

## **GST Webinar –**

# **PRACTICAL SUGGESTIONS FOR REPLY TO SHOW CAUSE NOTICES & LATEST GST UPDATES-JUDGEMENTS & COVID -19 GST RELIEF MEASURES**

**Hosted by GST CORNOR & GSTEXPERTS**  
**Date : 13<sup>th</sup> April 2020**

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# PRACTICAL SUGGESTIONS ON REPLY TO SHOW CAUSE NOTICE UNDER GST



# Show Cause Notice- Defined



- In order to adhere to the **principles of natural justice**, before raising any tax demand,
  - ❖ a **notice has to be issued** (generally referred to as Show Cause Notice),
  - ❖ asking the person chargeable with tax **to show cause as to why the specified amount of tax** should not be demanded from him.
- The issuance of SCN **grants an opportunity** to such person to defend himself before adjudication.
- The person to whom such notice has been issued can contest the demand by **filling a reply** to the show cause notice and also by **appearing before the adjudicating authority personally**.
- Only after going through the submissions, **Speaking Order** can be issued.

## SCN cannot be vague

- In the case of **M/s Brindavan Beverages (P) Ltd** [2007(213) ELT487(SC), Hon'ble SC observed that;
  - *"The show cause notice is the foundation on which the department has to build up its case. If the allegations in the show cause notice are not specific and are on the contrary vague, lack details and/or unintelligible that is sufficient to hold that the noticee was not given proper opportunity to meet the allegations indicated in the show cause notice."*

## Recovery without issuing Show cause notice (SCN)

- **M/s. L C Infra Projects Pvt. Ltd. [2019 (8) TMI 84]** - Karnataka High Court observed and held that
  - *The issuance of Show Cause notice is sine qua non to proceed with the recovery of interest payable thereon under Section 50 and penalty leviable under the provisions of the Act or the Rules.*
  - *Undisputedly, the interest payable under Section 50 has been determined by the Authority without issuing Show Cause Notice, which is in breach of principles of natural justice. It is settled principle of law that any order passed by the quasi-judicial authorities in contravention of the principles of natural justice, cannot be sustained.*
  - *Thus, it is apparent that action of the third respondent is perverse and illegal and the same deserves to be set aside.*

# Pointers to Reply of Show Cause Notice

- **Acknowledging the Receipt of SCN**

- While acknowledging the SCN, always remember to put date and time over the acknowledgement copy.

- **Don't avoid the receipt of SCN**

- If a SCN is being served, there is no point in avoiding to receive it. It has to be received and then contested / replied. Non receipt is sometimes considered as a service.

- **Contemplating any SCN and feel that GST has to be paid**

- it would be advisable to pay GST before SCN is issued. SCN cannot be issued for the amounts already paid.

## Pointers to Reply of Show Cause Notice- Is it a Valid Notice ?

- To read the show cause notice thoroughly
  - If you have not understood any point mentioned in the notice please read it again and again till you understand.

## Pointers to Reply of Show Cause Notice- Is it a Valid Notice ?

- **Preliminary objections to be raised first with justifications**
  - **Jurisdiction**-Centre/ State , Proper Officer [Ref CBIC Circular No. 3/3/2017 - GST dated 5th July, 2017, Circular No. 31/05/2018-GST dated 09th February 2018]
  - **Time Barred:** If the service of notice is time barred, it could be suitably replied with substantiating evidence
    - Section 73: Notice to be issued within 2 years and 9 months from the due date of filing annual return
    - Section 74: Notice to be issued within 4 years and 6 months from the due date of filing annual return
- invoking extended period of limitation
  - If the SCN is beyond 3 years, it will have to be proved that there was no suppression etc. on assessee's part so that department cannot invoke the provision of five years.



## Pointers to Reply of Show Cause Notice- Is it a Valid Notice ?

- **Opportunity of Being Heard**

- Whenever SCN is intended to enhance the liability of assessee or reduce the amount of refund, an opportunity of being heard is necessary and it can not be denied by the revenue

- **Computation of Demand**

- At times the computation of the amount demanded is not available. This can also be requested to be able to reply effectively and also as a process of natural justice.

- **Department to adjudicate only on the issue mentioned in the SCN**

- Department cannot go beyond what is mentioned in SCN and adjudicate an issue which is not a subject matter of SCN.

# Pointers to Reply of Show Cause Notice

- **Format to Reply**

- If Form is prescribed for reply
- If no form is prescribed for filing reply

- **Point-wise Reply**

- Try to provide reply or explanation to all points covered in SCN and wherever necessary, substantiate the reply with documentary evidences.
- Detailed reply may be submitted alongwith earlier decided case laws.
- A list of evidences on which you are relying must also be submitted.

## Pointers to Reply of Show Cause Notice

- **Reply within the stipulated time**
  - SCN is required to be replied within the stipulated time mentioned in the notice and must be replied accordingly
  - **Adjournment:** While efforts must be made to comply within the stipulated time, it would be advisable to seek extension of time or adjournment which is normally granted.

# Pointers to Reply of Show Cause Notice

- **Submission of Reply**

- the reply may be submitted in person before the authority and get acknowledgement from them or may be sent by registered post/speed post;
- If it is sent by registered post/speed post it is better to take the delivery report by tracking the same in the post office web site;
- Uploaded on Portal- Note the Acknowledgement no

- **Proper reply forms a foundation for Future litigation**

- SCNs have to be properly defended and argued for this stage builds the foundation for further actions.

## Pointers to Reply of Show Cause Notice

- **Assistance of Professional**

- If you are not in a position to represent your case personally, better hire a professional to assist you in drafting a reply to SCN and represent your case at adjudication stage.

# Notice not to be Invalid if already acted upon

As per section 160(2),

- 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** by the person to whom it is issued or
- where such **service has not been called in question** at or
- **in the earlier proceedings commenced, continued or finalised** pursuant to such notice, order or communication

## Modes of Service of Notice- Sec 169

Personal Delivery to the  
Taxable Person or through  
courier

by registered post or speed post  
or courier with  
acknowledgement due

Communication to his e-mail  
address

Making it available on the  
common portal

Publication in a newspaper

If earlier modes not practicable,  
affixing it in some conspicuous  
place at his last known place of  
business or residence

Affixing a copy thereof on the  
notice board of the office of the  
concerned officer or authority  
who or which passed such  
decision or order or issued such  
summons or notice.

## Modes of Service of Notice- Sec 169

In the case of **Kashi Bartan Bhandar** [2018 (11) TMI 556] – Allahabad High Court observed and held as under:

- the Assistant Commissioner could not come to any conclusion that all previous modes as prescribed under Section 169 are not practicable for the service of notice and
- has directly resorted to service by affixation.
- In such a situation, service if any by affixation cannot be regarded as a proper service. Moreover, nothing on record has been brought to establish the time, date and place and the manner in which service by affixation was resorted to.
- It has been stated that the show cause notice was sent at the e-mail address of the petitioner on 18.01.2018 but again there is no material to support the said contention and the sending and receiving of any such email has been categorically denied by the petitioner.
- Thus, petitioner was not served any SCN - the impugned order dated 27.01.2018 is not at all sustainable.



## Documentation Identification Number

- CBIC has issued **Circular No. 128/47/2019-GST dated 23-12-2019** regarding the generation and quoting of Document Identification Number (DIN)
- **Mandatory Generation of DIN:** With effect from 24-12-2019, the electronic generation and quoting of Document Identification Number (DIN) shall be done in respect of all communications (including e-mails) sent to tax payers and other concerned persons by any office of CBIC across the country.
- **Document not containing DIN invalid:** The CBIC directed that any specified communication which does not bear the electronically generated DIN, shall be treated as invalid and shall be deemed to have never been issued.

# Documentation Identification Number

- **Exceptions:**

- In exceptional circumstances communications may be issued without an auto generated DIN;
  - Only after recording the reasons in writing in the concerned file.
  - Also, such communication shall expressly state that it has been issued without a DIN.

- **Exceptional Circumstances:**

- (i) when there are technical difficulties in generating the electronic DIN, or
- (ii) when communication regarding investigation/enquiry, verification etc. is required to issued at short notice or in urgent situations and the authorized officer is outside the office in the discharge of his official duties.

## Documentation Identification Number

- **Communication issued to be regularized within 15 days**
  - Any communication issued without an electronically generated DIN in the exigencies mentioned shall be regularized within 15 working days of its issuance, by:
    - (i) obtaining the **post facto approval of the immediate superior officer** as regards the justification of issuing the communication without the electronically generated DIN;
    - (ii) **mandatorily electronically generating the DIN after post facto approval**; and
    - (iii) **printing the electronically generated pro-forma bearing the DIN and filing it in the concerned file.**

## Legal Provisions under which notices can be issued

Section	Subject Matter
61	Scrutiny of returns
62	Assessment of non-filers of returns
63	Assessment of unregistered persons
64	Summary assessment in certain special cases
65	Audit by tax authorities
66	Special audit
70	Summons under enquiry
73 / 74	Demand & Recovery

## MOST COMMON NOTICES CURRENTLY BEING ISSUED

- Mismatch in GSTR-2A vs ITC claimed in GSTR-3B- Non Compliance of Rule 36(4)
- Mismatch in GSTR-1 vs GSTR-3B
- GST audit to be conducted by GST Department u/s 65
- Notice for recovery of Interest on delayed payment of tax

# SAMPLE NOTICES

1822

OFFICE OF THE SUPERINTENDENT OF CENTRAL TAX  
CHENGALPATYU RANGE  
MARAIMALAI NAGAR DIVISION  
40, Ranga Colony, Rajakipakkam, Chennai-600073.  
D.C. No. 4119 /2020

To,  
[REDACTED]

Dtd. 04/02/2020

Gentlemen,

RPAD  
(Reg. Post)

While analysing the information available with this office, it is found that you have filed GSTR-3B returns belatedly, which attracts interest as per Sec. 50 of CGST Act, 2017. The details of returns filed by you is as follows:

Month	Delay in (Days)	Tax paid details (Headwise)				Interest to be paid (Headwise)			
		IGST	CGST	SGST	Cess	IGST	CGST	SGST	Cess
Apr-18	69	0	4120114	4120114	0	0	140197	140197	0
May-18	41	0	3886708	3886708	0	0	78586	78586	0
Jun-18	14	0	3070058	3070058	0	0	21196	21196	0
Jul-18	46	1333238	3891276	3891276	0	32217	94030	94030	0
Aug-18	22	16070	4188047	4188047	0	174	45437	45437	0
Sep-18									
Oct-18	1	0	3698077	3698077	0	0	1824	1824	0
Nov-18	15	67778	4108813	4108813	0	501	30394	30394	0
Dec-18	92		238002	238002		0	10798	10798	0
Jan-19	62		146081	146081		0	4466	4466	0
Feb-19			0	0		0	0	0	0
Mar-19									
Total						32892	426928	426928	0

Therefore, you are requested to pay the interest as mentioned in respective heads, immediately under intimation to this office. If the interest amount has already been paid, DRC-03 copy/copies may please be submitted to this office at earliest.

N. Rathakrishnan  
(N. RATHAKRISHNAN)  
SUPERINTENDENT

## Sample Notice of Belated Filing of GSTR-3B Return & Interest Recovery

## Notice for Recovery Interest

- Earlier, different opinions on whether interest would be charged on gross or net tax liability
- **Judgment of Telengana & Andhra Pradesh High Court**
  - M/s Megha Engineering and Infrastructures Ltd. [2019 (4) TMI 1319]
- **Proviso inserted in section 50(1) for calculation of interest liability on net basis prospectively – but not notified till date**
- **Judgement of Madras High Court**
  - M/s. Refex Industries Limited [2020 (2) TMI 794]
- **39<sup>th</sup> GST Council Meeting**
  - Interest to be paid on net tax liability retrospectively

# SAMPLE NOTICES

No. 2112 / JE T.O. 4/Dated 28/04/2019

Subject: Administration Under Section-61 of State Goods & Service Tax Act, 2017.

Whereas after perusal of your returns filed under the Act, a huge amount Sales/Purchases are found. For the period from April, 2018 to September, 2018, it has been found that there is a difference in the input tax credit claimed in GSTR-3B and GSTR-2A for the above said period. As per GSTR-3B, the total input tax credit claimed by you is 148934420.47, whereas per GSTR-2A the total input tax claimed is 124964746.29. The details of the above difference are as under:-

Sr. No.	Particular	ITC as per GSTR-3B	ITC as per GSTR-2A	Difference
	CGST	6369533.84	5343803.59	1025730.25
	SGST	6369533.84	5343803.39	1025730.45
	IGST	136195352.79	114276374.36	21918978.43
	Cess	0	764.95	-764.95
	Total	148934420.47	124964746.29	23969674.18

## Sample Notice of Variation between ITC as per GSTR-3B Vs GSTR-2A



# SAMPLE REPLY TO NOTICES OF VARIATION BETWEEN ITC AS PER GSTR-3B VS GSTR-2A

- GSTR-2A has only domestic ITC while figures taken from GSTR-3B includes total ITC availed including Imports, RCM, ISD credit and Other ITC
- Sharing the GSTR-2A Reco for the Period
- In case there is any variation, follow up action on the same should be included in the reply

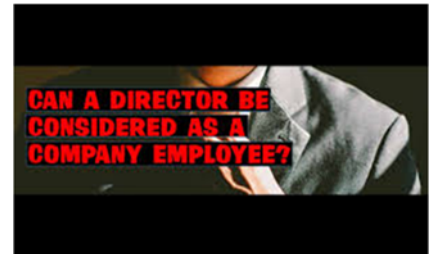


# IMPORTANT JUDGEMENTS



# GST ON MANAGERIAL REMUNERATION ?

- Re: **M/s. Alcon Consulting Engineers (India) Pvt. Ltd.** [2019 (10) TMI 793] & **M/s Clay Craft India Private Limited** [RAJ/AAR/2019-20/33],
- It was held that the remuneration to the Directors paid by the applicant are not covered under clause (1) of the Schedule III to the CGST Act, 2017, as the **Director is not the employee** of the Company.
- Managerial remuneration is liable to GST and should be paid under RCM as per Sec 9(3) of GST



## Implication:

- All Corporates , small and large will pay GST under RCM on Director's remuneration
- Smaller Companies liable to take Compulsory Registration

# GST ON MANAGERIAL REMUNERATION ?

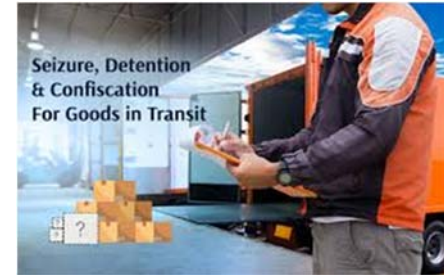
## Who is Employee?

- No Definition under GST
- Employer-Employee Relationship - The employer shall exercise absolute and effective control over the employee, not only the sufficient control.
- CBIC in Service tax regime - When a director receives payment in his personal capacity, the same is liable to be taxed in the hands of the director.
- **CBIC - [Circular No. 115/09/2009 – ST dated 31-07-2009]**-remunerations paid to Managing Director / Directors of companies whether whole-time or independent when being compensated for their performance as Managing Director/Directors would not be liable to service tax.
- **Income Tax-** Director remuneration is also taxed as income under the head salaries

# Undervaluation can't be ground for detention and seizure of goods

**K.P. Sugandh Ltd. Vs. State of Chhattisgarh** [2020 (3) TMI 890] - Chhattisgarh High Court observed and held as under:

- Vehicle was intercepted on the 14.01.2020. Person-In Charge carried all the requisite docs.
- The only observation made by the authorities concerned is that the valuation does not seem to have been properly conducted.
- The High Court held that undervaluation of a goods in the invoice cannot be a ground for detention of the goods and vehicle for a proceeding to be drawn under Section 129 of the CGST Act, 2017 read with Rule 138 of the CGST, 2017.



## Can Lift installed in Building be termed as “Plant & Machinery”

**M/s. Las Palmas Co-operative Housing Society Limited** [2020 (2) TMI 497] - Authority for Advance Ruling, Maharashtra, observed that;

- the applicant plans to replace the existing Lift/Elevator of their society building along with its supporting structures.
- For that purpose the applicant enter into contract with the supplier of lift/elevator on the basis of a lump sum contract price.
- The contract entered with the applicant will be considered as 'works contract' service.

## Can Lift installed in Building be termed as “Plant & Machinery”

It was held that the erection of the lift/elevator can be done only inside the building structure as an integral part of the building in which the lift is to be installed.

**Once the lift is installed and commissioned in the building, it becomes integral part of the immovable property i.e. the building.**

The lift when installed in the building makes the building fit for occupation and becomes a permanent fixtures of the building itself. Hence, the same would be considered as an immovable property and not 'plant and machinery'.



# GST RELIEF MEASURES FOR COVID -19 PANDEMIC





# EXTENSION OF DUE DATES-GSTR-3B

Turnover	Period	Regular due date	Relief Date-No Late Fee till [NTN 32/2020-CT dt 3.04.2020]	No Interest Till [NTN 31/2020-CT dt 3.04.2020]	INTEREST
Less than 1.5 Crore	February	22nd or 24th of next month	30th June,2020	30th June,2020	<ul style="list-style-type: none"> <li>No Interest till the Relief Date .</li> <li>In case payment of tax is beyond relief date, Interest @ 18% u/s 50 from the regular due date.</li> </ul>
	March		3rd July,2020	3rd July,2020	
	April		6th July,2020	6th July,2020	
	May --[NTN 36/2020-CT dt 3.04.2020]		12th July,2020/14th July, 2020	12th July,2020/14th July, 2020	
More than 1.5 but upto 5 Crore	February	22nd or 24th of next month	29 <sup>th</sup> June 2020	29th June,2020	
	March				
	April		30 <sup>th</sup> June,2020	30th June,2020	
	May --[NTN 36/2020-CT dt 3.04.2020]		12th July,2020 / 14th July, 2020	12th July,2020 / 14th July, 2020	
More than 5 Crore	February	20th March,2020	24 <sup>th</sup> June,2020	4th April 2020	<ol style="list-style-type: none"> <li>Interest @9% from the date specified till the Relief date</li> <li>In case payment of tax is beyond relief date, Interest @ 18% u/s 50 from the regular due date.</li> </ol>
	March	20th April,2020	24 <sup>th</sup> June,2020	5th May 2020	
	April	20th May,2020	24 <sup>th</sup> June,2020	4th June 2020	
	May --[NTN 36/2020-CT dt 3.04.2020]	20 <sup>th</sup> June, 2020	27 <sup>th</sup> June, 2020	27 <sup>th</sup> June, 2020	<ul style="list-style-type: none"> <li>In case payment of tax is beyond relief date, Interest @ 18% u/s 50 from the regular due date.</li> </ul>

## EXTENSION OF DUE DATES - GSTR-1: NTN 33/2020-CT dt 3.04.2020

Filing Frequency of GSTR-1	Period	Regular due date	Interest	Late fee and penalty
Monthly	March	11th April,2020	Not applicable	No Late Fee if filed till 30 <sup>th</sup> June,2020
	April	11th May,2020		
	May	11th June,2020		
Quarterly	Jan-Mar	30th April,2020		

## Illustration explaining revised interest rate for taxpayers with aggregate turnover of more than 5 crores – Circular 136/6/2020 - GST

S.No	Due Date of Filing of return	Date of filing of GSTR 3B [ Relief date : 24.06.2020]	No of days of Delay	Whether condition for reduced interest fulfilled	Interest
1	20.04.2020	02.05.2020	11	Yes	No interest
2	20.04.2020	20.05.2020	30	Yes	Zero interest for 15 days + Interest@9% p.a for 15 days
3	20.04.2020	24.06.2020	65	Yes	Zero interest for 15 days + Interest@9% p.a for 50 days
4	20.04.2020	30.06.2020	71	No	Interest@18% p.a for 71 Days+ Late Fee will also be applicable

## Relief for Composition Taxpayers

- NTN 30/2020-CT dt 3.04.2020
  - **Intimation in respect of opting to pay tax under composition** scheme for the FY 2020-21 can be filed till 30.06.2020 in Form GST CMP-02.
  - **Statement in Form GST ITC-03** in relation to above intimation to be filed upto 31.07.2020

## Relief for Composition Taxpayers

- NTN 34/2020-CT dt 3.04.2020
  - **Quarterly Statement:** Composition taxpayer or registered person availing the benefit under Notification 2/2019 – Central Tax (Rate) shall be required to furnish **details of self-assessed tax in Form GST CMP-08** for **quarter ending March 2020 by 07.07.2020** [not within 18 days from the end of quarter].
  - **Yearly Return:** The yearly return for 2019-20 shall be required to be filed in **Form GSTR 4** by the above persons **till 15.07.2020**.

## Amendment in Rule 36(4) of CGST Rules--[NTN 30/2020-CT dt 3.04.2020]

### Position before Amendment

- The registered person shall be required to **claim ITC to the extent of 110%** of eligible ITC getting reflected in GSTR 2A for the tax period.
- Taxpayer was required to calculate the amount as per the above provision **for every tax period** before filing of GSTR 3B.

### Position after Amendment

- **Cumulative calculation of ITC allowed** for period of February, March, April, May, July and August 2020. Therefore, for the returns furnished in said tax period, condition of Rule 36(4) not applicable.

# Notification No. 35/2020-Central Tax- Extension of Time limit upto 30<sup>th</sup> June,2020

**For completion or compliance of any action, the due date of which falls between 20th March, 2020 to 29<sup>th</sup> June,2020 for the purpose of:**

**Completion of proceedings, Passing of any order, Issuance of Notice, Intimation, Notification, Sanction or approvals**

**Filing of appeal, reply, application, furnishing of any report, document return, statement, records.**

## Notification No 35/2020 – Central Tax- Non Applicability of Extension

- E-Way bill- **Where e-way bill expires between 20.03.2020 and 15.04.2020, validity deemed to have been extended till 30.04.2020**
- Time and Value of Supply
- GSTR 3B except Return of TDS deductor, input service distributor, Non resident taxable person. These person can furnish return for March 2020, April 2020 and May 2020 on or before 30.06.2020
- Registration requirement
- Lapse of composition scheme on exceeding the turnover limit
- Provisions of casual taxable person and non resident taxable person in relation to registration
- Tax invoice
- GSTR – 1



## Notification No 35/2020 – Central Tax- Non Applicability of Extension

- Levy of Late fees
- Interest on delayed payment of tax
- Power to arrest
- Liability of partners of firm to pay tax
- Penalty
- Detention, seizure and release of goods and conveyance in transit

## Implementation of decision to expedite pending refund claims – Instruction No. 2/1/2020-GST dated 09-04-2020

- All pending GST refunds including IGST refunds shall be expeditiously processed.
- Decision to process pending refund claims has been taken with a view to provide immediate relief to the taxpayers in these difficult times even though the GST Law provides 15 days for issuing acknowledgement or deficiency memo and total 60 days for disposing off refund claims without any liability to pay interest.
- However, due diligence, may be done before granting the refunds on merits, considering all the relevant legal provisions and circulars.
- Efforts should be made to dispose off all the pending refund claims by 30th April 2020



Thank you!!!



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