

From Receipt to Response : Handling Show Cause Notice

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Disclaimer :

Views expressed in this presentation are personal views on the various aspects of Goods and Services Tax Act, 2017.



What is Show Cause Notice?



Oxford Dictionary defines show cause notice as "*a notice requiring a party to a case or dispute to provide arguments, explanation, or evidence on a specific point, especially in court.*"

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

Principally, *Show Cause Notice (SCN) is the starting point of any legal proceedings against the party.*



Questions to Ponder?

Is it optional to issue Show Cause Notice?

Is Show Cause Notice a formality?

Whether recovery of tax can be made without SCN?

Various Show Cause Notices under GST

- SCN under Section 73
- SCN under Section 74
- SCN under Section 76
- SCN for rejection of refund claim (GST-RFD-08)
- SCN for cancellation of regular registration (GST-REG-17)
- SCN for rejection of application for revocation of cancellation of registration (GST-REG-23)
- SCN for cancellation of provisional registration (GST-REG-27)
- SCN for denial of option for composition (GST-CMP-05)
- Others

How to respond to the Show Cause Notice?

Find the Errors in SCN?



Sample SCN

To,
Taxpayer

Subject : SCN issued under Sec 73/74 of the CGST Act

You have claimed incorrect credit under Sec 17 (blocked credit) of Rs approximate 2.50 crores (CGST 1.25cr+ SGST 1.25cr). Please pay the same along with interest and applicable penalty. If you have anything to say, please submit that the same in writing within 7 days. You have been informed me of the same in previous email to which you have not responded. In case you don't respond within time, it will be deemed to have been accepted, and demand shall be confirmed.

Asst. Commissioner
CGST Pune

What are the Errors in the Notice?



Format as per Rules

Issue: Does the notice need to be issued in correct format only?

Principle: SCN not in specified format liable to be quashed

Supporting case law:

Suresh Trading Corporation vs. The Asst. Commissioner (Circle) of SGST
[TS-541-HC(MAD)-2021-GST]

Proper Officer

Issue:

Does the notice need to be issued only by the Proper Officer?

Principle

SCN not issued by proper officer as per Section 2(91) and Circular 3/3/2017

Supporting Judgment : Cannon India (Supreme Court)

Monetary Jurisdiction :

Circular No. 31/05/2018 dt 09-02-18

Invocation of Incorrect/Incomplete Section

Issue : Does the notice need to provide the correct section and sub-section of the invoked provision by the Proper Officer?

The proper officer is mandated to provide the correct details of the violated provision. One needs to be clear on whether there is an error in quoting the provision or incorrect provision is being quoted.

Sub-section of the provision would also be required in case the allegations are provided differently in different sub-sections.

Deemed Acceptance

Issue : Does the SCN can waive personal hearing if no reply has been submitted?

The same cannot be waived.

Issuance and Adjudication

Issue: Can the SCN be adjudicated by same person who has issued the SCN?

“Nemo judex in causa sua”

Other SCN principles

Whether SCN is sine qua non for any demand proceedings

Whether SCN is to be in writing

Whether letter or communication asking for payment of tax is SCN?

Master Circular 1053/2/2017

How a SCN should be issued

What are the contents of an ideal SCN?



Response Strategy

"No two wars are the same, and each demands its own strategy, its own reckoning."

Section 160 of the GST Act, 2017

(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 of 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.

(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 finalised pursuant to such notice, order or communication.

"A show cause notice is like a layered puzzle. Only those who read it thrice, not once, can solve it without missing a piece."

What to note before starting the response to SCN

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Reminder : Section 160 of the GST Act, 2017

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Karara jawab milega !
Karara jawab milega !!

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Reply to Show Cause Notice

Background and Facts of the Case

Facts are non-disputable information of the case

Cross-verify that facts referred in SCN are matched or not. In case of any difference between the same which may result in dropping of the proceedings, please highlight the same.

Any additional facts which are important to the issue in SCN that have been missed in SCN

Reply to Show Cause Notice

Background and Facts of the Case

Narration and chronology of the events

Provisions invoked in the Section and tax demanded/action proposed

Gist of the allegation in summary

Reply to Show Cause Notice

Grounds of defense :

Challenge the SCN on the following without prejudice without each other

- i. Jurisdictional
- ii. Monetary
- iii. Provisional
- iv. Time Limit (Notification No. 56/2023)
- v. Pre-SCN notice

Challenge invocation of provision

- i. Section 74 (reasons for invocation)
- ii. Furnishing of evidence in support of each contention
- iii. Use of judgments

Reply to Show Cause Notice

(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised **by reason of fraud, or any wilful-misstatement or suppression of facts** to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.

Explanation 2.- For the purposes of this Act, the expression “suppression” shall mean **non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules** made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer.

Reply to Show Cause Notice

Grounds of defense :

Challenge the computation

Challenge the assumptions/presumptions involved in computation

Usage of cum tax principle in case where tax is not separately collected

Challenge invocation of provision

Section 74 (reasons for invocation)

Furnishing of evidence in support of each contention

Use of judgments in response

Reply to Show Cause Notice

Grounds of defense :

Burden of Proof :

- i. Classification
- ii. Valuation
- iii. Exemption Notification
- iv. Input Tax Credit
- v. Refund

Reply to Show Cause Notice

Grounds of defense :

Challenge the penalties proposed:

Challenge the assumptions/presumptions involved

Penalty not leviable in case of multiple views

Penalty can be limited in case of minor mistakes

Procedural lapses versus substantive lapses

Reply to Show Cause Notice

Grounds of defense :

Need for Cross Examination

Whether demand of cross examination is a vested right?

Person whose cross examination can be sought?

Admissibility of statement in case person does not appear for cross?

Refusal to grant cross?

Reply to Show Cause Notice

Grounds of defense :

Whether all the grounds needs to be submitted in the original response to SCN only?

Whether additional grounds can be submitted after the submission of original response?

Whether additional grounds can be submitted during the time of hearing?

Whether additional grounds can be submitted after the time of hearing also?

Reply to Show Cause Notice

Be professional, precise and persuasive

Use of clear headings and supporting documents

Keep it courteous and confident

Avoid emotional or accusatory language

Don't delay, ignore, or submit incomplete replies.

Watch tone, attachments, and compliance gaps

Maintain all filing trails

Keep learning as each SCN teaches



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Thank you

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