

Do's and Don't in drafting replies to Notices & Appeal before First Appellate Authority- including 6(2)(b)

- CA Vyankatesh Agrawal

Rule 112 of CGST Rule

General Rule

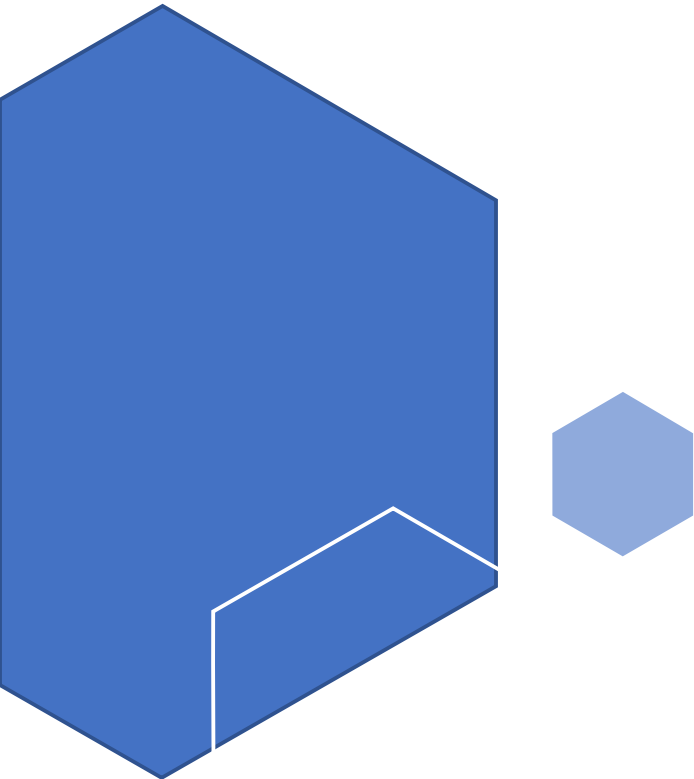
- No new evidence (oral/documentary) allowed at appeal stage
- Only evidence submitted earlier can be relied upon

Exceptions (Evidence may be admitted if):

- Evidence was **wrongly refused earlier**
- Appellant was **prevented by sufficient cause**
- Relevant evidence **could not be produced earlier**
- Order passed **without giving proper opportunity**

Department must be given opportunity to:

- Examine evidence
- Cross-examine witness
- Submit rebuttal



Areas to be focused in effective SCN Reply

- Detailed study of a Show Cause Notice;
- Understanding the complete facts and its collation;
- Testing the validity and legality of the SCN and making appropriate submissions;
- Framing grounds and replying them on merits;
- Replying for demand of interest;
- Replying for invocation of extended period of limitation & Penalties;
- Prayer & verification;
- Authorization for reply/ appearance;
- Copy of SCN along with other supporting documents & Annexures.

Background

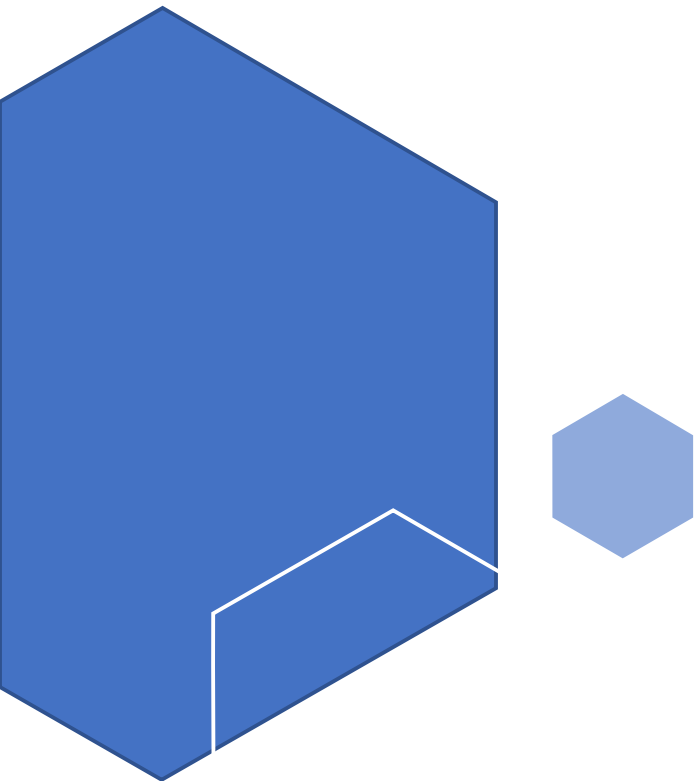
1. The SCN contains the following, each element must be read in detail:
 - Introduction of the case;
 - Factual statement and appreciation of evidences; -
 - Discussion, facts and legal framework;
 - Discussion on personal hearing
 - Findings of the Audit/ ASMT (if any)
 - Discussion on Limitation;
 - Discussion on penalties;
 - Calculation of duty and other amounts due;
 - Statement of charges;
2. Framing various issues alleged in the notice along with its reasons and basis and identifying the Crux of the allegation;
3. SCN must be unbiased and not prejudiced - Nemo Judex in re Sua.



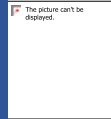
Statement of Facts



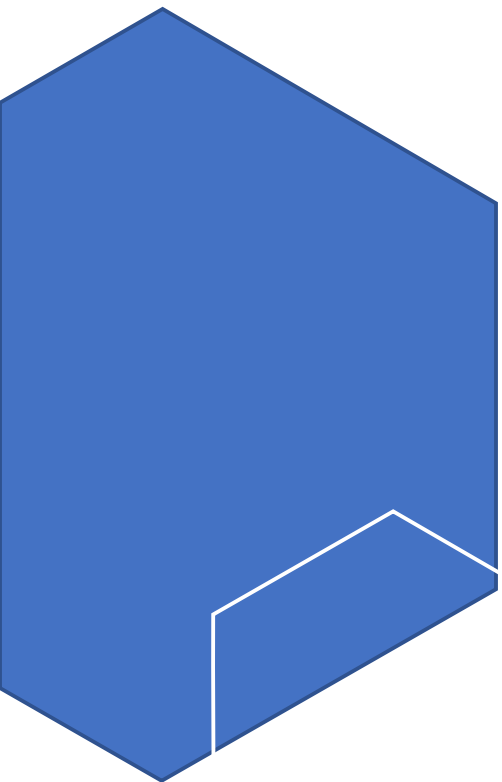
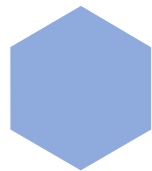
1. Chronologically organized - Plotting the sequence of complete events with the date of its occurrence; a complete sequence mapping has to be provided.
2. Facts should be supporting your case – A well drafted facts, you win 50% of the case – Judicial points
3. Do not take any grounds in facts
4. Facts to be supported by evidence
5. Use additional enclosures to submit charts and pictorial presentation of relevant information /data



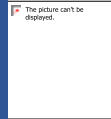
Statement of Facts



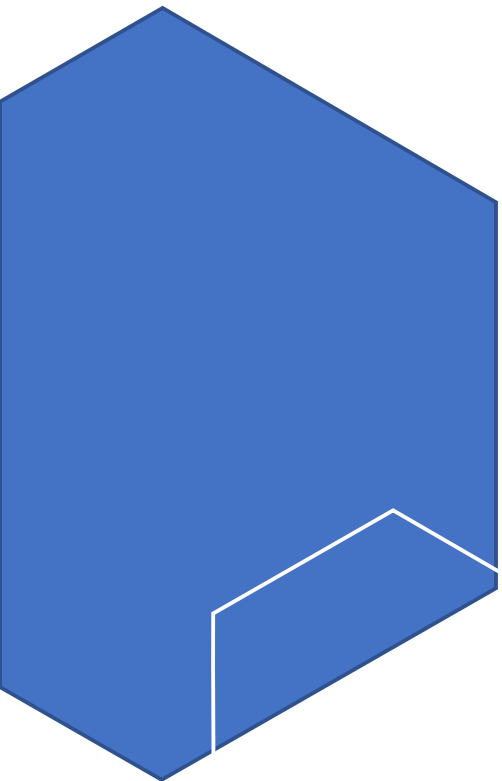
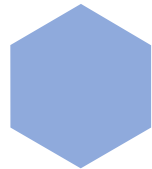
6. Understand & analyze the various submissions made in the past up to the receipt of OIO – **latest SC decision in CBIC vs. Aberdare Technologies Pvt. Ltd. (2025) 29 Centax 10 (S.C.) – rectification of errors in returns after sec 39(9) due dates**
7. Understanding various oral submissions made – Opportunity to reduce it in writing;
8. Facts gathered to be corroborated with the facts mentioned in the SCN – Missing/ incorrect facts – ref of para/page etc.,
9. Remember, first impression is the best impression
10. Make it accurate without leaving for any scope for ambiguity.
Ensure nothing is contradicting with each other.



Statement of Facts



11. Copy of agreements, invoices, calculation sheets, mails/ letters and other relied upon documents must be obtained and the same must be analysed;
12. Plotting the sequence of complete events with the date of its occurrence;
13. Detailed discussion with the client – Factory visit, Business understanding, Product understanding;

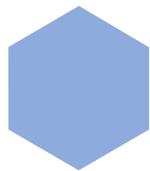


Factual



Factual Grounds –

- Answering the allegations
- Confirm the facts along with documentary evidence – *provide evidences wherever necessary. Eg. In Classification or functionality disputes – refer drawings, samples - if possible, videos. Eg. Hair oil classification, machinery functioning, essentiality test etc.,*
- Understand the relevant Section, Rules during the disputed period and its applicability to the facts of the case
- Bring out the facts which have not been discussed in SCN
- Counter incorrect facts – case built on incorrect factual position – Many a times, the SCN may specify that a particular letter has not been answered. In reality, there is no such letter
- Wherever necessary submit the certificates of independent authorities – *CA certificate/certificate from Governmental Authorities etc*



Legal



Legal Grounds

- Favorable judicial precedents – Higher Courts, Jurisdictional rulings, Final order to be relied, Reliance on international jurisprudence;
- Constitutional validity;
- Cardinal principles of interpretation & Legal Maxims;
- Each and every allegation must be precisely and clearly rebutted;
- Take help of Council Meetings, FAQ's issued to know the intention of law
- Circulars are binding on department and not on assessee
- Rules or Circulars beyond the Act are invalid
- Check the position in previous tax regime and settled case laws on similar context
- Sec 155 – Burden of proof is on assessee in case of ITC
- Distinguish the case laws relied on by the notice

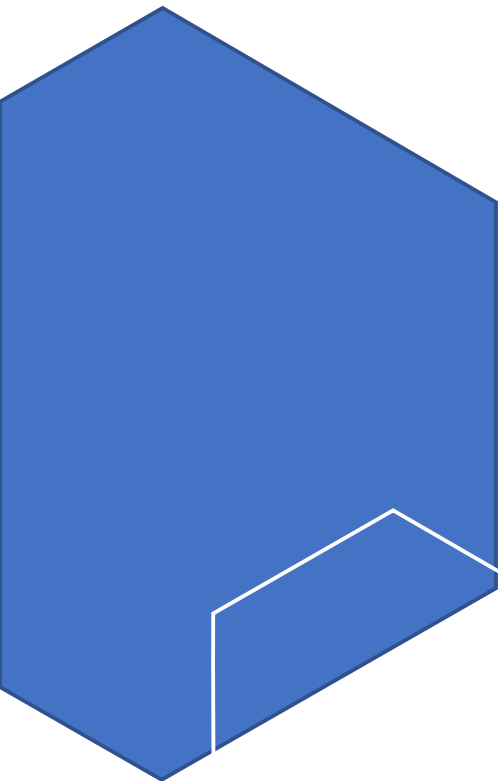
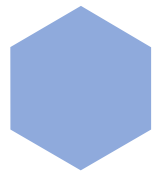


Technical

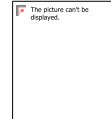


Technical Grounds –

- Jurisdiction
- Validity of Notice/Order
- Violation of principles of natural justice
- Onus not discharged
- Charges/violation not clear
- Charges/Violation not supported by evidence
- Not in accordance with the provisions of the act or rules – Relied on Circulars etc.;
- Incorrect quantification of demand;
- Benefit of Cum Tax can be claimed, if tax not collected;

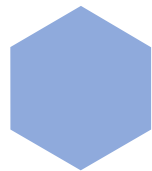
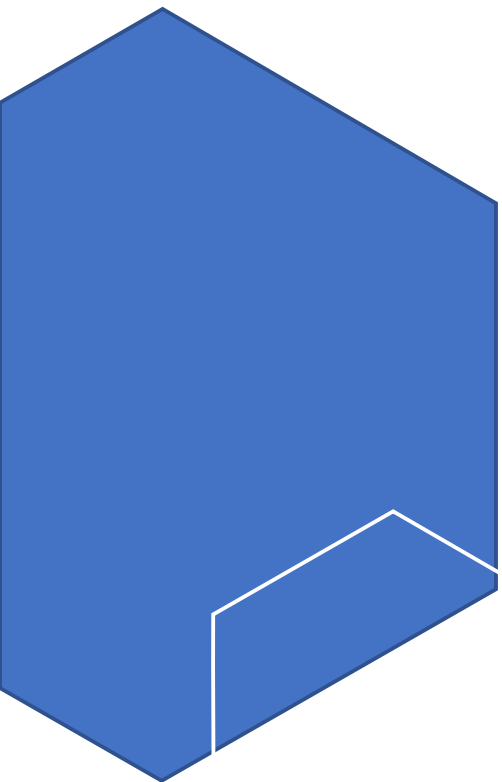


Example



GSTR 2A vs 3B –

- In cases of GSTR 2A vs 3B cases, if the authority does not discuss about the legal submission about the case then it has to be specifically brought in the submission.
- Legally, a stand can be taken that the requirement to reconcile 3B along with GSTR 2A is only applicable from 01.01.2022.
- Circular 183/15/2022-GST – Declaration/ CA Certificate to be submitted to the extent possible.
- If the order has not considered the declarations provided or has not tested the declarations given with Circular, then it has to be brought in the appeal.

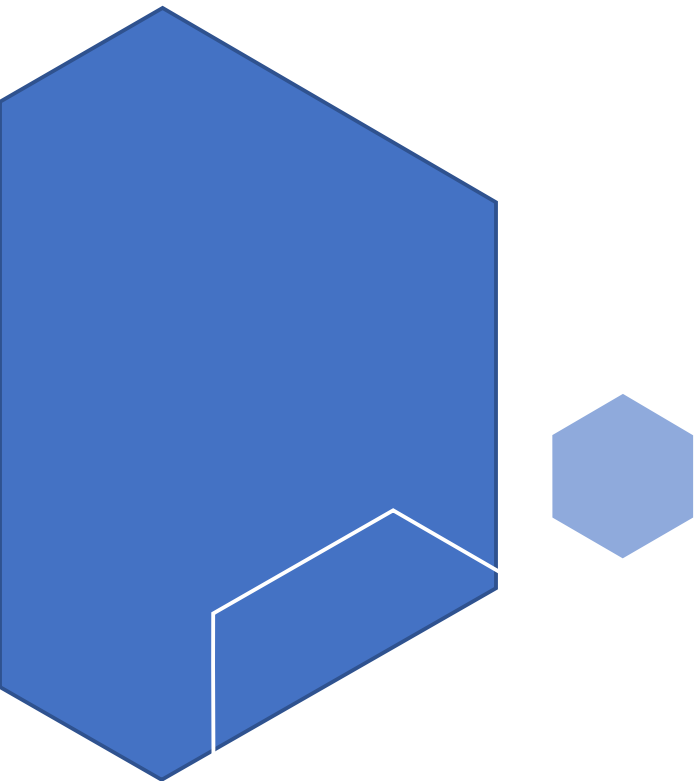


Example



GSTR 2A vs 3B –

- Reference to judgements which have been pronounced after submission of the SCN Reply – additional submission
- Many notices have taken cognizance from Section 16(2)(C) citing tax has not been paid, in such cases, it can be contested that tax payment by supplier cannot be traced owing to limitations of GSTR 3B.
- A recipient cannot be punished for the fault of the supplier – *Suncraft Energy Pvt Ltd. – SLP(C) No. 27827-27828.*



Replying for invocation of extended period of limitation & Penalties (1/2)

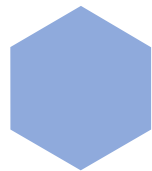
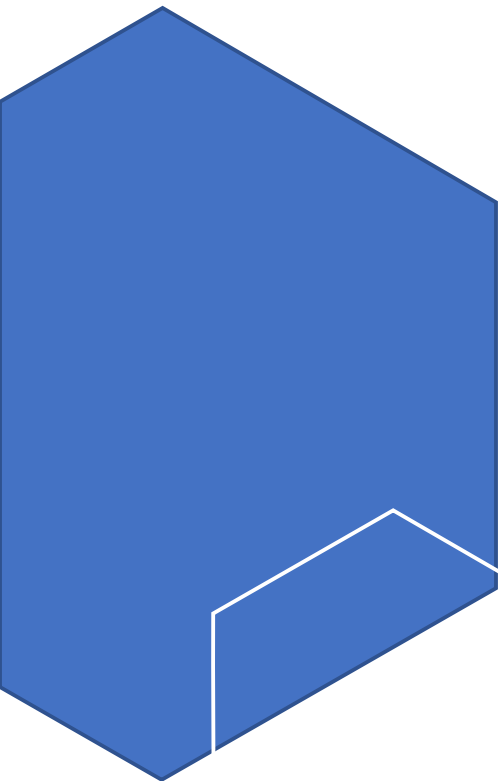


H N A & Co LLP
Chartered Accountants

Limitation Ground



- Check if the case can be proved to be time barred – check the issue date of SCN/ order in accordance with time limit given Section in Section 73/74
- Extended period of limitation u/s. 74 should not apply in following–
 - a. Facts already known to department** - *Monsanto manufacturers 2010 (260) E.L.T. 335 (S.C.)*
 - b. Department Audit/previous intervention;** - *Nizam Sugar Factory 2008 (9) S.T.R. 314 (S.C.)*
 - c. Recorded in books of accounts** - *Super Industries - 2017 (348) E.L.T. A127 (S.C.)*];
 - d. Different interpretation** - *Nirmala Dyechem 2007 (207) E.L.T. 161 (S.C.)*
 - e. Retrospective amendment** - *JK Cotton Spinning and weaving mills 1998 (99) E.L.T. 8 (S.C.)*



Limitation Ground



- Extended period of limitation should not apply in following–
 - f. **Revenue Neutrality** - *Nirlon Ltd 2015 (320) E.L.T. 22 (S.C.)*
 - g. **Burden of proof not discharged** - *Tamilnadu Housing Board, Bajaj Auto & Marco Textiles*
 - h. **There should be more than inaction or failure** - *CCE, Chemphar Drugs & Liniments 1989 (40) E.L.T 276 (S.C)*
 - i. **Mere failure to pay tax is not enough and must act deliberately to avoid such payment of tax** - *Tamil Nadu Housing Board v. CCE, 1994 (74) ELT 9 (SC)*
 - j. **In case of bonafide belief penalties should not be imposed** - *Padmini Products v. Collector —1989 (43) 195 (S.C.)*
 - k. **No suppression just because Audit party identified inadmissible credit** - *Medisray Laboratories P. Ltd – 2014 (307) ELT 15 (Guj)*
 - l. **Industry practice**

Interest

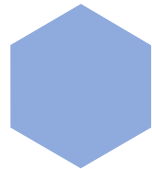
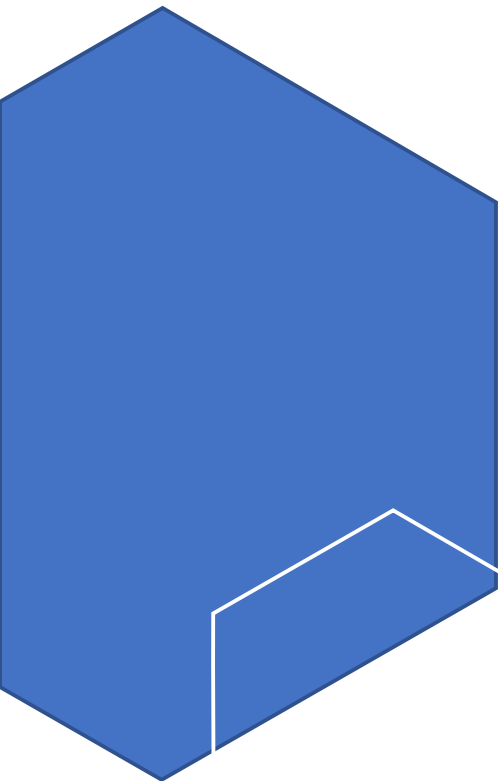


- Correctness of interest computations can be challenged;
- Interest to be payable on Net Tax liability – retros amendment in Sec 50;
- Interest liability if sufficient cash balance is available? Amendment?
- Applicability of interest on Input tax Credit availed and not utilized - retros amendment in Rule 88B;
- Interest is compensatory and different from penalty, which is penal in character. – **Pratibha Processors - 1996 (88) E.L.T. 12 (S.C.)**
- **Interest on Debit Notes?** – Check Mitsui Kinzoku Components India Pvt Ltd. – FAA, Gurugram (TS-100-FAA-2026-GST)
- **Interest on interpretational issue?** – check M/S Steel Authority of India - Civil Appeal Nos. 4056-4064 of 1999

Prayer



- Do not just pray only to set-aside the SCN
- Seek Specific and practical reliefs that align with the case.
 - E.g., To hold order is barred by limitation
 - To hold that tax is not payable on the sale of ABC
 - To order refund of the tax paid as far
- Consequential relief – **critical for claiming refunds/recredits**
- Intention to appear for personal hearing at its earliest -



Citations



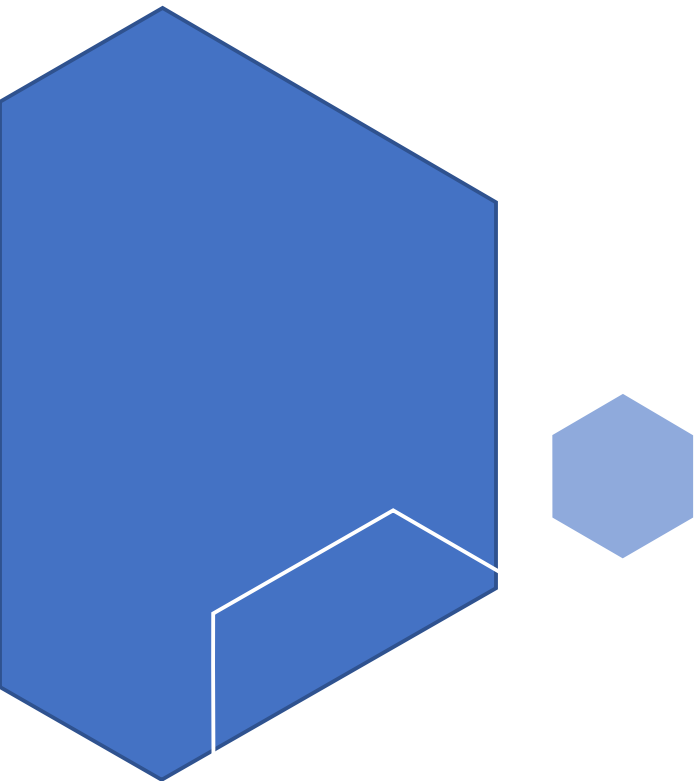
- Full Citation to be quoted
- Use the citation, that is commonly used by the Tribunal
- Extract the relevant portion of the findings, not the entire para. – only essential case laws not every case law cited
- Use the Hierarchy SC>HC>LB>Jurisdictional Tri>Tri.
- No Advance Ruling , except to plead bonafide



Fundamentals



- It is tougher to overcome wrong facts stated/pleaded than convincing with correct facts – hence, stating of actual facts is critical – sometimes – it would impact the overall outcome
- There is no presumption that the Judge knows the law. The legitimacy of the bar is dependent on the presumption that the judge does not know the Law. The assessee manufactures the facts, the consultant presents the facts mixed with the adversarial law. The judge is only like a server in a five star hotel who wears a glove and then whatever the cook prepares he serves it well on the table – Justice Goda Raghuram (rtd)



1

Importance of clarity – do not make it vague,
Eg. If there is diff as pointed by dept – state that such diff exists

2

Make your point straight – do not beat round the bush
Eg. Explain reasons for differential figures in summary form or tabular form

3

Do not repeat the points – make the point only once but effectively.

4

Avoid lengthy submission – make its as precise as possible

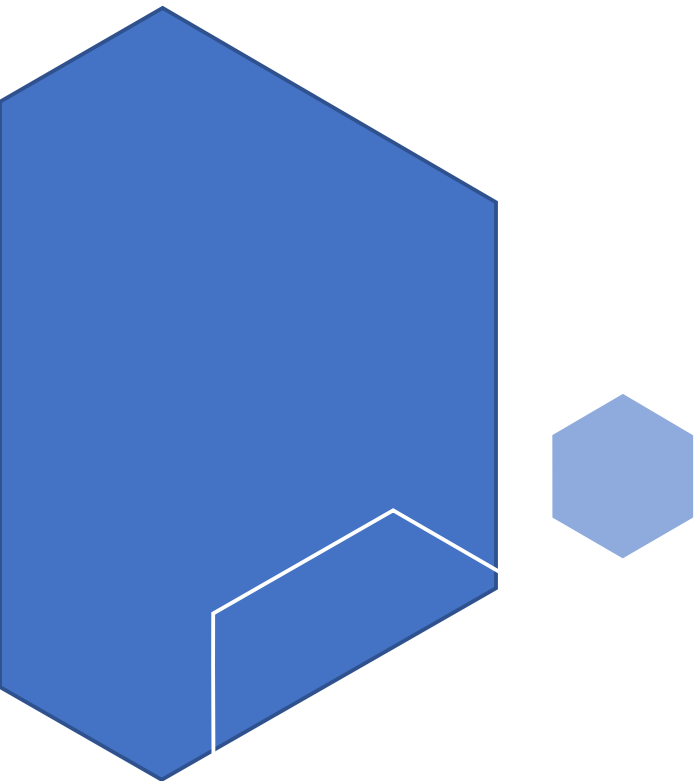
5

Supporting for every submission - only a statement will not help
E.g. Evidence like inward registers, Fasttag slips, LR's, consumption records etc.,
instead of simply saying goods are received

“Brevity is the hallmark of good advocacy. The Judges and lawyers are humans. Sometimes, bulky compilations and submissions can be counterproductive.” Hon’ble SC in Safari retreat (2024) 23 Centax 62 (S.C.)

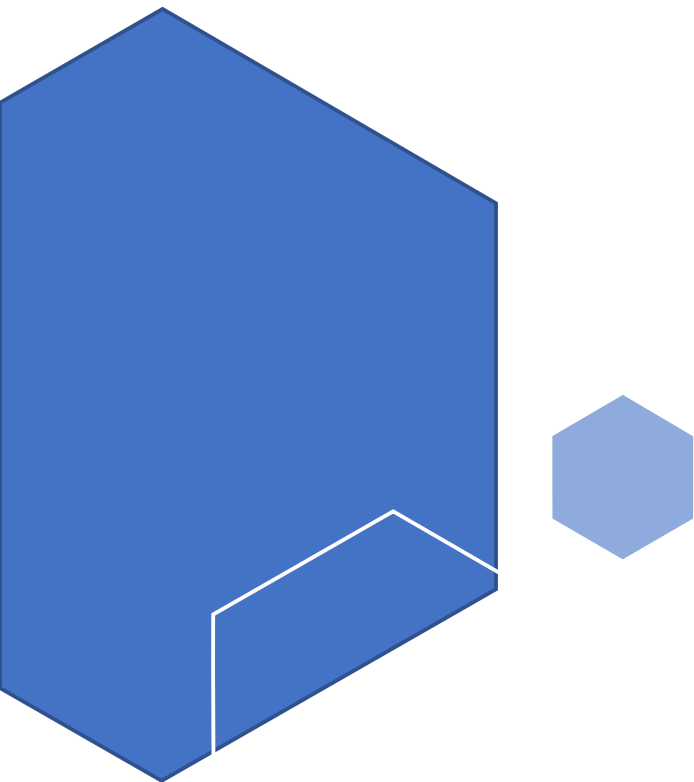
Appeals

- Section 107 provides power to any person to file an appeal against any order or decision passed by adjudicating authority -
 - Within **three months** from the date on which the said decision or order is **communicated** to such person.
 - If department prefers such appeal, then the Commissioner may, on his own motion, or upon request from the Commissioner of State tax or the Commissioner of Union territory tax, direct any officer subordinate to him to apply to the Appellate Authority within **six months** from the date of communication of the said order.

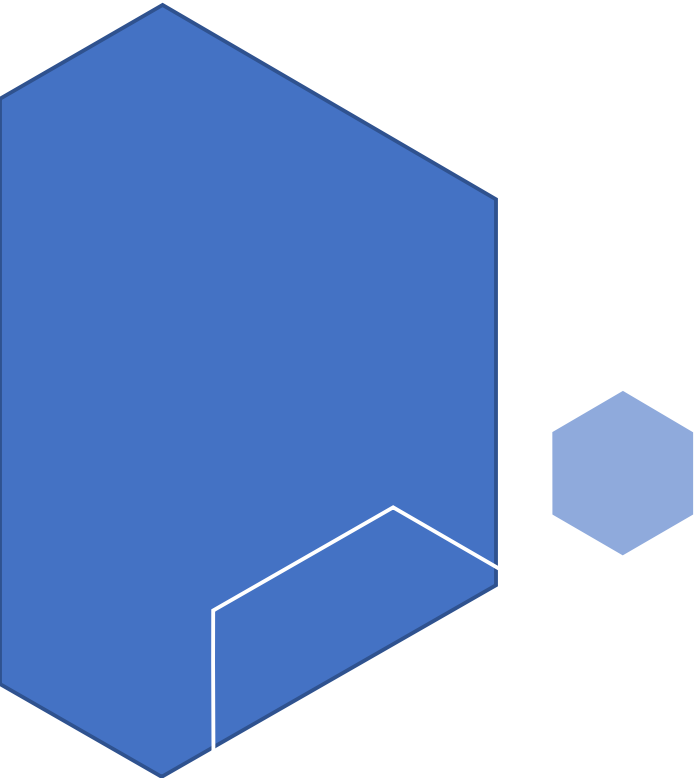


Appeals

- Interpretation of the term “communicated” - The expressions “served” and “communicated” are not synonymous. - **Sharp Tanks and Structurals Private Limited - 2025 (9) TMI 1149 (MAD)**
- The limitation will start running from the date on which the order or decision is communicated to the assessee. The provision does not say that limitation should be calculated from the date of service of the order on the assessee. Section 169 talks about service. When a statute employs two different expressions, they denote different meanings. The expressions “served” and “communicated” are not synonymous. A literary person, to flaunt his richness of vocabulary, may use different words to mean one and the same thing.



Issues



- Delivering the order copy to authorized representative – treated as communication or not ?
- Date of communication to authorized representative is to be considered for time limit of 3 months.
- Date of Summary Order or Date of detailed Order?
- Detention order served to driver of vehicle – is it valid ?
- Condonation period – 1 month (sufficient cause to be shown)
- Contrary decisions in – Vikas Shankar Joshi Vs Addl CCE & ST

Service

- 169. (1) Any decision, order, summons, notice or other communication under this Act or the rules made thereunder shall be served by any one of the following methods, namely:-
 - by giving or tendering it directly or by a messenger including a courier or
 - by registered post or speed post or courier with acknowledgement due or
 - by sending a communication to his e-mail address or
 - by making it available on the common portal or
- Section 169(3) assumes that the registered post or speed post or courier shall reach the intended person within normal time of transit unless otherwise proved – courier track



Order quietly uploaded on portal? Communication???

Issue?

- GST adjudication orders are **quietly uploaded** on the GST portal.
- No email, no SMS, no physical service.
- Many taxpayers **never know** an order exists until it is too late.
- Result → missed appeal deadlines → forced writ petitions → avoidable litigation.

Key Case Triggering the Discussion

- Order dated **28.02.2024** uploaded on GST portal.
- Taxpayer **never checked portal**, received **no physical communication**.
- Appeal filed **after limitation expired**.
- High Court held:
Uploading ≠ Communication.
Limitation starts only **after communication**, not merely portal upload.

The Bigger Problem Identified - Missed appeals, Litigation explosion, Courts overloaded, Natural justice compromised

Order quietly uploaded on portal? Communication???

Recommendations

A. Improve Visibility

- Prominent flashing **dashboard pop-ups** for all orders/SCNs.
- Highlight notices in **red/bold** on login.

B. OTP-Based Acknowledgment

- Taxpayer must enter OTP sent to mobile/email to “receive” the order.
- **Portal locked** until acknowledgment.
- OTP date treated as **date of service** for limitation.

C. Special Rule for Cancelled Registrations

- Cancelled taxpayers do not log in.
- Orders must also be sent by **physical post** to last known **residential address**.

Did not direct implementation but recommended that GST Council/CBIC/GSTN should consider them.

Issues in time limit prescribed

- Section 107(1) → Appeal to be filed within 3 months from communication of order.
- Section 107(4) → Appellate Authority may condone delay of 1 month on sufficient cause.
- Revenue often treats this as 90 days + 30 days = 120 days, causing wrongful rejections.

Why the Confusion?

The CGST Act does not define “month.”

Revenue assumes “1 month = 30 days,” “3 months = 90 days.”

Legal Definition of “Month”

Section 3(35) of General Clauses Act, 1897: “Month” = calendar month as per the British (Gregorian) calendar.

Therefore:

✓ Months vary → 28 / 29 / 30 / 31 days

✓ “3 months” ≠ 90 days

✓ “1 month” ≠ 30 days

Issues in time limit prescribed

Judicial Position – Calendar Months Must Be Used

Courts across India have affirmed this:

- **Patna HC (2025) – Brand Protection Services - [C.W.P. No. 14957 of 2024, dated 04.02.2025]**
→ Held that “three months” follows the British calendar, not 90 days
- **Kerala HC (2024) – N.N. Steel Trading Co. - [W.P.(C) No. 35471 of 2024, dated 22.10.2024]**
→ Appeal timelines follow calendar months.
- **Madras HC (2025) – S.V. Technick – [W.P. No. 38768 of 2024, dated 03.01.2025]**
→ “One month” = calendar month.
- **Supreme Court (2010) – Himachal Engineers - [C.A. No. 5998 of 2010, dated 26.07.2010]**
→ “Month” = British calendar month.
- **Supreme Court (2001) – Bibi Salma Khatoon - [C.A. No. 5645 of 2001, dated 21.08.2001]**
→ Month is not fixed at 30 days.

Conclusion:

True time limit = 3 calendar months + 1 calendar month condonable, not 90+30 days.

Issues in time limit prescribed

How to Compute Time Using General Clauses Act (Section 9)

- **Exclude** the date of communication of the order.
- Count in **calendar months**.
- End on the **corresponding date** of the third month.
- **Example**
Order communicated → **30 Nov**
3 months → **28/29 Feb**
Condonable 1 month → **31 Mar**

Problems with Revenue's 90+30-Day Formula

- Violates **General Clauses Act**.
- Leads to **incorrect appeal rejections**.
- Ignores variations in month length.
- Violates **natural justice** when appeals rejected without notice.

Condonation

- If sufficient cause is shown for delay, the Appellate authority may accept condonation of 1 month , subject to satisfaction of section 107(5).
- Reasons for Condonation shall rightly support the case that there is no intentional delay by the Appellant. Supporting documents shall be submitted – cash flow statement, travel tickets, medical certificate etc.
- Can Appellate Authority condone the delay beyond 1 month? – No Appellate Authority cannot but High Court can condone the delay in exercise of Writ Jurisdiction and Limitations Act, 1963 (***Apotex Research Pvt Ltd Vs UOI & Eswari Global Metal Industries Ltd Vs UOI, Arvind Gupta Vs Assistant Commissioner of Revenue State Taxes (Calcutta High Court) WPA/2904/2023***)

Sufficient Cause

Judicial Interpretation of “Sufficient Cause”

- The term “sufficient cause” is not defined in the CGST Act.
- Courts have taken a liberal, justice-oriented view to avoid dismissal of genuine cases on technicalities.
- Debate centres on whether Section 5 of the Limitation Act, 1963 (condonation of delay) applies to GST proceedings.

Two Judicial Views

Liberal Interpretation – S.K. Chakraborty & Sons v. UOI [2024 (123 GSTR 229)] - Calcutta HC

- Held that **Section 5 of the Limitation Act applies** to GST.
- Enables condonation of delay **even beyond the 3 + 1-month limit** under Section 107 in deserving cases.

Strict Interpretation – Shri Ram Ply Product v. Addl. Commissioner [2023 (75 GSTR 288)] – All - HC

- Held that the **CGST Act is a self-contained code** with its own limitation framework.
- Hence, **Section 5 of the Limitation Act does not apply**; no condonation beyond the prescribed period.

Circumstances for Condonation of Delay

Judicially Recognised Grounds for Condonation of Delay

Circumstance	Principle / Relevant Provision	Key Judicial Precedents / Notes
Pendency of Rectification Application	Section 161; bona fide pursuit of alternate remedy	Time Excludable: Arvind Fashion Ltd. (P&H HC) – time spent in rectification excluded. SAS Hotels (Madras HC) – delay condoned due to genuine pendency. Time Not Excludable: Garg Enterprises (Allahabad HC) – GST law is self-contained; no condonation beyond 3+1 months.
Medical Emergencies / Serious Illness	“Sufficient Cause” under Sections 107(4), 112(6)	Engineered & Innovative (Allahabad HC) – 95 days condoned; MD had TB. Shaik Abdul Azeez (AP HC) – illness accepted as valid reason.
Legal Misadvice / Counsel’s Error	Sufficient cause, provided error is bona fide	Madras HC – delay of one week condoned due to accountant’s error; no mala fide intent. Courts accept errors if genuine & taxpayer acted diligently.

Circumstances for Condonation of Delay

Circumstance	Principle / Relevant Provision	Key Judicial Precedents / Notes
Technical Glitches on GST Portal	Sufficient cause — systemic issues are valid grounds	Courts have taken liberal view; glitches widely accepted as justifiable reason for delay.
Lack of Communication of Order	Limitation starts from date of communication (Section 107(1))	V.R. India Trader (Raj HC) – communication date triggers limitation. DK Enterprises (Delhi HC) – email service valid if assessee was aware.
Natural Calamities / Force Majeure	Extraordinary events beyond control	Accepted for lockdowns, floods, pandemics. SC's COVID-19 suo motu extension reinforces principle.
Administrative / Procedural Delays	Sufficient cause — delay caused by govt procedures	Delay in obtaining certified copies or essential documents recognised as valid ground.

Condonation

Case 1 – M/s. Glaxo Smith Kline Consumer Health Care Limited (Supreme Court, 2020)

Facts: Appeal filed beyond maximum condonable period; High Court still entertained writ & remanded matter.

Issue: Can High Court intervene under Article 226 when statutory appeal is time-barred?

Decision: No. HC cannot bypass statutory limitations; writ cannot revive an extinguished remedy.

Impact: Strong precedent supporting **strict limitation**—taxpayers cannot routinely bypass Section 107 timelines via writs.

Case 2 – Singh Enterprises (SC, 2008)

Facts: Appeal under Excise Act filed beyond condonable period; Commissioner (Appeals) rejected it.

Issue: Can delay beyond statutory limit be condoned using Section 5 of the Limitation Act?

Decision: No. Special tax laws override Limitation Act; condonable period is fixed and non-extendable.

Impact: Foundational precedent used in GST to hold CGST Act is a **self-contained code**; supports non-extendability beyond 3+1 months.

Condonation

Case 3 – S.K. Chakraborty & Sons (Calcutta HC)

- **Facts:** Appeal rejected as time-barred (beyond 3+1 months).
Issue: Does Section 5 of Limitation Act apply to GST appeals under Section 107?
Decision: Yes. Section 5 applies; CGST Act does not expressly exclude it. Delay may be condoned beyond 3+1 months if cause is sufficient.
Impact: Only major **liberal view** allowing extended condonation. Creates judicial divergence; helpful for assessees in exceptional cases.

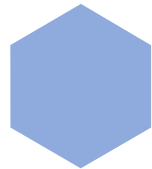
Case 4 – Kaajal Agarwal (Madras HC, 2025)

- **Facts:** Taxpayer first filed rectification under Section 161; appeal delayed by 67 days but within condonable month.
Issue: Does bona fide pursuit of rectification count as “sufficient cause”?
Decision: Yes. Time spent in genuine rectification attempts = sufficient cause; rigid limitation would deny justice.
Impact: Important relief for taxpayers; supports **exclusion of rectification period** when delay is genuine and documented.

Important -



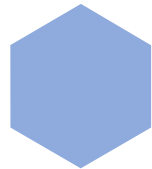
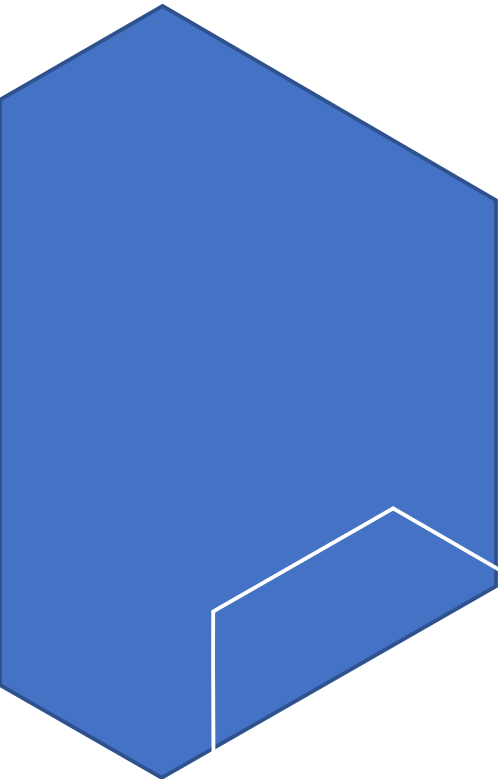
- **Underline:** To highlight specific portion that requires attention of the reader
- **Bold:** To emphasize the critical arguments, the crux of the case
- **Italics:** For all extracts
- **Singe Quotes:** for terms, definitions, and quotes within quotes.
- **Double Quotes:** Extracts from the Order/judgement etc.
- Use Consistently throughout the Appeal
- Do not overuse



Important -



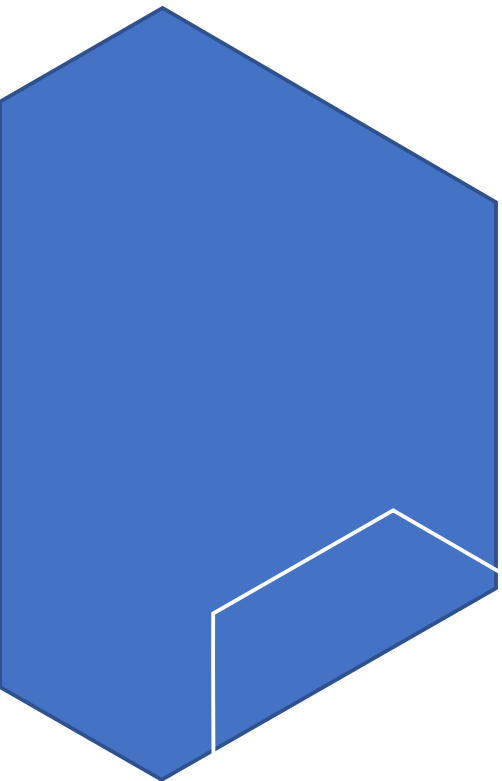
- Making Additional submissions upon new developments; - I.A.
- Reply along with annexures to be properly bound together;
- Giving proper references, index, copies of the judgments relied upon;
- Judgments relied upon must be read – Facts must be rechecked;



Important -



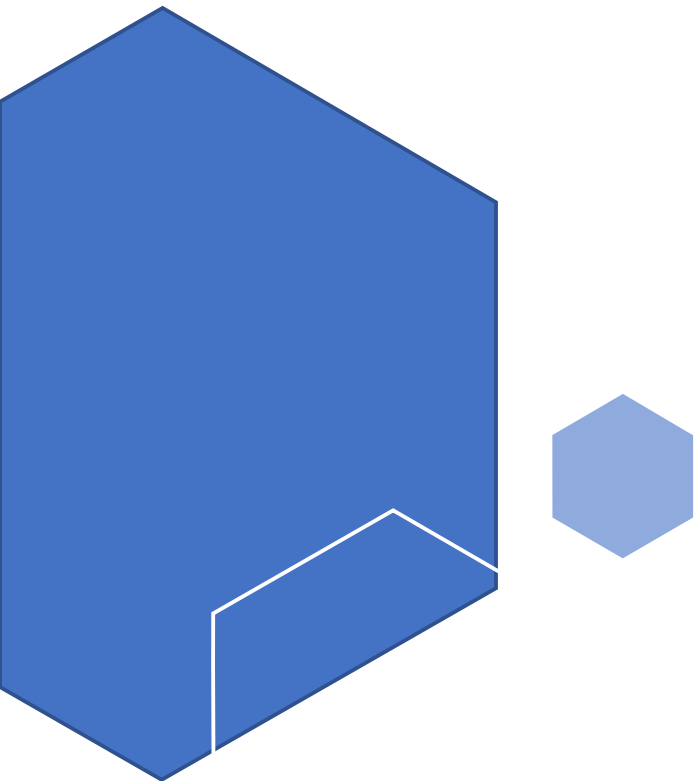
- Independent study of judgments must be carried out – Both favorable & against;
- Summary must be prepared and vetted prior to the commencement of drafting to the appeal
- Quality review to be undertaken in case of non-repetitive/ complex matters;
- Going deep, exploring your creative self – Think differently;
- Reply to be to the point and crisp;



Important -



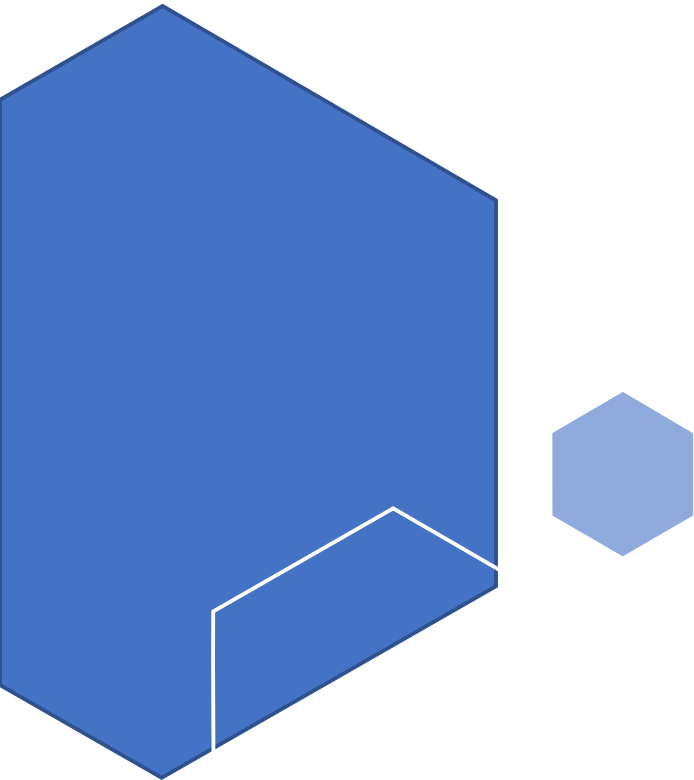
- **Ambiguity:** Avoid vague terms and unclear points.
- **Overloading the Submission:** Stick to relevant points rather than lengthy submissions.
- **Inconsistencies:** Ensure there's no contradiction in facts or legal positions.



Section 6(2)(b) of CGST Act 2017

- The relevant extract of the clause (b) of sub-section(2) of section 6 is:

“where a proper officer under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under this Act on the same subject matter”



Parallel proceedings/ Duplicate proceedings



e-Paper | Sunday Chronicle



DECCAN
Chronicle



GST Council to meet on February 18

During the 9th meeting of the GST Council, a high level forum of the Centre and all the states, a consensus was reached on how tax payers will be split for audit.

As per the agreement the states will have the power to assess and administer 90 per cent of the tax payers with less than Rs 1.5 crore annual turnover while the remainder would be controlled by the Centre.

However, intelligence based enforcement power will be with both the Centre and states. For tax-payers with more than Rs 1.5 crore turnover, the states and the Centre will control and administer them in a 50:50 ratio.

Mr Jaitley said each assessee will be assessed by only one authority. The states would also have the powers to levy tax on economic activity within 12 nautical miles of territorial waters even though such rights constitutionally vest with the Centre.

- Proper officer for the purpose of the act - Jurisdiction of the officer issuing the notice:
 - ✓ Cross empowerment between Centre & State - Below 1.5 Crore (90% to the state) & Above 1.5 Crore (50% by both). Criteria to be followed for the division of taxpayer base between the Centre and the States **to ensure single interface** - Circular No. 1/ 2017 - F. No. 166, GST Council;
 - ✓ Proper officer to execute various functions entrusted under the provisions of the act and rules – Sec 2(91) read with Circular No. 3/3/2017;
 - ✓ Assignment of the territorial jurisdiction to the proper officers - Notification No.2/2017-Central Tax [Sayed Ali (2011) ELT 17 (SC) & Canon India 2021-TIOL-123-SC-CUS-LB];
 - ✓ Monetary limits for different levels of officers of central tax - Circular No. 31/05/2018 – GST;
 - ✓ The central tax officers of Audit Commissionerate's and Directorate General of Goods and Services Tax Intelligence (hereinafter referred to as “DGGSTI”) shall exercise the powers only to issue show cause notices. A show cause notice issued by them shall be adjudicated by the competent central tax officer of the Executive Commissionerate in whose jurisdiction the noticee is registered - Circular No. 31/05/2018 – GST.

Testing validity and legality of the OIO



H N A & Co LLP
Chartered Accountants

- ✓ *In case show cause notices have been issued on similar issues to a noticee(s) and made answerable to different levels of adjudicating authorities within a Commissionerate, such show cause notices should be adjudicated by the adjudicating authority competent to decide the case involving the highest amount of central tax and/or integrated tax (including cess) - Circular No. 31/05/2018 - GST*
- *Where a proper officer under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under this Act on the same subject matter - Sec 6(2)(b);*
- *The expression “subject matter” refers to any tax liability, deficiency, or obligation arising from any particular contravention which the Department seeks to assess or recover - Where the proceedings concern **distinct infractions**, the same would not constitute a “same subject matter” even if the tax liability, deficiency, or obligation is same or similar, and the bar under Section 6(2)(b) would not be attracted - M/s Armour Security (India) Ltd - 2025 (8) TMI 991*
- *No one can be a judge in his own cause - Nemo Judex in causa sua - Issues faced in the e-way bill matters;*
- *Delhi HC seeks CBIC’s stand on State-authority jurisdiction for recovering central-tax demand exceeding Rs.2 cr*

Audit vs Investigation and parallel proceeding

Proceedings of investigation can be carried out independent of the Audit proceedings:

- Can the proceedings of the investigation be challenged when already an audit is under progress.
- Audit under section 65 is a routine procedure to be carried out by the Commissioner in such frequency and in such manner as prescribed in the rules; which is independent of an investigation under section 67.
- Section 67 is a more onerous procedure which can be initiated only on the satisfaction of Joint Commissioner or above of, suppression of taxable transactions, excess claim of input tax credit, contravention of the provisions of the Act and Rules, keeping of goods and accounts in contravention of the provisions, escapement of tax, secreting of goods or material liable to confiscation or relevant or useful in any proceedings under the Act and any act leading to evasion of tax.
- Investigation under section 67 is no routine procedure as is an audit under section 65.
- No any infirmity in the audit and investigation proceeding being continued simultaneously.
- This is also upheld by SC [**Suresh Kumar P. P. – (2021) 125 taxmann.com 61 (SC)**]

Parallel proceedings/ Duplicate proceedings

- **SCN cannot be issued on the same cause of action against which the favourable order is already passed by the Appellate Authority:**
 - Revenue cannot re-agitate and issue fresh show cause notices again for the same cause of action covering same period against which the Order passed by the first Appellate Authority has been accepted by the Respondents and same has attained finality.
 - The actions of the Respondent No.2 and the Respondent No.3 is therefore bad in law and is without jurisdiction and is further hit by the principles of res judicata and is clearly not permissible under the law.
 - As stated herein above, after passing of the 1st appellate order, only course available with the Respondents were to challenge the first Appellate Order before the Appellate Tribunal under Section 112 of the JGST Act, if at all aggrieved, and
 - Therefore, the impugned Show Cause Notices are wholly without jurisdiction, without authority of law and also barred by principles of res-judicata.

[Ambey Mining Pvt Ltd Vs Commissioner of State Tax 2023 (7) TMI 876- Jharkd HC]

Parallel proceedings/ Duplicate proceedings

Authorities commencing the proceedings first would need to continue with the proceedings:

- Parallel proceedings by multiple authorities - State GST department, Preventive Wing of Central GST and DGGI initiated enquiries.
- DGGI could not raise a question about credibility and competence of State GST authorities
- The officers of DGGI do not enjoy any special power or privilege in comparison with officers of State GST authorities
- Proceedings on basis of search and seizure by State authorities, being prior in point of time and all proceedings being inter-related, State authorities were to continue with proceedings.
- Therefore, the Preventive Wing of CGST and DGGI Wing of CGST, would forward all their investigation carried to State authorities.

[Vivek Narsaria - [2024] 158 taxmann.com 523 (Jharkhand)]

Parallel proceedings/ Duplicate proceedings

- **Parallel GST proceedings cannot be conducted by 3 wings of same department for same tax period:**
 - The learned Advocate for the appellants submitted that for two issues, the appellants had submitted their response to the notice and the matter has not been taken to the logical end. In the meantime, the other two wings of the department, viz. Anti Evasion wing as well as the Range Office have also proceeded against the appellants by issuing notices ***for the very same period*** for which audit proceedings under Section 65 of the Act has already commenced.
 - It was held that since the audit proceedings under Section 65 of the Act has already commenced, it is but appropriate that the proceedings should be taken to the logical end. The proceedings initiated by the Anti Evasion and Range Office for the very same period shall not be proceeded with any further.

[R. P. Buildcon Private Limited (Calcutta HC) - [WPA 20025 OF 2022 dated September 30, 2022]

Armour Security (India) Ltd. vs. Commissioner, CGST Delhi East Commissionerate [TS-711-SC-2025-GST]:

- **Facts of the case:** The petitioner was issued an SCN under Section 73 of the Act by the State authorities for FY 2020-21, alleging under-declared turnover and excess ITC claim. Later, Central authorities conducted a search under Section 67(2) and issued summons under Section 70 for document production. The petitioner challenged the summons before the Delhi High Court, citing lack of jurisdiction under Section 6(2)(b) due to prior proceedings by the State. The High Court dismissed the plea, following which the petitioner filed an SLP before the Supreme Court.
- **Dispute:** Does issuance of summons under Section 70 qualify as 'initiation of proceedings' under Section 6(2)(b), thus barring the Central Authority when the State Authority has already initiated proceedings on the same subject matter?

Case Law

- **Judgement:**

A. Initiation of proceedings is the issuance of a SCN: The expression “initiation of any proceedings” occurring in Section 6(2)(b) refers to the formal commencement of adjudicatory proceedings by way of issuance of a show cause notice, and does not encompass the issuance of summons, or the conduct of any search, or seizure etc.

B. Summon is not equivalent to proceeding: Mere issuance of a summons does not enable either the issuing authority or the recipient to ascertain that proceedings have been initiated.

C. What is subject matter & “Same” subject matter?

The expression ‘subject matter’ refers to any tax liability, deficiency, or obligation arising from any particular contravention which the department seeks to assess or recover an identical or a partial overlap.

The twofold test for determining whether a subject matter is “same” entails, first, determining if an authority has already proceeded on an identical liability of tax or alleged offence by the assessee on the same facts, and secondly, if the demand or relief sought is identical.

D. What is not the “same” subject matter?”.

Where the proceedings concern distinct infractions, the same would not constitute a “same subject matter” even if the tax liability, deficiency, or obligation is same or similar.

E. Who can initiate investigation?

Intelligence based enforcement action can be initiated by any one of the Central or the State tax administrations despite the taxpayer having been assigned to the other administration.

F. Certain Guidelines:

- Where a summons or a show cause notice is issued by either the Central or the State tax authority to an assessee, the assessee is, in the first instance, obliged to comply by appearing and furnishing the requisite response, as the case may be.

The Legal Conflict: Divergent Views from the High Courts:

The "Against" View: Summons as Proceedings (Favouring the Taxpayer)

Several High Courts had taken a broader view, holding that any coercive action, including summons, could trigger the bar under Section 6(2)(b) if the subject matter was the same.

- **High Court of Orissa in Anurag Suri v. DGGSIT — [2021]:** Quashed a State SCN because the Central authority (DGGI) was already investigating the same period. The Court held that the circular dated 05.10.2018 precluded State authorities from proceeding as long as the Centre was "seized of the matter."
- **High Court of Jharkhand in Vivek Narsaria v. State of Jharkhand — [TS-17-HC(JHAR)-2024-GST]:** Held that a "chain of events" under the Act meant that any enquiry or investigation by one authority should preclude another. It directed the State authority to continue proceedings as its search action was "prior in point of time."

Case Law

- **High Court of Punjab & Haryana in Stalwart Alloys India Pvt. Ltd. v. Union of India [TS-534-HC(P and H)-2024-GST]:** Took a strict view, stating that the word "subject matter" meant the "nature of proceedings." Therefore, if the State initiated proceedings for wrongful ITC availment for one period, the DGGI could not initiate for a later period, as the nature was the same.
- **High Court of Himachal Pradesh in Kundlas Loh Udyog v. State of H.P.[TS-586-HC(HP)-2024-GST]:** Echoed the Punjab & Haryana view, interpreting "subject matter" as the "nature of proceedings" and holding that once the State acts on an issue, the Centre is barred from acting on the same.

The "For" View: Summons are not Proceedings (Favouring the Revenue)

Other High Courts drew a clear distinction between investigation and adjudication, ruling that the bar applies only after the issuance of an SCN.

- **Allahabad High Court in G.K.Trading Company v. Union of India [TS-1159-HC-2020(ALL)-NT]:** Provided a seminal distinction, holding that an "inquiry" u/s 70 is not synonymous with "proceedings" u/s 6(2)(b). The court clarified that proceedings include actions like assessment and demand (initiated via SCN), while summons are merely a step in the inquiry process
- **Madras High Court in Kuppan Gounder P.G. Natarajan v. Directorate General of GST Intelligence [TS-400-HC(MAD)-2021-GST]:** Held that the scope of Sections 6(2)(b) and 70 are "different and distinct." The words "proceedings" and "inquiry" cannot be mixed to create a bar on the power to summon.

Case Law

- **Kerala High Court in K.T. Saidalavi v. State Tax Officer, SGST Department [TS-717-HC(KER)-2024-GST]:** Explicitly held that the initiation of an enquiry or issuance of summons u/s 70 cannot be deemed "initiation of proceedings," which is a reference to the issuance of a notice
- **Rajasthan High Court in Rais Khan v. Addl. Commissioner, Enforcement Wing-II:** Relied on the Allahabad and Madras decisions to dismiss a writ petition, holding that the issuance of summons u/s 70 is not hit by the bar under Section 6(2)(b).
- **Delhi High Court in Indo International Tobacco Ltd. v. Vivek Prasad, Additional Director General (DGGI) [TS-03-HC(DEL)-2022-GST]:** Introduced nuance, stating that Section 6 and the circulars are not intended to cover situations where an investigation has pan-India implications involving multiple taxpayers, as restricting it to territorial jurisdiction would lead to an incomplete investigation.
- **The Supreme Court's Synthesis:** A Landmark Summary The Supreme Court, in a detailed judgment, affirmed the Delhi High Court's decision and dismissed the appeal. It effectively endorsed the line of reasoning taken by the Allahabad, Madras, Kerala, and Rajasthan High Courts, while clarifying the contrary views.

Any Queries ?

*A good case can be lost by
bad preparation and
a bad case be won by
good preparation.*

Thank You!!!

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