

Departmental Notices and their possible Resolutions

CA GAURAV GUPTA

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Important Points

- ▶ Dual administration
- ▶ Continuing returns and rectifications
- ▶ 360 degree profiling of an assessee
- ▶ System monitoring
- ▶ Intelligent reviews by GSTN
- ▶ E way bill – complete check on movement of goods
- ▶ Credit check – between suppliers and recipient
- ▶ Difference in limitations on availment of ITC and demand limitation

Powers to issue Notice

- ▶ **s. 46** – Return defaulters
- ▶ **s. 61**- Power to scrutinise return
- ▶ **s. 52(12)** – Enquiry from E Commerce Operator
- ▶ **s. 73 and 74**
- ▶ Important Points

Return defaulters

- ▶ s.46 - Where a registered person fails to furnish a return under section 39 or section 44 or section 45, a notice shall be issued requiring him to furnish such return within fifteen days in such form and manner as may be prescribed.
- ▶ R.68 - A notice in FORM GSTR-3A shall be issued, electronically, to a registered person who fails to furnish return under section 39 or section 44 or section 45 or section 52.
- ▶ Cancellation notice under S.29 read with R.22

Enquiry from E commerce Operator

- ▶ s. 52(12) - Any authority not below the rank of Deputy Commissioner may serve a notice, either before or during the course of any proceedings under this Act, requiring the operator to furnish such details relating to—
 - (a) supplies of goods or services or both effected through such operator during any period; or
 - (b) stock of goods held by the suppliers making supplies through such operator in the godowns or warehouses, by whatever name called, managed by such operator and declared as additional places of business by such suppliers, as may be specified in the notice.
- ▶ Such information to be furnished within 15 days of service of such notice.

Scrutiny of Return

- ▶ **s.61** - The proper officer may **scrutinize the return and related particulars furnished** by the registered person to verify the correctness of the return and inform him of the discrepancies noticed, if any, in such manner as may be prescribed and seek his explanation thereto.
- ▶ **R.99** - in case of any discrepancy, he shall issue a notice to the said person in FORM GST ASMT-10, informing him of such discrepancy and seeking his explanation thereto within such time, not exceeding thirty days from the date of service of the notice or such further period as may be permitted by him.
- ▶ Assessee to pay tax or offer explanation in ASMT 11
- ▶ If acceptable, officer shall inform the person in ASMT 12

Scrutiny of Return

- ▶ Difference between outward supplies GST 3B and GSTR 1
- ▶ Difference between Input tax between GSTR 3B and GSTR 1 as filed by suppliers
- ▶ Difference between GSTR 3B and annual return

Demand Notice

- ▶ **§ 73.** - 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 [***], 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.
- ▶ (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.

Demand 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.

Demand Notice

- ▶ **§ 74.** - 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 [***], 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.
- ▶ (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.

Demand Notice

- ▶ (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.

Important Points

- ▶ Nothing beyond SCN can be confirmed
- ▶ Proper service
- ▶ Proper hearing
- ▶ SCN is not an assessment but an adjudication
- ▶ Demand cannot travel beyond SCN
- ▶ Reply to be limited to the issue raised
- ▶ Limitation

Demand Notice

Event	Reduction in Penalty
Section 73(3) - Tax along with interest payable is paid before issue of show cause notice in cases not involving fraud or any willful-misstatement or suppression of facts to evade tax	No Show cause and all proceedings in respect of the said tax shall be deemed to be concluded
Section 73(5) - Tax along with interest payable is paid within thirty days of issue of show cause notice in cases not involving fraud or any willful-misstatement or suppression of facts to evade tax	No penalty shall be payable and all proceedings in respect of the said tax shall be deemed to be concluded
Section 74 (3) - Tax along with interest payable along with 15% penalty of such tax is paid before issue of show cause notice in cases involving fraud or any willful-misstatement or suppression of facts to evade tax	No Show cause and all proceedings in respect of the said tax shall be deemed to be concluded
Section 74(5) - Tax along with interest payable along with 25% penalty of such tax is paid within thirty days of communication of show cause notice in cases involving fraud or any willful-misstatement or suppression of facts to evade tax	No further penalty and all proceedings in respect of the said tax shall be deemed to be concluded

Tax collected but not paid

- ▶ **§ 76.** - (2) Where any amount is required to be paid to the Government under subsection (1), and which has not been so paid, the proper officer may serve on the person liable to pay such amount a notice requiring him to show cause as to why the said amount as specified in the notice, should not be paid by him to the Government and why a penalty equivalent to the amount specified in the notice should not be imposed on him under the provisions of this Act.

Important Points

- ▶ **§ 160.**
- ▶ No notice shall be void on by reason of any mistake, defect or omission therein, if such assessment, re-assessment, adjudication, review, revision, appeal, rectification, notice, summons or other proceedings are in substance and effect in conformity with or according to the intents, purposes and requirements of this Act or any existing law.
- ▶ The service of any notice, order or communication shall not be called in question, if the notice, order or communication, as the case may be, has already been acted upon

Thank you

CA Gaurav Gupta

Partner

MGS & Co.

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