval of Commissioner of GST, taxpayer's bank account or property may be attached. This is not a provision for recovery of tax but to block the funds or property. This provision DOES NOT apply to proceedings under section 61 of Central GST Act. It is important that Commissioner of GST must be satisfied that provisional attachment is necessary or there may be a threat to recovery of dues later once the demand is confirmed in adjudication proceedings. No such provisional attachment will remain for more than 1 year and adjudication proceedings must be completed within 1 year of provisional attachment. After adjudication, taxpayer has the right to pay 10 per cent and be free from the balance amount of disputed tax as a statutory right. Provisional attachment cannot destroy the statutory right of automatic stay from recovery of 90 per cent of demand once appeal has been filed by taxpayer.

Redemption fine

14. Section 129 imposes penalty for transportation of goods without documents prescribed under section 68 of Central GST Act. But, section 130 imposes penalty in other cases of offense and is **“penalty in lieu of confiscation”**. That is, ‘instead of confiscating offending goods, monetary penalty may be imposed’. It is very important to note what is the offense that attracts confiscation under section 130 and to what extent penalty may be imposed. Confiscation means ‘transfer of property to Government’ and the ownership will belong to Government. Goods that are involved in the specified offense will be taken over by the Government. This taking over, can be only when an order of confiscation is passed. In order to pass such an order, it must be adjudicated upon. In order to adjudicate, there must be a show cause notice. This show cause notice will be issued under section 74 but it will contain (i) penalty on the person under section 122 and (ii) confiscation of the goods under section

132. Once this adjudication is completed, adjudicating authority is required to **“give option”** to pay an amount of monetary penalty to avoid taking over of ownership of those offending goods in favour of Government.

15. Such proceedings may be called “redemption fine” which is the money equivalent to the market value of the goods involved in the offence. Supplying goods in contravention of Central GST Act will be the goods itself. Transporting goods in contravention of Central GST Act will be the truck itself. Redemption fine (which is another form of penalty in place of confiscation) must be of such an amount that would equal the value of the property which would belong to Government if confiscation was done. There is a condition that the amount of redemption fine should not be less than the penalty that would apply under section 129 of Central GST Act if the same offence was involved under that section. Adjudication proceeding for imposing redemption fine needs to be carefully carried out because a person’s property is being taken away or fine to that extent is imposed IN ADDITION to penalty under section 122 of Central GST Act. Special powers in Central GST Act requires understanding the extent of such powers and its use in accordance with the procedures established by law.

Chart A – Demand of Output Tax

- a. Step 1: if supply is alleged, then pick under which specific provision of Central GST Act does it amount to supply:

Section	Specified forms of supply	Furtherance of Business	Existence of Consideration	Supply	
				'made'	'agreed to be made'
7(1)(a)	✓	✓	✓	✓	✓
7(1)(b) - sch I	✓	✓/x	✓	✓	x
7(1)(c)	✓	✓	✓/x	✓	x
19(3) or 19(6)	x	✓/x	x	✓	x
31(7)	✓	✓/x	✓/x	✓	x

- b. Step 2(a): if supply is under section 7(1)(a) then pick which 'form' of supply is the allegation relating to and demonstrate how the ingredients in each form of supply are found to exist in given transaction:

Forms of Supply	Two Capable Persons	Consideration in Money (Price)	Willingness to Contract		Delivery of Possession	Permanent alienation	Consensus	Object of Supply		
			Seller	Buyer				Identity of Object		
								Services	Movable	Immovable
Sale	✓	✓	✓	✓	✓	✓	x	✓	NA	
Transfer	✓	✓	x	✓	✓	✓	x	✓	✓	
Barter	✓	x	✓	✓	✓	✓	✓	✓	x	
Exchange	✓	x	✓	✓	✓	✓	x	x	✓	
License	✓	✓/x	✓	✓	x	x	✓	✓	✓	
Rental	✓	✓/x	✓	✓	✓	x	✓	x	x	
Lease	✓	✓/x	✓	✓	✓	x	✓	x	✓/x	
Disposal	✓	✓	✓	x/✓	✓	✓	x	x/✓	✓	

If supply is alleged under any other provisions, say, 7(1)(b) or 19(3), please identify ingredients specified under those provisions and list those ingredients in the notice.

- c. Step 2(b): if supply is NOT as per above table then, check if it is a deemed supply under section 7(1)(b) which requires sch I to be understood:

Description	Para	Involving		Accounting v. GST treatment		
		Goods	Services	Same	Reverse actual treatment	Apply fictional treatment
Credit-taken assets disposed-off	1	✓	×	×	✓	✓
Stock transfer	2	✓	✓	×	✓	✓
Principal-agent activities	3	✓	×	×	✓	✓
Overseas activities	4	×	✓	×	×	✓

From above table, it can be noticed that ‘goods only’ are involved in some case and ‘service only’ are involved. Stock transfer is very interesting, as even services can be involved in stock transfer. Refer Columbia Asia AAAR (Kar.) citation KAR/AAAR/Appeal-05/2018 dated 12-12-2018 for detailed understanding and importance of this concept.

- d. Step 2(c): if supply is under section 19(3), then it is a deemed supply and the time of supply will be the date when the inputs/capital goods were first sent to job-worker;
- e. Step 2(d): if supply is under section 31(7), then it is important to find out whether when exactly customer accepted the goods or customer has not accepted the goods and due to lapse of 6 months’ time, it is treated to be a supply.
- f. Step 3: exact nature of ‘supply’ will now be available and the same must be included in the show cause notice to determine the ‘taxable event’ for demand of tax on outward supply.

Chart B – Demand of Repayment of Input Tax Credit

- a. Step 1: if object of supply is ‘goods’ or ‘services’ must be established
- b. Step 2: if it is ‘goods’ then, it must be established whether it is to be ‘treated’ as supply of goods or is there any fiction in sch II to treat it as supply of ‘services’ and vice versa. Please refer sch II below where basis for classification is listed along with indication of ‘new’ fictional treatment in GST and areas of ‘risk’ of possible misinterpretation:

Description	Para	Common understanding	Involving		Must have documented facts	
			Goods	Services	New fictional treatment	Risk of misinterpretation
Title in goods	1(a)	Sale	✓	✓	x	x
Right or share in goods	1(b)	Lease	✓	✓	✓	✓
Installment scheme for goods	1(c)	Hire-purchase	✓	✓	x	x
Rights-in-land	2(a)	Land	x	x	✓	✓
Rights-in-building	2(b)	Building	x	x	x	x
Treatment or processing goods	3	Jobwork	✓/x	✓	x	✓
Change of use of assets	4(a)	-	✓	x	✓	✓
Non-business use of assets	4(b)	-	✓	x	✓	✓
Stoppage of business	4(c)	-	✓	✓	✓	✓
Rent of immovable property (all)	5(a)	Rent	x	x	x	x
Construction	5(b)	-	✓	✓	x	x
Use of IPRs	5(c)	License	✓/x	✓/x	✓	✓
Software development services	5(d)	Customized	✓/x	✓	✓	✓
Accepting obligations	5 e	-	x	x	✓	✓
Right-to-use goods	5(f)	Lease	✓	x	✓	✓
Works contract	6(a)	-	✓	✓	x	x
Serving food-drink	6(b)	Eatery	✓	✓/x	x	x
Serving goods to members	7	Association	✓	x/✓	✓	✓

- c. Step 3: after it is determined that ‘goods’ or ‘services’ are involved, then HSN classification is required to be applied. It is very important to note:
 - i) Goods, are always classified under HSN 1 to HSN 98. There is not HSN for goods under chapter 99; and
 - ii) Services, are always classified under HSN 99. There is no other HSN chapter for goods.
- d. Step 4: HSN based classification must be verified by referring to www.kar.nic.in

FORMAT

Show Cause Notice under section 73 or 74 or 76 of Central GST Act

(strike out whichever is not applicable)

Assignment No. and date.....

SCN No. and date.....

DRC1/2 No. and date.....

DRC1A No. and date.....

Tax period from to

WHEREAS you M/s having your place of business atare an individual / firm / company and registered with GSTIN No..... under the jurisdiction of, Karnataka GST authority.

WHEREAS it has come to the knowledge of undersigned that you have undertaken transactions which are liable to GST under section 9 of Central GST Act being ataxable supply under section 7(1)(a) of the Central GST Act.....

WHEREAS based on the inquiry conducted it is reliably learnt that the said taxable supply is a 'lease' transaction. Lease, is a lawful contract for permitting right to use goods for a finite duration of time. It is found that your contracts with various customers as per Annexure A contains arrangements involving lease and the consideration for the same as per the contracts referred to in said Annexure A is to the turn of Rs.....

WHEREAS extracts of your audited financial statements entitled 'schedule to profit and loss account' reflects the said amount of turnover in respect of lease as 'income from lease contracts' provided by you during the inquiry duly self-attested is enclosed as Annexure B.

WHEREAS the said amount of turnover transaction involving in respect of lease as 'income from lease contracts' provided by you is not included in your monthly GSTR 3B returns filed for the tax period(s) April 20XX to March 20XX. On verification, you have informed vide your letter dated in Annexure C, that only 'turnover of sales' is reported in GSTR 3B is reported by you as advised by your consultants.

WHEREAS GST being a self-assessment tax under section 59, it is incumbent upon every taxable person to determine taxability of any transaction, compute applicable tax, discharge such tax applicable and report the same without any interjection by revenue authorities. Further, in terms of explanation to section 74 of Central GST Act, "suppression" is defined to be ".....". Self-assessment responsibility under section 59 read together with statutory of suppression, it appears that tax is liable to be demanded under the extended period of limitation due to presence of special circumstances prescribed in section 74 of Central GST Act.

WHEREAS pre-notice consultations were held with you by the undersigned as summary of demand in FORM GSTR DRC 1A as required under section 74(5) of Central GST Act read together with rule 142(1A) of the Central GST Act Rules was served on you vide DCR1A No..... dated which was received by you on.....

WHEREAS the facility allowed in law under section 74(5) was turned down by you vide your letter of rejection datedand the same was

received by the undersigned on As a result, you have opted to forfeit the concession available thereunder.

WHEREAS the omission to report tax in respect of tax period(s) April 20XX to March 20XX is not in accordance with extant provisions of Central GST Act you are hereby called upon to show cause before Deputy Commissioner of Goods and Services Tax, VTK-1, Gandhinagar, Bangalore 560 002, why:

GST on the turnover of lease transactions amounting to supply under section 9 read with section 7(1)(a) of Central GST Act in the amount of Rs...should not be demanded under section 74 of Central GST Act;

a. Interest on the said turnover as applicable under section 50(1) of Central GST Act; and

b. Penalty under section 122(2)(b) of the Central GST Act. should not be demanded from you in accordance with law.

If no reply is received in FORM GST DRC6 within days from the date hereof or no appearance is entered by you or your duly authorized representative under section 116 of Central GST Act when the case is posted for hearing, the case will be decided based on merits and records available without any further opportunity.

Issued by:.....

Name and Signature.....

Enclosed Annexure A, B and C

FORMAT

Office of Deputy Commissioner of GST, Government of Karnataka

Record of Personal Hearing

Assignment No. and date.....

SCN No. and date.....

DRC1/2 No. and date.....

DRC1A No. and date.....

Tax period from to

Personal hearing intimation No. and date

M/sappeared in person through Mr , proprietor/partner/director or through authorized representative Mr , Chartered Accountant / Advocate, duly authorized vide letter of authorization / vakalath dated..... in respect of personal hearing scheduled today am/pm.

WHEREAS written objections dated were filed [OR objections were NOT filed] in reply to the above referred show cause notice. Further, summary of objections and additional objections dated....were submitted today.

WHEREAS demand was / was not admitted and all objections were reiterated and more particularly, the following points were argued:

a.

b.

There being nothing further to add, request for early disposal of the above referred show cause notice was made. Copy of this record was delivered to the parties present which were received and acknowledged.

Before me

Deputy Commissioner of GST Jurisdiction.....

Date and seal

Appeared by

Name and dated signature Designation and contact no.

(in acknowledgement of receipt of signed copy)

FORMAT

Office of Deputy Commissioner of GST, Government of Karnataka

Order of Adjudication

(passed under section of Central GST Act)

General notes:

Copy of this order is issued free of cost to Noticee is served electronically by registered email / on portal of registered person / by post / in person

Any person aggrieved against this order may appeal before First Appellate Authority within 3 months from date of this order under section 107 of Central GST Act.

First Appellate Authority is Joint Commissioner / Additional Commissioner atADDRESS.....

Certified copy of this order may be applied immediately in order to avoid delay in filing statutory appeal as required under rule 108(3) of Central GST Act.

In case of any mistakes apparent on record, the same may be brought to attention of undersigned within 3 months under section 161 of Central GST Act

Assignment No. and date.....

SCN No. and date.....

DRC1/2 No. and date.....

DRC1A No. and date.....

DRC 7 No. and date.....

Tax period from to

Personal hearing intimation No. and date

WHEREAS above referred show cause notice was served that was duly acknowledged, detailed objections dated was filed on... and argued in person / authorized representative on hearing granted on

WHEREAS show cause notice observed following non-compliance:

- a.
- b.

And called upon Noticee to show cause why:

- a. CGST in the amount of Rs..... should not be demanded under section 73/74/76 of CGST Act;
- b. CGST in the amount of Rs..... should not be demanded under section 73/74/76 of Central GST Act;
- c. Interest on above demand at the rate applicable should not be demanded under section 50(1) of Central GST Act;
- d. Penalty should not be demanded under section 122, 125, and of Central GST Act;
- e. Ineligible amount of input tax credit claimed of Rs..... should not be demanded under section 73/74 of Central GST Act;
- f. Interest on above demand at the rate applicable should not be demanded under section 50(3) of Central GST Act;
- g. Penalty should not be demanded under section 122, 125, and of Central GST Act; and
- h. ANY OTHERS

Discussion on facts:

..... Discussion on position of law:

..... Discussion on objections filed:

..... Findings:

.....

ORDER

In view of the foregoing, I hereby confirm the demand under section
.....in respect of..... confirm interest thereon
under sectionof..... and confirm penalty thereon
under section

Further, I drop demand under section in respect of

By me

Deputy Commissioner of GST Jurisdiction.....

Date and seal

Copy to:

1. Additional Commissioner of GST.....
2. Revisionary Authority of GST
3. Commissioner of GST.....

