

GST Notices and Orders cannot be against Rule of Law



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1. Order cannot travel beyond the SCN –

Eg. SCN does not cast an allegation on GSTR 1/ 3B mismatch, then the Order cannot demand on such mismatch. It has to restrict itself to the allegations cast in SCN

*S 75 (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.***

2. Sec 75 mandates and RTPs should pray for Personal Hearing

75 (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.

*75 (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.*

- the decision to refuse or extend time ought to be exercised with sound reasons and not in an arbitrary or capricious manner.

3. Analyze the total impact of an Order..No relief for Interest if demand is admitted

S 75 (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.

In **current TRAN dispensations Orders** it is seen that Orders are being issued allowing the TRAN Credit but interest on the ITC earlier taken.

4. SCN cannot be pre-judged. It cannot take the form of a crystallized demand –

For example, SCN can ask to show cause and cannot ask to make the payment of tax. Many SCNs give elaborate reasons as to why a product/service has to be classified/ not classified in a particular manner. SCNs cannot do the same.

5. Speaking Order should be passed -

The Order should have annexures providing the calculations of the demand. Many a times the calculations are faulty and thus the same must be rechecked.

S 75 (6) The proper officer, in his order, shall set out the relevant facts and the basis of his decision.

6. No DIN – Put the SCN/Order in Waste Paper

7. Incase of a crystallized demand, contest for Section 73 vis-à-vis Section 74 - fraud, or any wilful-misstatement or suppression of facts to evade tax

Sec 75 (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.*

Sec 75 (3) *Where any order is required to be issued in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a court, such order shall be issued within two years from the date of communication of the said direction.*

S 74 (4) *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 sub-section (1) are the same as are mentioned in the earlier notice.*

8. Order should take into account each and every point raised

Many a times, the point taken in an SCN Reply are not considered at all, 75(6) comes to the rescue

75(6) The proper officer, in his order, shall set out the relevant facts and the basis of his decision.

9. Pre-SCN should be issued in DRC-01A, SCN should be in DRC-01 and Order should be in DRC-07

Many a times a "Memo/Reply" is received from an agency/authority. In such cases a "reply/rebuttal" should be filed. However "appeal" cannot be filed until there is an Order

Further sometimes "Order" is also not in DRC-07. In such cases "appeal" should be filed manually taking the ground of a "Irregular Order"

10. No Arbitrage between S 73 or S 74

U/s 73 no penalty is payable incase tax + interest is paid before/within 30 days of SCN. Even after 30 days penalty is only 10%

U/s 74 15% penalty is payable even before SCN; 50% penalty is payable after 30 days of SCN; 100% penalty is payable thereafter;

Explanation 2.--For the purposes of this Act, the expression "suppression" 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.

THANK YOU



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