



# Litigations under GST

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# TAX INSPECTION



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# TAX INSPECTION



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# Coverage

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# Assessment

- **Section 59:** Self-Assessment
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- **Section 63:** Assessment of unregistered persons
- **Section 64:** Summary Assessment in certain special cases

# Background

S. No.	Topic	Section	Rule	Form
1.	Definition of Assessment	Section 2 (11)	-	-
1.	Self Assessment	Section 59	-	-
2.	Provisional Assessment	Section 60	Rule 98	ASMT – 01 to ASMT - 09
3.	Scrutiny of Returns	Section 61	Rule 99	ASMT – 10 to ASMT - 12
4.	Assessment of Non-filers of return	Section 62	Rule 100	ASMT – 13 and DRC – 07
5.	Assessment of unregistered persons	Section 63		ASMT – 14 and DRC – 01 ASMT – 15 and DRC – 07
6.	Summary Assessment in certain special cases	Section 64		ASMT – 16 and DRC – 07 ASMT – 17 & 18

## Non - Cognizable & Bailable Offence

- » Amount evaded in offences (as listed) is less than Rs. 5 crores; and,
- » Offences given in Section 132 (other than those listed), irrespective of amount evaded are non - cognizable and bailable offences.
- » In such cases, after arrest, –
  - such person shall be admitted to bail or in default of bail, forwarded to the custody of Magistrate; and,
  - DC/AC have the same powers as officer-in-charge of Police charge for the purposes of releasing on bail.

## Section 2(11): Definition of Assessment

“Assessment” means determination of tax liability under this Act and includes –

- ❑ Self – assessment;
- ❑ Re-assessment;
- ❑ Provisional Assessment;
- ❑ Summary Assessment; and,
- ❑ Best Judgment Assessment.



## Section 59: Self - Assessment

Every registered person shall –

- ✓ Self – Assess the taxes payable under this Act; and,
- ✓ Furnish a return accordingly, as per Section 39.

# Section 60: Provisional Assessment

## WHEN?

When taxable person is unable to determine –

1. Value of goods or services or both; or
2. Rate of tax applicable.

- Request the proper officer by furnishing an application along with relevant documents in Form GST ASMT - 01
- Giving reasons for such provisional payment



## Duty of proper officer

Proper officer shall pass an order allowing payment of tax on provisional basis at such rate or value as indicated in order

90 days from the date of receipt of request

## Time period for order



## Section 60: Provisional Assessment

### » **Condition for opting provisional assessment –**

- Only if the taxable person executes a bond along with surety or security, as the proper officer may deem fit;
- Binding the taxable person to pay the difference between the tax finally assessed and amount provisionally assessed.

### » **Final Assessment Order –**

- To be passed within 6 months from date of communication of provisional order;
- By proper officer indicating the amount of tax as finally assessed.
- Extension – By JC/ADC for a further period of maximum 6 months

By Commissioner for a further period of maximum 4 years

# Section 60: Provisional Assessment

## Final Assessment Order

Amount finally assessed >  
Amount provisionally paid

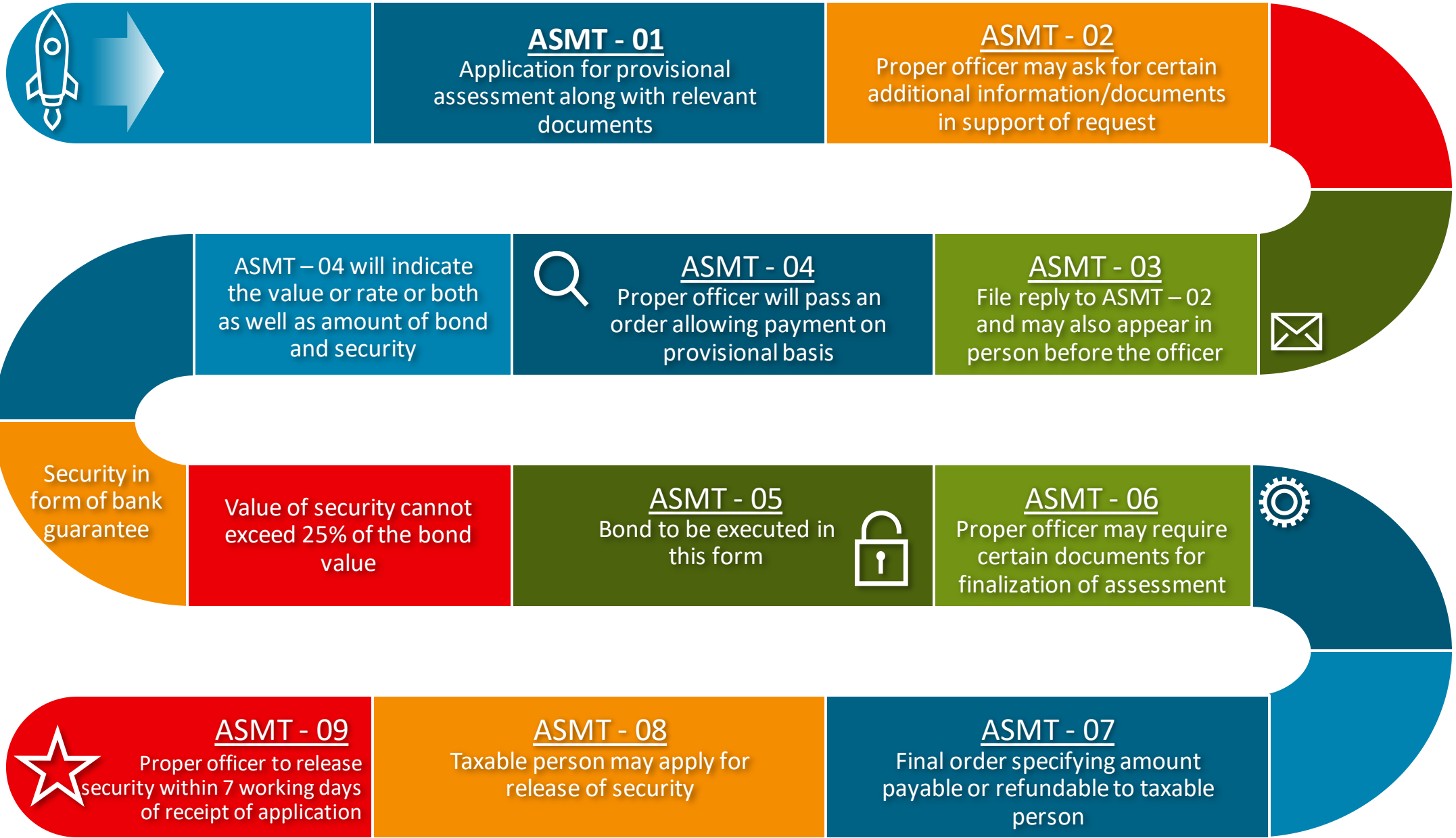
Interest is payable under Section 50(1) on differential tax payable –

- From 1<sup>st</sup> day after the due date of payment of such tax till the actual date of payment
- Interest to be paid irrespective of the fact that final assessed tax is paid before or after the order is passed.

Amount finally assessed <  
Amount provisionally paid

Refund\* will be granted along with  
Interest as per Section 56

Procedure



## FAQs on Provisional Assessment

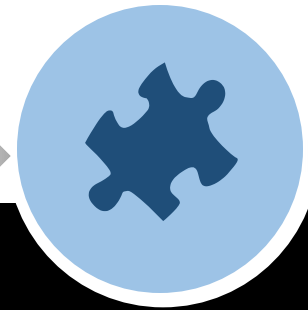
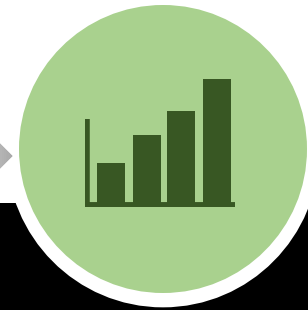
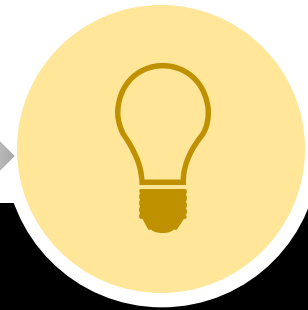
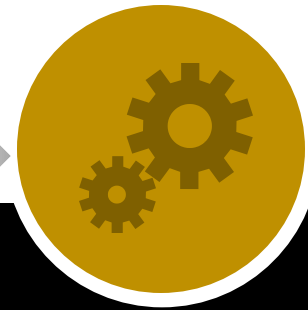
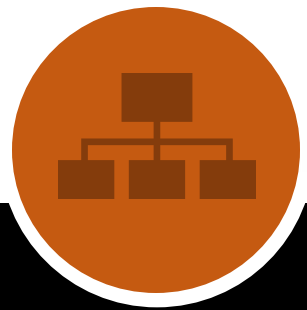
**Question 5: Banks lend gold in physical form for a period not exceeding 6 months. Banks receive interest on the gold ounces disbursed and the same is converted into Rupees after calculation of interest on the ounces and the USD/INR conversion. Will the same methodology continue in case of GST as well wherein Banks shall pay a provisional GST (i.e. IGST/SGST/CGST) on ongoing market prices and pay the final GST as and when the prices are fixed?**

Answer: Yes, Banks may avail of the benefit of provisional assessment provided under section 60 of the CGST Act, 2017.

**Question 6: Banks pay provisional VAT currently at the time of delivery of gold on the basis of ongoing market prices. When customer fixes the price of metal, Banks pay actual VAT on the maturity date of the Gold Loan. Banks must be allowed to set-off the excess provisional GST paid to the government against future fixation of prices. In case of excess payment, the same should be refunded on Pan - India basis and not on the basis of States.**

Answer: Banks may claim refund in accordance with the provisions of section 54 of the CGST Act, 2017. Interest is payable in such cases as provided in section 56 of the CGST Act, 2017. In this connection, section 60(5) of the CGST Act, 2017 may be referred to.

# Section 61: Scrutiny of Returns



Proper officer to scrutinize the return to verify its correctness

FORM ASMT - 10  
Inform assessee about the discrepancies noticed seeking his explanation and quantifying the amount of tax, interest, etc.

FORM ASMT - 11  
Assessee to furnish explanation or can accept and pay

FORM ASMT - 12  
Explanation found acceptable, no further action to be taken

Where assessee does not reply  
or  
after acceptance, fails to take corrective action  
or  
does not offer satisfactory explanation,

initiate proceedings u/s 65/66/67/73/74

Time limit for reply to ASMT – 10  
30 days of receipt of ASMT – 10 or such further period as may be permitted.

C.B.I. & C. Instruction No. 2/2022-GST, dated 22-3-2022 dated 22 March 2022 – Standard Operating Procedure (SOP) notified for Scrutiny of returns for FYs 2017-18 and 2018-19

- DGARM to select returns for scrutiny and inform concerned officer
- Risky Assessments (having revenue implications) to be prioritized in deciding the scrutiny schedule
- Every proper officer to conduct scrutiny of minimum 3 GSTINs per month
- ASMT-10 to be issued with documents available with department. No need to seek documents before issuing ASMT-10
- Discrepancies mentioned in Form ASMT-10 to be specific & not generic
- Additional payments not made through GSTR but paid through DRC-03 should also be considered before serving ASMT-10
- If matter needs to be further investigated, refer to jurisdictional officer to decide whether the matter needs to go to Audit or Anti-Evasion.
- Timelines for Scrutiny of Returns/Internal working given.



C.B.I. & C. Instruction No. 2/2022-GST, dated 22-3-2022 dated 22 March 2022 – Standard Operating Procedure (SOP) notified for Scrutiny of returns for FYs 2017-18 and 2018-19

**Indicative list (not exhaustive) of parameters for scrutiny –**

1. GSTR-1 v/s 3B
2. ITC availed for discharging RCM liability or Cash utilized less than RCM liability
3. Mapping of reverse charge liability (2A v/s 3B)
4. ITC from ISD (2A v/s 3B)
5. Other ITC (2A v/s 3B)
6. Reconciliation of outward taxable supplies
7. Outward Supplies (3B v/s E-way bill data)

C.B.I. & C. Instruction No. 2/2022-GST, dated 22-3-2022 dated 22 March 2022 – Standard Operating Procedure (SOP) notified for Scrutiny of returns for FYs 2017-18 and 2018-19

**Indicative list (not exhaustive) of parameters for scrutiny –**

8. ITC availed on supplies from the vendors post their effective date of cancellation of registration
9. Return filed after September of next FY to check inadmissible ITC
10. Details of Import of Goods cross – verified from ICEGATE portal
11. Reversal of ITC as per Rule 42/43
12. Interest paid on delayed payment of taxes
13. Late fee paid in case of delayed filing of return

## Guidelines/Circulars on Scrutiny of Returns

- » Circular No. 6 and 7/2021, dated 7-11-2021 issued by Kerala SGST – Instructions/ Guidelines related to Return and related particulars furnished by registered person – Scrutiny by Proper Officer

## Case laws on Scrutiny of Returns

***In re: Sri Kali Krishna Industries, cited in [2020] 121 taxmann.com 149 (AA-GST-AP)***

*It is pertinent here to observe that mismatch reports is indicative in nature, but cannot be seen as final to conceive any suppression of turnover/tax.*

## Section 62: Assessment of non-filers of return

- » **When?** – Notice issued u/s 46 in FORM GSTR – 3A for furnishing the return (u/s 39, 44 or 45) within 15 days but no return furnished thereafter
- » **How?** – Proper Officer will proceed to assess the tax liability under BJA taking into account all the relevant material which is available/gathered and pass an assessment order in FORM GST ASMT – 13 whose summary is to be uploaded in FORM GST DRC - 07
- » **Time limit for such order** – Assessment order to be passed within 5 years from furnishing of annual return of that period
- » **Assessment Order deemed to be withdrawn** – When assessee furnishes a valid return within 30 days of service of assessment order but liability for interest or late fee shall continue.

# Guidelines/Circulars on Assessment of non-filers of return

## **Circular No. 129/48/2019-GST, dated 24-12-2019 issued by CBIC containing Standard Operating Procedure in case of non-furnishing of return under Section 39, 44 or 45 of CGST Act, 2017**

- A system generated message to be sent to taxpayer 3 days before the due date as a reminder to file pending return
- No return filed, a system generated message to be sent intimating that return is not filed within due date
- 5 days after due date of furnishing of return, notice in GSTR-3A to be issued seeking filing of return within 15 days
- For invoking BJA, take into account the details as per GSTR-1, 2A, e-way bill portal or any other information.
- If returns not furnished even within 30 days of ASMT-13, initiate recovery proceedings u/s 78 and 79.

## Case laws on Assessment of non-filers of return

### **S.P.Y. Agro Industries Ltd. v. Union of India**, cited in **2021 (44) G.S.T.L. 337 (A.P.)**

- Notice u/s 46 issued on 15.01.2019 directing to file pending returns within 15 days
- ASMT-13 issued on 29.01.2019 for Tax, Intt. & Penalty
- Tax & Interest already paid. Penalty under challenge
- Without waiting for statutory period stipulated under the Act, assessment Order came to be issued in Form GSTR ASMT-13 u/s 62, on 29-1-2019, directing the Petitioner to pay huge sum of money including penalty.
- Also, procedure contemplated under Section 73 or 74 needs to be followed in Section 62 also which requires issuance of SCN and principles of natural justice to be followed.

## Case laws on Assessment of non-filers of return

### ***Suman Kumar v. State of Bihar*, cited in [2021] 127 taxmann.com 268 (Patna)**

- *In terms of the Assessment order u/s 62, financial liability stands fastened. Thus, it entails civil consequences, seriously prejudicing the petitioner inasmuch as, without affording any adequate opportunity of hearing or assigning any reason.*
- *Assessment Order passed without following principles of natural justice, set aside.*

***Vidyarthi Construction Pvt. Ltd. v. State of Bihar*, cited in [2021] 127 taxmann.com 483 (Patna) – Principles of natural justice applicable on Assessment Order passed u/s Section 62 also.**

### ***Bridge Hygiene Services Pvt. Ltd. v. State Tax Officer, Kottayam*, cited in 2019 (30) G.S.T.L. 391 (Ker.)**

- *Extension not granted by HC in stipulated period of 30 days for filing return after passing of assessment order u/s 62 (Reason – Paucity of Funds)*

## Case laws on Assessment of non-filers of return

### **Joy Mathew v. Union of India**, cited in [2020] 120 taxmann.com 344 (Kerala)

- Notice u/s 46 issued. Reply to Notice u/s 46 filed by the Assessee.
- Assessment Order u/s 62 passed by revenue.
- Within 30 days, returns filed by the Assessee
- Recovery notices issued by revenue.
- Recovery notice set aside as returns filed within 30 days and Assessment Order u/s 62 deemed to be withdrawn.



## Case laws on Assessment of non-filers of return

**In Re: Omsai Professional Detective and Security Services Pvt. Ltd.**, reported in **2020 (37) G.S.T.L. 360 (AA – AP)**

- Failure to file returns on outward supplies – BJA (150% hike) should be based on taking into account of all the relevant material, available or gathered by assessing authority - Impugned order does not speak of any material collected by assessing authority - No enquiries made to establish turnover assumed by AA - Assessment not bona fide - Failure on assessing authority's part of to any reason or basis in estimating the quantum of the outward taxable supplies
- Returns in Form GSTR-1 filed by assessee not rejectable due to lack of any additional contra evidence, hence the turnover and tax liability disclosed through these GSTR-1 returns to be confirmed as the real turnovers of assessee

**Golden Mesh Industries v. Assistant Commissioner of State Tax**, cited in **[2021] 127 taxmann.com 336 (Telangana)**

- Method adopted by Assessing Authority in multiplying 3 times monthly SGST tax to determine tax liability was arbitrary. Remanded back for fresh consideration.

## Section 63: Assessment of unregistered persons

- » **When?** – Taxable person fails to obtain registration when he was liable to do so or whose registration has been cancelled but who was liable to pay tax
- » **How?** – Proper Officer will proceed to assess the tax liability under BJA and pass an assessment order
- » **Procedure** – Issue a notice in FORM GST ASMT – 14 and serve a summary thereof in FORM GST DRC – 01 mentioning the grounds on which assessment is proposed to be made under BJA. After allowing a time limit of 15 days to furnish reply, assessment order to be passed in FORM GST ASMT – 15 and summary thereof in FORM GST DRC – 07
- » **Time limit for such order** – Assessment order to be passed within 5 years from furnishing of annual return of that period
- » **Opportunity of being heard** must be afforded to assessee before passing any such order

## Section 64: Summary Assessment (special cases)

- » **When?** – When any evidence showing a tax liability of an assessee comes to notice of a proper officer **and** if he has sufficient grounds to believe that any delay in assessment may adversely affect the interest of revenue.
- » **How?** – Proper Officer will proceed to assess the tax liability of such assessee and pass an assessment order in FORM GST ASMT – 16 and summary thereof in FORM GST DRC - 07
- » **Authorization by whom?** – ADC or JC
- » **Assessee not ascertainable** – Where the taxable person to whom the liability pertains is not ascertainable and such liability pertains to supply of goods, the person in charge of such goods shall be deemed to be the taxable person.
- » **Assessment Order to be withdrawn** – On an application made by taxable person in FORM GST AMST – 17 within 30 days of receipt of order or sou-moto, if ADC/JC considers such order to be erroneous, order to be withdrawn in FORM GST ASMT – 18 and procedure u/s 73/74 to be followed. However, the application in ASMT – 17 can also be rejected by ADC/JC in ASMT – 18 if order not found erroneous.<sup>27</sup>



# Best Judgement Assessment (BJA)

**Raghubar Mandal v State of Bihar** reported in **MANU/SC/0094/1957**

Supreme Court has held that the best judgment assessment is an estimate and involves guess work, the estimate must relate to some evidence or material and it must be something more than mere suspicion.

## Some of the common principles that needs to be followed in BJA

- Estimate must relate to some evidence and be made reasonable and not on surmises
- Assessing Authority must not act dishonestly or vindictively or capriciously
- Assessing officer needs to consider all relevant material on records
- BJA must not be fanciful & arbitrary
- Judgment should have reasonable nexus to the available material and circumstances of the case
- Basis of Computation to be disclosed in the order

## Illustration

Mr. A's turnover/taxable value is increasing by almost 5-10% every month from past 1 year and BJA is conducted by department for non-filing of GST Return for the m/o August 2019.

**Case – 1:** For computing tax payable in the m/o August 2019, proper officer enhanced July 2019's taxable turnover by 100%.

**Case – 2:** For computing tax payable in the m/o August 2019, proper officer enhanced July 2019's taxable turnover by 10%.

# Audit

- **Section 65:** Audit by departmental officers
- **Section 66:** Special Audit by Chartered/Cost Accountant appointed by department



# Background

S. No.	Topic	Section	Rule	Form
1.	Definition of 'Audit'	Section 2(13)	-	-
2.	Definition of 'Place of Business'	Section 2(85)	-	-
3.	Audit by proper officer	Section 65	Rule 101	ADT-01 and ADT-02
4.	Special Audit by CA/CWA appointed by department	Section 66	Rule 102	ADT-03 and ADT-04

## Section 2(13): Definition of Audit

“Audit” means –

- ❑ the examination of records, returns and other documents
- ❑ maintained or furnished by the registered person under this Act or the rules made thereunder or under any other law for the time being in force
- ❑ to verify the correctness of
  - ❑ turnover declared,
  - ❑ taxes paid,
  - ❑ refund claimed, and
  - ❑ input tax credit availed, and
- ❑ to assess his compliance with the provisions of this Act or the rules made thereunder.

# Section 2(85): Definition of Place of Business

“Place of business” includes –



Place from where business is carried on



Warehouse or godown or any other place where goods are stored



Place where books of accounts are maintained



Place where a taxable person is engaged in business through an agent

# Section 65: Audit by departmental authorities

**Authorization by whom?**



Commissioner or any officer authorized by Commissioner

**Where audit to be conducted?**



At the place of business of registered person or at own office (desk review)

**For how much period audit can be conducted?**



Section 73/74 containing provisions of issuance of demand notice must be referred for ascertaining the maximum period for which audit can be conducted. Audit can be conducted for one or multiple financial years or a part of financial year\*.

## Section 65: Audit by departmental authorities

- » **How assessee will be informed?** – By way of a notice in Form GST ADT – 01 from proper officer informing about the Audit to be conducted.
- » **Time limit for issuance of such notice?** – At least 15 days before the date on which proper officer wishes to conduct audit.

**Form GST ADT - 01**  
[See rule 101(2)]

Date: \_\_\_\_\_

Reference No.: \_\_\_\_\_

To, \_\_\_\_\_

GSTIN .....  
Name .....  
Address .....

Period - F.Y.(s) - .....

**Notice for conducting audit**

Whereas it has been decided to undertake audit of your books of account and records for the financial year(s) ..... to ..... in accordance with the provisions of section 65. I propose to conduct the said audit at my office/at your place of business on -----.

And whereas you are required to:-  
(i) afford the undersigned the necessary facility to verify the books of account and records or other documents as may be required in this context, and  
(ii) furnish such information as may be required and render assistance for timely completion of the audit.

You are hereby directed to attend in person or through an authorised representative on ..... (date) at ..... (place) before the undersigned and to produce your books of account and records for the aforesaid financial year(s) as required for audit.

In case of failure to comply with this notice, it would be presumed that you are not in possession of such books of account and proceedings as deemed fit may be initiated as per the provisions of the Act and the rules made thereunder against you without making any further correspondence in this regard.

Signature ...  
Name .....  
Designation .....

## Section 65: Audit by departmental authorities

**Manner of conducting audit** – No set manner has been prescribed for conducting audit. However, Rule 101 provides the documents/records to must be verified by proper officer –

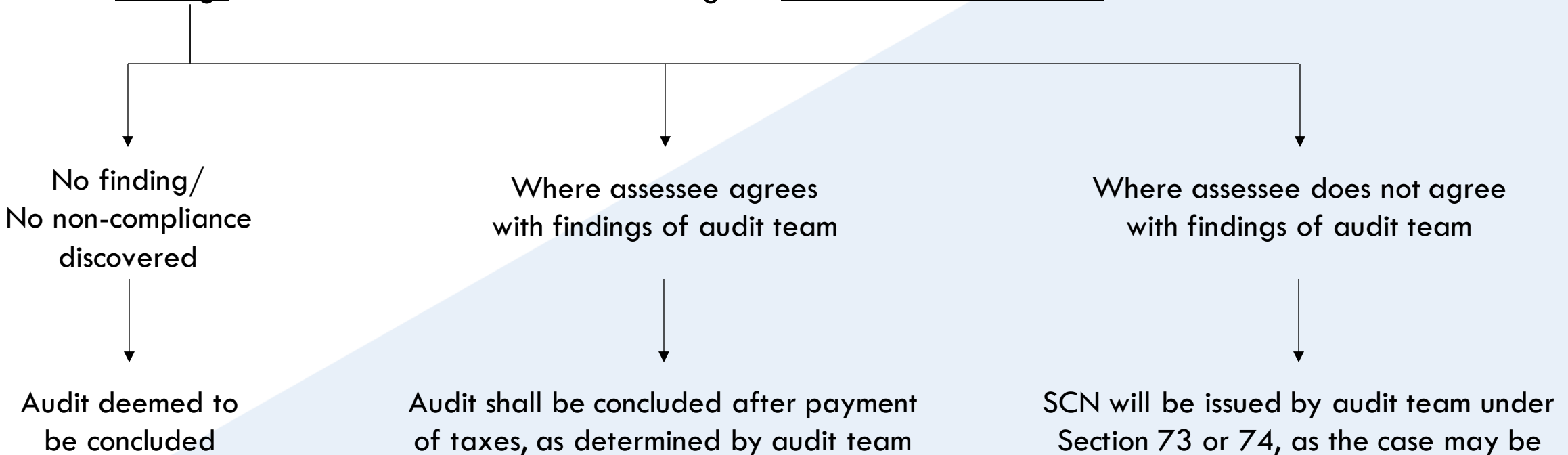
- the documents on the basis of which the books of account are maintained and the returns and statements furnished under the provisions of the Act and the rules made thereunder; and,
- the correctness of –
  - the turnover;
  - ITC availed and utilized; and,
  - exemptions claimed;
  - refund claimed.
  - rate of tax applied in respect of supply so made;

## Section 65: Audit by departmental authorities

- » **Time limit for completion of audit?** – Within a period of 03 months from date of commencement of audit. Can be extended by Commissioner by further period of maximum 06 months, after recording reasons in writing.
  
- » **Date of commencement of audit** shall mean the later of –
  - Date on which documents (as called by the proper officer) are furnished by assessee; or,
  - Date of actual institution of audit at the place of business.

## Section 65: Audit by departmental authorities

**Conclusion of audit** – Within 30 days of conclusion, proper officer shall inform the assessee about his findings and the reasons for such findings in FORM GST ADT – 02





# Form GST ADT - 02

## Form GST ADT – 02

[See rule 101(5)]

Reference No.:

Date:

To,

-----

GSTIN .....

Name .....

Address .....

Audit Report No. .... dated .....

### Audit Report under section 65(6)

Your books of account and records for the F.Y..... has been examined and this Audit Report is prepared on the basis of information available / documents furnished by you and the findings are as under:

Short payment of Tax	Integrated tax	Central tax	State /UT tax	Cess
Interest				
Any other amount				

[Upload pdf file containing audit observation]

You are directed to discharge your statutory liabilities in this regard as per the provisions of the Act and the rules made thereunder, failing which proceedings as deemed fit may be initiated against you under the provisions of the Act.

Signature .....

Name .....

Designation .....

## Guidelines/Circulars on Audit

- » Trade Circular No. 13/2020, dated 21-12-2020 issued by Maharashtra Government prescribing General Procedure in case of GST Audit u/s 65 of MGST Act, 2017

## Section 66: 'Special Audit' by CA/CWA appointed by department

### When it is required?

- » At any stage of scrutiny, inquiry, investigation or any other proceedings
- » Officer (not below the rank of AC) **having regard to the nature and complexity of the case and in the interest of revenue, is of the opinion** that
- » The value has not been correctly declared or the credit availed is not within the normal limits
- » Such officer may direct the assessee by issuing FORM GST ADT – 03 to get his records examined and audited\* by a Chartered/Cost Accountant, as nominated.

\*Special audit to be conducted even if an audit of assessee has already been undertaken under any other provision of this Act or any other Law

# Form GST ADT - 03

## Form GST ADT - 03

[See rule 102(1)]

Date:

Reference No.:

To,

-----  
GSTIN .....

Name .....

Address .....

Tax period - F.Y.(s) - .....

**Communication to the registered person for conduct of special audit under section 66**

Whereas the proceedings of scrutiny of return /enquiry/investigation/..... are going on;

And whereas it is felt necessary to get your books of account and records examined and audited by .....(name), chartered accountant / cost accountant nominated by the Commissioner;

You are hereby directed to get your books of account and records audited by the said chartered accountant / cost accountant.

Signature .....

Name .....

Designation .....

# Section 66: 'Special Audit' by CA/CWA appointed by department

**Approval of special audit by whom and who shall nominate such CA/CWA?**



Commissioner

**Time period for completion of such audit by CA/CWA?**



90 days. Can be extended by Assistant Commissioner (on an application by assessee or CA/CWA) by a further period of 90 days.

**Who will pay for the remuneration of CA/CWA?**



Expenses (including remuneration) of such examination and audit shall be determined and paid by Commissioner

## Section 66: 'Special Audit' by CA/CWA appointed by department

### Conclusion of special audit -

- » CA/CWA, as nominated, to submit his report within the time period, as specified, to Assistant Commissioner containing his findings.
- » Findings of Special Audit to be communicated to assessee in FORM GST ADT – 04.
- » Any material gathered by CA/CWA which is intended to be used against the assessee in any proceedings must be done only after affording an opportunity of being heard to the assessee.
- » Special Audit results in detection of amount not paid/short paid, etc. – Proceedings under Section 73/74 (demand notice) can be initiated by proper officer.

# Form GST ADT - 04

**Form GST ADT – 04**  
*[See rule 102(2)]*

Reference No.:

Date:

To,

-----  
GSTIN .....  
Name .....  
Address .....

**Information of Findings upon Special Audit**

Your books of account and records for the F.Y..... has been examined by -----  
--- (chartered accountant/cost accountant) and this Audit Report is prepared on the basis of  
information available / documents furnished by you and the findings/discrepancies are as  
under:

Short payment of	Integrated tax	Central tax	State /UT tax	Cess
Tax				
Interest				
Any other amount				

*[Upload pdf file containing audit observation]*

You are directed to discharge your statutory liabilities in this regard as per the provisions of  
the Act and the rules made thereunder, failing which proceedings as deemed fit may be  
initiated against you under the provisions of the Act.

Signature .....  
Name .....  
Designation .....

# Inspection, Search, Seizure & Arrest

- **Section 67:** Power of Inspection, Search & Seizure
- **Section 68:** Inspection of goods in movement
- **Section 69:** Power to Arrest
- **Section 70:** Power to Summon
- **Section 71:** Access to Business Premises
- **Section 72:** Officers to assist Proper Officers



# Background

S. No.	Topic	Section	Rule	Form
1.	Power of Inspection, Search & Seizure	Section 67	Rule 139 to 141	FORM GST INS – 01 to INS - 05
2.	Inspection of goods in movement	Section 68	Rule 138, 138A to 138D, 55A	FORM GST EWB – 01 to EWB-04 FORM GST INV – 01 FORM GST MOV – 01 to MOV - 11
3.	Power to Arrest	Section 69	-	-
4.	Power to Summon	Section 70	-	-
5.	Access to Business Premises	Section 71	-	-
6.	Officers to assist proper officers	Section 72	-	-

## Section 67: Power to Inspection, Search & Seizure

- † Inspection
- † Search & Seizure
- † Break open or seal
- † Other

# Inspection

## When can Inspection be ordered?

If the officer authorizing inspection has reasons to believe

Any person engaged in the **business of transporting goods (transporter) or an owner or operator of a warehouse or a godown or any other place is **keeping goods** which have escaped payment of tax or **has kept his accounts** or goods in such a manner as is **likely to cause evasion of tax** payable under this Act**

**A taxable person** has **suppressed** any transaction relating to supply of goods or services or both or the stock of goods in hand

**A taxable person** has **claimed input tax credit** in excess of the entitlement

**A taxable person** has indulged in **contravention** of any provisions of this Act or **Rules to evade tax** under this Act

# Inspection

## » Proper officer who can authorize inspection?

Officer in the rank of Joint Commissioner or above in FORM GST INS - 01

## » What can be inspected by proper officer?

Any place of business of the taxable person or the persons engaged in the business of transporting goods or the owner or the operator of warehouse or godown or any other place.

# Section 2(85): Definition of Place of Business

“Place of business” includes –



Place from where business is carried on



Warehouse or godown or any other place where goods are stored



Place where books of accounts are maintained



Place where a taxable person is engaged in business through an agent

# Search & Seizure u/s 67(2)

## » Officer who can authorize Search & Seizure?

Officer in the rank of Joint Commissioner or above in FORM GST INS - 01

## » When can search & seizure be authorized?

Proper officer, either pursuant to an inspection or otherwise, has reasons to believe that any goods liable to confiscation or any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Act, are secreted in any place.

## » Who can seize?

Any officer of central tax authorized by proper officer or proper officer himself

## » What can be seized?

Goods | Documents\* | Books | Things

Order of seizure in FORM GST INS-02.

\*Document as defined under Section 2(41) includes written and printed record of any sort and electronic record as defined in Section 2 of I.T. Act

# Search & Seizure u/s 67(2)

## » **Not practical to search or seize goods**

Serve on the owner or custodian of goods an order in FORM GST INS - 03 that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer

## » **Seized goods to be released on provisional basis**

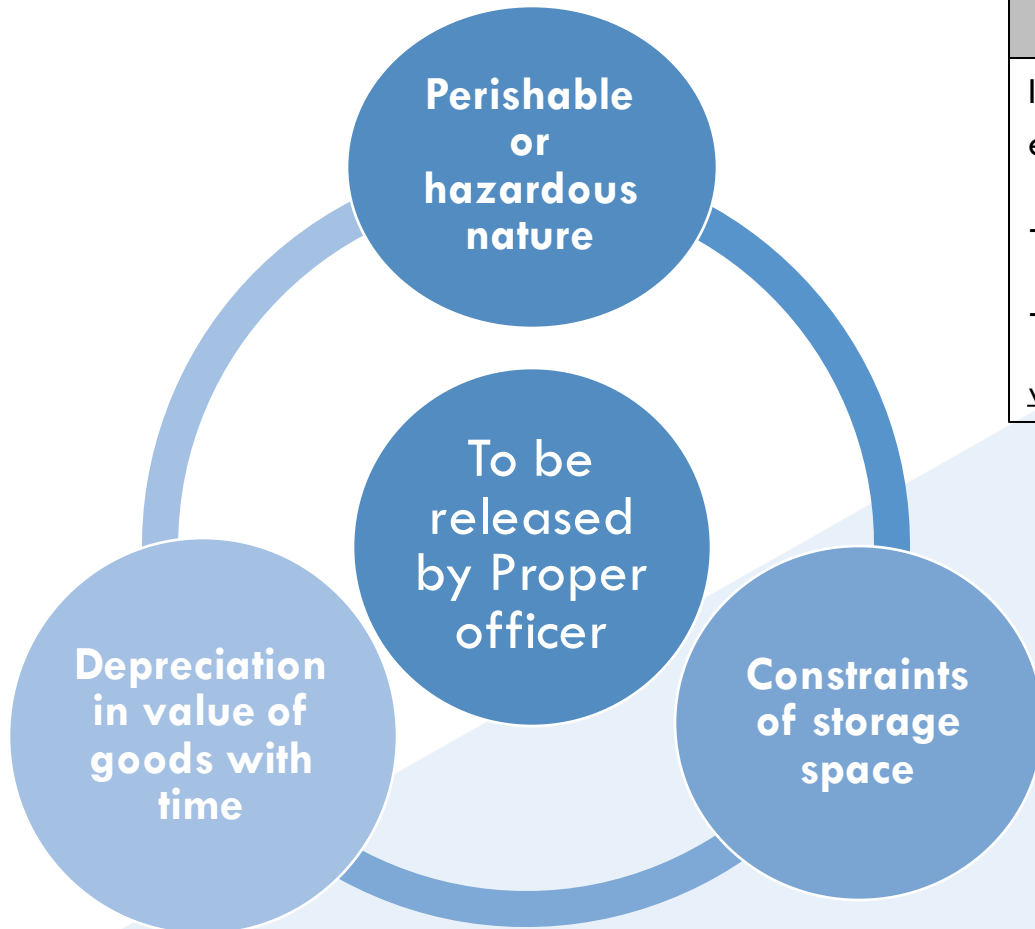
On execution of bond (equal to value of goods) in FORM GST INS – 04 and furnishing of security (equal to value of tax, interest and penalty) **or** on payment of applicable tax, interest and penalty.

Person to whom goods released provisionally fails to produce the goods at appointed date and place – encash security.

## » **Time limit**

A demand notice must be served within 6 months of seizure of goods otherwise goods to be returned by officer. Extension  
– Can be further extended by maximum 6 months.

# Search & Seizure u/s 67(2)



## Condition of release

If the taxable person pays an amount equivalent to the

- market price of such goods or things; or,
- the amount of tax, interest and penalty

whichever is lower

## Form of release

FORM GST INS - 05

## Condition not fulfilled

Goods will be disposed off and amount realized be adjusted against tax, interest and penalty

## Inventory

Proper officer shall prepare an inventory of all such goods seized, containing fields such as *description, quantity or unit, make, mark or model, where applicable* and get it signed from the assessee.



**Goods notified *vide* Notification  
No. 27/2018 – Central Tax  
dated 13 June 2018**

**Schedule**

- (1) Salt and hygroscopic substances
- (2) Raw (wet and salted) hides and skins
- (3) Newspapers and periodicals
- (4) Menthol, Camphor, Saffron
- (5) Re-fills for ball-point pens
- (6) Lighter fuel, including lighters with gas, not having arrangement for refilling
- (7) Cells, batteries and rechargeable batteries
- (8) Petroleum Products
- (9) Dangerous drugs and psychotropic substances
- (10) Bulk drugs and chemicals falling under Section VI of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975)
- (11) Pharmaceutical products falling within Chapter 30 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975)
- (12) Fireworks
- (13) Red Sander
- (14) Sandalwood
- (15) All taxable goods falling within Chapters 1 to 24 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975)
- (16) All unclaimed/abandoned goods which are liable to rapid depreciation in value on account of fast change in technology or new models etc.
- (17) Any goods seized by the proper officer under section 67 of the said Act, which are to be provisionally released under sub-section (6) of section 67 of the said Act, but provisional release has not been taken by the concerned person within a period of one month from the date of execution of the bond for provisional release.

[F. No. 349/58/2017 – GST (Pt.)]

# Search & Seizure u/s 67(2)

## » **Time period for which documents or books or things can be retained**

As long as they are necessary for their examination for any inquiry or proceedings. However, if a demand notice has been issued and anything from above has not been made part of RUD, return it to the assessee within 30 days of issuance of such notice.

## » **Rights of assessee in case of seizure of documents**

- Can make copies thereof or take extracts therefrom
- In presence of authorized officer at the place and time, such officer may indicate

Exception – When officer is of the opinion that it may prejudicially affect the investigation

## » Provisions of CrPC, in relation to search & seizure, to apply. 'Magistrate' to be substituted by 'Commissioner'.

# Search & Seizure u/s 67(11)

## » **Proper officer?**

Same in FORM GST INS - 01

## » **When?**

When PO has reasons to believe that any person has evaded or is attempting to evade the payment of any tax

## » **What can be seized?**

Accounts, Registers or documents of such person produced before the PO and grant a receipt for the same

## » **Time period?**

So long as required in connection with any proceedings under this Act/Rules for prosecution

C.B.I. & C. Instruction No. 1/2020-21/GST-Investigation, dated 2-2-2021  
– Instructions/Guidelines on Procedure to be followed during search operations accordance with provisions of CrPC, 1973

- Officer authorizing search should have valid & justifiable reasons duly recorded in file.
- Search only with proper search authorization issued by Competent Authority
- DIN should be quoted on each search authorization
- Premises of a person (Mr. X) cannot be searched basis search authorization of premises of another person (Mr. Y).
- Search Authorization issued on the name of a person who is already dead. Fresh search authorization to be issued on the name of its legal heirs.
- In case of search of residence, a lady officer to accompany.
- Search in presence of two independent witnesses. PSU Employees, Bank Employees, etc. may be preferred.
- Officers to show their ID cards to the person-in-charge of premises. Personal search to be offered of both officers and independent witnesses both before the start of search and after commencement of search.

C.B.I. & C. Instruction No. 1/2020-21/GST-Investigation, dated 2-2-2021  
– Instructions/Guidelines on Procedure to be followed during search operations accordance with provisions of CrPC, 1973

- Search Authorization to be executed before the start of search. Sign with date and time to be obtained of person-in-charge and independent witnesses on search authorization.
- Panchnama to be made. It should contain list of documents/ goods/things recovered. Time & date of start & conclusion of search proceedings to be also mentioned on Panchnama.
- For sensitive premises, videography may be considered.
- Sensitive & respectable towards assessee and his social & religious sentiments.
- Special attention to elders, women & children. Children can go to school after examination of their bags. If someone is not well, medical practitioner to be called.
- Panchnama's copy to be given to person-in-charge of premises. Every page of panchnama & its annexures to be signed by officer.

C.B.I. & C. Instruction No. 1/2020-21/GST-Investigation, dated 2-2-2021  
– Instructions/Guidelines on Procedure to be followed during search operations accordance with provisions of CrPC, 1973

- If person-in-charge does not sign panchnama, paste copy of panchnama at premises.
- Statement recorded during search, each page of statement to be signed by person giving statement.
- After search, report to be given to officer who authorized search.
- Leave the premises immediately after completion of Panchnama proceedings.
- Take COVID precautions.

## Paresh Nathalal Chauhan v. State of Gujarat

2020 (36) G.S.T.L. 498 – Guj. HC (24.12.2019)

- From the contents of the panchnama as referred to hereinabove, it is evident that the concerned officers remained at the residential premises of the petitioner with a view to extort confessions from the family members of the petitioner regarding the presence of the petitioner and the place where the petitioner might have secreted the documents regarding his business dealings.
- In the facts of the present case, the power under sub-section (2) of Section 67 of the GST Acts has not only not been exercised strictly in accordance with law, but has also not been exercised for the purposes for which the law authorises it to be exercised, namely that though the power was to be exercised for carrying out search and seizure of goods liable to confiscation, documents, books or things at the place in respect of which the authorisation of search was given, the search was converted to a search for the dealer and into an investigation to find out other places where documents, books or things could have been secreted, which was beyond the scope of the powers vested in the authorised officer.

**Pioneer Cooperative Car Parking Servicing & Constr. Society Ltd. v.  
State of West Bengal – 2019 (28) G.S.T.L. 193 – Cal. HC (30.05.2019)**

- Search and seizure under GST by an officer below the rank of Joint Commissioner is without jurisdiction and amounts to harassment of assessee.

**Prakashsinh Hathisinh Udavat v. State of Gujarat  
2019 (31) G.S.T.L. 583 – Guj. HC (16.10.2019)**

- The AC was not conferred any power under Section 67(2) to carry out any search or inspection.
- A perusal of the impugned order further reveals that against the name of person to whom the premises where the search is carried out belong, nothing has been stated and it has been left blank and against the names of witnesses, the petitioner's name and address has been shown. At the end of the order, the names of the witnesses are shown without complete addresses, making it impossible to identify the witnesses.



# Break open or seal

## » Proper officer?

Same as for Search or Seizure

## » Power?

- To Seal or Break Open the door of any premises; or
- To Break Open any almirah, electronic devices, box, receptacle
- in which any goods, accounts, registers or documents of the person are suspected to be concealed
- **where access to such premises, almirah, electronic devices, box or receptacle is denied.**

## Steel Hypermart India Pvt. Ltd. v. ADC, CT Enforcement

2019 (22) G.S.T.L. 321 – Kar. HC (01.02.2019)

- Sealing of petitioner's premises although access to business premises not denied by the petitioner.
- Revenue directed to unseal the premises in question at a time convenient to the petitioner and the petitioner shall co-operate for inspection/search of the premises in question, including the computer system.

# Others

Who?



Commissioner or any officer authorized by him

What?



Purchase of any goods or services or both from the business premises of any taxable person\*

Why?



To check the issue of tax invoices or bills of supply by such taxable person

## Section 68: Inspection of Goods in movement

- Charging section for prescribing a document, i.e. E-way bill & others, to be accompanied along with consignment (of a value greater than prescribed) while the goods are in movement.
- Charging section empowering Government to prescribe rules concerning procedure to be followed in case of inspection of consignment in movement – *Circular 41/15/2018 – GST dated 13 April 2018*

# Section 69: Power to Arrest

## Offences

01

**Supplies** any goods or services or both **without issue of any invoice**, in violation of the provisions of this Act/Rules, **with the intention to evade tax**

02

**Issues any invoice or bill without supply of goods or services or both** in violation of the provisions of this Act/Rules, leading to wrongful availment or utilisation of input tax credit or refund of tax

03

**Avails input tax credit** using the invoice or bill referred to in (2)

04

**Collects any amount as tax but fails to pay the same to the Government** beyond a period of three months from the date on which such payment becomes due

## Punishment

01

Where amount evaded exceeds Rs. 5 crores

Imprisonment of upto 5 years and with fine

02

Where amount evaded exceeds Rs. 2 crores but less than 5 crores

Imprisonment of upto 3 years and with fine

03

Again convicted for such offence

Imprisonment of upto 5 years and with fine

## Section 69: Power to Arrest

### » **Authorization by whom?**

Commissioner

### » **Power?**

When he has reasons to believe that a person has committed offences (as listed) punishable (as listed), authorize any officer of central tax to arrest such person.

## Cognizable & Non - Bailable Offence

- » Amount evaded in Offences (as listed) is more than Rs. 5 crores are cognizable and non - bailable offences.
  
- » In such cases, after arrest, officer shall inform the person arrested about –
  - the grounds of arrest; and,
  - produce him before a Magistrate within 24 hours.

# Cognizable v/s Non-cognizable

Particulars	Cognizable	Non-cognizable
Defined under which section of CrPC, 1973	Section 2(c)	Section 2(l)
Requirement of Warrant for Arrest	Not required	Required
Nature of crime	Serious offence	Not serious
Examples of CrPC	Murder, Rape, Dowry Death, Kidnapping, Theft, etc.	Assault, Cheating, Forgery, etc.
FIR	Can be lodged without obtaining prior permission of Magistrate	Cannot be lodged without obtaining prior permission of Magistrate
Procedure for Arrest	Can be arrested after lodging FIR	Lodge FIR, Investigate, prepare and file charge sheet in court, trial, final order of arrest by Court



# Bailable v/s Non-bailable

<b>Particulars</b>	<b>Non - Bailable</b>	<b>Bailable</b>
Defined under which section of CrPC, 1973	Section 2(a)	Section 2(a) read with First Schedule
Bail	Matter of discretion	Matter of right
Release on bail	By Court only	By Police also
Nature	Grave & Serious	Less grave & serious

## Section 70: Power to Summons

- Proper Officer has
  - power to summon
  - any person whose attendance he considers necessary
  - either to give evidence or to produce a document or any other thing in any inquiry
- 
- Manner same as provided in the case of civil court under the provisions of CPC



## FAQs released by CBIC

### **Q 34. What are the guidelines for issue of summons?**

*Ans. The Central Board of Indirect Taxes and Customs (CBIC) in the Department of Revenue, Ministry of Finance has issued guidelines from time to time to ensure that summons provisions are not misused in the field. Some of the important highlights of these guidelines are given below:*

- i. **summons is to be issued as a last resort where assesses are not co-operating and this section should not be used for the top management;***
- ii. **the language of the summons should not be harsh and legal which causes unnecessary mental stress and embarrassment to the receiver;***
- iii. **summons by Superintendents should be issued after obtaining prior written permission from an officer not below the rank of Assistant Commissioner with the reasons for issuance of summons to be recorded in writing;***



## FAQs released by CBIC

- iv. *where for operational reasons, it is not possible to obtain such prior written permission, oral/ telephonic permission from such officer must be obtained and the same should be reduced to writing and intimated to the officer according such permission at the earliest opportunity;*
- v. *in all cases, where summons are issued, the officer issuing summons should submit a report or should record a brief of the proceedings in the case file and submit the same to the officer who had authorized the issuance of summons;*
- vi. ***senior management officials such as CEO, CFO, General Managers of a large company or a Public Sector Undertaking should not generally be issued summons at the first instance. They should be summoned only when there are indications in the investigation of their involvement in the decision making process which led to loss of revenue.***

## FAQs released by CBIC

**Q 35. What are the precautions to be observed while issuing summons?**

*Ans. The following precautions should generally be observed when summoning a person:-*

- (i) A summon should not be issued for appearance where it is not justified. The power to summon can be exercised only when there is an inquiry being undertaken and the attendance of the person is considered necessary.*
- (ii) Normally, summons should not be issued repeatedly. As far as practicable, the statement of the accused or witness should be recorded in minimum number of appearances.*
- (iii) Respect the time of appearance given in the summons. No person should be made to wait for long hours before his statement is recorded except when it has been decided very consciously as a matter of strategy.*
- (iv) Preferably, statements should be recorded during office hours; however, an exception could be made regarding time and place of recording statement having regard to the facts in the case.*

Circular bearing F. No.  
208/122/89-CX.6 dated  
13 October 1989

*Complaints have been received from the trade that in some of the Collectorates summons under Section 14 of the Central Excise and Salt Act, 1944 are being issued to the Managing Directors and other high officers with a view to enforce recovery of dues which are under dispute. Action under this section is to be taken only as a last resort in cases whether assesses are not cooperating or investigations are to be completed expeditiously. This section should not be used for harassing the top management for forcing them to pay up demands which are disputed by them. For recovery of demands normal procedure under the law should be followed.*

*If any instance of issue of summons to Managing Directors and others without justification is noticed, a serious view will be taken by the board. Collectors will be held personally responsible for enforcing these instructions in their charges.*

Instruction bearing F. No.  
207/07/2014-CX-6, dated  
20 January 2015

*It has been brought to the notice of the Board that in some instances, the summons under Section 14 of the Central Excise Act, 1944 have been issued by the field formations to the top senior officials of the companies in a routine manner to call for material evidence/documents. Besides, summons have been issued to enforce recovery of dues, which are under dispute. As per Section 14 of Central Excise Act, 1944, summons can be used in an inquiry for recording statements or for collecting evidence/documents. While the evidentiary value of securing documentary and oral evidence under the said legal provision can hardly be over emphasized, nevertheless, it is desirable that summons need not always be issued when a simple letter, politely worded, can also serve the purpose of securing documents relevant to investigation. It is emphasized that the use of summons be made only as a last resort when it is absolutely required.*

Instructions bearing no.  
3/2022-23 (GST-Investigation)  
dated 17 August 2022

- *Officers are also advised to explore instances when instead of resorting to summons, a letter for requisition of information may suffice.*
- *The officer issuing summons should record in file about appearance/ non-appearance of the summoned person and place a copy of statement recorded in file.*
- *Summons should normally indicate the name of the offender(s) against whom the case is being investigated unless revelation of the name of the offender is detrimental to the cause of investigation, so that the recipient of summons has prima-facie understanding as whether he has been summoned as an accused, co-accused or as witness.*
- *Do not issue summons for statutory documents which are available on GST portal.*
- *DIN mandatory on Summons.*



Instructions bearing no.  
3/2022-23 (GST-Investigation)  
dated 17 August 2022

- *The summoning officer must be present at the time and date for which summons is issued. In case of any exigency, the summoned person must be informed in advance in writing or orally.*
- *All persons summoned are bound to appear before the officers concerned, the only exception being women who do not by tradition appear in public or privileged persons. (For exemption, Refer Section 132 and 133 of CPC)*
- *Repeated summons without ensuring service of the summons must be avoided.*
- *Sometimes it may so happen that summoned person does not join investigations even after being repeatedly summoned. In such cases, after giving reasonable opportunity, generally three summons at reasonable intervals, a complaint should be filed with the jurisdictional magistrate. However, this does not bar to issue further summons to the said person under Section 70 of the Act.*

# FSM Education Pvt. Ltd. v. Union of India & Ors.

2022 (1) TMI 551 – Bombay HC (10.01.2022)

## Facts of the case –

- The Petitioner received a communication dated 02 Dec. 2021 from the Office of the Commissioner of CGST, Mumbai West, requesting to submit certain documents within a period of 4 days from the date of receipt of the Notice. Documents submitted from time to time.
- Department issued a Summons on the Petitioner on 15 Dec. 2021, under Section 70 to remain present on 16 Dec. 2021 at 11.20 a.m. The Petitioner deputed Mr. Piyush Patel, Accounts Manager of the Petitioner. Said Piyush Patel was grilled and interrogated for a period of about five hours from 4.00 p.m. to 9.00 p.m. and was subjected to cross-questioning which was contrary to the guidelines issued by Department.
- The Department issued another summons on 23 Dec. 2021 to Mrs. Tanuja Gomes, one of the Directors of the Petitioner for producing documents and providing oral evidence and to remain present before his office on 29 Dec. 2021.

# FSM Education Pvt. Ltd. v. Union of India & Ors.

2022 (1) TMI 551 – Bombay HC (10.01.2022)

## **Petitioner's Arguments –**

- The summons cannot be issued to coerce and pressurize the Petitioner or its director. He submits that Ms. Tanuja Gomes is not personally familiar with the issue of exemption regarding payment of GST, she being a musician.

## **Plea –**

- Requested for HC's interference to quash and set aside the summons issued to Ms. Tanuja Gomes and seeks direction to the Respondents to conduct an enquiry without initiating summons and interrogation unless found extremely necessary and only by due adherence of the law.

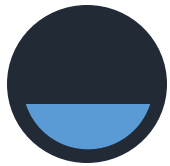
# FSM Education Pvt. Ltd. v. Union of India & Ors.

2022 (1) TMI 551 – Bombay HC (10.01.2022)

## Held –

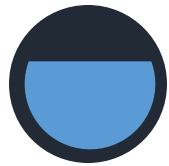
- A perusal of the reply to the question 34 of FAQs dated 15 December 2018, issued by GST Department would clearly indicate that issuance of summons is a last resort and are not issued in a casual manner. There are no allegations made by the Respondents alleging non-cooperation on the part of the Petitioner.
- Directed the Department to seek whatever document was necessary for inquiry and consultants were directed to furnish all the data within stipulated timeline.
- It was further held that if any summons is issued by the Department, the summons shall indicate the purpose of issuing summons to the Petitioner with clear 7 days notice before fixing the date for recording the statement of the said Director Ms. Tanuja Gomes.

# Section 71: Access to Business Premises



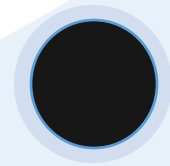
## Authorization by whom?

Officer in the rank of JC or above



## Power

Access to any place of business of a registered person to inspect books of account, documents, computers, computer programs, computer software whether installed in a computer or otherwise and such other things



## Why access is authorized?

For the purposes of carrying out any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of revenue

Assessee must assist the officers for scrutiny/audit/verification and provide documents immediately upon demand within a period of 15 days or such extended period, as may be allowed.

# Section 72: Officers to assist proper officers



Railway Officer



Customs Officer



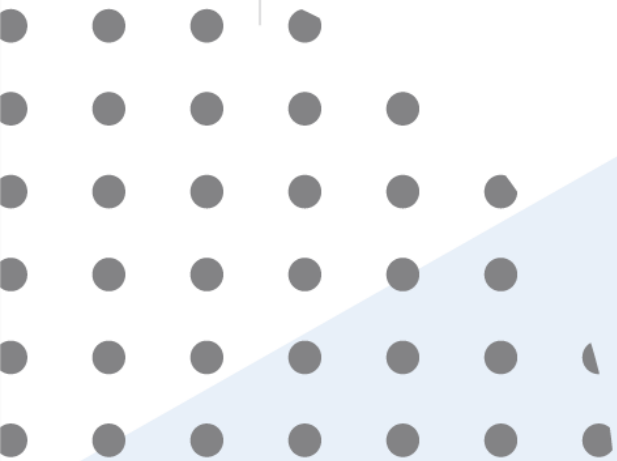
Land revenue collection Officer



Police Officer

To assist Proper Officer in this Act

# Proper Officer - Summary

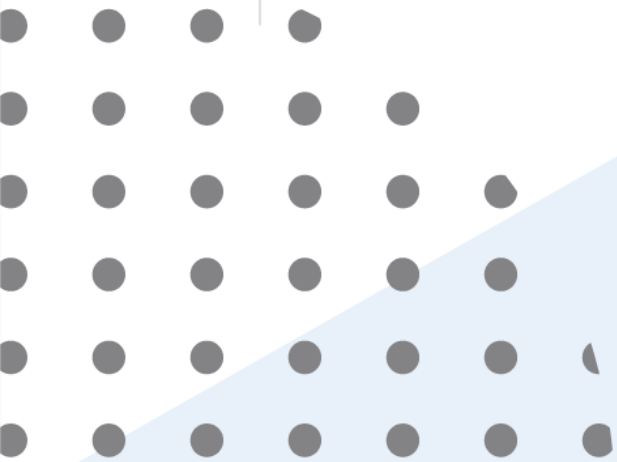


<b>Section</b>	<b>Description</b>	<b>Proper Officer</b>
Section 60	Provisional Assessment	DC/AC
Section 61	Scrutiny of Returns	Superintendent
Section 62	Assessment of Non-filers of return	Superintendent
Section 63	Assessment of Unregistered persons	DC/AC
Section 64	Summary Assessment	DC/AC
Section 65 (6) read with Rule 101 (2), (3), (4), (5)	Conduct of entire Audit	DC/AC
Section 65 (7)	Initiation of proceedings under 73/74 after conclusion of audit	Superintendent
Section 66 (6)	Initiation of proceedings under 73/74 after conclusion of audit by CA/CWA	Superintendent



Section	Description	Proper Officer
Section 67 (1), (2), (5), (9) read with Rule 139 (1), (2), (3), (4)	Inspection, Search & Seizure, Copies/Extract, Inventory of Perishable or Hazardous Goods, Serve an order if not practical to seize goods	ADC/JC
Section 67 (7)	Extension of time limit for serving notice after seizure of goods	Commissioner
Section 67 (11)	Search & Seizure	Superintendent
Rule 140 (2)	Goods provisionally released – Not brought at defined place and date – Encash the security	ADC/JC
Section 68 (3)	E-way bill interception	Inspector
Section 70	Power to issue Summons	Superintendent
Section 71	Access to Premises	ADC/JC

# Reasons to believe



Golden Cotton Industries v. Union of India, reported in 2019 (29) G.S.T.L. 587 (Guj.)

- The words “where the proper officer has reasons to believe” in Section 67 of the Act suggest that the **belief must be that of an honest and reasonable person based upon the relevant materials and circumstances.**
- The statutory requirement of reasonable belief, rooted in the information in possession of Proper Officer under the Act, is to safeguard the citizen from vexatious proceedings.
- ‘Belief’ is a mental operation of accepting a fact as true, so, **without any fact, no belief can be formed.**
- It is true that it is not necessary for the Proper Officer under the Act to state reasons for his belief. **But if it is challenged that he had no reasons to believe, in that case, he must disclose the materials upon which his belief was formed,** as it has been held by the Supreme Court in **Sheonath Singh’s case (AIR 1971 SC 2451)**, that the Court can examine the materials to find out whether an honest and reasonable person can base his reasonable belief upon such materials although the sufficiency of the reasons for the belief cannot be investigated by the Court.

Rimjhim Ispat Ltd. v. State of U.P., reported in 2019 (24) G.S.T.L. 711 (All.)

The principles that are culled out from the catena of decisions referred is that the 'reasons to believe' should exist and should be based on reasonable material and should not be fanciful or arbitrary.

L.R. Gupta v. Union of India, reported in (1992) 194 ITR 32

Delhi High Court held that the expression **“information” must be something more than a mere rumour or a gossip or a hunch. There must be some material, which can be regarded as information, which must exist on the file** on the basis of which the authorizing officer can have reason to believe. **Merely because a person does not file a return or does not disclose true income and wealth cannot be a ground** for authorising the search and seizure, under Section 132(1) of the Act.

## Background – Demands & Recovery (Chapter XV)

S. No.	Topic	Section	Rule	Form
1.	Determination of tax not paid/short paid/erroneously refunded or ITC wrongly availed or utilised for any reason other than fraud or any wilful misstatement or suppression of facts	Section 73	Rule 121 Rule 142	Form DRC-01 to DRC-08
2.	For reasons of fraud or any wilful misstatement or suppression of facts	Section 74		
3.	General provisions relating to determination of tax	Section 75		
4.	Tax collected but not paid to Government	Section 76	Rule 121 Rule 142	Form DRC-01 to DRC-08
5.	Tax wrongfully collected and paid to Central Government or State Government	Section 77		
6.	Initiation of recovery proceedings	Section 78		

## Background – Demands & Recovery (Chapter XV)

S. No.	Topic	Section	Rule	Form
7.	Recovery of tax	Section 79	Rule 96A(3), 143-157	Form DRC-09 to DRC-19
8.	Payment of tax and other amount in instalments	Section 80	Rule 158	Form DRC-20 & DRC-21
9.	Transfer of property to be void in certain cases	Section 81		
10.	Tax to be first charge on property	Section 82		
11.	Provisional attachment to protect revenue in certain cases	Section 83	Rule 159	Form DRC-22 & DRC-23
12.	Continuation and validation of certain recovery proceedings	Section 84	Rule 161	Form DRC-25

## Background – Appeals & Revision (Chapter XVIII)

S. No.	Topic	Section	Rule	Form
1.	Appeals to Appellate Authority	Section 107	Rule 108, 109, 109A & 113	Form APL-01 to APL-04
2.	Powers of Revisional Authority	Section 108	Rule 109B	Form APL-04 & RVN-01
3.	Constitution of Appellate Tribunal and Benches thereof	Section 109		
4.	President and members of Appellate Tribunal, their qualification, appointment, conditions of service, etc.	Section 110		
5.	Procedure before Appellate Tribunal	Section 111	Rule 112	
6.	Appeals to Appellate Tribunal	Section 112	Rule 110 & 111	Form APL-05 to APL-07
7.	Orders of Appellate Tribunal	Section 113		
8.	Financial and administrative powers of President	Section 114		

## Background – Appeals & Revision (Chapter XVIII)

S. No.	Topic	Section	Rule	Form
9.	Interest on refund of amount paid for admission of appeal	Section 115		
10.	Appearance by authorised representative	Section 116	Rule 116	
11.	Appeal to High Court	Section 117	Rule 114 & 115	Form APL-04 to APL-08
12.	Appeal to Supreme Court	Section 118	Rule 115	Form APL-04
13.	Sums due to be paid notwithstanding appeal, etc.	Section 119		
14.	Appeal not to be filed in certain cases	Section 120		
15.	Non-appealable decisions and orders	Section 121		



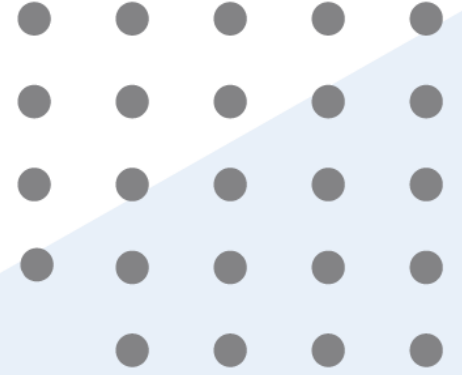
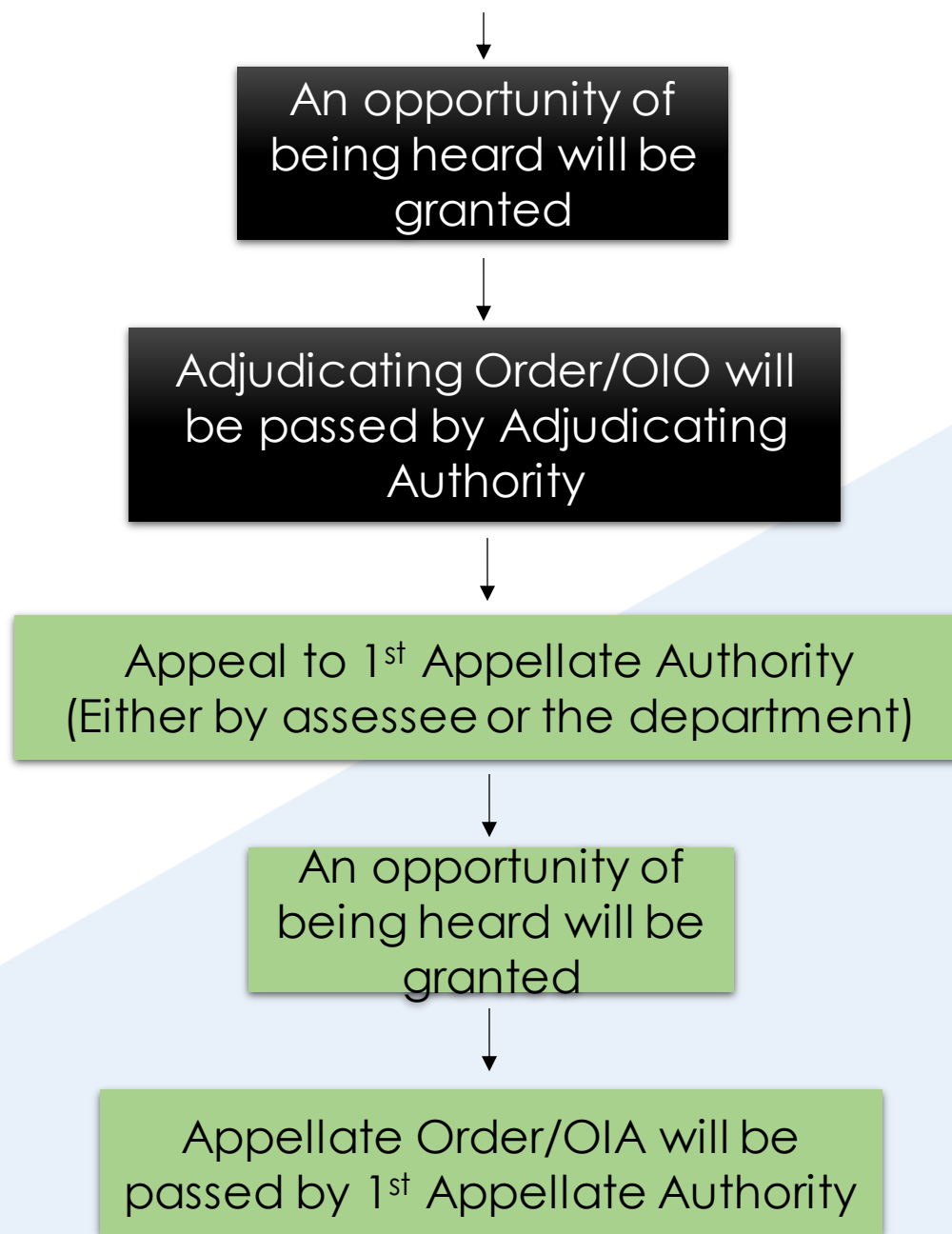
# Flow of Litigation



Any discrepancy noticed and officer is not satisfied with assessee's submissions

SCN will be served by the proper officer u/s 73 or 74

Reply to SCN to be furnished by the Assessee



↓

Appeal to 2<sup>nd</sup> Appellate Authority (GSTAT)  
(Either by assessee or the department)

↓

An opportunity of  
being heard will be  
granted

↓

Final Order will be passed by GSTAT  
(2<sup>nd</sup> Appellate Authority)

↓

Appeal to HC/SC  
(Either by assessee or the department)

↓

Final Order will be passed by HC/SC  
after affording personal hearing

→

**Matter attains  
finalization**

# Demands

- **Section 73:** SCN in non-fraud cases
- **Section 74:** SCN in fraud cases
- **Section 75:** General provisions relating to determination of tax
- **Section 76:** Tax collected but not paid to Government

# Section 73 & 74: Issuance of Show Cause Notice

Serve SCN on the assessee, if –

- † Tax not paid
- † Tax short paid
- † Tax erroneously refunded
- † ITC wrongly availed or utilized

Whether following ingredients exists?

- † Fraud
  - † Wilful-misstatement
  - † Suppression of facts
- to evade tax

No

SCN under **Section 73**

Interest u/s 50 and Penalty (10%)

Yes

SCN under **Section 74**

Interest u/s 50 and Penalty (100%)

# Section 73 & 74: Difference

Particulars	Section 73	Section 74
Time limit for passing Adjudicating Order	3 years*	5 years*
Time limit for passing Issuing SCN	At least 3 months prior to last date of issuing Order	At least 6 months prior to last date of issuing Order
Penalty leviable	10% of tax or Rs. 10,000, whichever is higher	100% of tax
Reduced Penalty (in case tax along with Interest & Penalty, if any, paid <u>before</u> service of SCN)	0%**	15%
Reduced Penalty (in case tax along with Interest & Penalty, if any, paid <u>within 30 days</u> of SCN)	0%**	25%
Reduced Penalty (in case tax along with Interest & Penalty, if any, paid <u>within 30 days</u> of Order)	No provision of reduced penalty	50%

\*In case of tax & ITC – 3/5 years from the due date for furnishing of annual return for the financial year.

\*In case of erroneous refund – 3/5 years from the date of refund.

\*\*These benefits u/s 73 not available in case of self-assessed tax or tax collected but not paid within 30 days.

Notification No. 13/2022-C.T.,  
dated 5-7-2022

***Extends the last date for issuance of Order u/s 73  
pertaining to period 2017-18 –***

***Original time period –***

*For Order – 02/04/06 February 2023*

*For SCN – 02/04/06 November 2022*

***Extended & new time period –***

*Order in case of tax & ITC – 30 September 2023*

*SCN in case of tax & ITC – 30 June 2023*

*In case of erroneous refund – exclude 01 March 2020  
to 28 February 2022.*

## Section 73 and 74: Common rules

- ❖ For subsequent period demand, extended period of limitation cannot be invoked and SOD has to be served u/s 73 only.
- ❖ Where proceedings on main Noticee concluded, proceedings of Section 122 & 125 also concluded against co-noticee(s).
- ❖ Prior to amendment w.e.f. 01-01-2022, proceedings u/s 129 & 130 were also concluded against co-noticee(s), now they'll continue.
- ❖ **“Suppression”** – 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.



## Section 75: General provisions

- ❖ Service of notice or issuance of order stayed by Court – Period of stay to be excluded for computing period of limitation.
- ❖ Charges of fraud, wilful-misstatement or suppression of facts to evade tax not proved – SCN deemed to be issued u/s 73 instead of 74.
- ❖ Any Order is to be issued as per directions of Court – Time limit – 2 years from the date of communication of directions.
- ❖ Opportunity of being heard is to be given when –
  - Written request is made; or,
  - Any adverse order is to be passed.

## Section 75: General provisions

- ❖ Adjournment of hearing can be sought subject to maximum of 3 adjournments.
- ❖ Speaking Order to be passed.
- ❖ Order cannot travel beyond SCN.
- ❖ Adjudication Proceedings deemed to be concluded if Order not passed in stipulated time period.
- ❖ If same issue has been decided against Revenue and revenue has filed an appeal against the same, period of decision of lower authority till decision of higher authority before which Appeal has been filed by revenue is to be excluded.
- ❖ *Non obstante clause* – Amount of self-assessed tax (tax declared in GSTR-1 but not paid in 3B) is not paid, refer provisions of Section 79 (Recovery) and not Section 73/74.
- ❖ Penalty leviable u/s 73/74, no penalty for same Act or omission leviable under any other Section.

## Extended Period – Landmark Judgements

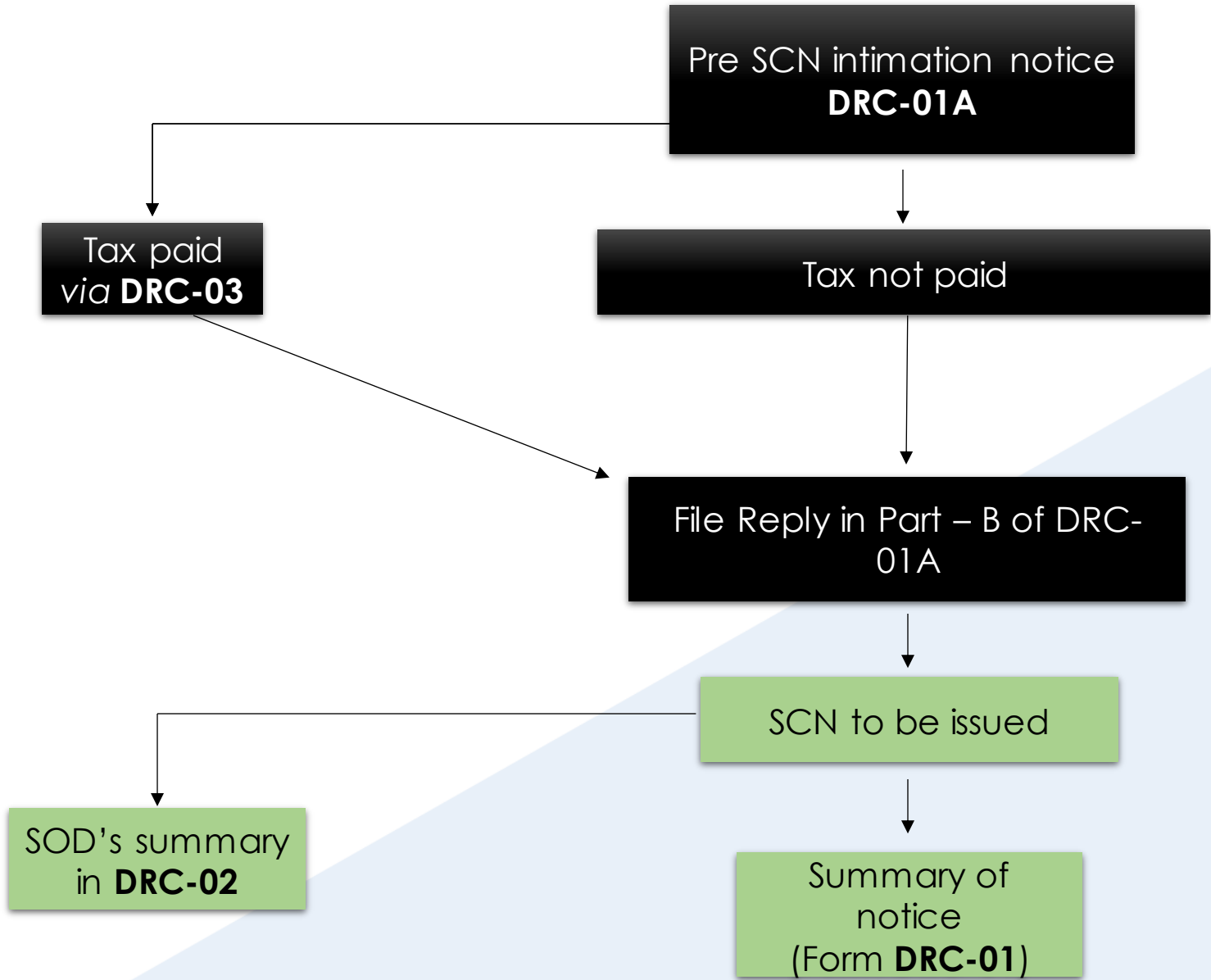
- ❖ Simplex Infrastructures Ltd. v. Commissioner of S.T., Kolkata cited in 2016 (42) S.T.R. 634 (Cal.)
- ❖ Commissioner of C. Ex., Chandigarh v. Punjab Laminates Pvt. Ltd. reported in 2006 (202) E.L.T. 578 (S.C.)
- ❖ Uniworth Textiles Ltd. v. Commissioner of Central Excise, Raipur cited in MANU/SC/0060/2013; 2013 (288) ELT 161 (S.C.)
- ❖ Anand Nishikawa Co. Ltd. v. CCE cited in [2005 (188) ELT 0149 (S.C)]
- ❖ Collector of Central Excise v. Chemphar Drugs & Liniments reported in 1989 (40) ELT 276 (SC)

# Extended Period – Landmark Judgements

- ❖ **Merely holding that issue unearthed in enquiry/investigation is not sufficient to prove *mala – fide* intent –**
  - Chattisgarh State Industrial Development Corporation Ltd. v. C.C.E. & S.T., Raipur cited in MANU/CE/0199/2016; 2016 (44) STR 642 (Tri. – Del.)
  - Simplex Infrastructure
  
- ❖ **No suppression when receipts shown in Financial Statements>Returns –**
  - Central India Engineering Co. v. Commissioner of C. Ex., Nagpur reported in 2016 (44) S.T.R. 657
  - Khandwala Securities Ltd. v. Commissioner of Service tax, Mumbai – I reported in 2015 (40) S.T.R. 738 (Tri. – Mum.)
  - Valencia Construction Pvt. Ltd. v. Commr. of C. Ex., Cus. & S.T., Nagpur reported in 2016 (41) S.T.R. 436 (Tri. – Mum.)

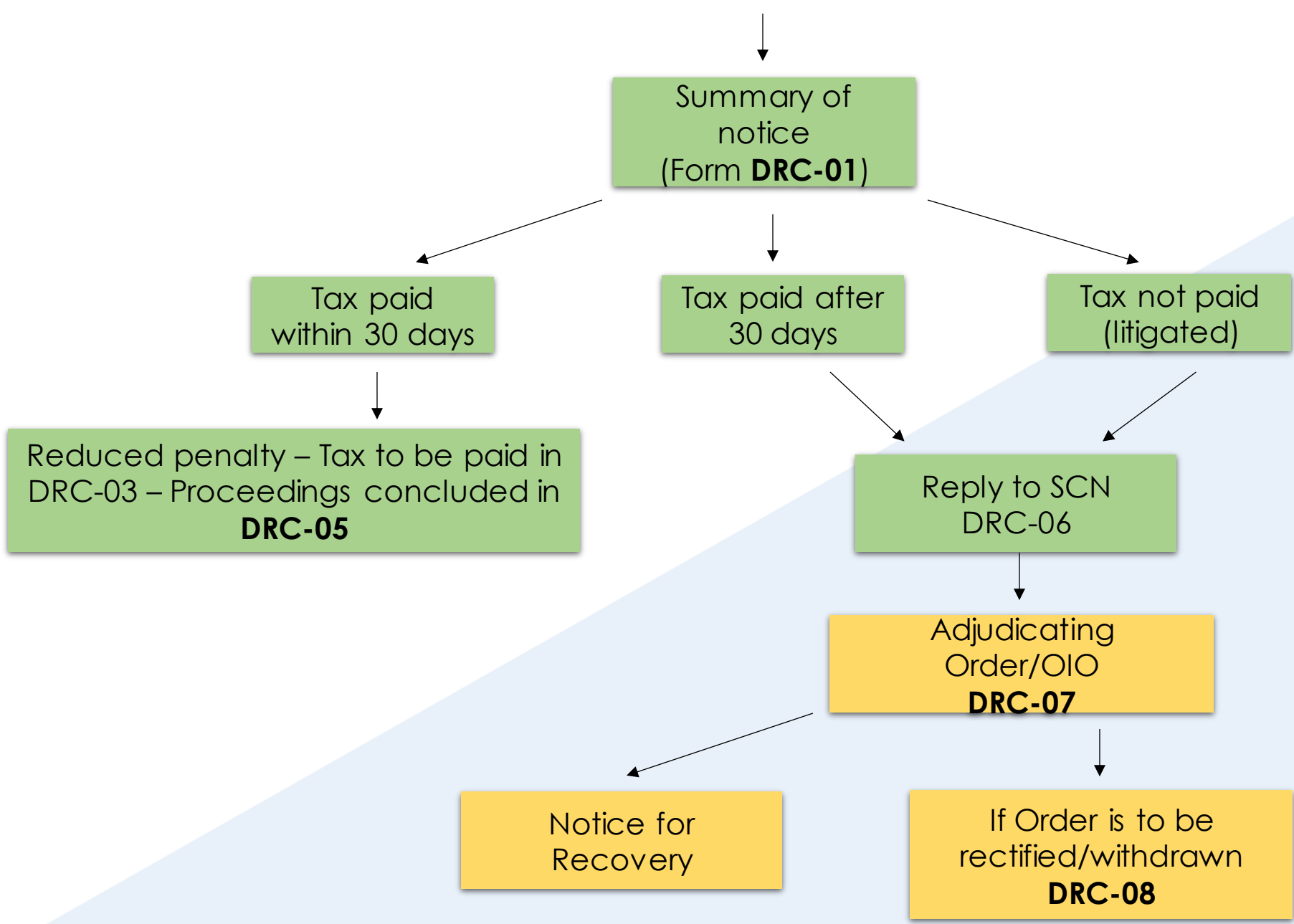
## Section 76: Tax collected but not paid to Government

- ❖ Amount collected as tax – to be paid to Government – irrespective of whether taxable/exempt supplies or notwithstanding any Court's order
- ❖ Not paid – SCN to be served with Interest & **100% penalty**
- ❖ Time limit for issuance of Order – **1 year from date of issuance of Notice**
- ❖ Time limit for issuance of Notice – **No time limit.** Can be recovered even after 3/5 years.



Provision of pre-SCN intimation inserted and made mandatory w.e.f. 09/10/2019

Pre SCN made voluntary w.e.f. 15/10/2020



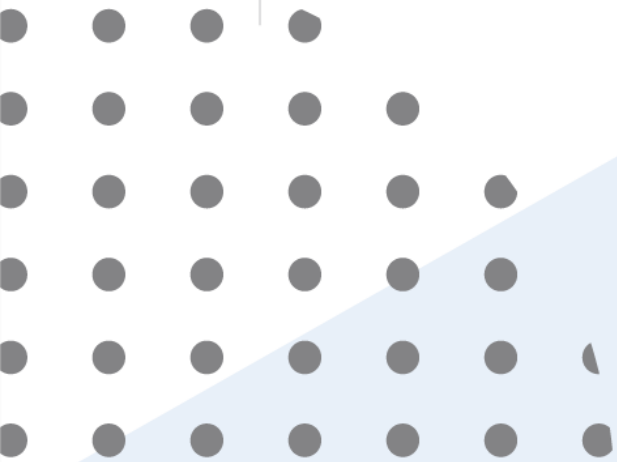
# NKAS Services Pvt. Ltd. v. State of Jharkhand

2022 (58) G.S.T.L. 257 (Jhar.)

- ❖ **Format** – A perusal of the impugned SCN creates a clear impression that it is a notice issued in a format without even striking out any relevant portions and without stating the contraventions committed by the petitioner.
- ❖ **Detailed SCN** – A summary of SCN as issued in Form DRC-01 cannot substitute the requirement of proper SCN, also fails to describe the necessary facts which could give an inkling as to the contravention done by the petitioner.
- ❖ **Beyond SCN** – At the same time, if a SCN does not specify the grounds for proceeding against a person no amount of tax, interest or penalty can be imposed in excess of the amount specified in the notice or on grounds other than the grounds specified in the notice as per Section 75(7) of the JGST Act.



# Reply to Notice



# Importance

Maxim “*verba volant, scripta manent*” means ***spoken words fly away, written words remain!***

- ✓ Contains in detail all your submissions.
- ✓ An incomplete or unsubstantiated reply can never win the matter.
- ✓ Written argument of a counsel
- ✓ Hearing at various levels is a mere formality due to huge number of cases, so only your reply is going to help win the matter.
- ✓ To cover tracks for future litigation, if required.

## Important Points to remember

- ✓ Carefully read (word by word) Notice or SCN against which Reply is to be drafted
- ✓ Carve out all the important points from Notice or SCN relating to Allegations which has to be replied
- ✓ Clarity must be obtained as to on what issue we need to draft (Understand the matter)
- ✓ Necessary Research around all such provisions must be done, like, notifications, circulars, case laws, rules, etc.
- ✓ Intend to remove ambiguities in Notice or SCN and solve it through your reply as far as possible
- ✓ Make it simple and easy to understand even by a layman
- ✓ Quote all necessary provisions in your reply

## Important Points to remember

- ✓ Make it concise and to the point
- ✓ Don't make it too concise that reader does not understand what your submission is
- ✓ Use relevant material and convey your submission effectively. Skip irrelevant aspects and repeated submissions/facts
- ✓ Proper supporting documents/evidences are **MUST**. Without supporting documents/evidences, you **cannot** win the matter merely based on statements/submissions.
- ✓ Reply should be self-explanatory

## Common Grounds to look out for

- ✓ Order travelled beyond SCN
- ✓ No Pre SCN consultation held
- ✓ SCN issued without authority of law
- ✓ Extended period of limitation is wrongly invoked
- ✓ Grounds for Penalty
- ✓ Penalty of 76 & 78 levied together
- ✓ Principles of Natural Justice Violated
  - ✓ No opportunity of being heard given
  - ✓ Non speaking SCN or Order
  - ✓ No SCN served and directly Order passed
- ✓ Wrong computation of demand (Rate, BJA, etc.)
- ✓ Cum-Duty Benefit (except under RCM)

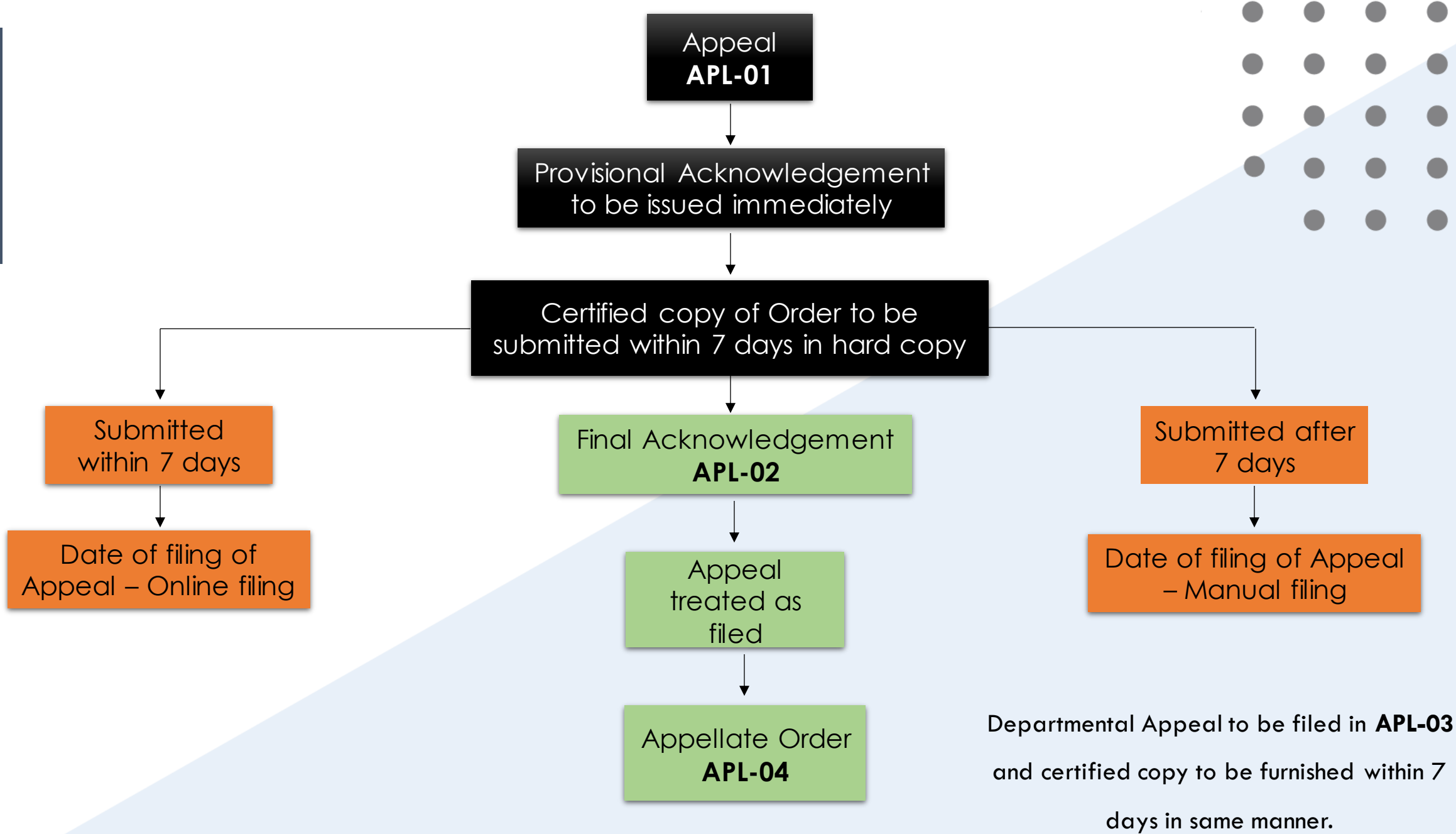
# Appeals

- **Section 107:** Appeals to Appellate Authority
- **Section 109:** Constitution of Appellate Tribunal & benches thereof
- **Section 110:** President and members of Appellate Tribunal, their qualification, appointment, conditions of service, etc.
- **Section 111:** Procedure before Appellate Tribunal
- **Section 112:** Appeals to Appellate Tribunal
- **Section 113:** Orders of Appellate Tribunal
- **Section 114:** Financial and administrative powers of President
- **Section 115:** Interest on refund of amount paid for admission of appeal
- **Section 116:** Appearance by authorised representative
- **Section 117:** Appeal to High Court
- **Section 118:** Appeal to Supreme Court
- **Section 119:** Sums due to be paid notwithstanding appeal, etc.
- **Section 120:** Appeal not to be filed in certain cases
- **Section 121:** Non-appealable decisions and orders

## Section 107: Appeals to Appellate Authority

Particulars	Section 107
Time limit for filing Appeal by Assessee	3 months
Time limit for filing Appeal by Department	6 months
Maximum Condonable Period	1 month
Mandatory Pre-Deposit	100% of Amount admitted (+) 10% of remaining amount, maximum of Rs. 25 crores Order u/s 129 – 25% of penalty
Time period for passing of Order (Voluntary not mandatory)	1 year from filing of Appeal

- ❖ Appeal can be filed against any decision or any order.
- ❖ Speaking & reasoned order to be passed.
- ❖ Appellate Order cannot travel beyond Adjudicating Order.
- ❖ Maximum of 3 adjournments can be granted.
- ❖ Case cannot be remanded back to Original Adjudicating Authority in GST regime.





# Section 112 & 113: Appeals to Appellate Tribunal

Particulars	Section 112
Time limit for filing Appeal by Assessee	3 months
Time limit for filing Appeal by Department	6 months
Time limit for filing Cross Objections	45 days
Maximum Condonable Period	As Tribunal may deem fit
Mandatory Pre-Deposit	100% of Amount admitted (+) 20%* of remaining amount, maximum of Rs. 50 crores *20% is in addition to 10% paid u/s 107
Time period for passing of Order (Voluntary not mandatory)	1 year from filing of Appeal

- ❖ Tribunal may refuse to admit appeal if amount involved is less than Rs. 50,000/-
- ❖ Tribunal has the power to remand back the matter for fresh adjudication.
- ❖ Maximum of 3 adjournments can be granted by Tribunal.
- ❖ Error apparent on the face of record – can be rectified within 3 months

Removal of Difficulty Order No.  
09/2019 – Central Tax dated  
03 December 2019

*the “three months from the date on which the order sought to be appealed against is communicated to the person preferring the appeal” in sub-section (1) of section 112, the start of the three months period shall be considered to be the later of the following dates:-*

- (i) date of communication of order; or*
- (ii) the date on which the President or the State President, as the case may be, of the Appellate Tribunal after its constitution under section 109, enters office;*

Circular No. 9T/2020, dated  
26-5-2020 issued by MH Govt.

### **5. Recovery of dues after disposal of appeal –**

*After disposal of pending appeal u/s. 107, if any demand is confirmed or appellate authority has created the additional demand then in such cases **taxpayer shall submit a declaration in Annexure-I before the jurisdictional tax officer stating that he is proposing to file an appeal u/s. 112(1) against the appeal order. If such declaration is not submitted within fifteen days from the communication of the said order, then it will be presumed that taxpayer is not willing to file appeal against the order and recovery proceedings may be initiated as per the provisions of law.***

Writ petition maintainable against Order of 1st Appellate Authority when GSTAT not formed

- ✓ **Rahul Traders v. State of U.P.**, cited in **2022 (59) G.S.T.L. 42 (All.)**
- ✓ **State Tax Officer, Bureau of Investigation (North Bengal) v. Surinder Kumar Kotnala**, reported in **2022 (60) G.S.T.L. 317 (Cal.)**
- ✓ **Mega Jewels Pvt. Ltd. v. Addl. Commr. (Appeals), CGST, C. Ex. & Cus., Jaipur**, cited in **2021 (51) G.S.T.L. 202 (Raj.)**

## Section 115: Interest on refund of pre-deposit

- ❖ Interest will be granted on refund of pre-deposit amount
- ❖ From date of payment of pre-deposit till date of refund
- ❖ Under Section 56
- ❖ Rate of Interest notified *vide* Notification No. 13/2017 – Central Tax dated 30 March 2022 –  
6% p.a.

## Section 117: Appeal to High Court

Particulars	Section 117
Time limit for filing Appeal by Assessee or department	180 days
Maximum Condonable Period	As HC may deem fit

## Relevant forms for Appeal to Tribunal/HC/SC

Particulars	Tribunal	HC
Form of Appeal by Assessee	APL-05	APL-08
Departmental Appeal	APL-07	
Memorandum of Cross Objections	APL-06	
Final Acknowledgement	APL-02	

## Section 120: Appeal not to be filed in certain cases

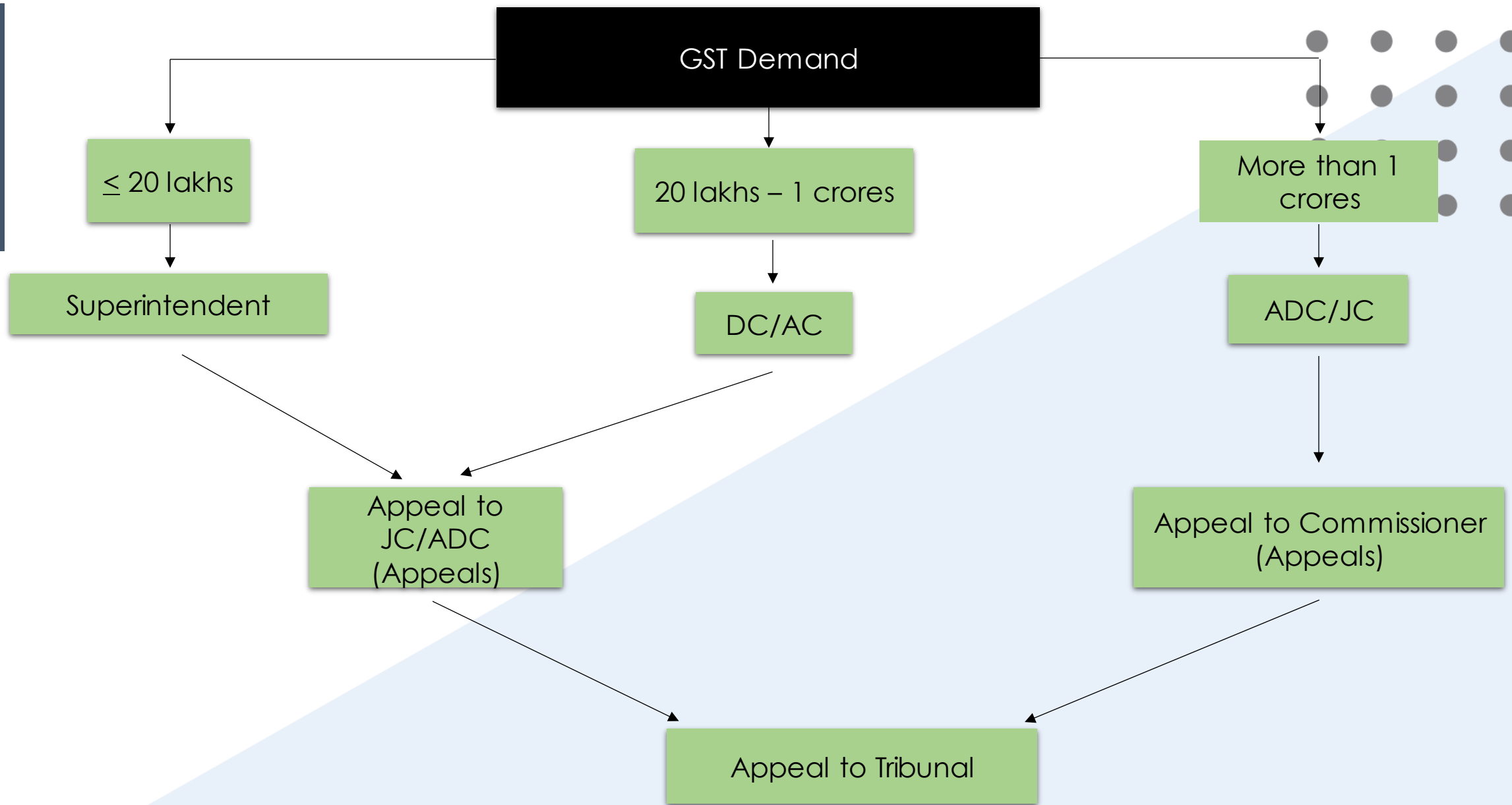
- ❖ Board to decide monetary limits for filing of Appeal by the department.
- ❖ Not filing appeal in one case due to monetary limits does not preclude department to file appeal in other case.
- ❖ Monetary limits not to set precedent to be quoted by the Assessee.
- ❖ GST monetary limits not notified yet
- ❖ Monetary limits of erstwhile law *vide* Letter bearing F. No. 390/MISC/116/2017-JC dated 25 June 2018 –
  - CESTAT – 20 lakhs
  - HC – 50 lakhs
  - SC – 1 crores



## Section 121: Non-Appealable decisions & orders

No appeal shall lie in following cases –

1. An order of the Commissioner or other authority empowered to direct transfer of proceedings from one officer to another officer.
2. An order pertaining to the seizure or retention of books of account, register and other documents (Section 67).
3. Order sanctioning prosecution under the Act.
4. Order passed under Section 80 of the Act (payment of tax in instalments).





# Revision

- **Section 108:** Powers of Revisional Authority

## Section 108: Powers of Revisional Authority

- ✓ Revisional Authority can *sou motu* or upon information received from Department, may modify any Order (OIO) passed by Adjudicating Authority
- ✓ **Exceptions –**
  - ✓ Order subject to Appeal before higher forum
  - ✓ Time period for filing Appeal is not lapsed
  - ✓ More than 3 years from OIO has lapsed
  - ✓ Already taken for revision under this section
- ✓ If any adverse decision is to be taken, grant hearing in **Form RVN-01**
- ✓ Summary of Order in Form **APL-04**

# THANK YOU

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