How to tackle Show Cause Notices and related Judgments

Jammu & Kashmir Branch in association with Kashmir CPE Chapter of NIRC of ICAI on 17-06-2021

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Introduction

- In **Pre GST era** section 11A of Central Excise Act, section 28 of the Customs Act and Section 73 of Finance Act 1994 dealt with SCNs
- In GST law following sections deal with SCN:

a) Section 73 : Determination for reason other than fraud or wilful misstatement or suppression of facts to evade tax

b) Section 74 : Determination by reason of fraud or wilful misstatement or suppression of facts to evade tax

Legal Process of Adjudication

Pre Show Cause Notice

1.

- The person chargeable with tax
- may pay tax
- along with interest payable u/s 50
- Before the service of Show Cause Notice(SCN)
- on the basis of his own ascertainment
- In case of ascertainment u/s 74, penalty equivalent to 15% of tax also needs to be paid.[S.73(5)/74(5)]

Note :

It is strange why a person on own ascertainment admit fraud, wilful misstatement or suppression of facts.

Whether a person can be compelled to be evidence against self

2.

- The person chargeable with tax
- may pay tax
- along with interest payable u/s 50
- Before the service of Show Cause Notice(SCN)
- **As ascertained by the proper officer**
- In case of ascertainment u/s 74, penalty equivalent to 15% of tax also needs to be paid.

[S.73(5)/74(5)]

3.

Where ascertainment is made by the proper officer,

The proper officer may, before service of notice to the person chargeable with tax, interest and penalty, under sub-section (1) of Section 73 or sub-section (1) of Section 74, as the case may be, communicate**]** the details of any tax, interest and penalty, in **Part A** of **FORM GST DRC-01A**. [R. 142(1A)]

From 9-10-19 to 15-10-2020, it was obligatory on the proper officer to communicate the details in Part A of DRC-01A . However w.ef. 15-10-2020, it is optional. He may or may not communicate such details

Pre SCN Consultation Pre GST Era [Para 5 of Circular dtd 19-01-2017]

- Board has made pre show cause notice consultation by the Principal Commissioner/ Commissioner prior to issue of show cause notice in cases involving demands of duty above Rs. 50 lakhs ***(except for preventive/ offence related SCN's)*** **mandatory vide instruction issued from F No. 1080/09/DLA/MISC/15 dated 21st December 2015**. Such **consultation shall be done by the adjudicating authority with the assessee concerned**. This is an important step towards trade facilitation and promoting voluntary compliance and to reduce the necessity of issuing show cause notice.

4.

*Where the person referred to in sub-rule (1A) has made partial payment of the amount communicated to him or desires to file any submissions against the proposed liability, he may make such submission in **Part B** of **FORM GST DRC-01A**.*[R. 142(2A)]

5.
The person chargeable with tax shall inform the proper officer of such payment in writing [[S.73(5)/74(5)]

6.

Where, before the service of notice or statement, **the person chargeable with tax** makes payment of the tax and interest in accordance with the provisions of sub-section (5) of section 73 or, as the case may be, tax, interest and penalty in accordance with the provisions of sub-section (5) of section 74, **or where any person makes payment of tax, interest, penalty or any other amount due in accordance with the provisions of the Act** whether on his own ascertainment or, as communicated by the proper officer under sub-rule (1A)] he shall inform the proper officer of such payment in **FORM GST DRC-03** **[R.142(2)]**

7.

The proper officer shall issue an acknowledgement, accepting the payment made by the said person in **FORM GST DRC-04**.[R. 142(2)]

8.

The proper officer, **on receipt of such information**, shall not serve any show cause notice or statement of demand for periods other than covered by SCN,

- **in respect of** the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.[73(6)/74(6)]

Exception:

Where any amount of self-assessed tax or any amount collected as tax has not been paid within a period of thirty days from the due date of payment of such tax by reason, other than fraud or wilful misstatement or suppression of facts to evade tax, **in which case a penalty equivalent to ten per cent of tax or ten thousand rupees, whichever is higher, shall be levied** [S. 73(11)]

9.

Where **the proper officer is of the opinion** that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1)

- **in respect of** such amount which falls short of the amount actually payable. [S.73(7)/74(7)]

SHOW CAUSE NOTICE

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**, for any reason, other than 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 leviable under the provisions of this Act or the rules made thereunder**. [S.73(1)/74(1)]

1. It appears vs. reason to believe vs. opinion

2. In S.74(1) ; penalty is equivalent to the tax specified in the notice and not **and a penalty leviable under the provisions of this Act or the rules made thereunder**. Hence S. 73 notice has to be read with S.122 to 125.

3. In S.76(4) , Interest is at the rate specified in S.50 but in S.73(1)/74(1), interest is payable u/s 50. Now u/s 50 there are host of issues like S.50(1) deals with failure to pay tax and not ITC reversal. In S. 50(2), manner of calculation has as yet not been prescribed, however in S.76(4), independent manner of calculation of interest is specified.

4. ITC reversed before utilization is equivalent to ITC no taken and hence there should be no interest liability **GRASIM BHIWANI TEXTILE LTD 2018 (362) E.L.T. 424 (P & H)**

5. Whether Interest is payable @ 18% or 24% ?
6. Whether wilful is with misstatement only or also with suppression of facts ?
7. Whether wilful statement has to be regarding facts or can be some thing else ?
8. Service as per S.169

Significance of "The proper officer" explained in Canon India [2021] 125 taxmann.com 188 (SC)

conferred by the statute *i.e.* under section 28(4) of the Act. This Section empowers the recovery of duty not paid, part paid or erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts and confers the power of recovery on "the proper officer". The obvious intention is to confer the power to recover such duties not on any proper officer but only on "the proper officer". This Court in *Consolidated Coffee Ltd. v. Coffee Board* [1980] taxmann.com 235 has held:—

> "14. ...Secondly, and more importantly, the user of the definite article 'the' before the word 'agreement' is, in our view, very significant. Parliament has not said 'an agreement' or 'any agreement' for or in relation to such export and in the context the expression 'the agreement' would refer to that agreement which is implicit in the sale occasioning the export."

In *Shri Ishar Alloy Steels Ltd. v. Jayaswals Neco Ltd.* [2001] 3 SCC 609 has held:—

> "9. ...'The' is the word used before nouns, with a specifying or particularising effect as opposed to the indefinite or generalizing force of 'a' or 'an'. It determines what particular thing is meant; that is, what particular thing we are to assume to be meant. 'The' is always mentioned to denote a particular thing or a person."

10. There are only two articles 'a (or an)' and 'the'. 'A (or an)' is known as the Indefinite Article because it does not specifically refer to a particular person or thing. On the other hand, 'the' is called the definite Article because it points out and refers to a particular person or thing. There is no doubt that, if Parliament intended that any proper officer could have exercised power under section 28 (4), it could have used the word 'any'.

SCN should be "on the person chargeable with tax" and not "person liable to pay tax"

- 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 for any reason, other than the 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 leviable under the provisions of this Act or the rules made thereunder."

Whether refund of unutilized ITC can be subject of notice u/s 73/74 ?

- Law says "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 for any reason, other than the 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 leviable under the provisions of this Act or the rules made thereunder."

Section 73/74 covers only tax erroneously refunded and not erroneous refund of unutilized ITC. Whether word "tax" includes "input tax" ?

Tax is the amount payable as a result of the charging provision. It is a compulsory exaction of money by a public authority for public purposes, the payment of which is enforced by law

[Para 13 of PRATIBHA PROCESSORS 1996 (88) E.L.T. 12 (S.C.)]

What is the significance of "Wrongly availed or utilized"

- Mere taking of ITC in books does not tantamount to availment.
- Whether If I have wrongly availed Rs. 10 L ITC but utilized only Rs. 5 lac ITC, shall revenue raise demand first for Rs. 10 lacs wrongly availed and then Rs. 5 lacs worngly utilized and there by charging Rs. 15 lacs.

Structure of SCN

a) Introduction of the case

b). Legal frame work

c). Factual statement and appreciation of evidences

d). Discussion, facts and legal frame work,

e). Discussion on Limitation

f). Calculation of duty and other amounts due

g). Statement of charges

h). Authority to adjudicate.

[Circular 19-01-2017]

Introduction

1. The **details of the person** to whom the notice is to be issued.
2. The **name, registration number/IEC and address** of the person and **the manner in which the said person, has been identified** in the later text of the notice.
3. In case of issuance of **SCN to many noticees**, details of all such noticees should be stated separately irrespective of the fact that, the persons are closely related to each other.
4. A very brief background as **to how the present proceeding started** should be discussed in the SCN. For example, a SCN may be based on audit of accounts by the internal audit or detailed scrutiny of return by the Range office or intelligence by anti-evasion etc.
5. The gist of audit objections/observations/ intelligence and a brief modus operandi of duty evasion adopted by the alleged offender may be discussed.
6. Further, the details of verification/investigation conducted/ carried out and the summary of the verification may also be discussed in this part

Legal Framework

1. The authority issuing the SCN should clearly lay down the legal provisions in respect of which the person shall be put to notice.

2. While specifying the provisions, care should be taken to be very accurate in listing all the provisions and the law in respect of which the contraventions are to be alleged in the SCN

Factual statement and appreciation of evidence

- In this part of SCN, the facts relating to **act of omission and commission pertinent to the initiation of the proceedings** against the noticee need to be stated in a most objective and precise manner.
- All evidences in form of **documents, statements and material evidence resumed during the course of enquiry /investigation should be organised serially** in a manner so as to establish the charges against the noticee.

Discussion, Facts and Legal Background

- In this part the facts and evidence need to be discussed against the legal framework set out in the show cause notice so as to arrive at the charges of omission and commission against each of the noticees separately.
- **On the basis of discussion, the charges need to be clearly and succinctly spelt out against each noticee**

Discussion on Limitation

- The SCN should clearly spell out the ingredients for invoking the extended period of five years with evidence on record
- Apex Court's in the case of **M/s Cosmic Dye chemical Vs Collector of Cen. Excise, Bombay [1995 (75) E.L.T. 721 (S.C.),** has laid the law on the subject very clearly.

Quantification of duty demanded

- It is desirable that the demand is quantified in the SCN
- , however if due to some genuine grounds it is not possible to quantify the short levy at the time of issue of SCN, the SCN would not be considered as invalid. It would still be desirable that the principles and manner of computing the amounts due from the noticee are clearly laid down in this part of the SCN

[In the case of **Gwalior Rayon Mfg. (Wvg.) Co. Vs. UOI, 1982 (010) ELT 0844 (MP), the Madhya Pradesh High Court at Jabalpur** affirms the same position that merely because necessary particulars have not been stated in the show cause notice, it could not be a valid ground for quashing the notice, because it is open to the petitioner to seek further particulars, if any, that may be necessary for it to show cause if the same is deficient]

J.B.A. PRINTING INKS LTD 1980 (6) E.L.T. 121 (Bom.)

The show cause notice under Rule 10 need not indicate the rule under which it was issued as tong as it complies with the requirements of that rule, but it must enjoin upon the party to show cause to the proper officer why he should not pay the stated amount which must be manifestly specified and not be relegated to conjecture, speculation or calculations for ascertainment of the exact amount payable (see para 21**). Dissented in HINDUSTAN ALUMINIUM CORPORATION LTD 1981 8 ELT 642 (Del.)**

HINDUSTAN ALUMINIUM CORPORATION LTD 1981 8 ELT 642 (Del.) followed by BIHARI SILK & RAYON PROCESSING MILLS (P) LTD. 2000 (121) E.L.T. 617 (Tribunal - LB) "……………Word 'specified' in Section 11A ibid is not the same as 'determined' referred in sub-section (2) of Section 11A ibid or 'quantification' - While there is an element of definiteness in specifying any amount, describing or stating in detail is the same as specifying "…………..

Statement of Charges

- In this part, the SCN list of all charges against the noticees need to be summarized and the notice should be charged as to why action as provided in law, should not be taken against them.

The Commissioner (Appeals) held that the ***Modvatable document must show the name of the person, who is eligible to take credit and that ones own gate pass could not be held to be a Modvatable document*** and on this ground he upheld the lower order.

The extract of the show **cause notice cited above does not seem to challenge inadequacy of the documents**. It could be that such inadequacy could be inferred there from but the notice, which is meant to put the recipient on notice, must always spell out the exact charge. A notice, which is ambiguous or capable of interpretation, cannot be the ground for sustaining an order based on the inference drawn from the show cause notice

Mehta Pharmaceuticals (Mum Tri)

A show cause notice has to **state clearly the allegations made against the noticee**. Where the allegations are absent or not substantiated, that defect cannot be cured at subsequent stages and certainly not at the stage of the second appeal ***BHIKHLAL DWARKADAS 1998 (99) E.L.T. 438 (Tribunal)***

Authority to Adjudicte

- A SCN must state the authority to whom the reply to the show cause notice is required to be answered.
- In case of seizure of goods, the issue of show cause notice is mandatory before any order for confiscation of goods is passed
- Where there is a change in the adjudicating authority, <u>a corrigendum to the SCN may be issued and served on the noticees</u> to ensure that the noticees have a fair opportunity to present their case to the appropriate adjudicating authority.
- Corrigendum to SCN is issued due to change in jurisdiction, monetary limit, re assignment, etc. **The authority who issued the SCN has to issue the corrigendum and then transfer the file to the new adjudicating authority**.

Relied/Not Relied Upon Documents {para 13 of Circular 19-01-2017]

- A show cause notice and the documents relied upon in the Show Cause Notice needs to be served on the assessee for initiation of the adjudication proceedings.
- The documents/records which are not relied upon in the Show Cause Notice are required to be returned under proper receipt to the persons from whom they are seized.
- **Show Cause Notice itself may incorporate a clause** that unrelied upon records may be collected by the concerned persons within 30 days of receipt of the Show Cause Notice.
- **The designation and address of the officer responsible for returning** the relied upon records should also be mentioned in the Show Cause Notice. This would ensure that the adjudication proceedings are not delayed due to non-return of the non-relied upon documents

Whether Demand can be raised without SCN also ?

"……Notice is a condition precedent to demand………"**GOKAK PATEL VOLKART LIMITED 1987 (28) E.L.T. 53 (S.C.)**

"…………..Section 11A of the Central Excises and Salt Act, 1944 clearly proceeds that prior Show Cause Notice must be issued to the person against whom any demand on ground of short-levy or non-levy of payment of excise duty is proposed to be made. Therefore **a post facto Show Cause Notice cannot be regarded as adequate in law**……………" [para 4***] MADHUMILAN SYNTEX PVT. LTD. 1988 (35) E.L.T. 349 (S.C.)***

Whether Letter, communication, advisory can be deemed show cause notice ?

- "…………………. **Communications, orders, suggestions or advices from department not to be deemed to be a show cause notice**, a specific show cause notice indicating the amount demanded and calling upon the assessee to show cause if he has any objection to such demand necessary***………." METAL FORGINGS 2002 (146) E.L.T. 241 (S.C.)***

- ".. The assessee filed a bill of entry dated 21-8-2003 for clearance of 1,70,050 pieces of Melamine spoons classified under Chapter sub-heading 3924.90 with concessional rate of duty under Customs Notification No. 26/2000. The Deputy Commissioner felt that the benefit of Notification No. 43/2003 is not applicable to them. Therefore, he issued a letter dated 17-1-2004 without issuing a show cause notice in terms of law and passed an order-in-original holding that the assessee is liable for payment of duty, interest and penalty……………. **Admittedly, the letter which is served on the assessee did not satisfy the requirement of a show cause notice**. Issue of a show cause notice is a condition precedent for initiation of proceedings under Section 28 of the Act."

MERCHANT IMPEX 2012 (276) E.L.T. 458 (Kar.)

"…………….the Superintendent Central Excise had sent the extract of Para 1 and Para 2 of the audit report to the appellants with the request to deposit the amount of duty as mentioned in the audit paras……….. The communication sent by the Superintendent is neither an order nor a decision. It is only a communication of the audit report, under which the appellants were requested to deposit the amount of duty mentioned in the audit report. Any demand of duty is to be preceded by issue of a show cause notice, which this communication is not.

SIDWAL REFRIGERATION INDUS. P. LTD. 2002 (145) E.L.T. 682 (Tri. - Del.)

Subsequent communication after objection by assessee

TIN PLATE CO. OF INDIA LTD 1996 (87) E.L.T. 589 (S.C.)

- Demand raised directly without issuing a Show Cause Notice - Objection by assessee
- Department offered if assessee desires he can contact the Assistant Collector for hearing
- **It is only an answer to the assessee's letter** dated 1-2-1985 addressed to the Collector of Customs wherein he contended that the two demand notices were *ultra vires* and the Deputy Collector refers to the factum of suppression with a view to bringing those two notices within the period of limitation by the invocation of the proviso to Section 28(1) of the Customs Act. There was nothing to stop the Department from issuing a proper show cause notice

Whether withheld credit can be adjusted against demand without SCN?

Steel Ingots 1988 (36) ELT 529 (MP)

"………………Superintendent of Central Excise passed orders under Rule 57-I of the Central Excise Rules ***holding the credit of duty taken by the petitioners as having been wrongly taken and directing them to adjust the credit account***.

No show cause notice was given on the plea that Rule 57-I of the Central Excise Rules did not envisage the giving of any opportunity to show cause before proceeding to take action under that rule. However, there is nothing in that rule which excludes the applicability of the principles of natural justice. ***Counsel for the Respondents was unable to point out any cogent reason for holding that departure from the fundamental rule of natural justice "Audi alteram partem" can be presumed to have been intended before taking action under Rule 57-I. The orders, therefore deserve to be quashed on this short ground***. The proper Officer shall be at liberty to take action afresh, according to law under Rule 57-I after giving reasonable opportunity to the petitioners to show cause and passing speaking orders [AIR 1986 SC 180 and AIR 1979 SC 1628 referred]. [paras 2, 3 and 4]…………………"

"………………The fact that during the hearing before the Asstt. Commissioner, the appellant was **explained orally** that the classification under heading 84.15 has to be applied does not fulfil the right given to the appellant to have notice issued in writing fulfilling the classification that is proposed to be determined……………." ***VOLTAS LTD. 2000 (121) E.L.T. 802 (Tribunal)***

The decision of the Tribunal in **Virgo Steel & Anr. v. CC (C/1994/92B2 and C/151/94-Bom),** held that a notice demanding duty under section 28 of the Customs Act, 1962

cannot be oral and must be in writing

and the decision of the Tribunal in ***Saphai Saw Mills & Veneer Unit v. CCE - 1999 (109) E.L.T. 197 (Tribunal) = 1997 (20) RLT 64*** that the notice demanding duty under section 11A of the Central Excise Salt Act must be in writing and cannot be oral

Vague SCN

The show cause notice is the foundation on which the department has to build up its case. **If the allegations in the show cause notice are not specific and are on the contrary vague, lack details and/or unintelligible that is sufficient to hold that the noticee was not given proper opportunity to meet the allegations indicated in the show cause notice.** ***BRINDAVAN BEVERAGES (P) LTD. 2007 (213) E.L.T. 487 (S.C.)***

SCN based on presumptions

- *Allegations based only on calculations of raw material fed into the process or on working of the machinery as noticed during test inspection - No tangible evidence on record - Finding of non-accountal vitiated by error of law, being based only on inferences involving unwarranted assumptions*
- ***Now, these calculations certainly involve some assumptions. If any of these assumptions breaks down, then the ultimate conclusion will have to be rejected as incorrect. It cannot be assumed that even in an ordinarily well run factory the performance of machinery will be uniformly good or uniformly the same. The human element also plays a significant part***.

OUDH SUGAR MILLS LTD. 1978 (2) E.L.T. (J 172) (S.C.)

Wrong provisions mentioned in SCN

If the authorities have the power to issue notice either under Rule 10A or Rule 9(2), the fact that the noticee refers specifically to a particular rule which may not be applicable, will not make the notice invalid.

THE ELPHINSTONE SPINNING AND WEAVING MILLS CO. LTD 1978 (2) E.L.T. (J 399) (S.C.)

Whether right to SCN can be waived ?

VIRGO STEELS 2002 (141) E.L.T. 598 (S.C.)

"………………………………………….

- **14.** From the ratio laid down by the Privy Council and followed by this Court in the above-cited judgments, it is clear **that even though a provision of law is mandatory in its operation if such provision is one which deals with the individual rights of person concerned and is for his benefit, the said person can always waive such a right.**
- **15.** Bearing in mind the above decided principle in law, if we consider the mandatory requirement of issuance of notice under Section 28 of the Act, it will be seen that **that requirement is provided by the Statute solely for the benefit of the individual concerned, therefore, he can waive that right**. In other words, this Section casts a duty on the Officer to issue notice to the person concerned of the proposed action to be taken. This is not in the nature of a public notice nor any person other than the person against whom the proceedings are initiated has any right for such a notice. Thus, this right of notice being personal to the person concerned, the same can be waived by that person.
- **16.** If the above position in law is correct, which we think it is, M/s. Virgo Steels, **having specifically waived its right for a notice, cannot now be permitted to turn around and contend that the proceedings initiated against them are void for want of notice** under Section 28 of the Act, so as to frustrate the statutory duty of the Revenue to demand and collect customs duty which M/s. Virgo Steels had intentionally evaded.

Circular dated 19-01-2017

9.1 Waiver of SCN: The issue of waiver of SCN has been dealt with in circular issued vide by F.No. 137/46/2015-Service tax dated 18.08.2015. The crux of the clarification given is that on receipt of written request of the assessee the requirement of written SCN may be waived and the charges alongwith duty payable may be explained orally. This clarification was given in the context of closure of cases on payment of duty, interest and penalty. However, where the issue is likely to be litigated at a later date by the assessee, it would be appropriate that a written SCN be issued. This would hold true in particular for offences of serious nature or where the duty involved in high. Conclusion of proceedings may be approved by an officer equal in rank to the officer who is competent to adjudicate such cases. The cases can be closed by the competent authority in DGCEI/Executive Commissionerate/Audit Commissionerate, as the case may be. If multiple issues involving different monetary values arise from the same proceedings, then the sum total involved in all the issues arising from the same proceedings should be considered for conclusion of proceedings.

The conclusion of proceedings should invariably be intimated to the assessee in writing. There is no need to issue an adjudication order. Further, **there is no need to undertake review of such conclusion of proceedings**.

NATIONAL CO-OPERATIVE BANK LTD.2018 (15) G.S.T.L. 202 (Kar.)

- ***Contention that no show cause notice was necessary as assessee had paid tax and penalty on basis of tax ascertained by Audit Enquiry Officer before service of notice, untenable*** - Assessee had made it clear that amount paid was provisional and under protest - No waiver of show cause notice had been accepted - Show cause notice necessary for determining disputed tax, interest and penalty - Communication issued by Superintendent directing assessee to issue letter to Commissioner waiving its rights to get show cause notice issued in its name, Communication issued by Deputy Commissioner (Audit) stating that proceedings were concluded at assessee's option and no show cause notice was liable to be issued under Section 73(3) ibid and audit report quashed - Matter remitted to Commissioner to issue show cause notice to assessee to determine disputed tax, interest and penalty after issuing show cause notice and considering assessee's objections, if any, in expedite manner

Sub : SHOW CAUSE NOTICE
Your attention is invited to our HQ's letter No. IV/53/06-MS/HO dated 25-10-2007 and subsequent joint meeting with the buyer held at our Head office on 5th September, 2007 on the trade complaint received from M/s. Cascade Marine Foods LLC, Sharjah.

At the meeting **it was convincingly proved that the cargo shipped by you to the above mentioned buyer was defective** and you have not so far settled the complaint. Therefore, in exercise of the powers vested in me vide Office Order Part-II No. 184012005 dated 25-11-2005 read with Rule 43 of the MPEDA Rules, I hereby call upon you to show cause why the Certificate of Registration as an Exporter granted to you should not be cancelled for reasons given below:

1. **It has been proved beyond doubt** that you have sent substandard material to M/s. Cascade Marine Foods, LLC, Sharjah.
2. You have dishonoured your written agreement with M/s. Cascade Marine Foods, LLC, Sharjah to settle the complaint made by the buyer as you had agreed to compensate to the extent of the value of defective cargo sent by you and have now evaded from the responsibility.
3. This irresponsible action have brought irreparable damage to India's trade relation with UAE.

Your reply should reach the undersigned within 10 days from the date of receipt of this letter failing which it will be presumed that you have no explanation to offer and we will proceed with action for cancellation of your registration certificate without further notice to you. If ultimately a decision is reached to deregister you under the provisions of the MPEDA Rules, it will automatically entail de-registration under Registration Exporters' policy also."

In the case of M/s Oryx Fisheries Pvt ltd (2011) 266 ELT 422 (SC) the Apex court has observed that:

"28. It is no doubt true that at the stage of show cause, the person proceeded against must be told the charges against him so that he can take his defence and prove his innocence. It is obvious that at that stage the authority issuing the charge-sheet, cannot, instead of telling him the charges, confront him with definite conclusions of his alleged guilt. If that is done, as has been done in this instant case, the entire proceeding initiated by the show cause notice get vitiated by unfairness and bias and the subsequent proceeding become an idle ceremony.

31. It is of course true that the show cause notice cannot be read hyper-technically and it is well settled that it is to be read reasonably. But one thing is clear that while reading a show- cause notice the person who is subject to is must get an impression that he will get an effective opportunity to rebut the allegations contained in the show cause notice and prove his innocence. If on a reasonable reading of a show-cause notice a person of ordinary prudence gets the feeling that his reply to the show cause notice will be an empty ceremony and he will merely knock his head against the impenetrable wall of prejudged opinion, such a show cause notice does not commence a fair procedure especially when it is issued in a quasi-judicial proceeding under a statutory regulation which promises to give the person proceeded against a reasonable opportunity of defence."

SCN based on Fraud, Wilful Misstatement or Suppression of Facts to evade tax

M/s Cosmic Dye chemical Vs Collector of Cen. Excise, Bombay [1995 (75) E.L.T. 721 (S.C.)

- Now so far as fraud and collusion are concerned, it is evident that the requisite intent, i.e., intent to evade duty is built into these very words.
- So far as mis-statement or suppression of facts are concerned, they are clearly **qualified by the word "wilful" preceding the words "mis-statement or suppression of facts**" which means with intent to evade duty.
- The next set of words "contravention of any of the provisions of this Act or Rules" are again qualified by the immediately following words "with intent to evade payment of duty".
- It is, therefore, not correct to say that there can be a suppression or mis-statement of fact, which is not wilful and yet constitutes a permissible ground for the purpose of the proviso to Section 11A. Misstatement or suppression of fact must be wilful

[Para 3.3 of Circular dated 19-01-2017]

Meaning of suppression

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.

Note:

1. Suppression can not result **merely because officer is not satisfied** with your reply. There has to be failure to reply to constitute suppression.

2. Oral demand of information does not result in suppression. Officer must ask in writing to constitute suppression.

Whether omission to take note of withdrawal of exemption is suppression ?

TIN PLATE CO. OF INDIA LTD. 1996 (87) E.L.T. 589 (S.C.)

No suppression of facts on the part of the assessee since the department aware of withdrawal of exemption notification from 31-12-1983 as the manifest has been effected after the arrival of vessel in January, 1994

When to invoke extended period of limitation in SCN

Limitation Period for SCN and Order

Maximum Time period allowed	By Reason of Fraud or any willful mis statement or suppression of facts [Section 74]	By Reason <u>other than</u> Fraud or any willful mis statement or suppression of facts [S. 73]
For <u>Issue</u> of Order of Determination of tax not paid or short paid or ITC wrongly availed or mis utilized or Erroneously refunded [S.73(10)/74(10)] The adjudication proceedings shall be deemed to be concluded, if the order is not issued within three years as provided for in sub-section (*10*) of section 73 or within five years as provided for in sub-section (*10*) of section 74.[S. 75(10)]	• 5 years from due date for furnishing of annual return for the financial year to which determination of tax etc. relates OR • 5 years from date of erroneous refund [S. 74(10)]	• 3 years from due date for furnishing of annual return for the financial year to which determination of tax etc. relates OR • 3 years from the date of erroneous refund [S. 73(10)]
For <u>Issue</u> of Show Cause Notice [S.73(2)/74(2)]	**At least 6 Months prior to:** • 5 years from due date for furnishing of annual return for the financial year to which determination of tax etc. relates OR • 5 years from date of erroneous refund [S. 74(2)]	**At least 3 months prior to:** • 3 years from due date for furnishing of annual return for the financial year to which determination of tax etc. relates OR • 3 years from the date of erroneous refund [S. 73(2)]

Limitation Period for SCN and Order from 2017-18 to 2019-20

Year	Due Date of annual return	Notification	Order u/s 73 (10)	SCN u/s 73 (2)
2017-18	05-02-2020 07-02-2020	6/2020	5-02-2023 7-02-2023	5-11-2022 7-11-2022
2018-19	31-12-2020	80/2020	31-12-2023	30-09-2023
2019-20	31-03-2021	4/2021	31-03-2024	31-12-2023

Year	Due Date of annual return	Notification	Order u/s 74(10)	SCN u/s 74(2)
2017-18	05-02-2020 07-02-2020	6/2020	5-02-2025 7-02-2025	5-8-2024 7-08-2024
2018-19	31-12-2020	80/2020	31-12-2025	30-06-2025
2019-20	31-03-2021	4/2021	31-03-2026	30-09-2025

CA Vinamar Gupta 17-06-2021

Power to issue notice for extended period is restricted by presence of active ingredients which indicate an intent to evade duty as explained above. Indiscriminate use of such restricted powers leads to fruitless adjudications, appeals and reviews, inflates the figures of outstanding demands and above all causes unnecessary harassment of the assessees. Therefore, before invoking extended period, it must be ensured that the necessary and sufficient conditions to invoke extended period exists [Para 3.6 of Circular dated 19-01-2017]

Disputed Areas of Interpretation

- Board may issue **circular clarifying that the general practice of assessment was erroneous** and instructing field formations to correct the practice of assessment. Consequent upon such circular, issue of demand notice for extended period of time would be incorrect as it cannot be said that the assessee was intentionally not paying the duty [Para 3.4 of Circular 19-01-2017]

- Income arising from the services rendered by assessee and **reflected in Balance Sheet and Profit and Loss Account** which are public documents - Invocation of extended period of limitation for raising demand based on figures shown in such public documents, not sustainable - Section 73 of Finance Act, 1994
- ***MEGA TRENDS ADVERTISING LTD. 2020 (38) G.S.T.L. 57 (Tri. - All.)***
- ***KAMAL LALWANI 2017 (49) STR 552 (Tri. Delhi)***
- ***Kirloskar Oil Engines 2004 (178) ELT 998 (Mum Tri)***
- ***Anantpur Textile Mills 1994 (72) ELT 48 (Del Tri.)***

The proper officer **shall serve**, along with the

(a)	notice issued under section 52 or section 73 or section 74 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130, a summary thereof electronically in **FORM GST DRC-01 [R.142(1)(a)**

DRC-01 is summary and not SCN.

What if only DRC-01 is uploaded and not SCN ?

Statement of Demand

Where a notice has been issued for any period under sub-section (1), the proper officer **may** serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised ***for such periods other than those covered under sub-section (1),*** on the person chargeable with tax [S.73(3)/74(3)]

Summary of Statement of demand in DRC-02

- R.142(1)(b)The proper officer shall serve, along with the

(b)	statement under sub-section (3) of section 73 or sub-section (3) of section 74, **a summary thereof** electronically in **FORM GST DRC-02**, specifying therein the details of the amount payable.

Deemed SCN if Grounds in Statement of Demand = Grounds in SCN

- The service of such statement shall be **deemed to be service of notice on such person under sub-section (1)**, subject to the **condition** that the ***grounds relied upon for such tax periods are the same as are mentioned in the earlier notice.***[73(4)]

Statement of Demand u/s 74(3) *is deemed SCN u/s 73(1) and not 74(1)*

- The service of statement under sub-section (3) shall be **deemed to be service of notice under sub-section (1) of section 73**, subject to the condition that the grounds relied upon in the said statement, except the ground of fraud, or any wilful-misstatement or suppression of facts to evade tax, for periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.[S.74(4)]

Second SCN invoking extended period [Para 3.7 of Circular dated 19-01-2017]

- Issuance of a second SCN invoking extended period after the first SCN invoking extended period of time has been issued is **legally not tenable**.
- However, the second SCN, if issued would also need to establish the ingredients required to invoke extended period independently.
- For example, in cases **where clearances are not reported by the assessee in the periodic return, second SCN invoking extended period is quite logical whereas in cases of wilful mis-statement regarding the clearances made under appropriate invoice and recorded in the periodic returns, second SCN invoking extended period would be difficult to sustain as the department comes in possession of all the facts after the time of first SCN.**
- Therefore, ***as a matter of abundant precaution, it is desirable that after the first SCN invoking extended period, subsequent SCNs should be issued within the normal period of limitation***.

- ***In the case of India Tourism Development Corportion Ltd (2017) 52 STR 229 Delhi High Court has held that quasi- judicial authority can not review its earlier decision unless power of review is conferred by statute . Second SCN after gap of five years can not be issued once first SCN is adjudicated ,became final and accepted by both parties .***
- ***In the case of M/s Prince Gutka Ltd (2017) 52 STR 83 (SC) , Cestat has held that there could not have been second show cause notice on the same cause of action on which adjudicating authority had dropped the earlier demand . Supreme court has held that issue of second SCN on same cause of action is not permissible and that there was no error on Tribunal 's order setting aside demand under second SCN .***

Deemed Conclusion of Proceedingson payment in 30 days from SCN [S.73(8)/74(8)]

- Where any person chargeable with tax under sub-section (1) or sub-section (3) pays the said tax along with interest payable under section 50 **<u>within thirty days of issue of show cause notice</u>**, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded. [S.73(8)]

- Where any person chargeable with tax under sub-section (1) pays the said tax along with interest payable under section 50 ***<u>and a penalty equivalent to twenty-five per cent of such tax within thirty days of issue of the notice</u>***, all proceedings in respect of the said notice shall be deemed to be concluded.[74(8)]

<u>Exception:</u>

Where any amount of self-assessed tax or any amount collected as tax has not been paid within a period of thirty days from the due date of payment of such tax by reason, other than fraud or wilful misstatement or suppression of facts to evade tax, **in which case a penalty equivalent to ten per cent of tax or ten thousand rupees, whichever is higher, shall be levied** [S. 73(11)]

*Where the person chargeable with tax **makes payment** of tax and interest under sub-section (8) of section 73 or, as the case may be, tax, interest and penalty under sub-section (8) of section 74 within thirty days of the service of a notice under sub-rule (1), or where the person concerned makes payment of the amount referred to in sub-section (1) of section 129 within fourteen days of detention or seizure of the goods and conveyance, he shall **intimate the proper officer of such payment in FORM GST DRC-03** and **the proper officer shall issue an order in FORM GST DRC-05 concluding the proceedings in respect of the said notice**.*

ADJUDICATION

:Show Cause Notice generally provides a time limit of thirty days for submission of written reply, however the time limit may be extended by the adjudicating authority on written request of the assessee.

- Where the assessee fails to submit a written reply, the adjudicating authority may issue a letter requesting the noticee to submit reply to the SCN

[Para 14.2 of Circular 19-01-17]

The representation referred to in sub-section (9) of section 73 or sub-section (9) of section 74 or sub-section (3) of section 76 or the reply to any notice issued under any section whose summary has been uploaded electronically in **FORM GST DRC-01** under sub-rule (1) shall be furnished in **FORM GST DRC-06. [R. 142(4)]**

An opportunity of being heard shall be granted [S. 75(4)]

- Where any adverse decision is contemplated against person chargeable with tax or penalty **or**
- Where ***request is received*** in writing from person chargeable with tax or penalty

Always make request for opportunity of being heard

Adjournment [S. 75(5)]

The proper officer shall, **if sufficient cause is shown** by the person chargeable with tax, grant time to the said person and adjourn the hearing for reasons to be recorded in writing. No such adjournment shall be granted for ***more than three times*** to a person during the proceedings.

All 3 times cause should be sufficient

As per Para 14.3 of Circular dated 19-01-2017, There should be sufficient interval of time between adjournments

All three opportunities of personal hearing should not be fixed in one go. In fact separate letter for each hearing/extension should be issued [Para 14.3]

14.4 Record of personal hearing:

The adjudicating authority must maintain a record of personal hearing and written submission made during the personal hearing. Evidence of personal hearing and written submission on record is very important while adjudicating the case.

[Circular 19-01-17]

Request for Early Adjudication

However, if the concerned party requires expeditious adjudication for any reasons, they may file their replies at the earliest, and request that their case be heard expeditiously for early finalisation of the adjudication proceedings.

[**Circular No. 290/6/97- Central Excise dated 20-01-1997]**

Cross Examination

- **Where a Statement is relied upon in the adjudication proceedings, it would be required to be established though the process of cross-examination, if the noticee makes a request for cross-examination of the person whose statement is relied upon in the SCN.**
- During investigation, a statement can be fortified by collection of corroborative evidence so that the corroborative evidence support the case of the department, in cases where cross-examination is not feasible or the statement is retracted during adjudication proceedings.
- It may be noted retracted statement may also be relied upon under given circumstances.

Whether matter can be pre judged on the basis of past conduct of the assesse ?

- Assessee is a manufacturer of betel nut product and he is dealing with same in name and style of "Roja Pakku" - While other manufacturers took stand that product in question will come under chapter 8 of Central Excise Tariff Act, 1985, assessee contested stand of department that product will come under chapter 21–Supreme Court in a case of another manufacturer of betal nut upheld that product should be classified only under Chapter 8 and not under Chapter 21 – Revenue issued a communication calling upon assessee to pay tax of certain amount quantified by computing applicable rate of tax at CGST 9 percent and SGST 9 percent by classifying product under chapter 21–Assessee filed an instant writ petition on ground that products are being taxed at a lesser rate and they have not been classified under Chapter 21 - Whether merely because assessee had earlier opted to be classified under Chapter 21, revenue should not predetermine issue of taxability of assessee based on assessee's past conduct–Held, yes [Paras 5 to 7]
- **N.V.K. Mohammed Rowther & Sons [2021] 127 taxmann.com 125 (Madras)**

The proper officer **after considering the representation** of the person charged, shall **determine** the amount of tax, interest and penalty to be paid by person charged [S. 73(9) and S. 74(9)]

As per S.73(9), Penalty= 10% of tax or Rs. 10,000/-
As per S.74(10), Penalty=Amount Due, As per 74(1), penalty=tax specified in the notice

The proper officer shall issue **an order** [S. 73(9) and S. 74(9)]

Speaking Order [S. 75(6)]

The proper officer, in his order, shall set out the relevant facts and the basis of his decision. [Also refer Para 14.5 of Circular 19-01-17]

He is also expected to **examine each of the points raised in the reply to the SCN and accept or reject them with cogent reasoning** [Para 14.6]

Demand in Order Amount not to exceed show cause notice [S.75(7)]

The amount of tax, interest and penalty demanded in the order shall not be in excess of the amount specified in the notice and ***no demand shall be confirmed on the grounds other than the grounds specified in the notice.***

MADHUMILAN SYNTEX PVT. LTD. 1988 (35) E.L.T. 349 (S.C.)

"………………If the **approved Classification List has been modified by the Assistant Collector without any opportunity and the Show Cause Notice is given only with regard to quantification of the amount** of the short-levy, such a Show Cause Notice cannot be regarded as for modification of Classification List hence it is not covered under Section 11A of the Central Excises and Salt Act, 1944……………."

Body of the order [Para 14.7 of Cir.19-1-17]

The adjudication order should generally contain

a) brief facts of the case,
b) written and oral submissions by the party,
c) observation of the adjudicating authority on the evidences on record and facts of omission and commission during personal hearing and
d) finally the operating order.

<u>At any cost</u>, the findings and discussions should not go beyond the scope and ground of the show cause notice.

Summary of Order

- **A summary of the order issued** under section 52 or section 62 or section 63 or section 64 or section 73 or section 74 or section 75 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130 shall be **uploaded electronically in FORM GST DRC-07**, **specifying therein** the amount of tax, interest and penalty payable by the person chargeable with tax.[R.142(5)]

Gujarat HC directed department to supply reasoned order to applicant, summary order not sufficient

- **Where revenue had passed an order against applicant without providing any explanation or reasons and demanded payment of tax of huge amount, revenue was to be directed to supply reasoned order to applicant**
- **Anish Infracon India (P.) Ltd. [2021] 127 taxmann.com 61 (Gujarat)**

Order treated notice for recovery

- The order referred to in sub-rule 142(5) shall be treated as the notice for recovery.[R.142(6)]

Unpaid Self Assessed Tax and Interest can be recovered with SCN proceedings [S.75(12)]

Notwithstanding anything contained in section 73 or section 74, where any amount of self-assessed tax in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, **or any amount of interest payable on such tax** remains unpaid, the same shall be recovered under the provisions of section 79.

<u>Inserted by the Finance Act, 2021, w.e.f. a date yet to be notified.</u>

Explanation.—*For the purposes of this sub-section, the expression "self-assessed tax" shall include the tax payable in respect of details of outward supplies furnished under section 37, but not included in the return furnished under section 39.*

As per **Karnataka High Court in L.C. Infra Projects Pvt Ltd.,**

"................the issuance of Show Cause Notice is *sine qua non* to proceed with the recovery of interest payable thereon under Section 50 of the Act and penalty leviable under the provisions of the Act or the Rules. **Undisputedly, the interest payable under Section 50 of the Act has been determined by the third respondent-Authority without issuing Show Cause Notice, which is in breach of principles of natural justice**. It is trite law that any order passed by the quasi-judicial authorities in contravention of the principles of natural justice, cannot be sustained..................**The notion of the third respondent-Authority that Section 75(12) of the Act empowers the authorities to proceed with recovery without issuing Show Cause Notice is only misconceived**. The said Section is applicable only to the self-assessment made by the assessee and not to quantification or determination made by the Authority.................."

Summary of Rectification/Withdrawal

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

Special Waiver of Penalty u/s 74 for early payment

- Where any person served with an order issued under sub-section (9) pays the tax along with interest payable thereon under section 50 and a **penalty equivalent to fifty per cent of such tax** ***within thirty days of communication of the order***, all proceedings in respect of the said notice shall be deemed to be concluded.[S.74(11)]

Quantum of Penalty at Various stages of Proceedings

Tax and Interest and applicable penalty paid	By Reason **other than** of Fraud or any willful mis-statement or suppression of facts [Section 74]	By Reason Fraud or any willful mis-statement or suppression of facts [S. 73]
Before Issue of Show Cause Notice [S. 73(5) and 74(5)]	NIL	15% of the tax
With in 30 days from the issue of Show Cause Notice [S. 73(8) and 74(8)	NIL	25% of the tax
With in 30 days from the date of Communication of Order [S. 74(11)]	Higher of the a) 10% of tax or b) Rs. 10,000/- [S.73(9) and S. 122(2)(a)]	50% of Amount of Tax
After 30 days from the date of Communication of Order [S. 73(9) and S. 122(2)]	Higher of the a) 10% of tax or b) Rs. 10,000/- [S.73(9) and S. 122(2)(a)]	Higher of the a) 100% of tax due or b) Rs. 10,000/- [S. 74(9) and S. 122(2)(b)]

Immunity from Penalty under other sections

Where any penalty is imposed under section 73 or section 74, no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act [S.75(13)]

No Immunity from Interest

The interest on the tax short paid or not paid shall be payable whether or not specified in the order determining the tax liability [S. 75(9)]

No Immunity from Prosecution

No Immunity is available u/s 132 [clause(i) of Explanation 1]

Clause (i) of Explanation 1 after S.74 For the purposes of section 73 and this section,— the expression "all proceedings in respect of the said notice" shall not include proceedings under section 132

Limitation Period for SCN and Order

Maximum Time period allowed	By Reason of Fraud or any willful mis statement or suppression of facts [Section 74]	By Reason <u>other than</u> Fraud or any willful mis statement or suppression of facts [S. 73]
For <u>Issue</u> of Order of Determination of tax not paid or short paid or ITC wrongly availed or mis utilized or Erroneously refunded [S.73(10)/74(10)] The adjudication proceedings shall be deemed to be concluded, if the order is not issued within three years as provided for in sub-section (*10*) of section 73 or within five years as provided for in sub-section (*10*) of section 74.[S. 75(10)]	• 5 years from due date for furnishing of annual return for the financial year to which determination of tax etc. relates OR • 5 years from date of erroneous refund [S. 74(10)]	• 3 years from due date for furnishing of annual return for the financial year to which determination of tax etc. relates OR • 3 years from the date of erroneous refund [S. 73(10)]
For <u>Issue</u> of Show Cause Notice [S.73(2)/74(2)]	**At least 6 Months prior to:** • 5 years from due date for furnishing of annual return for the financial year to which determination of tax etc. relates OR • 5 years from date of erroneous refund [S. 74(2)]	**At least 3 months prior to:** • 3 years from due date for furnishing of annual return for the financial year to which determination of tax etc. relates OR • 3 years from the date of erroneous refund [S. 73(2)]

Limitation Period for SCN and Order from 2017-18 to 2019-20

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2018-19	31-12-2020	80/2020	31-12-2023	30-09-2023
2019-20	31-03-2021	4/2021	31-03-2024	31-12-2023

Year	Due Date of annual return	Notification	Order u/s 74(10)	SCN u/s 74(2)
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2018-19	31-12-2020	80/2020	31-12-2025	30-06-2025
2019-20	31-03-2021	4/2021	31-03-2026	30-09-2025

Exclusion of Period of Stay

Where the **service of notice or issuance of order is stayed by an order of a court or Appellate Tribunal**, the period of such stay shall be excluded in computing the period specified in sub-sections (2) and (10) of section 73 or sub-sections (2) and (10) of section 74, as the case may be.[S.75(1)]

S. 73(2) and S. 74(2) is **on the issuance of notice and not on the service of notice.** Hence whether exclusion of stay on issuance of SCN may not operate

- ***Supreme Court in Golak Patel Volkart Limited 1987 (28) E.L.T. 53 (S.C.***), denied the benefit of stay where High Court stayed the collection of duty while exclusion under explanation to S.11A was available only for service of notice

Held "…………………*Reliance on the Explanation to Section 11A for obtaining extension of that period was not tenable because in the instant case, the order of stay passed by the High Court had only stayed the collection of excise duty which is a stage following levy under the scheme of the Act. Obviously, there was no interim direction of the High Court in the matter of issue of notice for the purpose of levy of duty. Under Section 3 of the Central Excises Act which is a charging section clearly shows that the levy and collection are two distinct and separate steps. Therefore, the benefit of Explanation is not available to the facts of the case and the demand was barred by limitation…………"*

System of Call Book

- An issue on which the Appellate Authority or the Appellate Tribunal or the High Court has given its decision
- which is prejudicial to the interest of revenue **in some other proceedings**
- and an appeal to the Appellate Tribunal or the High Court or the Supreme Court against such decision of the Appellate Authority or the Appellate Tribunal or the High Court is pending,
- ***the period spent between*** the date of the decision of the Appellate Authority and that of the Appellate Tribunal or the date of decision of the Appellate Tribunal and that of the High Court or the date of the decision of the High Court and that of the Supreme Court
- shall be excluded in computing the period referred to in sub-section (10) of section 73 or sub-section (10) of section 74 where proceedings are initiated by way of issue of a show cause notice under the said sections.[S.75(11)]
- [This does not extend the time period of SCN but only issue of orer

Limitation Period for Consequential Orders

Where any order is required to be issued in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a court, such order **shall be issued within two years from the date of communication of the said direction.[S.75(3)]**

What if order is not passed with in two years ? Whether proceedings shall be concluded ? No provision like 75(10) available here.

Exclusion of stay period u/s 75(1) and call book u/s 75(11) is not available here

Consequential Order for Conversion of Proceedings

Where any **Appellate Authority or Appellate Tribunal or court** concludes that the notice issued under sub-section (1) of section 74 is not sustainable for the reason that the charges of fraud or any wilful-misstatement or suppression of facts to evade tax has not been established against the person **to whom the notice was issued,** the proper officer shall determine the tax payable by such person, **deeming as if the notice were issued under sub-section (1) of section 73**. [S.75(2)]

Whether Penalty shall be saved ?

Auto Invocation of Interest [S. 75(9)]

The interest on the tax short paid or not paid shall be payable whether or not specified in the order determining the tax liability.

This section is not applicable to ITC/erroneous refunds and is only applicable to tax short paid/not paid.

Modification of Interest and Penalty

Where the Appellate Authority or Appellate Tribunal or court modifies the amount of tax **determined** by the proper officer, the amount of interest and penalty shall stand modified accordingly, taking into account the amount of tax so modified.[S.75(8)]


Thank you