

**Handbook
on
Show Cause Notice - Approach
and Reply under GST**



The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)
New Delhi

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Foreword

The introduction of Goods & Services Tax (GST) in India is one of the most significant indirect tax reforms since Independence. The reform that took more than a decade of mutual co-operation, continuous discussion and intense debate between Central and State Governments about implementation methodology, was finally implemented with effect from 1st July 2017, subsuming almost all indirect taxes at the Central and State levels. As the journey of GST implementation progressed in India, the authorities have been quick to address the various challenges faced by the Industry and public concerns by issuing a series of notifications, clarifications, press releases and FAQs, to resolve a wide range of concerns.

The GST along with its challenges has brought in various benefits also like creation of National market by bringing down fiscal barriers amongst the States and has mitigated the cascading effect of taxes by allowing seamless credit of input tax across goods and services. The Institute of Chartered Accountants of India (ICAI) through its GST & Indirect Taxes Committee has been playing a vital role in the implementation of GST in India by providing suggestions to the Government at each stage of development of GST. Further, the Institute has been playing proactive role and is a catalyst in dissemination of knowledge and awareness through technical publications, newsletters, e-learning and organizing various programmes, Certificate courses, webcasts etc. for all stakeholders.

I am happy to note that the GST & Indirect Taxes Committee of ICAI has now taken an initiative to issue a series of Handbooks covering various procedural aspects of GST and in that series is bringing out this **Handbook on Show Cause Notice - Approach and Reply under GST** with an objective to provide a basic understanding of the topic. The Handbook explains the concepts / procedures relating to Show Cause Notices - Approach and Reply thereto in an easy to understand lucid language and it is aimed at updating the knowledge base of members in a simple and concise manner.

I congratulate CA. Rajendra Kumar P, Chairman, CA. Sushil Kumar Goyal, Vice-Chairman and other members of GST & Indirect Taxes Committee for coming out with this Handbook and for taking active steps in providing regular guidance to the members and other stakeholders at large.

I am sure that Members will find this publication very useful in discharging the statutory functions and responsibilities in an efficient and effective manner.

CA. Atul Kumar Gupta
President, ICAI

Date: 4th August, 2020

Place: New Delhi

Preface

Goods and Services Tax (GST) was introduced in India from 1st July, 2017. It is one of the major tax reforms since independence in the area of indirect taxation. It was introduced with the objective to mitigate the cascading effect of taxes by allowing seamless credit across goods and services, facilitate free flow of goods and services across India and boosting tax revenue from better compliance and widening the tax base. A remarkable feature of GST implementation is that all the States in India came together with the Centre to form a unique federal body called GST Council, which is entrusted with the objective of recommending policies and procedural matter in the formation and implementation of GST legislation. The spirit of co-operative federalism took deep roots thereby ensuring that large federal countries like India implement the GST Law.

In order to facilitate understanding the various compliances under GST, the GST & Indirect Taxes Committee of ICAI has taken an initiative to prepare a handbook on procedural aspects like registration, refund, return, Invoice etc. One of the results of such initiative is this **Handbook on Show Cause Notice - Approach and Reply under GST**. An attempt has been made herein to cover all aspects related to Show Cause Notices - Approach and Reply thereto at one place and is intended to give general guidance to all stakeholders and also help them in resolving issues that they may face during the course of their compliance aspect in GST. This Handbook on Show Cause Notice - Approach and Reply under GST is comprehensive containing analysis of the entire provisions under the law including notifications, circulars or orders upto 31st July, 2020 issued by the Government from time to time along with few FAQ's, MCQ's, Flowcharts, Diagrams and Illustrations etc. to make the reading and understanding easier.

We stand by the Government in our role as "Partners in GST Knowledge Dissemination" and have always been supporting Government with our intellectual resources, expertise and efforts to make GST error-free.

We sincerely thank CA. Atul Kumar Gupta, President and CA. Nihar Niranjana Jambusaria, Vice-President, ICAI for their encouragement to the initiatives of the GST & Indirect Taxes Committee. We express our gratitude for the untiring effort of CA. N K Bharath Kumar who has shared his intellectual expertise and CA. A. Jatin Christopher for reviewing this publication. We

place on record the services and unstinted support provided by the Secretariat of the Committee.

We trust this Handbook will be of practical use to all the members of the Institute and other stakeholders. We also welcome suggestions at gst@icai.in and request you to visit our website <https://idtc.icai.org> and provide valuable inputs in our journey to make GST truly a good and simple tax.

CA. Rajendra Kumar P
Chairman
GST & Indirect Taxes Committee

CA. Sushil Kumar Goyal
Vice- Chairman
GST & Indirect Taxes Committee

Date: 4th August, 2020

Place: New Delhi

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Chapter 1

Introduction

Show cause notice shortly called as 'SCN' is a document served by the department on a person asking him to explain with reasons as to why a particular course of action should not be taken against him. It is similar to an opportunity given to a person who is proposed to be charged with violation of law by giving him sufficient opportunity to submit his view point as to why he should not be proceeded against for the alleged violation.

It is a time-tested principle of natural justice (*audi alteram partem* meaning 'let the other side be heard') that no person can be adjudged guilty without being given an opportunity to answer charges against such person. And to hear a person, such person should be "put at notice" which clearly states various aspects about the charges or allegations in such notice so that the person can understand the allegations and answer them. In GST, as with every legislation, this notice is called "show cause notice" and this show cause notice is a mandatory requirement for raising demands. Any other communication, letter, endorsement, suggestion or advisory from tax Department cannot be considered to be a show cause notice. It has also been held that, a notice to show cause has to be issued under specific sections of law with all the essential ingredients and reply to such SCN submitted has to be considered by the adjudicating authority and only then, liability has to be determined by issuance of an order or adjudication also known as 'Order-in-Original'. Notice is thus a *sine qua non* for any demand proceedings and SCN is the one that 'sets the law in motion'.

Show cause notice is the foundation in the matter of recovery of duty, penalty and interest and if a particular point is not raised in the show cause notice, it cannot be raised later at any of the appellate stage(s).

Show cause notice is a foundation on which the Department has to build its case. Hence, show cause notice is a basic and an indispensable part of proceedings in the tax system.

Chapter 2

Coverage

Under the Goods and Services Tax Law, there are multiple situations where we encounter the provision for issuance of show cause notice. These situations are as tabulated below.

S.No	Situations	Form
1	Denial of option to pay tax under Section 10	GST-CMP-05
2	For cancellation of regular registration	GST-REG-17
3	For rejection of application for revocation of cancellation of registration	GST-REG-23
4	For cancellation of provisional registration	GST-REG-27
5	For disqualification of GST Practitioner	GST-PCT-03
6	Rejection of refund claim	GST-REF-08
7	Assessment under Section 63	GST-ASMT-14
8	Show cause notice under Section 73	
9	Show cause notice under Section 74	
10	Show cause notice under Section 76	

In this booklet, we are going to cover show cause notice issued under Sections 73, 74 and 76 in particular. Nevertheless, the basic propositions in handling the show cause notice will remain the same in all the other situations.

Chapter 3

Show Cause Notice under Section 73

3.1 Trigger Point

Section 73 talks about determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful mis-statement or suppression of facts. Hence, when a person has

- (a) not paid or
- (b) short paid or
- (c) erroneously received refund, or
- (d) wrongly availed or utilised input tax credit

the *Proper Officer* (being one who is authorized under section 5 to carry out this function under the law) shall serve notice on the said person 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 as per the provisions of the Act.

A show cause notice will be issued in similar form as was being done in erstwhile pre GST era but online. Additionally, a summary of the total demand in Form DRC-01 also will be issued along with the show cause notice.

3.2 Time Limit

Section 73(2) when read with Section 73(10), spells out the time limit for passing the adjudication order along with the time limit for issuance of show cause notice. It says that, the *adjudication order* needs to be passed *within three years from the due date for furnishing of annual return* for the financial year to which the tax relates to or within three years from the date of erroneous refund. This is a very important new provision in GST where the 'end date' is prescribed. It is usual to find a 'start date' for issuing SCN but to find such an 'end date' is welcome measure. And as stated in section 75(10), if the adjudication is *not* completed within the 'end date' so specified, then the notice will be 'deemed to be concluded'.

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The date within which a show cause notice shall be issued has been made dependent on the due date of passing of the order. It prescribes that the *show cause notice* shall be issued *at least 3 months before the due date of passing of adjudication orders*.

A sample of illustrated table is given below for reference.

<i>Year</i>	<i>Due Date for Filing of Annual Return (AR) *</i>	<i>SCN can be issued upto (2Yrs & 9M from DD of AR)</i>	<i>Order to be passed within (3Yrs from DD of AR)</i>
2017-18	07-Feb-2020	06-Nov-22	06-Feb-23
2018-19	30-Sep-2020	29-Jun-23	29-Sep-23
2019-20	31-Dec-2021	29-Sept-24	30-Dec-24

** Note that in case of 'erroneous refunds', the due date will not be counted based on the date of filing the AR but from the date of such order of refund.*

3.3 Statement in Lieu of a Full Notice

Mr. X, a taxpayer, receives a show cause notice for the financial year 2017-18 for wrong availment of ineligible credit. Let us assume that, the same mistake has continued in the years 2018-19 and 2019-20. In this situation, as a show cause notice would have already been served for the year 2017-18, the Department will not be required to issue a full-fledged show cause notice again for the subsequent years. A 'statement of demand' containing the reference of the previous show cause notice and details of tax demanded or input tax credit to be reversed for the period in question can be issued along with the summary of demand in *Form GST DRC-02*. However, this statement of demand will be held as valid "show cause notice" only if the grounds relied upon for the said tax periods are the same as are mentioned in the earlier notice for the first year. This is an option and not mandatory but a welcome step to ensure ease of making demands for 'further period' on identical issues.

3.4 First Opportunity of Zero penalty

Any taxpayer, pursuant to enquiry or audit or investigation from the Department, may get into a situation where he becomes chargeable with tax. He gets an opportunity to discharge the tax liability along with the interest

Show Cause Notice under Section 73

either upon self-assessed by him or assessed by the officer. The Officer will serve an intimation vide *Part A of Form GST DRC – 01A* asking the person to remit the tax along with interest. Details about the tax demand will be stated briefly in Part A.

This is a mandatory facility that must be allowed before SCN so that the taxpayer who turns down this opportunity also gives up the concession that goes along with this facility, the concession being that in cases covered by section 73, if tax demanded along with interest is paid 'before SCN' then, penalty payable will be 'nil'.

Upon remitting such amounts vide *Form GST DRC-03*, the taxpayer shall inform the proper officer in writing of such payment. Upon receipt of such information, the proper officer shall give an acknowledgement in *Form GST DRC-04* and shall not serve any notice under Section 73(1) or statement under Section 73(3) with respect of the tax so paid and no penalty shall be levied. If this facility is turned down by the taxpayer then, SCN will be issued under section 73(1) or 73(3) to 'set the law in motion' for a full-fledged demand and its adjudication.

3.5 Situation where the Payment is not made in full

In case, the assessee has made only partial payment and he is not accepting the remaining liability or he is disputing the entire liability, he can respond in *Part B of the same form GST DRC-01A*. Detailed arguments are not warranted in taxpayer's reply in Part B but information that would help clear any factual or legal misapplication in making this demand may be clarified to a certain extent.

After such submission, the proper officer will proceed to serve show cause notice under Section 73(1) in respect of such amount which falls short of the amount actually assessed and is payable.

3.6 Second Opportunity of Zero Penalty

After having turned down the facility allowed under section 73(3) when the show cause notice is issued, the taxpayer is allowed a 'second' opportunity to pay tax demanded along with interest in *Form GST DRC-03 within 30 days of issue of show cause notice* and inform the proper officer in writing of such payment. The officer upon receipt of such information, shall give an intimation of conclusion of proceedings in *Form GST DRC-05* and all the proceedings in respect of the said notice except proceedings under Section

132 shall be deemed to be concluded. Here too, penalty payable will be 'nil'. Taxpayers can take into consideration details of the charges made in the SCN and consider this 'second' opportunity to avoid further disputes.

3.7 Applicability of Zero Penalty [Refer Paras 3.4 and 3.6]

It needs to be noted that, this benefit of zero penalty will apply only where the *tax amount is other than* by way of self-assessed tax or any amount collected as tax which has not been paid within a period of thirty days from the due date of payment of such tax.

If the amount payable is self-assessed tax or an amount collected in the name of tax and paid after a period of thirty days from the due date of payment, then this benefit of zero penalty will not be available.

3.8 Imposition of penalty and quantum thereof

Where the taxpayer had not availed both the opportunities and if the amount demanded does not get covered as explained in Para 3.7 above, the proper officer will proceed to take up the adjudication process to decide the case on hand. After considering the representation made by the taxpayer in *Form GST DRC-06* the proper officer shall determine the amount of tax, interest and penalty equivalent to *ten per cent of tax or ten thousand rupees, whichever is higher,* and pass and upload an adjudication order vide order in original along with summary of demand in *Form GST DRC-07* within the time limit as discussed in Para 3.2 above. It may also be noted that, the order referred herein shall be treated as notice of recovery as per Rule 142(6) of the Central Goods and Services Tax Rules.

Chapter 4

Show Cause Notice under Section 74

4.1 Trigger Point

Section 74 talks about determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful misstatement or suppression of facts. Hence, when a person has

- (a) not paid or
- (b) short paid or
- (c) erroneously received refund, or
- (d) wrongly availed or utilised input tax credit

by reason of fraud or any wilful-misstatement or suppression of facts to evade tax, the Proper Officer shall serve a notice on the said person requiring him to show cause as to why he should not be asked to pay the amount specified in the notice along with interest payable thereon under section 50 and with 100% of tax as penalty leviable as per the provisions of the Act.

A show cause notice will be issued in similar form as was being done during the pre-GST era but online. Additionally, a summary of the total demand in *Form DRC-01* also will be issued along with the show cause notice.

These special circumstances of 'fraud or any willful mis-statement or suppression of facts to evade tax' must be an additional allegation in the SCN and must be substantiated and not merely alleged. If the tax is found payable but these 'special circumstances' are *not* proved then, as per section 75(2), the demand raised under section 74 will be 'deemed' as if it were raised under section 73.

4.2 Time Limit

Section 74(2) when read with Section 74(10), spells out the time limit for passing the adjudication order along with the time limit for issuance of show cause notice. It says that, the *adjudication order* needs to be passed *within five years from the due date for furnishing of annual return* for the financial

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year to which the tax relates to or within five years from the date of erroneous refund. This provision sets an 'end date' that tax authorities need to adhere to and if they delay beyond this 'end date' the SCN will be 'deemed to be concluded' as stated in section 75(10). [Please refer earlier discussion under section 73]

The date within which a show cause notice shall be issued has been made dependent on the due date of passing of the order. It prescribes that the show cause notice shall be issued *at least 6 months before the due date of passing of adjudication orders.*

The various time limitations are given in the following Table.

Please refer earlier discussion under section 73

<i>Year</i>	<i>Due Date for Filing of Annual Return *</i>	<i>SCN can be issued upto (4Yrs & 6M from the DD of AR)</i>	<i>Order to be passed within (3Yrs from the DD of AR)</i>
2017-18	07-Feb-2020	05-Aug-24	06-Feb-25
2018-19	30-Sep-2020	28-Mar-24	29-Sep-25
2019-20	31-Dec-2021	29-Jun-26	30-Dec-26

** Note that in case of 'erroneous refunds', the due date will not be counted based on the date of filing AR but from the date of such order of refund.*

4.3 Statement in Lieu of a Full Notice

Mr. X a taxpayer, receives a show cause notice for the financial year 2017-18 for wrong availment of ineligible credit. Let us assume that, the same mistake has continued in the years 2018-19 and 2019-20. In this situation, as a show cause notice would have been already served for the year 2017-18, the Department is not required to issue a full-fledged show cause notice again for the subsequent years. A 'statement of demand' containing the reference of the previous show cause notice and details of tax demanded or input tax credit to be reversed for the period in question can be issued along with the summary of demand in *Form GST DRC-02*. However, this statement of demand will be held as valid "show cause notice" only if the grounds relied upon in the notice served for the previous tax periods are the same except the ground of fraud, or any wilful mis-statement or suppression of facts to evade payment of taxes.

Statement of demand issued under section 74(3) will always be considered to be a notice under section 73 and hence, be eligible for all concessions in penalty in first or second opportunity as well as on final adjudication (as discussed in the Chapter on section 73).

4.4 First Opportunity to get away with 15% penalty

Any taxpayer, pursuant to enquiry or audit or investigation from the Department, gets into a situation where he becomes chargeable with tax, he gets an opportunity to discharge the tax liability along with interest either upon self-assessment or on being assessed by the officer. The proper officer will serve an intimation vide *Part A of Form GST DRC – 01A* asking the person to remit the tax along with interest and 15% penalty without serving a show cause notice. Part A will contain brief details about the nature of allegation resulting in the demand being considered.

Upon remitting of such amounts vide *Form GST DRC-03*, the taxpayer shall inform the proper officer in writing of such payment. Upon receipt of such information, the proper officer shall give an acknowledgement in *Form GST DRC-04* and shall not serve any notice under Section 74(1) or statement under Section 74(3) with respect of the tax, interest and penalty so paid.

4.5 Where Payment is not made in full

In case, the assessee has made only partial payment and he is not accepting the remaining liability or he is disputing the entire liability, he can respond in *Part B of the same form GST DRC-01A*. After such submission by the taxpayer, the proper officer will proceed to serve show cause notice under Section 74(1) / 74(3) in respect of such amount which fell short of the amount actually payable. Part B does *not* provide an opportunity to state detailed arguments in respect of the demand being considered but only to clarify facts or legal provisions applicable in the context. It must clearly contain taxpayer's intention to 'accept or refuse' this opportunity.

4.6 Second Opportunity to get away with 25% penalty

In a situation enumerated in Para 4.05 above, after the issuance of show cause notice, if the taxpayer comes forward and pays the balance amount of tax, interest along with *25% penalty in Form GST DRC-03 within 30 days of issue of show cause notice* and informs the proper officer in writing of such payment, the officer upon receipt of such information, shall inform the taxpayer that, all the proceedings in relation to the said notice except

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proceedings under Section 132 are deemed to be concluded and issue *Form GST DRC-05* in effect of the decision.

4.7 Third Opportunity to get away with 50% penalty

Where the tax payer had not availed both the opportunities provided under the provisions for applicability of 15% and 25% penalty, the proper officer shall proceed to take up the adjudication process to decide the matter and after considering the representation made by the taxpayer in *Form GST DRC-06* the proper officer shall determine the amount of tax, interest and penalty as applicable and pass an adjudication order vide order in original within the time limit as discussed in Para 4.02 above.

After issuance of order in original the tax payer can avail the third chance to get away with 50% penalty. Where the taxpayer comes forward and pays the amount demanded, applicable interest along with *50% penalty in Form GST DRC-03 within 30 days of communication of the order* and informs the proper officer in writing of such payment, the officer upon receipt of such information, shall give an intimation of conclusion of all the proceedings in respect of the said notice except proceedings under Section 132. Care must be taken of the 'dates' when calculating this time limit of 30 days after SCN and 30 days after order of adjudication. It is a facility that taxpayer would do well to take with seriousness based on the eventual outcome as made out from the detailed charges in the SCN or detailed grounds in the adjudication order-in-original passed.

4.8 Explanation for the term 'Suppression'.

The term *suppression* shall mean

- (a) 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
- (b) failure to furnish any information on being asked for, in writing, by the proper officer.

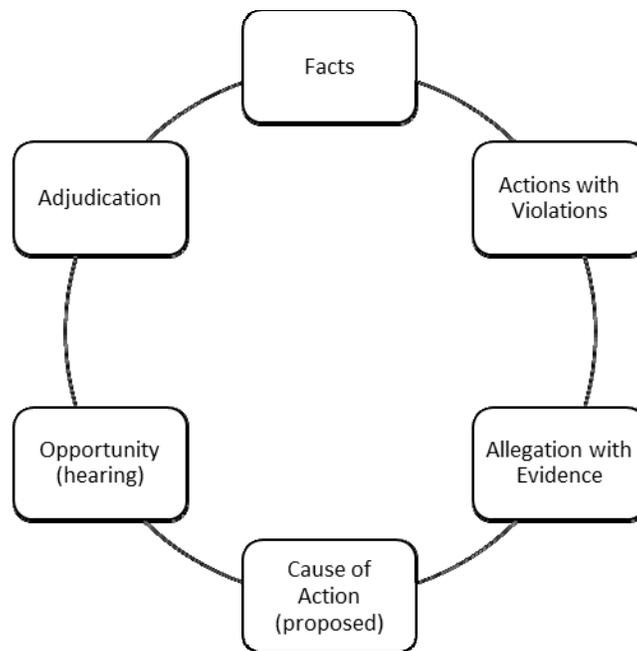
This being a statutory definition, understanding of 'suppression' in English cannot be applied here. Care must be taken that unintentional failure to disclose information as required by the Rules or as requested in writing will also amount to 'suppression'.

4.9 Notice to multiple persons under same Proceedings:

Where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all other persons liable to pay penalty under sections 122 (penalty for certain offences), 125 (general penalty), 129 (detention, seizure and release of goods and conveyances in transit) and 130 (Confiscation of goods or conveyances and levy of penalty) are also deemed to be concluded.

The following flowchart illustrates the ingredients of a valid show cause notice:

(MAY BE RETAINED IF REQUIRED):



Chapter 5

Show Cause Notice under Section 76

5.1 Objective

Section 76 deals with a situation of “tax collected but not paid to Government”. The provision begins with non-obstante clause which reads as follows:

“Notwithstanding anything to the contrary contained in any order or direction of any Appellate Authority or Appellate Tribunal or court or in any other provision of this Act or the rules made thereunder or any other law for the time being in force, every person who has collected from any other person any amount as representing the tax under this Act, and has not paid the said amount to the Government, shall forthwith pay the said amount to the Government, irrespective of whether the supplies in respect of which such amount was collected are taxable or not”

Hence, any amount collected “as tax” under the GST Acts, must be remitted immediately to the Government irrespective of whether the supplies made were taxable or not.

A plain reading of the above may give rise to a view that, when we have sections 73 and 74 to govern taxes not paid, short paid, erroneously refunded and ineligible input tax credit, why at all Section 76 is required? In our view, the focus of this section will be on the supplies which are exempted but the supplier had charged and collected the taxes on them. The basis of this view is explained in the following paragraphs.

5.2 Trigger Point

Where any amount is required to be paid to the Government as stated above, and which has not been so paid, the proper officer may serve a show cause notice on the person liable to pay such amount requiring him to show cause as to why the said amount as specified in the notice, should not be paid by him and why a penalty equivalent to the amount should not be imposed on him under the provisions of this Act.

A show cause notice will be issued in similar form as was being done in during the pre GST era but online. Additionally, a summary of the total

Show Cause Notice under Section 76

demand in Form DRC-01 also will be issued along with the show cause notice.

5.3 Time Limit

No time limit has been prescribed to issue a show cause notice under this section. Hence, the proper officer can issue a notice at any time whenever he gets the information about the evasion.

5.4 Personal Hearing

The proper officer after considering the representation, if any, made by the person on whom the notice is served, shall determine the amount due from such person and thereupon such person shall pay the amount so determined. There is no relief of zero penalty, nil penalty, 15% penalty, 25% or 50% under this section.

The said person shall, in addition to paying the tax amount so determined, also be liable to pay interest thereon at the rate specified under section 50 from the date such amount was collected by him to the date such amount is paid by him to the Government.

Under this section, an opportunity of hearing shall be granted where a request is received in writing from the person to whom the notice was issued to show cause. If no request is made in the reply furnished to the officer, the case will get decided on *ex parte* basis.

5.5 Time Limit for passing Adjudication Order

The proper officer shall issue an order within one year from the date of issuance of such notice under this section.

Chapter 6

Comparison between Notice under Sections 73, 74 & 76

The basic difference between sections 73, 74 and 75 are presented in the following Table:

S.No	Section 73	Section 74	Section 76
1	No allegation of fraud, wilful mis-statement or suppression.	Allegation of fraud, wilful mis-statement or suppression.	Collection of amount by way of tax and not paying to the Government is sufficient to invoke this section
2	Show cause notice shall be issued within 2 years and 9 months from the due date of filing of annual return. This is so even for those taxpayers for whom filing of annual return was made optional.	Show cause notice shall be issued within 4 years and 6 months from the due date of filing of annual return. This is so even for those taxpayers for whom filing of annual return was made optional.	No time limit is prescribed for issuance of SCN.
3	The final order needs to be passed within the time limit of 3 years from the due date of filing of annual return or refund of input tax credit	The final order can be passed within the time limit of 5 years from the due date of filing of annual return or refund of input tax credit	The final order needs to be passed within 1 year from the date of issuance of SCN.

Comparison between Notice under Section 73, 74 & 76

4	Statement of demand in lieu of show cause notice can be served	Statement of demand in lieu of show cause notice can be served	Only SCN is prescribed. No statement of demand.
5	Option for zero penalty is available when the disputed amount is other than self-assessed tax or any amount collected as tax.	No question of zero penalty	No question of zero penalty
6	Penalty is 10% of tax liability or Rs.10,000/- whichever is higher	Penalty will be imposed at 15%, 25%, 50% and also upto 100% of tax liability.	100% of tax will be imposed as penalty

Chapter 7

General Provisions Relating to Determination of Tax [Section 75]

This Chapter contains the guidelines or a set of conditions which need to be adhered to in following the due process of law.

7.1 Exclusion of Stay Period

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 for issuance of show cause notice or passing of an order under sub-sections (2) and (10) of section 73 or sub-sections (2) and (10) of section 74, as the case may be.

7.2 Auto Conversion of Notice under Section 74(1) to Section 73(1)

Where any Appellate Authority or Appellate Tribunal or court concludes that the notice issued under Section 74(1) is not sustainable for the reason that the charges of fraud or any willful mis-statement 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 was issued under sub-section (1) of section 73.

7.3 Time Limit for passing order in Remanded Matter

Where any order is required to be issued in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a court, the law has fixed a time of two years from the date of communication of the said direction.

7.4 Principles of Natural Justice

An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person. There is no proceeding where notice is issued but hearing can be by-passed as this is a principle of adjudication and not a rule of GST law.

7.5 Adjournments

If the authorised representative or the person chargeable with tax is able to show a sufficient cause as to why he is unable to appear for the personal hearing, the proper officer shall grant time to the said person and adjourn the hearing for reasons to be recorded in writing. In any case, the maximum number of adjournments cannot exceed more than three.

7.6 Speaking Order

The proper officer shall set out the relevant facts and the basis of his decision and pass a speaking order with complete details. If it is not a speaking order, the order will be treated as invalid.

7.7 Order cannot travel beyond SCN

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

7.8 Higher Authority's Order will prevail

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.

7.9 Interest Payable - Mandatory

The interest liability on the tax short paid or not paid shall be payable whether or not specified in the order determining the tax liability. So even if the operational part of the order does not contain anything about interest, as per the Section 75(9), interest will be payable. It is interesting to note that any omission in the order-in-original to confirm penalty cannot be demanded even if applicable in the circumstances of the case. Order-in-original provides the framework of facts for all further proceedings in appeal, revision or review.

7.10 Invalid Proceedings if order is passed after prescribed time limit

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. This is a welcome provision that makes tax administration accountable for completing proceedings in time.

7.11 Time Limit not to apply in certain cases

If there is a matter which is decided against the Revenue by any of the appellate authorities (first Appellate Authority, Tribunal or High Court), which is prejudicial to the interest of revenue *in some other proceedings* and if the Revenue has preferred an appeal against the said order with the higher forum (Tribunal, High Court or Supreme Court) and the said issue is yet to be decided by the higher forum, the period spent between the date of the impugned order and the date of the decision by the higher forum shall be excluded in computing the period of 3 years / 5 years as the case may be where proceedings are initiated by way of issue of a show cause notice under the said sections. This is also known as 'call book' cases. In these cases, the SCN must be issued but kept in abeyance until the 'other proceedings' are concluded. In these 'call book' cases, the 'end date' specified in section 73(10) or 74(10) will *not* be applicable.

7.12 Initiation of Direct Recovery Proceedings

Section 75(12) commences with a non obstante clause to supersede the powers of Section 73 and 74. It mentions that, 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. However, judicial decisions by few High Courts have rendered this section as invalid and mandated that recovery proceeding cannot be initiated without issuance of show cause notice under Section 73 or Section 74 as the case may be. Care must be taken to differentiate between 'self-assessed tax' and 'demanded tax'. Undisputed arrears cannot be left unpaid as discussed earlier about the inapplicability of concessional penalty in case of self-assessed tax (para 3.7).

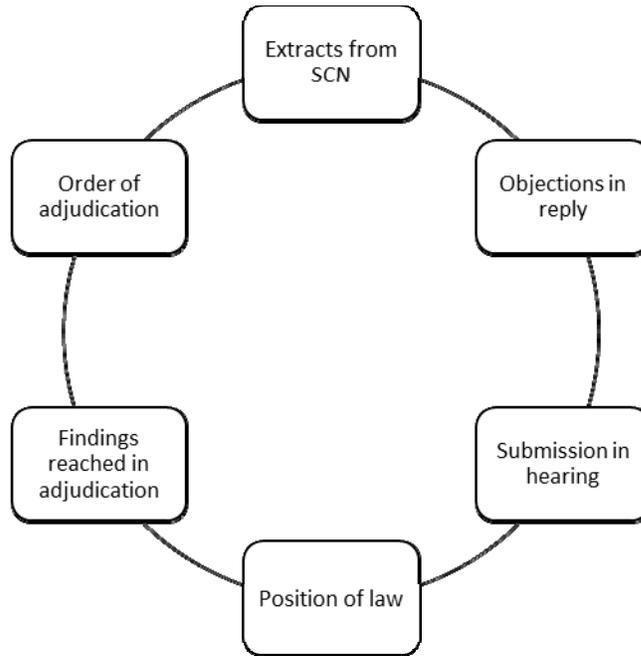
7.13 No Additional Penalty

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.

General Provisions Relating to Determination of Tax [Section 75]

The following flowchart illustrates the ingredients of a valid order-in-original

(MAY BE RETAINED IF REQUIRED):



Chapter 8

Manner of Service of Notice

Manner of Service of Notice

8.1. Section 169 of the CGST Act, 2017 contains the provisions relating to service of notice.

Any decision, order, summons, notice or other communication under the CGST Act 2017 or the Rules made thereunder shall be served by *any one of the following methods*. It is pertinent to note that, the proper officer is free to follow 'any one' method.

- (a) by giving or tendering it directly or by a messenger including a courier to
- the addressee or
 - the taxable person or
 - to his manager or
 - authorised representative or
 - an advocate or
 - a tax practitioner
 - a person holding authority to appear in the proceedings on behalf of the taxable person or
 - to a person regularly employed by him in connection with the business, or
 - to any adult member of family residing with the taxable person; or
- (b) by registered post or speed post or courier with acknowledgement due, to
- the person for whom it is intended or
 - his authorised representative, if any,
- at his last known place of business or residence; or

Manner of Service of Notice

- (c) by sending a communication to his e-mail address provided at the time of registration or as amended from time to time; or
- (d) by making it available on the common portal; or
- (e) by publication in a newspaper circulating in the locality in which the taxable person or the person to whom it is issued is last known to have resided, carried on business or personally worked for gain; or
- (f) if none of the modes aforesaid is practicable then -
 - by affixing it in some conspicuous place at his last known place of business or residence and if such mode is not practicable for any reason,
 - by affixing a copy thereof on the notice board of the office of the concerned officer or authority who or which passed such decision or order or issued such summons or notice

8.2. Every decision, order, summons, notice or any communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed in the manner provided above.

8.3. When such decision, order, summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved.

8.4. Care must be taken to 'object' to any notice that is improperly served. Section 160(2) makes it clear that where a notice or other proceedings is not properly served and taxpayer (i) attends to it on merits or (ii) omits to question the validity of service at the earliest opportunity, then such questions (although legally very significant) cannot be raised in subsequent proceedings. This is also known as the principle of acquiescence. And examining 'validity of service' is the first step in acceptance of SCN and any other communication from the tax Department. Service includes service of a (i) valid notice (ii) under valid section (iii) by Proper Officer and not merely communicating the broad nature of the demand without the required degree of specificity required in the law. After all, taxpayers rights are affected by SCN and this cannot be done lightly or without regard to the time-tested principles of natural justice.

Chapter 9

What's next after Receipt of Show Cause notice

Chapters 1 to 8 dealt with the provisions of GST law. Let us now see some of the practical aspects. Readers are hereby informed that the details given in the following paragraphs are based on the practical experience of the author and it cannot be taken as complete set of procedures. There is always a scope of improvement and hence, the readers can pick and choose the points as suitable to them and they should explore beyond what is mentioned under this Chapter to improvise the practical method of responding to show cause notice.

9.1 Date of Receipt

The date of receipt of the show cause notice plays a vital role in commencing the decision making process. The date of receipt can be ascertained from copy of email, postal cover, etc. Hence, it is very important that a documentation for the date of receipt of the notice is created without fail. It is suggested that, a one-page print of email or photocopy of the postal cover should be preserved in the file. The calculation of 30 days from the date of communication of notice will start only from the date when you receive the show cause notice.

9.2 Time limit to reply for Show Cause notice

Section 73 / 74 does not prescribe any time limit *per se* within which the person has to respond to the notice. In many occasions, the date of personal hearing may be specified in the SCN which implies that written response need to be submitted on or before the said date. In certain cases, a particular date may be mentioned within which the taxpayer will have to respond. Hence, that can also be treated as the due date to furnish a reply to a show cause notice.

It is suggested that one should take a time of 30 days within which the proper officer may start expecting the reply. It is necessary that the tax payer responds to the notice within the first 30 days by either submitting the reply that has been prepared or seeking an extension in order to submit a reply.

9.3 Reading of A Show Cause Notice

A show cause notice should be read line by line and in detail. We need to look for the details which can give us the complete picture of the issue right from the basic details of the assessee including GST Number, tax period concerned with the issue, the transactions captured in the notice, details of the Sections and Rules of the GST Acts referred in the show cause notice and the alleged violations by the noticee, other allegations made by the department, manner in which the value has been arrived, the way in which goods or services have been classified, the details of input tax credit being disallowed, the rate of tax considered for arriving at the tax amount, etc. This will enable us to get a good grip on the issue which can help us while we draft the reply to show cause notice.

9.4 Analysis of Issue with Client and Collection of further Details

A lot of things can happen over a coffee. Similarly, many details may come out over a one to one discussion on the table. It is suggested that, the details gathered by studying the show cause notice be discussed in detail with the client and his views on the allegations made in the show cause notice be sought from him in order to take the case forward.

One should also seek further information by asking questions on the issue viz., date of transaction, what was the input tax credit that is alleged as ineligible, whether invoice was raised properly, whether e-way bill was raised, was there any issue during the said period, whether the applicable taxes were paid on time or with delay...etc. The client may sometimes come up with a new information which can be relevant for the case on hand.

9.5 Drafting of Response

The drafting of a reply to a show cause notice is an art. It requires regular practice of reading the law and its daily updates along with references to landmark judgements pronounced by various judicial fora.

A good and tasty food though prepared well, will not be attractive unless it is presented well. Similarly, the presentation of response matters a lot when it comes to responding to a show cause notice.

Further the environment for drafting of response should be calm and quiet without disturbance which will enhance the quality of reply with proper flow of contents.

Handbook on Show Cause Notice - Approach and Reply under GST

In addition to the above, the following points need to be covered properly in responding to the notice.

(a) Coverage of Issues

The reply should be prepared by responding to each and every paragraph of the show cause notice. The drafting should cover response to all the issues and allegations made in the notice. If any of the issue/allegation is not addressed, the proper officer may deem it as acceptance of the same and it will have negative impact on the outcome of the adjudication process.

(b) Reference to Provisions of Law:

The reply should be crisp and specific to the point and it should not be like beating around the bush. Wherever required, the references of the provisions of law can be quoted and explained in a detailed manner which will convey the clear message of how we have interpreted the provisions.

(c) Interpretation Issues

It has been held in many judgements under the erstwhile law that when the issue involves interpretation, penal provisions cannot be invoked on the tax payer. Whenever there is an interpretational issue, the response should contain the structured method of interpreting each and every word, phrase or line of the section or rule and arrive at a conclusion, giving the meaning as understood by us. Further, wherever possible, the allegations made in the SCN should also be referred and it should be brought to the notice of the adjudicating authority as to why the conclusion drawn in the show cause notice by way of wrong interpretation cannot be held valid in the eyes of the GST law.

(d) Classification Issues

The major contentious issue which is expected to break out will be on classification. The taxpayer would classify certain particular goods or service under a particular HSN Tariff Code / SAC Code. However, the proper officer may have another view on classification of those goods or services. If the rate of taxes of the goods or services in dispute happens to be the same, it may not have much implication. However, when there is a rate difference, the taxpayer may lose his profits, reserves and surplus too if his classification happens to be at a tariff with lesser rate of tax.

Whenever classification issues come up, please ensure that the Schedule of the Chapter is discussed in detail along with relevant Chapter Notes,

What's next after Receipt of Show Cause notice

references from the decided judicial precedents, references from the customs act, references from the HSN issued by World Custom Organisation also can be quoted in the response.

A clear distinction should be drawn between the tariff followed by the tax payer and the one referred in the SCN.

(e) Calculation Tables

Whenever the issue pertains to valuation or calculation of tax liability, it should be the endeavour of the notice to give the complete basis and method of arriving at a particular value as per the valuation rules based on which the tax payer has declared the value of taxable supply and calculated the tax liability at appropriate rates.

We should be able to defend the method and the calculation by highlighting what is missed or wrongly considered in the calculation adopted in the Show Cause notice.

(f) Annexures

The reply should not be cluttered by dumping all the details at one place. The items or details which are referred (Case Laws, Copy of the HSN Tariff Schedule or notes, Third Party Certificates...etc.) or which cannot fit within the response (calculations, widely tabulated information for ITC...etc.) should always be given as annexure. This will help the reader of the response to develop a positive feel and understand the issue in better manner and also refer to the annexures wherever necessary.

(g) Documentation & Submission

The reply to show cause notice shall be printed on the letter head of the noticee along with the annexures on white sheets of size A4 or legal as per the requirement. In total, three sets of the response shall be prepared. One for submission with the Department, second copy for obtaining acknowledgement and the third one as client copy which also will come handy in time of need. The response shall be printed with page numbers on every page including annexures. The papers shall be neatly assembled and tagged properly before submission to the Department.

9.6 Authorisation to Appear

Section 116 of the CGST Act, 2017 contains the provisions relating to the appearance before the authorities.

(i) Personal Appearance

Personal appearance by the tax payer where he or she is an individual / proprietor for examination on oath or affirmation, subject to the other provisions of this section.

(ii) Appearance by Authorised Representative

The term "authorised representative" shall mean a person authorised by the person referred above to appear on his behalf, being—

- (a) his relative or regular employee; or
- (b) an advocate who is entitled to practice in any court in India, and who has not been debarred from practicing before any court in India; or
- (c) any Chartered Accountant, a Cost Accountant or a Company Secretary, who holds a certificate of practice and who has not been debarred from practice; or
- (d) a retired officer of the Commercial Tax Department of any State Government or Union territory or of the Board who, during his service under the Government, had worked in a post not below the rank than that of a Group-B Gazetted officer for a period of not less than two years and he shall be entitled to appear after lapse of one year from the date of his retirement or resignation; or
- (e) any person who has been authorised to act as a goods and services tax practitioner on behalf of the concerned registered person.

(iii) Persons who cannot appear before the tax authorities

- (a) A person who has been dismissed or removed from Government service.
- (b) A person who is convicted of an offence connected with any proceedings under this Act, the State Goods and Services Tax Act, the Integrated Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, or under the existing law or under any of the Acts passed by a State Legislature dealing with the imposition of taxes on sale of goods or supply of goods or services or both.
- (c) A person who is found guilty of misconduct by the prescribed authority.
- (d) A person who has been adjudged as an insolvent, for the period during which the insolvency continues.

(iv) Automatic Disqualification

Any person who has been disqualified under the provisions of the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act shall be deemed to be disqualified under this Act.

It is suggested that the authorised representative shall obtain a Power of attorney on a stamp paper of Rs.100/- which shall be signed by the noticee and the representative who is going to appear on behalf of the tax payer. Advocates will usually execute a *Vakalatnama* to obtain an authorisation in their name for appearing before the authorities. The original copy of the power of attorney should be submitted to the adjudicating authority before or at the time of personal hearing and an acknowledgment shall be obtained on the photocopy of the same document which shall be preserved as office copy.

Before we part

Winning the case or loosing the case should be a matter of concern for a tax payer. As a professional, we should be concerned with the professionalism we show in handling the matter. The way in which we prepare our response, the way in which we express the finer points in detail, the way in which we present ourselves before the authorities will have a lasting impression. Whenever any professional appears before an authority, the authority should be convinced or he should develop a feeling that, this person will do his job perfectly and he is a perfect gentleman. They should be able to understand that the person has got the good grasp on the subject matter and the law and finally, the client should understand our efforts and our conscience should say that we have given our best.

Closing Remarks

With the deliberations made above, it is humbly submitted that there can be many other aspects which may have possibly been left out from the above. Hence, the readers should not restrict themselves to the contents deliberated above. They should definitely aim to further improve upon keeping this as a base content.