

**A SPECIAL SESSION
ON
“Q & A RELATING TO SHOW CAUSE
NOTICE & APPEALS UNDER GST LAW”**

**ORGANIZED BY THE WESTERN
MAHARASHTRA TAX PRACTITIONERS’
ASSOCIATION & OTHER BODIES DURING
THE
MEGA CONFERENCE ON GST LITIGATION**

**BY SHAILESH SHETH, ADVOCATE
DATE: FRIDAY, MAY 21, 2021**



" No man ever reached to excellence in any one art or profession without having passed through the slow painful process of study and preparation."
- [Horace - Ancient Greek Poet, 65 BC- 8 BC]

PRE- NOTICE CONSULATION

| Sr. No . | Name of Participant | Question | Speaker's Response |
|----------|---------------------|---|---|
| 1 | Kunal Desai | What would be situation if DRC-01A is not issued by proper officer after "may communicate" substituted ? and shall we challenge descritinary power of office with WP in High Court? | "May" denotes discretion vested in the officer. Challenge to HC can always lie but it's a difficult task. |
| 2 | Sandesh S Kutnikar | 142(1A) does not say may communicate. It says under 73(1) Or 74(1), as the case may be, communicate. In my humble view, it is still mandatory to issue DRC-01A prior to SCN | The provision is not properly read. Earlier word "shall" is replaced by "may". |
| 3 | Dwarakesh S | Can statement in Form DRC-1A be challenged? | HC's door is always open but not advisable. |

PRE- NOTICE CONSULTATION

| Sr. No | Name of Participant | Question | Speaker's Response |
|--------|---------------------|--|--|
| 4 | Vikash Mittal | Can't we take the grounds taken in the pre SCN consultation in reply to, SCN? Will it be barred? If no then what is the harms in participating in such consultation process? | Grounds earlier taken can always be taken but will it serve any purpose? |
| 5 | Manmohan Bajaj | Can we choose to reply to DRC-01A by saying liability not acceptable without giving any reasons for the same? | Yes |
| 6 | Madhavan Narasimhan | is department required to pre consult with assessee before issue of show cause notice | Amended provision makes it discretionary |

SHOW CAUSE NOTICE

| Sr. No. | Name of Participant | Question | Speaker's Response |
|---------|---------------------|---|---|
| 1 | Prakash Mirchandani | How to related or points to take care for the cases to be quoted in support for points mentioned in our reply to SCN | Read the judgements carefully before relying on it and do not go by Headnotes. |
| 2 | DEEPAK GADGIL | what will be status of notice issued Without Din | At worst, irregular but can be challenged as invalid on the basis of Board's Circular |
| 3 | Ambesh Biyani | Can the reply to the notice be shared with us.? | ?? |
| 4 | Aditya Khandelwal | Can commissioner (Appeals) take fresh contention and pass adverse appeal order if such contentions were not present in SCN of Adjudicating Authority? | No. See, SC in Hindustan Polymer's case and other judgements in my Presentation. |

SHOW CAUSE NOTICE

| Sr. No | Name of Participant | Question | Speaker's Response |
|--------|---------------------|--|--|
| 5 | Anil Kumar Agrawala | Who can issue SCN - whether Proper Officer or Adjudicating Authority? | Proper Officer who generally acts 'Adjudicating Authority' also. |
| 6 | kartik solanki | One More Question On Service Tax, For A Assessee, Having Registration In Multiple Registrations - Can An Officer Having Jurisdiction Over Only One Of The Registrations, Issue An SCN Demanding Service Tax On Difference Between P&L Account Of The Entire Entity Vs All The Returns Filed? Can One Fight The Whole Matter Only On The Basis On The Jurisdictional Issue? | This depends upon the facts of the case. It is not advisable to plead the case only on jurisdiction ground at Departmental level. This ground should be taken only as 'Preliminary objection/ground' |

SHOW CAUSE NOTICE

| Sr. No | Name of Participant | Question | Speaker's Response |
|--------|---------------------|---|---|
| 7 | vn dubey | In Reply To Scn Is It Appropriate To Put All The Judicial Pronouncement , May Be Having Risk Of Counter By Adjudicating Authority ? | One should avoid placing multiple judgements with the same conclusion on an issue. Before relying upon a judgement, its latest status should be ascertained |
| 8 | Ujjwal Kapoor | Can They Issue SCN Only U/S 73 & 74 Only, Or There Are Any Other Sections For Issuance Of SCN, Specially After Seizure Of Goods | Yes. Please refer S. 129 (3). |
| 9 | Sunil Agrawal | Is Audit Memo A SCN? | No. See, Sidwell Refrigeration – 2002 (145) ELT 682 (T) |
| 10 | BABAN SALUNKE | what can be done if received notice under section 16(4) ? | One must contest it. |

SHOW CAUSE NOTICE

| Sr. No | Name of Participant | Question | Speaker's Response |
|--------|---------------------|--|--|
| 11 | Satish Kasliwal | Is Show Cause Notice Is Appealable | No |
| 12 | Dwarakesh S | Can SCN be issued by DGGI authorities? | It is highly debatable issue. |
| 13 | Satish Kasliwal | If Reply To Show Cause Notice Id Found Satisfactory, Can Proceedings As Initiated Under Section 73 Can Be Dropeed By Asuming Officer | If he is 'satisfied', he can drop it. Whether he will or not is anybody's guess. |
| 14 | Jignesh Upadhyay | If in SCN wrong Service Tax number of the assessee is mentioned , what remedy is available to the assessee. | It is not fatal to the proceedings. |

SHOW CAUSE NOTICE

| Sr. No | Name of Participant | Question | Speaker's Response |
|--------|---------------------|---|---|
| 15 | Nikhil Inani | What if the Amount is actually determined in the show cause but the tax rate applied to recover tax is incorrect. There are very recent cases in Maharashtra where WCT returns as per MVAT are compared to STax returns for real estate and the difference is liable to 14% (highest tax rate) without considering abatement of 75% for real estate. isnt this a case where the officer has not even applied a basic logic of what is the assessee type which it proposes to issue show cause notice for? | One should challenge it. |
| 16 | Vikash Mittal | Whether any documents can be demanded by department after issuance of SCN and submissions of reply? | Even if he demands, he cannot substantially amend the Notice. |

SHOW CAUSE NOTICE

| Sr. No | Name of Participant | Question | Speaker's Response |
|--------|---------------------|---|---|
| 17 | Sunil Jain | Can just non registration and consequent non filing of return can be construed as suppression of facts? | This depends upon the facts of the case. |
| 18 | Navneet Mangal | Whether recovery under Section 79 can be directly made without issue of SCN for self assessment tax as per Section 75(12) | This is a contentious issue in view of the conflicting judgements. Please also refer to |
| 19 | Pankaj Kumar | can multiple show cause notice be issued for the same period? | There cannot be overlapping demand for the same period on the same ground. |
| 20 | Satish Kasliwal | If In Show Cause Notice , Reference Of Penalty Is Not Given, Can The Proper Officer Levy Penalty Afterwards If Not Mentioned In Show Cause Notice | No |

SHOW CAUSE NOTICE

| Sr. No. | Name of Participant | Question | Speaker's Response |
|---------|---------------------|---|-------------------------------------|
| 21 | Chetan Deshpande | Is there any limit on number of SCNs for the financial year | No |
| 22 | Sandesh S Kutnikar | Can a SCN be issued u/s 73 demanding only interest? Considering reading of Section 73(1) which says tax along with interest | Yes. |
| 23. | CA. Neeraj Agrawal | is there any time limit prescribed for issue of show cause notice in case of search or it will be governed by the normal provisions of section 73 or 74 i.e. 3/6 months before the passing of the order | This will be governed by S. 73/S.74 |

SHOW CAUSE NOTICE

| Sr. No. | Name of Participant | Question | Speaker's Response |
|---------|---------------------|---|--|
| 24. | Prafull Garg | Whether the SCN date will be calculated from the Annual Return Due date or the date on which the Annual Return is filed. Also, what will be due date in case no Annual Return is filed for the particular year. | The relevant date will be 'due date for furnishing the Annual Return' and not 'the date of furnishing return [S.73(10)/S.74(10)]. The Return will be deemed to have been filed on the 'due date' if not filed. |
| 25 | Soman NL | In GST era, the practice is that all SCNs have been raised with "wilful misstatement" invoking fraud. How can the taxpayer defend his position that it is "mere misstatement". The mistake is only omission/inadvertent. But for the assessee, it is omission, the same thing to Department, it is fraud? | This is not in GST era only. This is an age-old phenomenon. One shall contest it. |

SHOW CAUSE NOTICE

| Sr. No | Name of Participant | Question | Speaker's Response |
|---------------|----------------------------|---|---|
| 26 | MIRZA KOTKAR AND CO. | in case of search at the premises , tax determined by the PO is less than 2.5 Cr. and has forced for spot recovery , without issue of SCN , what can be remedy | One should write a letter seeking the SCN and/or file a refund claim challenging the recovery without SCN and on other grounds. |
| 27 | CHETAN RATHOD | If a number was suspended and notice was issued for filling of returns. After receiving the notice the interest was paid and officer accepted to revoke the notice but was not able to do because system was not supporting and they were having technical issues. Now the number has started but is ask for penalty to pay. If my window was not open for filling of returns then how system can ask for late filling of returns | One may pay late fees/penalty to ensure smooth operation and then claim refund. |

SHOW CAUSE NOTICE

| Sr. No | Name of Participant | Question | Speaker's Response |
|--------|---------------------|---|--|
| 28 | Aditya Khandelwal | Can appellate authority raise fresh contentions not present in both SCN and OIO and pass adverse OIA? | No |
| 29 | Ravindra I Manek | Whether separate SCNs are to be issued under State & Central Act and whether SCN can only be issued by other department (other than jurisdictional department)? | No |
| 30 | Ujjwal Kapoor | An SCN issued without mention of S.73/74, and mentions as 'Issued u/s 130', pls guide for its validity | This depends upon the facts of the case. |
| 31 | Prasad Upadhyaya | Can SCN Altered Added Once It Is Issed | No, unless for minor errors. |

SHOW CAUSE NOTICE

| Sr. No. | Name of Participant | Question | Speaker's Response |
|---------|---------------------|---|---|
| 32 | Anonymous Attendee | 1. whether the adjudicating authority demand further documents after issuance of SCN and submission of reply? 2. Whether allegation of suppression can be made only because non payment of tax was disclosed during audit? | 1. Please refer to reply at Q.17 2. This depends upon the facts of the case. |
| 33 | Vivek Agarwal | Can we file writ petition against the Show Cause Notice? | This depends upon the allegations in the show cause notice. |
| 34 | vn dubey | Any instance or possibility of order may be passed by both CGST and SGST in very same matter of the assessee ? | Not likely |

SHOW CAUSE NOTICE

| Sr. No | Name of Participant | Question | Speaker's Response |
|--------|---------------------|---|---|
| 35 | vn dubey | Whether while presenting the facts of case, charges/observations of dept to countered in very same para or it is appropriate first to put all observations of dept then assessee view point ? | This depends upon the individual practice and comforts. |
| 36 | vn dubey | guidance on timing of use of judgements at adjudication or first appellate or at tribunal, as there may be risk of counter by other side to improve order ? | Judgements can and ought to be placed on records at any convenient stage but then 'current status' shall always be ascertained. |
| 37 | Prakash Mirchandani | Sir SCN issued how to classify and prove that the supression of facts not done please clarify | This depends upon the facts of the case. |

SHOW CAUSE NOTICE

| Sr. No | Name of Participant | Question | Speaker's Response |
|--------|---------------------|--|--|
| 38 | Priyanka Kumari | can Officer extend period of on line reply to notice, if we were not able to reply earlier within time | Extension of time is permissible but one shall be diligent in such matters. |
| 39 | Tanuja Mantrawadi | whether blockage of itc without any prior intimation is legal??? | No. it is illegal and without authority of law. |
| 40 | Sunil Jain | SCN issued based on gross receipts in Form 26AS of Income Tax – is it a valid SCN? | This may not be a valid notice but needs to be seriously contested raising all possible grounds. |
| 41 | Prafull Garg | Whether the State GST Officer, Indore can issue SCN for the Goods supplied by Mumbai Taxpayer to Lucknow Taxpayer. Since, no jurisdiction lies with Indore SGST Officer. | No. |

SHOW CAUSE NOTICE

| Sr. No . | Name of Participant | Question | Speaker's Response |
|----------|---------------------|---|---|
| 42 | Tootica Sanjay | Can Multiple Show Cause Notices Be Issued On The Same Case After Closure Of Proceedings?? | In fact, no show cause notice can be issued after closure of the proceedings as per law. |
| 43 | kartik solanki | Sir, generally the statements are not given on time. When do we retract, if the statement is given only with SCN | One may retract on receipt of the notice |
| 44 | shashi | Received a notice for purchase from non existing dealer, department block the credit ledger and issue order u/s 74, how to proceed. | If order is already passed, then challenge by way of appeal – option of approaching the High Court can also be considered but carefully |
| 45 | Goli Suresh Babu | could you please provide draft copy to give reply to SCN | ??? |

SHOW CAUSE NOTICE

| Sr. No | Name of Participant | Question | Speaker's Response |
|--------|---------------------|---|--|
| 46 | JITENDRA THAKKAR | In Case Of Fake Invoice Buyer Have Scn If He Reverse The Credit. Interest And Penalty Can Be Waived ? If Credit In Credit Ledger Available Than Interest Can Be Waived ? | 1. Interest cannot be waived. If the proceedings are u/s. 74, then penalty (15%) will also be leviable. 2.If the ITC available is attributable to the fake invoice then the issue is debatable. |

SHOW CAUSE NOTICE

| Sr. No. | Name of Participant | Question | Speaker's Response |
|----------------|----------------------------|--|--|
| 47 | SOORAJ B | Usually law does not prescribe the time limit to reply to SCN ;is it at the discretion of the officer ? What is generally accepted as a reasonable time period ? | As a protocol, '30 days' time is given for filing the reply. Extension is a matter of discretion and depends upon the facts and circumstances of each case. |
| 48 | Mr. Narayanan, Advocate | What is the scope of S.73(11) and its implications on the option for the closure of proceedings? | Sub-section (11) of S.73 seeks to exclude these two types of cases as it does not involve any tax liability that has remained to be crystallised by the taxpayer. One may here refer to S.75 (12) and its amendment by the Finance Act, 2021. See, Kabeer Reality Pvt Ltd Vs UOI – 2019 – TIOL 2813- HC-MP- GST. Also refer amendment to S.75(12) by FA,2021 |

| Sr. No . | Name of Participant | Question | Speaker's Response |
|----------|---------------------|---|--|
| 1 | kartik chawla | Audit findings u/s 65 if accepted by the assessee will be covered under section 73 non fraud case or under section 74 fraud case ? | This depends upon the facts of the case. |
| 2 | Vikash Mittal | Can allegation of suppression of fact be made merely because the fact of non payment of tax was discovered during departmental audit? Citations pls. | No. But this will still depend upon the facts of the case. |
| 3 | Kuljeetsinh Jhala | Sir, how can we deal with the penalty @15 % imposed during GST AUDIT BY DEPT although we have paid the tax with 24 % interest on the point raised during AUDIT? Any case reference to drop the penalty. Thank You | It may not be advisable to rely on a case law without evaluating the facts of the case. Such issues depend on the facts involved in each case. |

| Sr. No | Name of Participant | Question | Speaker's Response |
|--------|---------------------|--|--|
| 4 | Sunil Agrawal | Sir Audit memo issued is not a SCN u/s 73 or 74 nor statement of demand since not issued in AOC-2... Can we have benefit of 73(5) for penalty waiving? | Both have no co-relation with each other. |
| 5 | Sanjay Mehta | Under Departmental Audits , Audit Authority comples to pay tax + Interest + penalty in audit procedure only What is the right manner to deal with? | <ol style="list-style-type: none">1. Any demand raised by any authority without SCN is illegal and without authority of law.2. ordinarily, yes. |

| Sr. No. | Name of Participant | Question | Speaker's Response |
|---------|---------------------|--|---|
| 6 | Kuljeetsinh Jhala | Sir Kindly guide for GST AUDIT DEPT PENALTY to be paid or otherwise @ 15% AS the main tax with interest @ 24% already paid by my client. Any chances for dropping of penalty by dept or at Appeals ? | Waiver of penalty cannot depend simplicitor on the payment of tax and interest. The issue needs evaluation of the relevant facts. |
| 7 | Pinky Jha | Sir can you guide me the rate of interest applicable in case of ITC reversal at the time of GST department Audit ?? | As per law, it is 24% u/s. 50 (3) whether it is leviable or not depends upon the facts of the case. |
| 8 | Samir Jani | Any time limit for issuance of SCN based on FAR | The time limit for the issue of the SCN will always be governed by S. 73/S. 74. |

DETENTION/SEARCH/INVESTIGATION

| Sr. No . | Name of Participant | Question | Speaker's Response |
|----------|---------------------|---|--|
| 1 | Navratan Jain | Section 73 can be invoked within 33 months from due date of Filing of Annual Return (Say F.Y. 2021-22). So for detaintion of goods in say Apr 21, can section 73 be invoked. | Not warranted unless the goods are found to be supplied without cover of tax invoice. Otherwise, action u/s. 129 can follow. |

DETENTION/SEARCH/INVESTIGATION

| Sr. No . | Name of Participant | Question | Speaker's Response |
|----------|---------------------|--|---|
| 2 | Soman NL | <p>In Sec 129 vehicle detention cases, the notice as well as the speaking order in MOV-09 are not issued by the jurisdictional officer of the person. The queries in this regard are:</p> <ol style="list-style-type: none"> 1. Whether MOV-09, without any preamble about right to appeal, is an appealable order? 2. If yes, where the appeal shall be filed, with the jurisdictional appeal commissioner of the person or at the order issuing officer's Commissionerate? 3. Appeal in GST era, shall be filed online against the summary order uploaded in the portal. But in Eway bill cases, such a summary order is absent and will the appeal right of the person is in jeopardy? | <ol style="list-style-type: none"> 1. Yes. One may also refer to the amendments made by the Finance Act, 2021. 2. Appeal shall be filed with the jurisdictional officer 3. It can't be jeopardised |

DETENTION/SEARCH/INVESTIGATION

| Sr. No. | Name of Participant | Question | Speaker's Response |
|---------|---------------------|--|---|
| 3 | Ravindra I Manek | Appeal shall lie to which authority when goods are detained in other state and order is passed by official of that state? Whether registration is to be taken in that state for filing appeal? | No separate registration is required. One can file an appeal with the jurisdictional officer. |
| 4 | Anonymous Attendee | Appeal remedies for seizures with respect to eway bills? | Appeal remedy is as available u/s. 107 of the CGST Act, 2017. |
| 5 | Vinay Emmanuel | during a search & seizure they dont allow CA to be part of statement recording. is there any provision which can be used | There is no provision providing for the presence of CA during the search and seizure. |

LIMITATION/TIME - BAR

| Sr. No . | Name of Participant | Question | Speaker's Response |
|----------|---------------------|---|--|
| 1 | Kumarpal M Jain | <p>in case where assessee has not filed the annual return for FY 2017-18.</p> <p>What would be timelimit u/s 73?</p> <p>in another situation if the assessee files the return on 31st December 2021, what would be the timelimit u/s 73</p> | <p>Time limit will always to be reckoned from the 'Due date of furnishing the Annual Return....'</p> |
| 2 | SUMIT AGARWAL | <p>whether the Supreme Court Suo moto extention order will automatically extent the limitation period</p> | <p>Yes</p> |

LIMITATION/TIME - BAR

| Sr. No . | Name of Participant | Question | Speaker's Response |
|----------|---------------------|---|--|
| 3 | CA Sunil R | How will time limit u/s. 73 or 74 will be determined for those cases who have opted not to file annual return (< 2 crore cases) ... | The 'Due date of furnishing the Annual Return...' will be deemed to be the date for the purposes of S.73 (2) r/w. S.73 (10) or S./ 74(2) r/w. 74(10) |
| 4 | Akshit Jain | This means that technically the amendment of reopening of assessment under the Income tax act,1961 being 3 years is of no use because we have to anyhow maintain records for 5-6 years as per GST act | Yes |
| 5 | CA Santosh Dhumal | Period of limitatin for SCN u/s 73/74 shall also be applicable in case of SCN issued after summon, inquiry? | Yes |

LIMITATION/TIME - BAR

| Sr. No | Name of Participant | Question | Speaker's Response |
|--------|---------------------|--|--------------------|
| 6 | Harish Lalwani | Sir do you agree with me that we all the tax payers and professionals should vociferously work on having the time limits of Sec 73 and sec 74 reduced substantially due to all data now being digitised and use of artificial intelligence and intelligence information with the Department. The officer do not require time that is mapped with the older laws. | Yes |
| 7 | CA Santosh Dhumal | In one of the recent judgement of SC, it was concluded that 23 march 2020 till 31 march 2021 shall be excluded from period of limitation. whether it will have impact on limitation on 73/74? | Yes |

LIMITATION/TIME - BAR

| Sr. No | Name of Participant | Question | Speaker's Response |
|--------|---------------------|--|---|
| 8 | vn dubey | justification & legality of invoking section 74 even its matter of interpretation and normal period still available? | Generally, when the issue involved relates to the statutory interpretation, the extended period is not invocable. But normal period can be applied. |
| 9 | Nikhil Inani | where the IT vs STax and MVAT vs STax comparison is done and thereby invoking extended period can we state that there was no supression.. since data and information was always available with IT and MVAT and can be referred by the department.... Where is supression?? | Yes |

LIMITATION/TIME - BAR

| Sr. No | Name of Participant | Question | Speaker's Response |
|--------|---------------------|--|---|
| 10 | Vivek Agarwal | whether sending email is advisable | Any relevant information can be sent by e.mail also. |
| 11 | kartik solanki | Will the Supreme Court order extending the limitation result in exclusion of time period from 14.03.20 to the end or the period when the court determines the pandemic to be over or it will only be considered from 14.04.21? The Court order did not consider the ordinance issued in the last year and the ordinance did not consider the SC order. So the question becomes - which will have Supremecy, the SC order under article 141 and 142 (without considering the specific Act) or the Specific Act? | The SC order will be effective for the period from 14.03.2020 SC's order will prevail over the Ordinance |

LIMITATION/TIME – BAR

| Sr. No . | Name of Participant | Question | Speaker's Response |
|----------|-----------------------|--|---|
| 12 | Prasad Upadhyaya | Whether the dept has right to amend/modify scn once served on last day by invoking extended period of limitation under service tax for 2015-16 ? | No |
| 13 | CA KIRTIKUMAR THAKKAR | Honble SC order on limitation (May 01, 2021) is only for litigation matters only or other proceedings like Refund application, etc. also | It covers the refund proceedings also. |
| 14 | Pankaj Kumar | whether limitation period is applicable for Department also to issue service tax notice for 15-16 | Imo, yes. |
| 15 | CA. Neeraj Agrawal | Is time limit of completion of assessment also get extended by SC order for extension | There is no provision for assessment in GST laws. |
| 16 | CA Nagesh Belsare | Sir this order of SC may give time limit to Department in caser of Service tax and Excise Notice? | Imo, yes. |

LIMITATION/TIME – BAR

| Sr. No . | Name of Participant | Question | Speaker's Response |
|----------|---------------------|--|--|
| 17 | Aditya Khandelwal | where basic and additional time period for filing appeal before appellate authority is expired. Can Writ be filed with High Court.? | Yes. But lot will depend upon the facts of the case. |
| 18 | Pankaj Kumar | whether extended period of limitation of 5 yrs can be extended for third party verification | No |
| 19 | ANUP MOHANTY | can the adjudication order be paassed before the due date of filing of annual returns since as per section 74((9) limitation is prescribed five years from the due date of furnishing of annual return | Yes |
| | | | |

| Sr. No. | Name of Participant | Question | Speaker's Response |
|---------|---------------------|---|---|
| 1 | Somnath Swami | In many cases Assessing Officer writes that appeal against the Case Law mentioned in written submission could be there and passed adverse order. Is it ultra virus or how to deal with it. | It shows judicial indiscipline and shall be challenged. |
| 2 | Girish Maru | can officer finalise order without discussing with tax payers where all details is submitted by taxpayer at the satisfaction of officer and gave all details with required information. | No order can be passed without following the principles of natural justice. |
| 3 | Gangadhar Haldikar | Summary of of the Order issued under Section 73 or 74 electronically uploaded in Form GST DRC 07 of GST Common Portal can be considered as communication of Order where speaking order is not communicated to taxpayer? | No. |

| Sr. No. | Name of Participant | Question | Speaker's Response |
|---------|---------------------|---|---|
| 1 | Aditya Khandelwal | Can commissioner (Appeals) take fresh contention and pass adverse appeal order if such contentions were not present in SCN of Adjudicating Authority? | No |
| 2 | Soman NL | No appellate authority till the Tribunal/Court will struck down the confirmed order of lower authority invoking fraud in a mere omission situation. What is the recourse available to the assessee? | One just has to doggedly pursue the matter. |

| Sr. No. | Name of Participant | Question | Speaker's Response |
|---------|---------------------|---|---|
| 3 | Satish Kasliwal | If Any Matter Is Decided Against The Revenue For Any Year And The Revenue Is In Appeal Against The Said Order, Wheather Proceedings As Initiated In Show Cause Notices For Subsequest Year On The Same Issue Can Be Kept In Abeyance Till The Decision Of Higher Forum. Wheather Limitation Period For Finalisation Of Proceedings For Subsequent Year Will Apply ? | For the purpose of passing the Order u/s. 73(10) or S. 74(10) on the subsequent SCN, the period spent for pursuing the appellate remedies in the previous matter will be excluded as per S. 75(11). |
| 4 | Jitendra Jain | What would be procedure if tax with interest and 15% penalty is paid because of pressure made by deparment officials to asseesee and now we want to go for appeal ? | One shall ask for the SCN or a speaking order. |

| Sr. No. | Name of Participant | Question | Speaker's Response |
|---------|---------------------|---|--|
| 5 | Santosh Patel | Sir, What is the current status of GSTAT (Tribunal)..? | It is in the suspended animation! |
| 6 | Utkarsh Desai | In absence of GST Tribunal, approaching HC is the only option available in case of E Way Bill Orders? | No. One may approach the First Appellate Authority. |
| 7 | Jitendra Jain | Because of pressure from department we have paid tax with interest and 15% penalty against protest and now we want to go for appeal. How can we go for appeal without having any order department ? | One shall ask for the SCN or a speaking order and if not issued then shall file a the refund claim |

| Sr. No. | Name of Participant | Question | Speaker's Response |
|---------|---------------------|---|--|
| 8 | Priyanka Kumari | Sir, whether Guidelines on Personal Hearing issued by CBIC dated 21.08.20 could be ground to file Appeal ? | If the guidelines are not followed then it can be one of the grounds for the appeal |
| 9 | CA Santosh Dhumal | sir, since GsT law has automated process the application has to be filed online(appeal) by login on portal, means only reg person can login and appeal, whether unregister person file appeal (being receipt), and how? | If the recipient is unregistered (for any reason), he may be granted a temporary registration for filing the appeal. |

| Sr. No. | Name of Participant | Question | Speaker's Response |
|---------|-----------------------------|--|-------------------------------------|
| 10 | CA KIRTIKUMAR THAKKAR | Tax payer mistakenly had two GST numbers, one on his application and one migrated due to registration under service tax. He mistakenly paid GST for two months under migrated registration number and rest of the months in registration granted against his application. He made good the lapse by paying GST for two months against the correct registration number. However, appeal for two months paid under mistaken number is now time barred. First appellate authority simply rejected the appeal for refund of excess tax paid quoting "The appeal is time barred". No show cause notice or opportunity of being heard given. What is the remedy? | One should file the Writ in the HC. |

| Sr. No. | Name of Participant | Question | Speaker's Response |
|---------|---------------------|---|--|
| 11 | V V S RAO | Appeal can be between B2B only OR B2C also ?!! | Appeal does not depend upon the nature of relationship between the supplier and the recipient |
| 12 | Pooja Jajwani | Can a ITC recipient file an appeal for tax charged and borned by him? | It is a debatable issue. Please refer to the SC's judgement in CCE vs Allied Photographics India Ltd. – 2004 (156) ELT 3 (SC) |
| 13 | Ganesh Krishnan | Can you explain rectification order | The powers of 'Rectification of Order' are vested in the Appellate Tribunal u/s. 113(3). See also, S.160 & 161. Since Tribunal is not set up yet further elaboration is avoided. |

| Sr. No. | Name of Participant | Question | Speaker's Response |
|---------|---------------------|---|--|
| 14 | Ganesh Krishnan | What is the course of action in case we have not filed within statutory limit of 3 months ? | One may file the Appeal with the COD application within the further period of 1 month |
| 15 | Satish Kasliwal | The Appellate Authority Can Condone A Delay Of Only Period Of 30 Days After The Expiry Of Initial Period Of Filing Appeal As Per The Language Of Section 100 Of Cgst Act Is Concerned. Then What Is The Remedy Available If Any | The Appellate Authority has '1 month' (not '30 days') to condone the delay u/s. 107(4) [Not. S.100'). In case, this time limit has also expired, then the Writ is the only remedy. |
| 16 | Satish Kasliwal | Can Appellate Authority Can Refer Back To The Authority That Passed The Decision Or Order . At Certain Times ,Because , Many Times Facts Of The Case Are Not Properly Verified By The Lower Authorities. | The issue is highly contentious |

| Sr. No. | Name of Participant | Question | Speaker's Response |
|---------|---------------------|---|---|
| 17 | CA PALLAVI MEHTA | I Have Filed Appeal With JC In Mar 2020 - Till Date No Communication For Hearing Is Received From Department. What Shall Be Period Of Limitation In This Case? Do We Need To Communicate With Department In This Case? | There is no 'rigid' time limit for deciding the appeal. Please refer to S. 107 (13). |
| 18 | Satish Kasliwal | For Filing Of Appeal Before Tribunal , There Is Condition Of Pre Deposit 20 % Of Disputed Tax, Whereas, In Case Of High Pitched Cases , The Registered Person Do Not Have Sufficient Cash Flow To Make Such Pre Deposit . Then What Is Remedy Available . | In the deserving cases, one may approach the High Court but it will be a tough journey. |
| 19 | Sunil Agrawal | can appeal be rejected on non submission of certified copy | No |
| 20 | Utkarsh Desai | If the Order has been issued electronically, then also do we require to submit the certified copy? | Yes |

| Sr. No. | Name of Participant | Question | Speaker's Response |
|---------|---------------------|---|--|
| 21 | Gangadhar Haldikar | <p>1. Whether the summary of order u/s 73 or 74 uploaded electronically in Form GSGT DRC 07 can be considered as communication of order where speaking order is not communicated? In absence of speaking order can we file appeal against such a summary of order DRC 07 or wait for communication of speaking order?</p> <p>2. What are the options available in case of time barred orders?</p> | <p>1. No. 2. The question is not clear</p> |
| 22 | Gangadhar Haldikar | <p>3. In case of orders served U/s 129 or 130 for detention / confiscation goods for non compliance of E way bill provisions, the functionality to file Appeal electronically is not available on the GST Common Portal. In this case filing of appeal manually can be invalidated / rejected by the Department?</p> | <p>No.</p> |

| Sr. No. | Name of Participant | Question | Speaker's Response |
|---------|---------------------|---|--|
| 23 | Satish Kasliwal | Without Properly Verifying The Facts Of The Case , Tribunal(Fact Finding Authority) Passed The Order Against The Assessee , Have You Come Across Any Case Under Gst That Honourable High Court Entertain The Appeal Or Remanded Back The Case To Tribunal To Verify The Merit Of The Facts. | There are many judgements where the High Courts have intervened. |
| 24 | Sanjay Mehta | Sir Can we have sample of appeal/reply with due respect and confidentiality? As you rightly said that Income tax appeal habits that to start with "learned Commissioner " etc has now inbuilt in mind. "Income tax Sanskaras" | One need not remain wedded to the ' sanskars ' if it has become a ' burden ' or if it stifles the ' self development '! |

| Sr. No. | Name of Participant | Question | Speaker's Response |
|---------|---------------------|---|--|
| 25 | CA. Neeraj Agrawal | Sir why appeal against seizure of vehicle during movement lies with the office of appellate authority having jurisdiction over the place where the vehicle was intercepted and not where the jurisdiction of assessee lies. Why not this law is challenged. | Appeal lies with the jurisdictional authority. |
| 26 | SUMIT AGARWAL | Whether the amount paid as pre-deposit or voluntarily and subsequently the case is lost, whether the amount will be adjusted first against tax or Interest? | Amount will be adjusted against the tax |
| 27 | Nilesh Jadhav | Please explain the payment process. Where to pay? Whether only paid in cash is sufficient or any other form is to be filed? | The pre-deposit can be paid through the debit in ITC Ledger. |
| 28 | vn dubey | any power with appellate auth -for waiver of pre deposit and stay of demand including appellate jurisdiction of HC ? | No & nor it is required |

| Sr. No. | Name of Participant | Question | Speaker's Response |
|---------|---------------------|---|---|
| 29 | Santosh Patel | In absence of GSTAT(Tribunal) constitution, what action to be taken against Order passed by Commissioner(appeals)..? | Depending upon the nature of the case, one may approach the HC. |
| 30 | Pankaj Kumar | Sir in multiple cases under GST, appeal is filed still manually. not in all cases order Id is issued for filing appeal online | Manual appeal is not a bar. |
| 31 | kartik Solanki | Sir - any specific cases where cross objection is allowed as a new appeal, where the appeal was not filed? | See, 1. AIR 1960 SC 1349; 2. AIR 1967 SC 1182 3. 2002 (142) ELT 91 (T) for better understanding of " Cross objection " |
| 32 | vn dubey | Cross objection vis-a-vis cross appeal - whether facts and ground to be submitted in same manner ? | Yes. But it is not a rigid procedure. |

| Sr. No. | Name of Participant | Question | Speaker's Response |
|---------|-----------------------------|--|--|
| 33 | CA KIRTIKUMAR THAKKAR | Department going into appeal, assessee not preferring any cross objection. Can still he file written submission to contest the submission of the department before the tribunal. | Yes. |
| 34 | vn dubey | restriction of power to condonation only upto 3 months -recourses any possibility under limitation act? | One will have to approach the Writ Court only. |
| 35 | Anil Kumar Agrawala | Can Tribunal go beyond statutory period of one month and allow appellant in condoning delay in filing appeal? | The Tribunal's power to condone the delay is '3 months' and not 'one month'. (At present, CESTAT has powers to condone the delay without any restriction on the period). However, it cannot be beyond the statutorily prescribed period of limitation(COD period). |

| Sr. No. | Name of Participant | Question | Speaker's Response |
|---------|---------------------|--|--|
| 36 | Shriniwas Diddi | Unilateral Order passed u/s 62 on 13/10/2020 for march20 No appeal is made till date, can limitation period is applicable to file appeal to commissioner? | Only remedy is the Writ Court. |
| 37 | Anil Kumar Agrawala | Does Commissioner Appeal has power to enhance? | Yes. Please refer to the First and Second proviso to S. 107 (11). |
| 38 | vn dubey | Whether first appellate auth may enhance the demand "modifying" in line of CIT(A) under ITA? | Yes. Please refer S. 107 (11). |
| 39 | kartik solanki | If the commissioner (A) has set aside the adverse order and remanded the case, should we file the appeal to CESTAT or go back to adjudicating authority? | If one feels aggrieved by the remand order, then one may file an appeal. |

| Sr. No. | Name of Participant | Question | Speaker's Response |
|---------|---------------------|--|---|
| 40 | Rakesh Kumar | All Judicial Pronouncement as discussed were pertaining to erstwhile law. Are the still applicable U/s 107(11) for remanding the case back to Assessing Authority? | The issue is contentious. Moreover, the language of S.107(11) is pari materia with the language of the corresponding provisions of CEA or FA or CA. |
| 41 | Lokesh | How to Remand to the proper officer without a provision in the law? | It remains a contentious issue. |
| 42 | Soman NL | In the absence of Tribunal constituted in GST cases, where the E way bill appeal go after first level appeal? | In any event, it will go to first Appellate authority only. |

| Sr. No. | Name of Participant | Question | Speaker's Response |
|---------|---------------------|---|--|
| 43 | Ramesh Sathe | my gst refund application was rejected by assistant commissioner of state tax for the month of September 2017 period of appeal is already over how to file appeal for delay of condonation of delay ? | No statutory remedy now exists. One may have to approach the HC. |
| 44 | Siddharth Gilda | If order is passed without giving opportunity for personal hearing then can i go for appeal to remand back the case?? | One has to go in appeal only but 'remand' will be the Appellate Authority's call. |
| 45 | Anonymous Attendee | can we file writ against the order of First Appellate authority confirming the demand for stay recovery of the demand | There appears to be no need as the Board's instructions already protect the taxpayers. |

| Sr. No. | Name of Participant | Question | Speaker's Response |
|---------|---------------------|--|---|
| 46 | Gangadhar Haldikar | Sir what are the options available in case of time barred cases for appeal in GST? | One need to approach the HC only. |
| 47 | Rakesh Kumar | Till What Time Can We File Retraction Of A Statement Recorded? | There is no specific time limit and it depends upon the facts of the case. But it shall be at the earliest available opportunity. |
| 48 | Gangadhar Haldikar | Sir can we take additional grounds which was not taken in reply submitted to the Appellate Authority, on or before the Personal Hearing? | Yes. But its permissibility will depend upon the discretion vested in the Appellate Authorities |

| Sr. No. | Name of Participant | Question | Speaker's Response |
|----------------|----------------------------|--|--|
| 49 | Somnath swami Swami | In many cases Assessing Officer writes that appeal against the Case Law mentioned in written submission could be there and passed adverse order. Is it ultra virus or how to deal with it. | This is not 'ultra vires' (An order cannot be 'ultra vires'). But it is a case of judicial indiscipline. |
| 50 | Aditya Khandelwal | Can commissioner (Appeals) take fresh contention and pass adverse appeal order if such contentions were not present in SCN of Adjudicating Authority? | No |
| 51 | pankaj patwari | any advise regarding utilisation of rectification of mistakes | The powers are vested only on the Appellate Tribunal. |

| Sr. No .[| Name of Participant | Question | Speaker's Response |
|-----------|---------------------|--|--|
| 1 | CA Rajesh Agrawal | Ocean Freight Is Against Department, Can We Follow It. Odisha High Court For Input Tax Credit Of Works Contract Is Against High Court Can We Follow | 1. Yes 2. Yes |
| 2 | RAJESH KUMAR BAID | How can we say 16(2)(c) means supplier not recipient | Please read the provision in its entirety. |
| 3 | JRK SASTRY | IBC ACT2016 is superior than GST ACT 2017 . | Yes |

| Sr. No .[| Name of Participant | Question | Speaker's Response |
|-----------|---------------------|---|---|
| 4 | Adv Vaideesvaaran N | Sir can u explain per incuriam and sub silentio | The phrase " Per incuriam " literally translated means " through lack of care " and in law, it refers to a judgement of a court which has been decided without reference to a statutory provision or precedent [See, 2010 (254) ELT 196 (SC) the phrase " sub silentio " literally means under silence and is legally used to refer to something that is implied but not expressly stated. |

| Sr. No. | Name of Participant | Question | Speaker's Response |
|---------|---------------------|--|---|
| 6 | Sanjay Mehta | Sir, Excess ITC claimed = found at the time of GSTR 9=but it was not utilised against any Out put tax liability = DRC 03 filed= will have to pay INTEREST AND PENALTY ? | This is a very contentious issue |
| 7 | V V S RAO | when 9C is filed, why again audit by department ? if departmental audit is must, then avoid 9C - so that firms can save money for availing 9C !! | Form GSTR 9C was never warranted. |
| 8 | Dwarakesh S | Incase where the issue is related to classificaiton (lets assume - the taxpayer agrees to remit 18% instead of 12%), whether the differential credit can be passed to the buyer? | It is a settled law that the ITC of the higher duty/tax paid by the supplier cannot be denied to the buyer. Moreover, the inputs cannot be reassessed |

| Sr. No. | Name of Participant | Question | Speaker's Response |
|---------|---------------------|---|---|
| 9 | Akshit Jain | Only our learned experts can answer this question or can file a writ before the Honorable High Court to throw some light on such a hidden terms and conditions section of the GST Act wherein the revenue is getting technically unlimited time and the taxpayers get maximum 3 months. The taxpayer is ultimately suffering. | GST Law with its ill-conceived design and poor drafting was never meant or expected to relieve the taxpayer of his suffering. |
| 10 | Dwarakesh S | In a scenario where the tax liability is short reported in GSTR 3B but considered in GSTR 9, can the supplier contend that section 74 is not applicable? | It can be contested |

| Sr. No | Name of Participant | Question | Speaker's Response |
|--------|---------------------|---|---|
| 11 | Abid Khan | <p>Sir, in case of principle of revenue neutrality case, you said that RCM can be said that since I can take ITC, there is no suppression of facts. But the department may say that since you have not taken ITC that time, now you are not eligible to take ITC as it is time barred but you have to pay RCM. Therefore, there is suppression of facts</p> | <p>If at all such a contention is raised, then it will be 'inside out, upside down with no middle'! Firstly, the law on this issue is well-settled. Secondly, the provisions of S.16(4) do not apply in case of availing ITC of tax paid even under FCM. Third, there is no time limit for making payment of tax under RCM. Fourth and as a corollary, there is no nor can there be any time limit for availing ITC of tax paid under RCM.</p> |
| 12 | Manmohan Bajaj | <p>Whether payment of penalty under GST is madatory or once can fight against it just like under income tax act?</p> | <p>One can always challenge it as there are sufficient provisions in GST Law.</p> |

MISCELLANEOUS

| Sr. No. | Name of Participant | Question | Speaker's Response |
|---------|---------------------|--|--|
| 13 | Nayan sharma | What remedy available if instruction of tribunal not given effect within 2 years? Section 75(3). | The Order may become void. |
| 14 | Sumit Pokharna | Penalty has been prescribed under both 74 and 122, which one is to be levied by department? | Penalty will be leviable only u/s. 74. Please also refer to S. 75(13). |
| 15 | santosh kumar | I have claimed sgst and cgst instead of igst in the year 2017-18 what is the consequences now | The consequences specified u/s. 77 will follow. However, the issue is fit for the challenge to the HC. |
| 16 | jitendra thakkar | in case of fake invoice buyer received drc 01a about tax + interest + penalty @ 15% if buyer reverse itc from credit ledger which long last from opening and after reversal of itc our credit ledger not going in negative. so can we get interest and penalty waived in this case ? | This is a highly debatable issue. |

| Sr. No. | Name of Participant | Question | Speaker's Response |
|---------|---------------------|--|--|
| 17 | vn dubey | tips for successfully challenging the vires of act/rules / actions under gst law being tax and central statute ? | The 'tip' if any provided, will still remain the 'tip of the iceberg'! |
| 18 | Hiren Chauhan | ITC reversed through DRC-03 as same was not appearing in 2 A. Can same b reclaimed in the month in which same appears in 2A? | Yes. But why to reverse ITC on this ground at all? |
| 19 | CA Santosh Dhumal | sir, NT 03/2019 (Rate) CGST is unconstitutional? | Almost, the entire Notification relating to the 'Real Estate' is unconstitutional. |
| 20 | Nidhi Nawal | After insertion of Sec 16(aa) restrictions are made by law. How 300 A will help? | Clause (aa) inserted in S.16(2) (though not operational as yet) is prima facie an unconstitutional piece of legislation and will be subject to serious constitutional challenge. |

| Sr. No. | Name of Participant | Question | Speaker's Response |
|---------|---------------------|---|---|
| 21 | Prakash Mirchandani | Sir what is to be considered for eligible input credit i.e. Gstr2a or Gstr2b for filing Gstr3b please clarify | Imo, neither is required to be considered. |
| 22 | Ekant Toshniwal | The department has blocked the refund application on the pretext that ITC which is not reflecting in 2A has to be reversed else they will reject the refund. Since the amount involved is large, the dealer agrees to reverse the ITC. Now the department asks interest also on such reversal. How tenable is this? | One must challenge the reversal itself imposed on the taxpayer. |

| Sr. No. | Name of Participant | Question | Speaker's Response |
|---------|---------------------|---|---|
| 23 | CMA Aarti Kadam | Can department issue notice without processing last refund application or without acknowledging the previous application? | The issue of the notice has nothing to do with the chronology of the refund claims and their disposal. |
| 24 | Anonymous Attendee | Sir What To Do If We Not Follow 2b Then Dept Cancelled The Reg ? | One should challenge it by way of Appeal or Writ. |
| 25 | vn dubey | for filing writ in case blocking of credit without justification, is it advisable to first send representation to concerned officer ? | In legal parlance, sometimes it is described as 'A letter for demand of justice' and is advisable to send it. |
| 26 | Mahesh Bhagwat | Can we request to issue summon to another Govt. Officer in case of action taken by any officer in the matter of e way bill? | No |

| Sr. No. | Name of Participant | Question | Speaker's Response |
|----------------|----------------------------|--|--|
| 27 | Vaishali Pawar | if Sale for the month of march reflect in may gstr1 , whether the receipt is able to take ITC , Department denied ITC how to handle | The denial is unjustifiable if the ITC is taken in May. Even if ITC taken in March, the denial could be debatable. |
| 28 | CA Ritesh Mehta | Is it fine to highlight few important paras etc. in reply for attention of authority ? Hope it is not annoying | As such there is no need to do so unless it is necessary to draw the attention to it. |
| 29 | MOHAMMAD SABIR | SCN issued in respect to cancellation of GSTN and suspended the GSTN, after that filed all return and Reply the SCN by the Assessee within due time, but more than one month is over but Dept has not issued the order. Now what to do by Assessee to revocation of suspenssion? | One should send the reminder seeking revocation within specific time limit and if not done, approach the HC. |

MISCELLANEOUS

| Sr. No. | Name of Participant | Question | Speaker's Response |
|---------|--------------------------|---|---|
| 31 | CA RAJESH MANGAL AGRAWAL | SIR, WHETHER THE DEPT. IS BOUND TO GIVE, COPY OF PH RECORD AVAILABLE TO COUNCIL. | Yes |
| 32 | Gangadhar Haldikar | Sir, pls guide whether power authority/ letter of authority shall be taken on stamp paper ? If yes how to decide the value of stamp paper to be used? | It is on Rs. 100 Stamp paper |
| 33 | Dhananjay Gumaste | Sir in some cases i have noticed some officers are prejudiced w.r.t the taxpayer, how to deal with it in a better way ? Also without sounding disrespectful how can we prove our point in this matter ? | The Revenue Officers are always or deemed to be 'prejudicial' against the taxpayers! One should always be polite, firm, courteous but clear in its arguments. |

| Sr. No. | Name of Participant | Question | Speaker's Response |
|----------------|----------------------------|--|--|
| 33 | Ambesh Biyani | Can the reply to the notice be shared with us..? | No problem there but will it serve any purpose? |
| 34 | Anonymous Attendee | For reference of any case law in our reply, are we supposed to match the entire facts with that case, or any paragraph or observations which are helpful may be taken for our reply? | The judgement is relevant for the ratio of the principle it lays down in the given set of facts. The attention shall be drawn to the relevant paragraph. |
| 35 | Raveendran M Pothuval | CA. Raveendran. Proceeding Sheets are not provided by he First Authority . | One may put a written request or objection. |

"I often tell young lawyers, if you think you will come here and make money, then you are in the wrong place, go and do import-export or become a builder, that is more lucrative monetarily. Lawyers don't retire, they practice till they die. My only advice to young lawyers is to choose a stream of practice or even profession which interests you to continue till that time, don't think of just making money out of it."

***[Soli Sorabjee - Indian Jurist & Former Attorney General of India
(1930-2021)]***

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