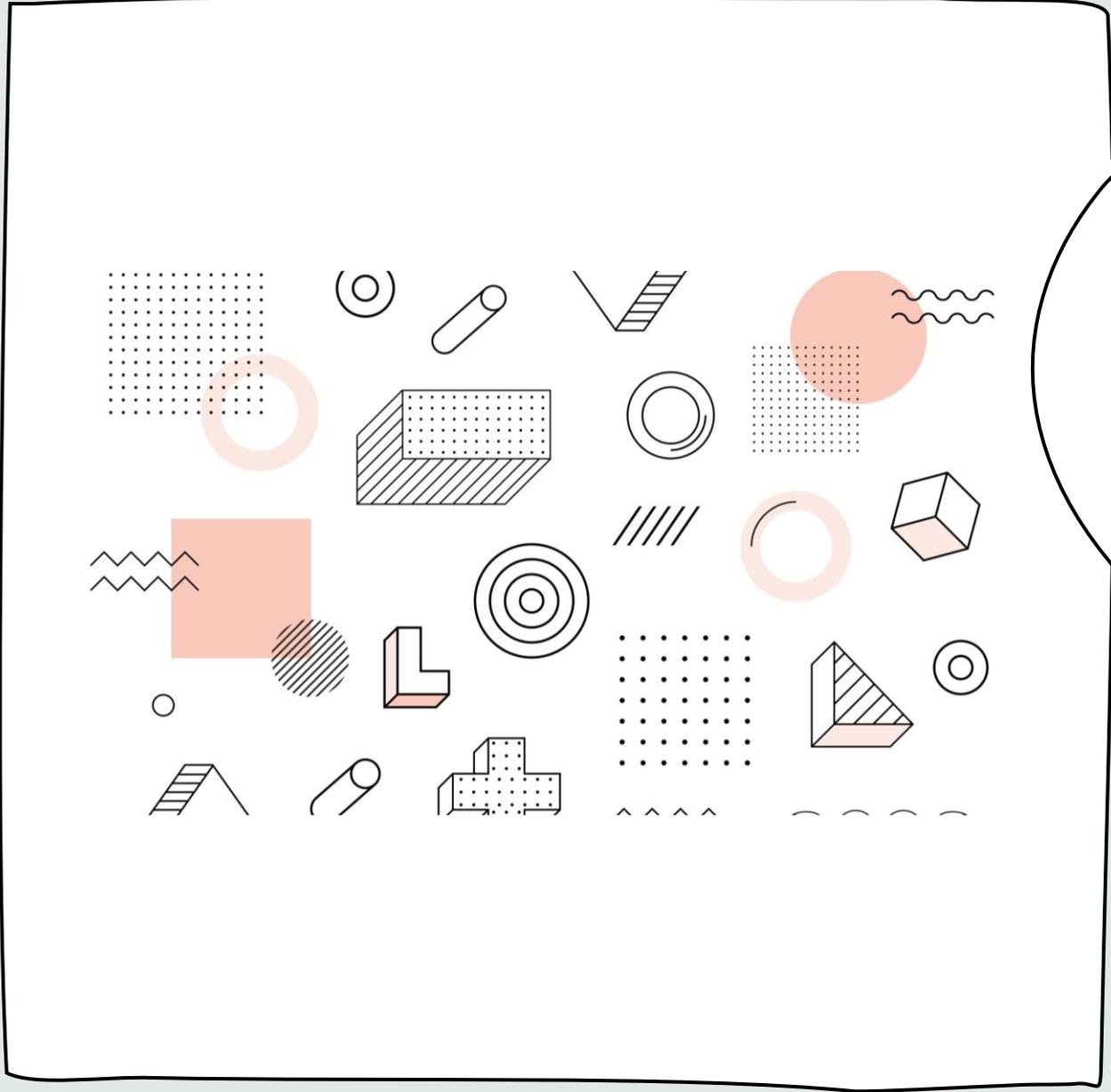


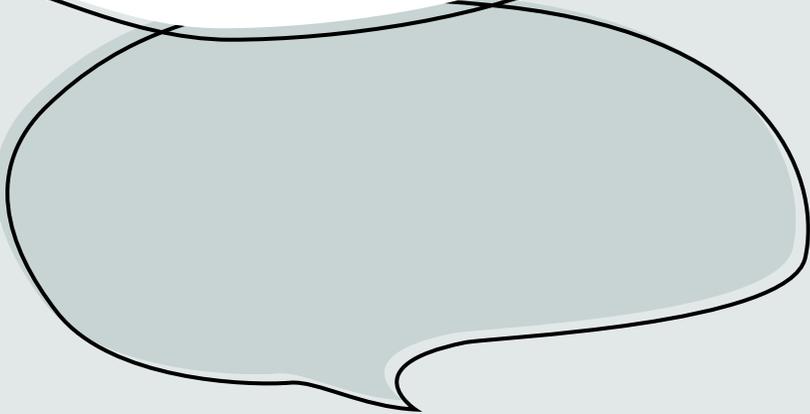


Show Cause Notice, Demands and Recovery- (Section 73-75)

CA ARPIT HALDIA



Opportunity of Hearing



Article 14 of Constitution of India

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

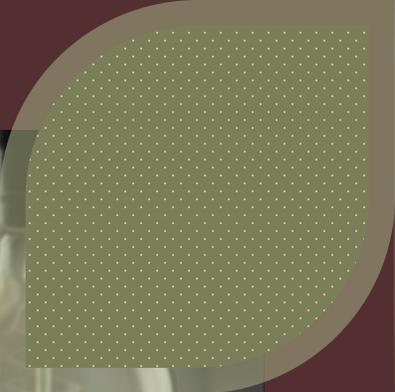
Right of Hearing-Article 14-Constitution of India

*The 'audi alteram partem' rule which, in essence, enforces the equality clause in Article 14 of the Constitution is applicable not only to quasi-judicial orders but to administrative orders affecting prejudicially the party in question unless the application of the rule has been expressly excluded by the Act or Regulation or Rule which is not the case here. Rules of natural justice do not supplant but supplement the Rules and Regulations. Moreover, the Rule of Law, which permeates the Constitution of India, demands that it has to be observed both substantially and procedurally. Rule of law posits that the power to be exercised in a manner which is just, fair and reasonable and not in an unreasonable, capricious or arbitrary manner leaving room for discrimination.-
Delhi Transport Corporation vs D.T.C. Mazdoor Congress on 4 September, 1990*

Right of Hearing-Article 14-Constitution of India

*It is well established that even where there is no specific provision in a statute or rules made thereunder for showing cause against action proposed to be taken against an individual, which affects the rights of that individual, the duty to give reasonable opportunity to be heard will be implied from the nature of the function to be performed by the authority which has the power to take punitive or damaging action. This principle was laid down by this Court in the State of Orissa v. Dr. (Miss) Binapani Dei & Ors.(1) in the following words "The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitutional set-up that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would, therefore arise from the very nature of the function intended to be performed, it need not be shown to be super- , added. **If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a Person is made, the order is a nullity.** That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case."-**Maneka Gandhi vs Union Of India on 25 January, 1978 Equivalent citations: 1978 AIR 597, 1978 SCR (2) 621***

**Why the
order passed
by the
Officer has to
be a
Reasoned
Order**



Summary of some Judgements

- ✓ Failure to Give reasons amounts to denial of Justice-State Of Orissa vs Dhaniram Luhar on 4 February, 2004
- ✓ Duty to give reasons is a safety valve against arbitrary exercise of Power-Baidya Nath Sarma And Ors. vs Commissioner Of Wealth-Tax And ... on 4 February, 1982
- ✓ Reasons are the heartbeat of every conclusion and without the same, conclusion becomes lifeless-Raj Kishore Jha vs State Of Bihar And Ors on 7 October, 2003- (SC)
- ✓ Affected Party should know why the order has gone against him-State of Uttaranchal v. Sunil Kumar Singh Negi [(2008) 11 SCC 205
- ✓ Why providing reasons are mandatory in every order-Asst. Commissioner vs M/S Shukla & Brothers on 15 April, 2010 (SC)

Summary of some Judgements

- ✓ Requirement of recording reasons is one of the principles of natural justice which govern exercise of power by administrative authorities including judicial or quasi-judicial functions-S.N. Mukherjee vs Union Of India on 28 August, 1990 Equivalent citations: 1990 AIR 1984, 1990 SCR Supl. (1) 44
- ✓ Requirement to give reasons is a necessary requirement for compliance with the principle of audi alteram partem -Rasiklal Ranchhodbhai Patel vs Commissioner Of Wealth-Tax, ... on 19 September, 1978 Guj (HC)
- ✓ Why Judicial authorities should always give reason for their conclusion- Woolcombers Of India Ltd vs Woolcombers Workers Union And ... on 27 August, 1973 Equivalent citations: 1973 AIR 2758, 1974 SCR (1) 504
- ✓ The rule requiring reasons to be given in support of an order is, like the principle of audi alteram partem, a basic principle of natural justice-Siemens Engineering & ... vs Union Of India & Anr on 30 April, 1976 Equivalent citations: 1976 AIR 1785, 1976 SCR 489

A black and white photograph of two people in a professional setting. One person, wearing a red shirt, is pointing at a tablet held by another person in a grey suit. They are sitting at a table with a laptop and a smartphone. The background shows a modern office environment with a window and a chair.

General Provision relating to Determination of Taxes- Section 75

Section 75 (2)-Notice not sustainable under the provisions of Section 74

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

Section 75(4)- Opportunity of Hearing

(4) 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.**

Section 75(5)-Adjournment of Hearing

(5) The proper officer shall, if sufficient cause is shown by the person chargeable with tax, **grant time to the said person and adjourn the hearing for reasons to be recorded in writing:**

Provided that no such adjournment shall be granted for **more than three times to a person during the proceedings.**

Section 75(6)-Order to set out facts and basis of decision

(6) The proper officer, in his order, **shall set out the relevant facts and the basis of his decision.**

Section 75(7)-No demand to confirmed in excess of the amount specified in notice or on grounds other than stated in the notice

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

Section 75(9)-Interest Payable whether or not specified in order

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

Section 75(10)-Adjudication proceedings deemed to be concluded if order not passed within the specified time limit

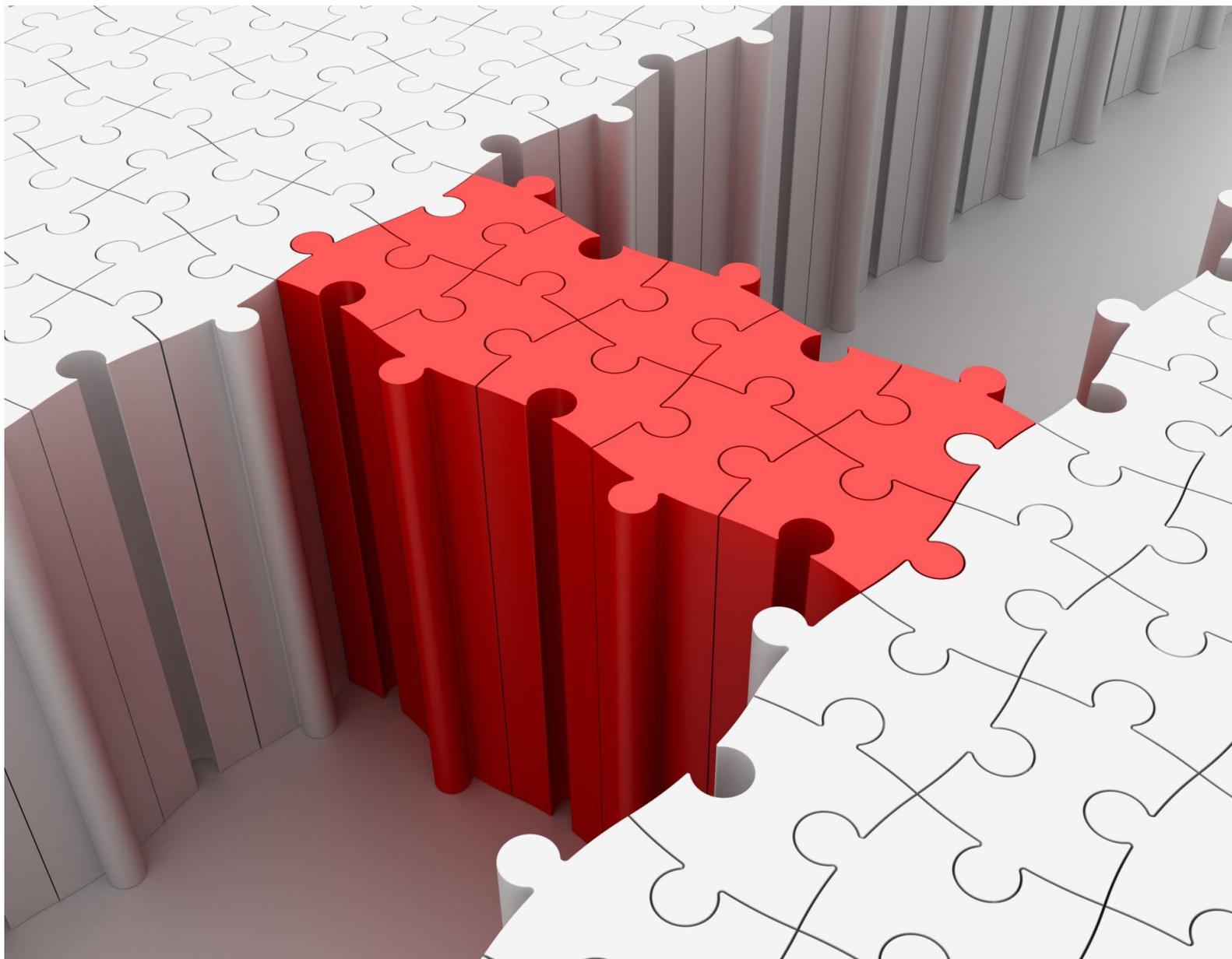
(10) The adjudication proceedings shall be **deemed to be concluded, if the order is not issued within three years as provided for in sub-section (10) of section 73 or within five years as provided for in sub-section (10) of section 74.**

Section 75(12)-No Penalty on same act or omission

(13) 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.**

Determination of Tax and Penalty Under Section 73/74





**HOW MENS REA
CAN BE
INCORPORATED/
INCLUDED IN
OFFENCES OF
CIVIL LIABILITY**

- CA ARPIT HALDIA

HOW MENS REA CAN BE INCORPORATED/INCLUDED IN OFFENCES OF CIVIL LIABILITY

Commissioner of Sales Tax v. Rama and Sons, General Merchant, Ballia, 1999 UPTC 25 the Allahabad High Court observed as under:-

"We have words like 'voluntarily', 'intentionally', 'negligently', 'knowingly', 'fraudulently', 'dishonestly', 'rashly', 'omits', 'without lawful authority' ect., 'omits' used in various sections of the Indian Penal Code defining various offence. Proof of the State of mind or of the conduct of the person as indicated by the aforesaid word establishes the offence and no further guilty intent or mens rea need be proved."

HOW MENS REA CAN BE INCORPORATED/INCLUDED IN OFFENCES OF CIVIL LIABILITY

Section 11AC of Central Excise Provides as follows:

"11AC. Where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reasons of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, the person who is liable to pay duty as determined under sub-section (2) of section 11A, shall also be liable to pay a penalty equal to the duty so determined:"

Hon'ble Supreme Court in the Matter of Commnr. Of Central Excise, ... vs M/S. Pepsi Foods Ltd on 10 December, 2010 Appeal No. 1921-1923 of 2003

"20. It is well settled that when the statutes create an offence and an ingredient of the offence is a deliberate attempt to evade duty either by fraud or misrepresentation, the statute requires 'mens rea' as a necessary constituent of such an offence. But when factually no fraud or suppression or mis-statement is alleged by the revenue against the respondent in the show cause notice the imposition of penalty under Section 11 AC is wholly impermissible.

How Section 73 Evolved-Present CGST Act vs The Draft GST Law

Issue No. 11- Amendments to provision of section 67:

- As per the present provision in section 67 (1), the proper officer shall have to first establish the mentioned criteria before giving notice. However section 67 (1) doesn't provide the due process for coming to the decision that such criteria exist. It is proposed to amend the said section so as to provide for said process.

Proposal by Law Committee:

It is proposed that section 67(1) may be amended as follows:

Section 67-Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any willful misstatement or suppression of facts.

(1) Where *it appears to the proper officer that* any tax has not been paid or short paid or erroneously refunded or he where input tax credit has been wrongly availed or utilized by reason of fraud, or any willful-misstatement or suppression of facts to evade tax, ~~the proper officer~~ he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilized input tax credit requiring him to show cause why he should not pay the amount specified in the notice along with interest payable thereon under section 45 and a penalty equivalent to the tax specified in the notice.

SECTIONS WHICH MAY LEAD TO 73/74

- ✓ **Section-61-Scrutiny of Returns**
- ✓ **Section-65-Audit by Tax Authorities**
- ✓ **Section-66-Special Audit**
- ✓ **Section-67- Power of inspection, search and seizure**
- ✓ **Section-70-Power to summon persons to give evidence and produce documents**
- ✓ **Section-71-Access to business premises**

Meaning of Tax Not Paid and short Paid

A plain reading of this provision shows that this provision shall be fully applicable in cases where the tax was not paid for any reason other than fraud. In the present case, though it is submitted by learned counsel for CGST that since the tax was paid, Section 73 (1) of the Act shall not be attracted in the case of the petitioner, but the fact remains that the tax was not paid by the petitioner Company in the Government account within the due date, and accordingly it is a case of tax not being paid, within the period prescribed, or when due. In that view of the matter, we are unable to accept the contention of learned counsel for CGST that no showcause notice was required to be given in this case. Even otherwise, if any penal action is taken against the petitioner, irrespective of the fact whether there is provision under the Act or not, the minimum requirement is that the principles of natural justice must be followed. In the present case admittedly, prior to the issuance of letter dated 6.2.2019, no show-cause notice or an opportunity of being heard was given to the petitioner and no adjudication order was passed.

**[2020] 114 taxmann.com 563 (Jharkhand) HIGH COURT OF JHARKHAND Godavari
Commodities Ltd. v. Union of India**

Tax Not Paid/Short Paid

20. This Court, while interpreting the term "tax not paid" has held that if a tax has not been paid within the prescribed period, the same would fall with the expression "tax not paid" as mentioned under section 73 of the CGST Act. The aforesaid interpretation further finds support from other subsections of section 73, particularly sub-sections (5), (6) and (7) of section 73. A bare reading of the aforesaid sub-sections (5), (6) and (7) of section 73 would reveal that a person chargeable with tax, if before service of notice pays the amount of tax along with interest payable thereon under section 50 of the Act on the basis of his own ascertainment, then the Assessing Officer, if satisfied that correct tax along with interest has been paid by the said assessee, shall not issue any notice under section 73(1) of the Act. However, section 73(7) of the Act provides that if an assessee, who has itself on his own ascertainment, deposited the tax along with interest, but if in the opinion of the Proper Officer, the amount paid on own ascertainment falls short of the amount actually payable, then a notice would be issued by the said Proper Officer under section 73 (1) of the Act for recovery of the actual amount payable. Thus, from a conjoint reading of the aforesaid provisions, it would be evident that even in a case where an assessee files his return as per his own ascertainment, pays the tax and even pays interest, but if the said amount paid by the assessee is falling short of the amount actually payable, the Proper Officer is required to initiate proceedings under section 73(1) for recovery of the said amount of tax and interest. The natural corollary of the above interpretation is that if an assessee has allegedly delayed in filing his return, but discharges the liability of only tax on his own ascertainment and does not discharge the liability of interest, the only recourse available to the Proper Officer would be to initiate proceedings under section 73(1) of the CGST Act for recovery of the amount of "short paid" or "not paid" interest on the tax amount.

[2020] 116 taxmann.com 262 (Jharkhand) HIGH COURT OF JHARKHAND Mahadeo Construction Co. v. Union of India

Applicability of the Provisions of the Section

Section 73

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

Section 74

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

Section 74

Para Materia Section 11A of Central Excise Act-1944-M/s Cosmic Dye chemical Vs Collector of Cen. Excise, Bombay [1995 (75) E.L.T. 721 (S.C.)

7. The main limb of Section 11-A provides limitation of six months. In cases, where the duty is not levied or paid or short-levied or short-paid or erroneously refunded, it can be recovered by the appropriate officer within six months from the relevant date. (The expression "relevant date" is defined in the section itself.) But the said period of six months gets extended to five years where such non-levy, short levy, etc., is "by reason of fraud, collusion or any wilful misstatement or suppression of facts or contravention of any of the provisions of this Act or of the rules with intent to evade payment of duty..

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

Nature	Section 74	
Meaning of Suppression	Explanation 2.--For the purposes of this Act, the expression –suppressionll shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer.	

Nature	Section 73	Section 74
Time limit for issue of Notice	(2) The proper officer shall issue the notice under sub-section (1) at least three months prior to the time limit specified in sub-section (10) for issuance of order.	(2) The proper officer shall issue the notice under sub-section (1) at least six months prior to the time limit specified in sub-section (10) for issuance of order

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

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

Nature	Section 73	Section 74
Voluntary Payment or Pre-consultation by the Authority	<p>(5) The person chargeable with tax may, before service of notice under subsection (1) or, as the case may be, the statement under sub-section (3), pay the amount of tax along with interest payable thereon under section 50 on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.</p>	<p>(5) The person chargeable with tax may, before service of notice under subsection (1), pay the amount of tax along with interest payable under section 50 and a penalty equivalent to fifteen per cent. of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.</p>

Nature	Section 73	Section 74
Conclusion of Proceedings	(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1) or, as the case may be, the statement under sub-section (3), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.	(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.
Initiation of Proceedings on short deposit of amount	(7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.	(7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.

Nature	Section 73	Section 74
Deposit of Amount within Thirty Days of Issue of Show Cause Notice	(8) Where any person chargeable with tax under sub-section (1) or sub-section (3) pays the said tax along with interest payable under section 50 within thirty days of issue of show cause notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.	(8) Where any person chargeable with tax under sub-section (1) pays the said tax along with interest payable under section 50 and a penalty equivalent to twenty-five per cent. of such tax within thirty days of issue of the notice, all proceedings in respect of the said notice shall be deemed to be concluded.

Nature	Section 73	Section 74
Issuance of Order	(9) The proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to ten per cent. of tax or ten thousand rupees, whichever is higher, due from such person and issue an order.	(9) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order.
Time Limit for issuance of Order	(10) The proper officer shall issue the order under sub-section (9) within three years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within three years from the date of erroneous refund.	(10) The proper officer shall issue the order under sub-section (9) within a period of five years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within five years from the date of erroneous refund.

Nature	Section 73	Section 74
Self-assessed Liability not paid within thirty days from the due date	(11) Notwithstanding anything contained in sub-section (6) or sub-section (8), penalty under sub-section (9) shall be payable where any amount of self-assessed tax or any amount collected as tax has not been paid within a period of thirty days from the due date of payment of such tax.	
Deposit of Amount within Thirty Days of Issue of Order	-	(11) Where any person served with an order issued under sub-section (9) pays the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty per cent. of such tax within thirty days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded.

**SOME
IMPORTANT
JUDICIAL
RULINGS ON
ISSUANCE OF
SHOW CAUSE
NOTICE**



Essentials of Show Cause Notice



Subject of the Decision	Decision
<p data-bbox="101 511 522 1028"><i>Notice should spell out the exact nature of deficiency</i></p>	<p data-bbox="560 221 2458 892"><i>The extract of the show cause notice cited above does not seem to challenge inadequacy of the documents. It could be that such inadequacy could be inferred there from but the notice, which is meant to put the recipient on notice, must always spell out the exact charge.</i> A notice, which is ambiguous or capable of interpretation, cannot be the ground for sustaining an order based on the inference drawn from the show cause notice-</p> <p data-bbox="560 1006 2458 1242">Mehta Pharmaceuticals vs Commissioner Of Cus. And C. Ex. on 4 April, 2003-Equivalent citations: 2003 (157) ELT 105 Tri Mumbai</p>

**Circular No. F.NO 96/1/2017-CX.1-
Dated: 19th January, 2017**

2.2 Structure of SCN: A SCN should ideally comprise of the following parts, though it may vary from case to case:

- a) Introduction of the case**
- b). Legal frame work**
- c). Factual statement and appreciation of evidences**
- d). Discussion, facts and legal frame work,**
- e). Discussion on Limitation**
- f). Calculation of duty and other amounts due**
- g). Statement of charges**
- h). Authority to adjudicate.**

2.4 Legal framework: The authority issuing the SCN should clearly lay down the legal provisions in respect of which the person shall be put to notice. While specifying the provisions, care should be taken to be very accurate in listing all the provisions and the law in respect of which the contraventions are to be alleged in the SCN.

2.5 Factual statement and appreciation of evidence: In this part of SCN, the facts relating to act of omission and commission pertinent to the initiation of the proceedings against the noticee need to be stated in a most objective and precise manner. **All evidences in form of documents, statements and material evidence resumed during the course of enquiry /investigation should be organised serially in a manner so as to establish the charges against the noticee.** While discussing the facts and evidences, care should be taken to be precise and succinct in expression so that unnecessary details are avoided.

3.4 Extended period in disputed areas of interpretation: There are cases where either no duty was being levied or there was a short levy on any excisable goods on the belief that they were not excisable or were chargeable to lower rate of duty, as the case may be. Both trade and field formations of revenue may have operated under such understanding. Thus, the general practice of assessment can be said to be non-payment of duty or payment at lower rate, as the case may be. In such situations, Board may issue circular clarifying that the general practice of assessment was erroneous and instructing field formations to correct the practice of assessment. **Consequent upon such circular, issue of demand notice for extended period of time would be incorrect as it cannot be said that the assessee was intentionally not paying the duty.**

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

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

14.5 Adjudication order: The adjudication order must be a speaking order. A speaking order is an order that speaks for itself. A good adjudication order is expected to stand the test of legality, fairness and reason at higher appellate forums. Such order should contain all the details of the issue, clear findings and a reasoned order.

14.6 Analysis of issues: The Adjudicating authority is expected to examine all evidences, issues and material on record, analyse those in the context of alleged charges in the show cause notice. He is also expected to examine each of the points raised in the reply to the SCN and accept or reject them with cogent reasoning. After due analysis of facts and law, adjudicating authority is expected to record his observations and findings in the adjudication order.

14.7 Body of the order: The adjudication order should generally contain brief facts of the case, written and oral submissions by the party, observation of the adjudicating authority on the evidences on record and facts of omission and commission during personal hearing and finally the operating order. At any cost, the findings and discussions should not go beyond the scope and ground of the show cause notice.

14.8 Quantification of demand: The duty demanded and confirmed should be clearly quantified and the order portion must contain the provisions of law under which duty is confirmed and penalty is imposed. **The duty demanded in an adjudication order cannot exceed the amount proposed in the Show Cause notice.**

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

15. Corrigendum to an adjudication order: A corrigendum to an adjudication order can only be issued to correct minor clerical mistakes which do not alter the adjudication order per se. Therefore, adjudicating order should normally be issued after careful examination of details obviating the need to issue any corrigendum. It may be noted that after issuing an adjudication order, the adjudicating authority becomes *functus officio*, which means that his mandate comes to an end as he has accomplished the task of adjudicating the case. As a concept, *functus officio* is bound with the doctrine of *res judicata*, which prevents the reopening of a matter before the same court or authority. It may also be noted that under the Central Excise Act, adjudicating authority does not have powers to review his own order and carry out corrections to the adjudication order.

16. Transfer of adjudicating authority: Adjudicating officers are expected to issue order-in-original before being relieved in cases where personal hearing has been completed. The successor in office can not issue any order on the basis of personal hearing conducted by the predecessor. The successor in office should offer a fresh hearing to the noticee before deciding the case and issuing adjudication order/formal order.

Instances of non-payment and conclusion



Subject of the Decision	Decision
Doubt over Validity of Law	<p>-If there was genuine cause for confusion regarding the correct legal position and also scope for doubt about the service tax liability, extended period of 5 years cannot be invoked-Mumbai High Court in The Saswad Mali Sugar Factory Ltd [2013-TIOL-898-HC-MUM-ST]</p> <p>-Where there was scope of doubt whether duty was payable or not, it is not 'intention to evade payment of duty'-Tamilnadu Housing Board v. CCE - 1994 (74) ELT 9 (SC),</p>

Subject of the Decision	Decision
Revenue Neutral	-Once the entire exercise was revenue neutral, there was no question of sustaining the duty demand-CCE Vs Coca Cola India P. Ltd. 2007(213)ELT 490 (SC), CCE Vs Textile Corporation 2008(231)ELT 195 (SC),
Ignorance of Law	-Ignorance of law is no excuse as has been held in Bharat Electronics Ltd. v. CCE - 2004(165) E.L.T. 485 (S.C.)

Subject of the Decision	Decision
Transactions Reflected in Books of Accounts	<p>There is some force in the arguments advanced on behalf of the appellants that they...the type of cotton waste manufactured by them and they have not suppressed the facts since the value of cotton waste was shown in the respective balance-sheets. We agree with the appellants' Counsel that it cannot be said in the instant case the goods were removed clandestinely in view of the fact that value of the goods was shown in the balance-sheets and reflected in private accounts maintained by them. In the facts and circumstances of the case particularly taking into consideration that value of the item was shown in the balance-sheets and in the absence of specific allegations of suppression of facts as argued by the appellants' Counsel, we are of the view that the Department was not justified in invoking the larger period. In the view we have taken we set aside the impugned order and accordingly appeal is allowed.-Anantpur Textiles Ltd. vs. CCE - 1994 (72) ELT 48 (Tri-Del)</p>

Subject of the Decision	Decision
Transactions Reflected in Books of Accounts	<p>Apart from the merits of the case, we also find that the demand is squarely barred by limitation having been raised by invoking the longer period. The Revenue has picked up the figures from the balance sheet and profit and loss account maintained by the assessee. The balance sheet and profit and loss account has been held to be public documents by various decisions and it stands concluded that when the income arising from various activities stand reflected in the said public documents, it cannot be said that there was any suppression or misstatement on the part of the assessee so as to invoke the longer period of limitation. Reference can be made to Tribunal's decision in the case of C.S.T., New Delhi v. Kamal Lalwani [2017 (49) S.T.R. 552 (Tri.- Del.)], laying down that extended period is not invocable if services rendered are reflected in balance sheet and income tax returns and no evidence stands produced that non-payment of duty was due to any mala fide. Reference can also be made to Hon'ble Allahabad High Court's decision in the case of Commissioner of Central Tax v. Zee Media Corporation Ltd. [2018 (18) G.S.T.L. 32 (All.)]. The Hon'ble High Court observed that the show cause notice itself shows that every details was maintained by the assessee in usual course of business, the ingredients of proviso to section 73(1) of the Finance Act, 1994, establishing any suppression of facts to evade payment of tax cannot be held to be present and invocation of extended period of limitation was not correct on the part of the Revenue. -Mega Trends Advertising Ltd. vs. CCE -2020 (38) GSTL 57 (Tri-All.)</p>

Subject of the Decision	Decision
<p data-bbox="89 378 535 1149">Merely Providing that without audit, error would not have been detected is not sufficient</p>	<p data-bbox="560 221 2458 978">I find that as the Commissioner (A) has observed in para 12.1 to 12.3 that the entire facts were in the knowledge of the department and the audit report also came on 8.1.2007 and the show-cause notice was issued on 3.4.2009 which is beyond the period of limitation and the department <i>has also failed to bring on record any suppression of fact except saying that the same was detected during the audit and had it not been detected during audit, it would have gone unnoticed.</i> This is not sufficient to invoke the extended period of limitation-</p> <p data-bbox="560 1092 2458 1249">The Commissioner Of Central ... vs M/S. Ashok Iron Works Pvt. Ltd on 8 June, 2017</p>

Subject of the Decision	Decision
<p>Whether Penalty can be imposed on the dealer on the ground that he had furnished false returns by not including the amount of freight in the taxable turnover disclosed in the returns.</p>	<p>It is elementary that section 43 of the Madhya Pradesh General Sales Tax Act, 1958 providing for imposition of penalty is penal in character and unless the filing of an inaccurate return is accompanied by a guilty mind, the section cannot be invoked for imposing penalty. If the view canvassed on behalf of the Revenue were accepted, the result would be that even if the assessee raises a bonafide contention that a particular item is not liable to be included in the taxable turnover, he would have to show it as forming part of the taxable turnover in his return and pay tax upon it on pain of being held liable for penalty in case his contention is ultimately found by the Court to be not acceptable. That surely could never have been intended by the Legislature.-Cement Marketing Co. of India Ltd. Vs. Assistant Commissioner of Sales Tax, Indore & Ors. 1980 SCR (1)1098,</p>

Second Show Cause Notice



Subject of the Decision	Decision
<p data-bbox="101 599 738 1028">Second Show Cause Notice enhancing the demand</p>	<p data-bbox="777 299 2458 913">-Adjudicating authority had already issued a show-cause notice on 27.02.2018 asking the petitioner to show cause why for the period between July 2017 and 20.02.2018 unpaid CGST and SGST of Rs. 30,88,706/-not be recovered. The second impugned show-cause notice also pertains to the same period and same demand of unpaid taxes only the figure now proposes is Rs. 1,29,13,928/-. The crucial question was, could department have issued such a notice in purported exercise of powers under section 74(3) of the CGST Act.</p> <p data-bbox="777 999 2458 1328">In other words, powers under sub-section (3) of section 74 cannot be exercised for expanding or enlarging the liability arising out of show-cause notice under sub-section (1) from the same period. Essentially, sub-sections (1) and (3) of section 74 are envisaged to cover separate periods.</p>

Subject of the Decision	Decision
Second Show Cause Notice enhancing the demand	<p>In that view of the matter, the respondents are wholly incorrect in issuing a fresh show-cause notice for the same period of July 2017 to 20.02.2018, which notice was already issued under sub-section (1) of section 74 of the Act purportedly under exercising powers to suggest that once a notice has been issued under sub-section (1) of section 74 of the Act, if the authorities find that the liability of tax, interest or penalty larger than one indicated in the statement referred to in sub-section (1) is likely to arise, the competent authority is remedy-less. However, his remedy does not lie in issuing second notice under sub-section (3) of section 74 of the Act. The impugned notice dated 19.03.2018 therefore, shall have to be quashed. Remark Flour Mills (P.) Ltd. v. State of Gujarat [2018] 92 taxmann.com 337 (Gujarat)</p>

Subject of the Decision	Decision
<p>When notice is entirely on different grounds, it will be treated as new show cause notice and period of notice will be effective from date of new notice.</p>	<p>As regards the contention, that the corrigendum to the show cause notice was issued on 16.12.2009 beyond the normal limitation period and is hence time barred, we notice that by the corrigendum only arithmetic recomputation of the alleged liability was conveyed and there was no fresh attribution of fact or law against the assessee. As such the corrigendum does not substantially alter the framework of the show cause notice dated 05.10.2009/09.10.2009. We therefore reject this contention of the appellant and conclude that this demand is not barred by limitation nor is illegal for unwarranted invocation of the extended period, under the proviso to Section 73(1) of the Act.</p> <p>Delhi Public School Society vs. CST, New Delhi [2013 (32) STR 179 (Tri.)]</p>

Subject of the Decision	Decision
<p>if a corrigendum or the Addendum does not change the framework of the show cause notice, then the same can not be treated as a fresh show cause notice</p>	<p>That in view of the following case laws, it is held that if a corrigendum or the Addendum does not change the framework of the show cause notice, then the same can not be treated as a fresh show cause notice:-</p> <ul style="list-style-type: none">(a) Sara Services Engg. Pvt. Limited vs. CCE Meerut [2010 (254) ELT 486 (Tri.)](b) Delhi Public School Society vs. CST, New Delhi [2013 (32) STR 179 (Tri.)](c) CCE Bhubneswar vs. Konark Cylinders & Containers (P) Limited [1994 (73) ELT 702 (Tri.)](d) Best & Company vs. CC, New Delhi [2009 (239) ELT 294 (Tri.)] <p>Delhi Public School Society vs. CST, New Delhi [2013 (32) STR 179 (Tri.)]</p>

Subject of the Decision	Decision
Whether the extended period of limitation could be invoked where the Department has earlier issued show cause notices in respect of the same subject-matter	<p data-bbox="563 218 2463 629">6. The Collector has given a categorical finding that the earlier Show Cause Notice raised a demand on a similar issue and for an identical amount. That Show Cause Notice had been dropped. In our view the Tribunal was wrong in still holding that there was suppression of fact or material. This Court has in the case of <i>ECE Industries Limited v. Commissioner of Central Excise, New Delhi</i> held as follows :-</p> <p data-bbox="563 725 2463 1286">"4. In the case of <i>P & B Pharmaceuticals (P) Ltd. v. Collector of Central Excise</i> reported in Also reported in 2003 (153) E.L.T. 14 (S.C.). [2003 (2) SCALE 390], the question was whether the extended period of limitation could be invoked where the Department has earlier issued show cause notices in respect of the same subject-matter. It has been held that in such circumstances, it could not be said that there was any wilful suppression or mis-statement and that therefore, the extended period under Section 11A could not be invoked.</p>

Subject of the Decision	Decision
Whether the extended period of limitation could be invoked where the Department has earlier issued show cause notices in respect of the same subject-matter	<p data-bbox="560 211 2463 445">5. In our view, the principles laid down in above case fully apply here. As earlier proceedings in respect of same subject-matter were pending adjudication it could not be said that there was any suppression and the extended period under Section 11A was not available."</p> <p data-bbox="560 525 2463 1125">On the ratio laid down in this judgment it must be held that once the earlier Show Cause Notice, on similar issue has been dropped, it can no longer be said that there is any suppression. The extended period of limitation would thus not be available. We are unable to accept the submission that earlier Show Cause Notice was for a subsequent period and/or it cannot be taken into consideration as it is not known when that Show Cause Notice was dropped. If the Department wanted to take up such contentions it is for them to show that that Show Cause Notice was not relevant and was not applicable. The Department has not brought any of those facts on record. Therefore, the Department cannot now urge that findings of the Collector that that Show Cause Notice was on a similar issue and for an identical amount is not correct. ``</p> <p data-bbox="560 1205 2463 1316">Hyderabad Polymers (P) Ltd. vs Commissioner Of C. Ex., Hyderabad on 18 March, 2004 Equivalent citations: 2004 (94) ECC 7, 2004 (166) ELT 151 SC, (2006) 11 SCC 578</p>

Judgements on other related issues



Subject of the Decision	Decision
<p>If option to pay tax has been opted under Section 74, then interest and penalty also has to be paid under Section 74</p>	<p>-The petitioner, however, wants to get the best of both worlds by opting for the former course and simultaneously obtaining an exemption from the requirement of payment of interest and penalty amounts intimated to her by the Department. In my view, such an exercise is not permissible in terms of the Statute. When the scheme under section 74 for avoiding a show cause notice is one that is optional to an assessee, the assessee has either to opt for it or look away from it. If she opts for the scheme, she has to comply with the terms under which the option is made available under the statute. She cannot seek a variation of the said scheme.-Muhammed Kochukudiyil Ishabeevi Alias Isha Shaefi v. State Tax Officer (Intelligence)-[2020] 121 taxmann.com 265</p>

**Cases on Cross
Empowerment and Issuance
of Summons/SCN for same
subject by different
authorities/same authority
for same year/different
years**



Summon Issued on same subject matter

It was alleged that Central Authority has *issued summon on the same subject matter* on which summon has already been issued by the State Authority, which is impermissible under law as per the provisions of section 6(2)(b) of the GST Act 2017.

The High Court directed the Central Authority to consider the reply submitted by the petitioner and in case it is decided that the subject matter is one and the same, they will have to necessarily drop the proposed initiation of proceedings against the petitioner as per the provisions of section 6(2)(b) of the GST Act 2017.

Tvl. Al-Madhina Steel Traders v. Superintendent/Intelligence Officer (ECM) [2023] 148 taxmann.com 86 (Madras) Dated 07-02-2023

Simultaneous Proceedings by State and Central Authority

State authority had conducted the search and seizure operations and summons had been issued, order of provisional attachment had been passed and in such situation it was alleged by the petitioner that *Directorate General of GST Intelligence cannot initiate any action and issue summons under section 70 of the CGST Act* and the summons is barred as per the provisions of Section 6(2)(b) of the CGST Act.

It was held that the scope of section 6(2)(b) and section 70 is different and distinct, as the former deals with any "proceedings on a subject matter/same subject matter" whereas, section 70 deals with power to summon in an inquiry and therefore, the words "proceedings" and "inquiry" cannot be mixed up to read as if there is a bar for the respondent to invoke the power under section 70 of the CGST Act.

Kuppan Gounder P.G. Natarajan v. Directorate General of GST Intelligence [2022] 143 taxmann.com 289 (Madras)

Dated-01-09-2021

Simultaneous Proceedings by State and Central Authority

It was contended by the petitioner that once Deputy Commissioner (SIB), Ghaziabad, has conducted a survey of the business premises of the petitioner on 30-5-2018 and is investigating in the matter pursuant to the aforesaid survey, no inquiry can be initiated or summon can be issued by the DGGSTI Meerut Zonal Unit, Meerut under section 70 of the C.G.S.T. Act against the petitioner even if basis of material of inquiry/investigation by them may be different. In other words, the State Authority may investigate/inquire in all the matters pertaining to the business of the petitioner and, therefore, the summons in the matter of inquiry issued by the Central Authority is barred by the provisions of section 6(2)(b) of the C.G.S.T. Act.

It was held by the High Court that the word "proceedings" used in Section 6(2)(b) is qualified by the words "subject-matter" which indicate an adjudication process/proceedings on the same cause of action and for the same dispute, which may be proceedings relating to assessment, audit, demands and recovery and offences and penalties etc. It was further pointed out that these proceedings are subsequent to inquiry under section 70 of the CGST Act and the words "in any inquiry" are referable to the provisions under Chapter XIV viz., sections 67, 68, 69, 71 and 72. Thus, it was held that the proper officer may invoke power under section 70 in any inquiry and the prohibition under section 6(2)(b) shall come into play when any proceeding on the same subject-matter had already been initiated by a proper officer under the State Act. Therefore, the contention raised by the appellant stating that in issuance of summons for conducting an inquiry and to obtain a statement from the appellant cannot be construed to be bar under section 6(2)(b) of the CGST Act. Thus, the key words occurring in both the provisions viz., "in any inquiry" and "proceedings on the same-subject matter" indicate the crucial difference between these two provisions.

Summon issued by State Authorities stayed pending the proceedings before Central Authorities

The High Court stayed the *proceedings initiated by summons issued on October 19, 2020 by the State GST* which prima facie, in the opinion of the High Court were in violation of Section 6(2)(b) of the WBGST Act *since the proceedings were pending before the Central GST Authorities.*

Raj Metal Industries v. Union of India [2021] 127 taxmann.com 546 (Calcutta)

Dated-24-03-2021

Show Cause Notice issued by State Authority for Illegal availment of ITC and subsequent commencement of proceedings by DGGSTI on same matter

It was alleged that once *a show cause notice proceeding have been initiated and are pending before the concerned authorities under the SGST*, then *DGGSTI could not have issued or initiated another investigation or proceeding in-respect of the same subject matter*, which otherwise is not permissible under the provisions of Section 6(2)(1)(b).

The High Court held that the initial issuance of the show cause notice and the proceedings drawn were in respect of the intrastate transactions made by the petitioner, whereas subsequent to a secret information being received and further investigation being made, particularly in the course of a raid, which was conducted at the premises of the petitioner-establishment and other related premises, it was revealed that the magnitude of the offence committed by the petitioner-establishment was far more grave and serious. It was in the course of raid found that the petitioner had been making false and bogus transactions and has illegally availed ineligible ITC credits. The magnitude of which detected by now is approximately Rs. 60 crores and with further investigation the amount is likely to increase manifold. The High Court thus did not find any substance in the arguments of the petitioner, when petitioner contended that the investigation and the proceedings now initiated is one, which hit by section 6(2)(1)(b) of the CGST Act of 2017.

Dadhichi Iron and Steel (P.) Ltd. v. Chhattisgarh GST [2020] 116 taxmann.com 334 (Chhattisgarh)

Dated 25-02-2020

SCN issued by DGGSTI and investigation commenced by State Authority

The Primary ground of contention by the Petitioner was of parallel investigation and the contention is borne out of the notice dated 30th September, 2020, whereby the documents for the period of 2017-18 to 2020-21 were requisitioned by State GST Authority. It was contended by the Petitioner that **since DGGI has issued a show-cause notice under section 74 of the CGST Act, for the years 2017-18 and 2018-19, then by virtue of Section 6 of CGST Act, State GST authorities cannot carry out the investigation for the said period.**

The High Court observed that the request in the notice dated 30th September, 2020 cannot *ipso facto* lead to the conclusion that there is a parallel investigation for the same period by both the Central and State Authorities. The High Court also observed that in the event the notice issued by the State authorities pertains to a period which is covered by the investigation carried out by the Central GST authorities, the Petitioner can take recourse to the appropriate remedies in that regard.

The High Court held that if an officer of the Central GST initiates intelligence-based enforcement action against a taxpayer administratively assigned to State GST, the officers of the former would not transfer the said case to their counterparts in the latter department and they would themselves take the case to its logical conclusion. The revenue would be bound by Letter Dated 5-10-2018 and letter issued by the Central Board of Indirect Taxes and Customs being No. CBEC-20/10/07/2019-GST dated 22th June, 2020 and high court reiterated that in case the action of the State and Central Authorities is overlapping, the Petitioner would be at liberty to take action to impugn the same in accordance with law.

RCI Industries and Technologies Ltd. v. Commissioner DGST, Delhi [2021] 123 taxmann.com 342 (Delhi) Dated-07-01-2021

Simultaneous Proceedings by State and Central Authorities

Petitioner's business premises was impounded by the DGGSTI and a search was undertaken thereof. **During the course of search records, documents were seized and summons were issued under Section 70 of the CGST Act on various dates by DGGSTI.** Thereafter, **show cause notice was issued by the Additional CT and GST Officer, Sambalpur- I Circle (SGST) wherein Petitioner was asked to pay OGST, CGST, interest, penalty to the tune of Rs.3,78,68,262.08 on ITC wrongly availed.** The petitioner submitted that since the Senior Intelligence Officer of the DGGSTI, Bhubaneswar has seized all the documents and issued summons pursuant to which the Petitioner was appearing there from time to time, the proceedings initiated by State GST should be kept in abeyance till such time of proceedings before the DGGSTI concluded. Despite the above request, State GST Officer proceeded to pass an order under Section 74 of the OGST Act requiring the Petitioner to pay a sum of Rs.3,74,74,953.98 towards OGST, CGST, interest, penalty. The State Authorities in their reply did not dispute the circular dated 5th October, 2018 but claim not to have known that the Central tax authority was seized of the matter.

The High Court observed that period of enquiry as far as Central tax authority is concerned is from July, 2017 to September, 2018 whereas State Authority has issued a show cause notice specific for April, 2018 and, therefore, there is also an overlapping of the periods. Therefore, the High Court quashed the show cause notice and the impugned order issued by the State Authority and directed that till the conclusion of the proceedings initiated against the Petitioner by the DGGSTI, no coercive action be taken against the Petitioner by State GST Authority.

Sonam Berlia v. State of Odisha MANU/OR/0306/2021 Dated 23-03-2021

Concurrent Proceedings for Audit, Investigation and Jurisdictional Officer

In the present matter, **Inspection and seizure of documents was on 16-3-2020**, the first **impugned notice under Section 65 is dated 30-8-2022**, 'show cause notice' based on inspection was issued on dated 18-10-2022, reply to the SCN is dated 22-11-2022, second and third impugned notices are dated 23-11-2022 and 27-12-2022.

The High Court held that here is nothing to demonstrate that when the audit under section 65 has been kick started by way of a notice, thereafter show cause notice under section 74 is impermissible.

Om Sakthi Construction v. Assistant Commissioner [2023] 147 taxmann.com 434 (Madras)

Dated-06-01-2023

Concurrent Proceedings for Audit, Investigation and Jurisdictional Officer

GST Authorities initiated the search and seizure proceedings against Managing Director and Director of Media Company. **Pursuant to such proceedings summons u/s 70 were issued.** Thereafter, **notice for audit under section 65 of CGST Act was also issued.** Various documents were seized vide Order of Seizure dated 09.06.2020. The petitioner prayed for relief from such enquiry proceedings.

Petition was dismissed by holding that auditing of books as well as order of seizure of documents would help the department in correlating the entries in the documents and at the time of auditing of the account. The procedure for further actions is contained in Chapter 15 of CGST Act. Therefore, it would be too premature to comment upon the act of the respondents and cannot be said to be against the provisions of the statute or misuse, warranting interference under Article 226 of the Constitution of India.

SLP Filed before Supreme Court in the matter has been dismissed. **Suresh Kumar P. P. v. Deputy Director, Directorate General Of GST Intelligence (DGGI) [2021] 125 taxmann.com 61 (SC)**

Suresh Kumar P.P. v. Deputy Director, Directorate General of GST Intelligence (DGGI) [2020] 120 taxmann.com 173 (Kerala)

Dated-14-08-2020

Concurrent Proceedings for Audit, Investigation and Jurisdictional Officer

In the present matter, *three wings of the same department are proceeding against the appellants for the very same period, i.e. financial years 2017- 2018, 2018-2019 and 2019-2020.* The first of the department which had taken action was the Audit Commissionerate, which had issued notice under section 65 of the CGST Act, 2017 dated 9th November, 2021. It is submitted that the appellants had furnished the details as called for in the said notice and also responded to the intimation dated 5th January, 2022/6th January, 2022 for conducting GST audit. In the meantime, the other two wings of the department, viz. Anti Evasion wing as well as the Range Office have also proceeded against the appellants by issuing notices for the very same period for which audit proceedings under section 65 of the Act has already commenced. Revenue in its reply stated that the three wings of the department are proceeding against the appellants because the Range office was not aware about the proceedings initiated by the Audit Commissionerate and the Anti Evasion also was not aware of the same.

The High Court observed that it is not clear as to why in the present days of electronic communications available in the department, such parallel proceedings can be conducted by three wings of the same department for the very same period. Thus, it held that since the audit proceedings under section 65 of the Act has already commenced, it is but appropriate that the proceedings should be taken to the logical end. The proceedings initiated by the Anti Evasion and Range Office for the very same period shall not be proceeded with any further.

R. P. Buildcon (P.) Ltd. v. Superintendent, CGST & Central Excise [2022] 144 taxmann.com 108 (Calcutta)

Dated 30-09-2022

Transfer of Multiple Proceedings having common thread under one umbrella

The investigations were initiated by various jurisdictional authorities against different entities. As contended by the respondents, as common **thread were allegedly found in these investigations, the same have been transferred to DGGI, AZU to be brought under one umbrella.** We also find that in the CGST Act there is no prohibition to such transfer. Section 6(2)(b) of the CGST Act has limited application and therefore, is not applicable to the facts of the present petitions. Similarly, the Circular dated 5-10-2018 also has no application to the facts of the present petitions.

Indo International Tobacco Ltd. v. Vivek Prasad, Additional Director General (DGGI) [2022] 134 taxmann.com 157 (Delhi)

Dated-11-01-2022

Show Cause Notice issued on same subject by State and Central Authority

It was alleged that a **similar show cause notice has already been issued** by the Central Authority under CGST Act, 2017 on 29-7-2022 against the petitioner, involving the very same defects. It was submitted by the authority that a detailed reply has not been sent by the petitioner to the impugned show cause notice and for the similar defects for which notice has been issued by the Central Authority, such defects will be omitted and action shall be initiated in respect of the balance defects alone.

The High Court disposed of the petition stating that the limited relief that can be granted to the petitioner is to permit them to file a detailed reply to the impugned show cause notice, stating all their objections that have been raised in this Writ Petition including the objection with regard to section 6(2)(b) of the TNGST Act, 2017 and on receipt of the said reply, a direction can be issued to the respondents to consider the said reply on merits and in accordance with law within a time frame to be fixed by this Court.

[2023] 148 taxmann.com 83 (Madras) VGN Projects Estates (P.) Ltd. v. Assistant Commissioner (State Taxes)

Dated-30-01-2023



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