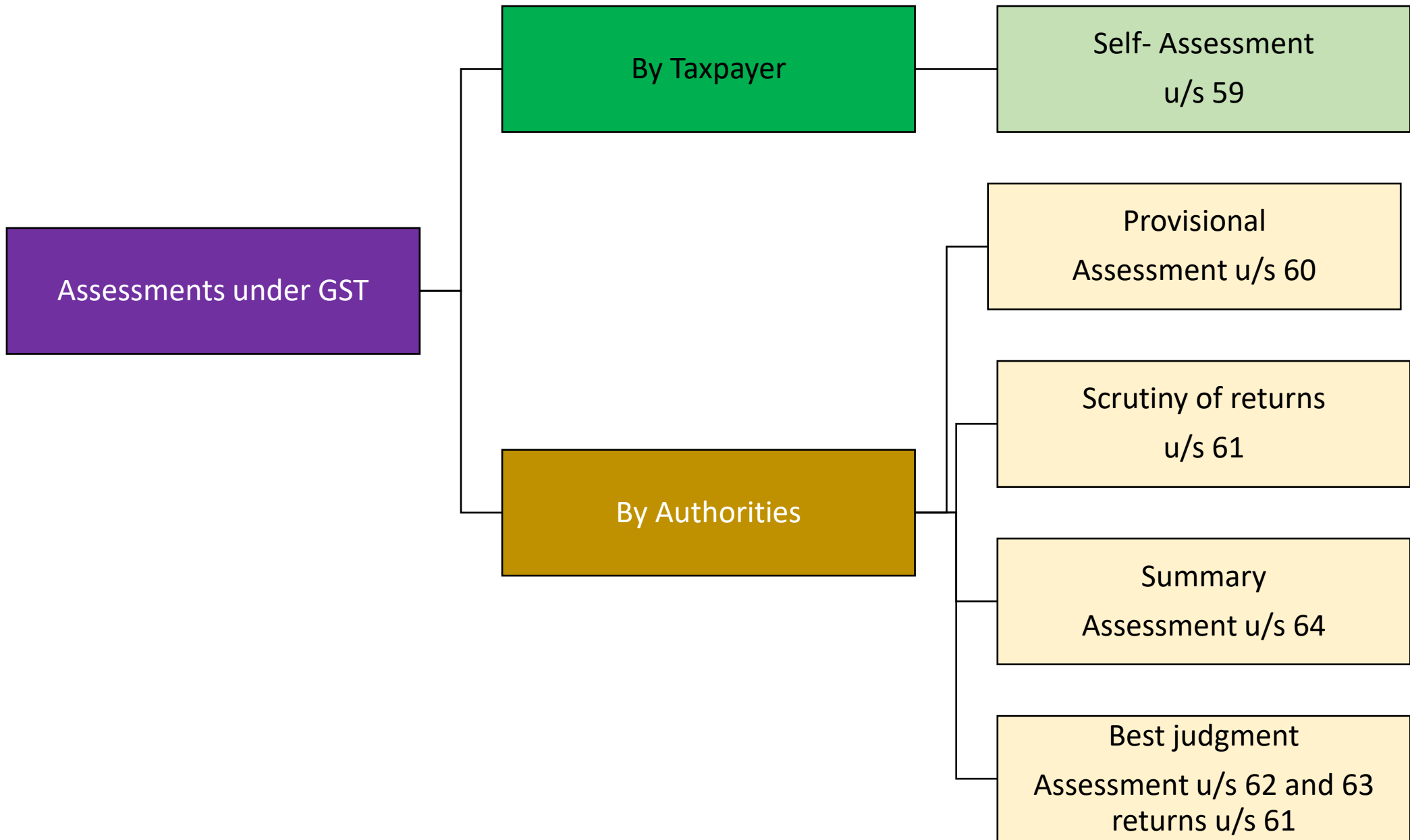


GST Assessments and Appeals at National Conference Rajkot, Gujarat on 19-Dec-2022

Abhishek Raja Ram

9810638155, fca.gst@live.com



Summary of Forms in Assessment

S. No.	Form No	Form Name
1	FORM GST ASMT-01	Application for Provisional Assessment under section60
2	FORM GST ASMT-02	Notice for Seeking Additional Information / Clarification / Documents for provisional assessment
3	FORM GST ASMT-03	Reply to the notice seeking additional information
4	FORM GST ASMT-04	Order of Provisional Assessment
5	FORM GST ASMT-05	Furnishing of Security
6	FORM GST ASMT-06	Notice for seeking additional information / clarification / documents for final assessment
7	FORM GST ASMT-07	Final Assessment Order
8	FORM GST ASMT-08	Application for Withdrawal of Security
9	FORM GST ASMT-09	Order for release of security or rejecting the application

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Contd.

S. No.	Form No	Form Name
10	FORM GST ASMT-10	Notice for intimating discrepancies in the return after scrutiny
11	FORM GST ASMT-11	Reply to the notice issued under section 61 intimating discrepancies in the return
12	FORM GST ASMT-12	Order of acceptance of reply against the notice issued under section 61
13	FORM GST ASMT-13	Assessment order under Section 62
14	FORM GST ASMT-14	Show Cause Notice for assessment under section 63
15	FORM GST ASMT-15	Assessment order under section 63
16	FORM GST ASMT-17	Application for withdrawal of assessment order issued under section 64
17	FORM GST ASMT-18	Acceptance or Rejection of application filed under section 64 (2)

Section 59: Self Assessment



Self-Assessment means self determination:

Supply not excluded by
Schedule III

Taxability of Supply not
covering alcohol and 5
specified Petro
products & Securities

Classification – Goods
and Services

Exemption

Liability of Taxable
Person on Forward
Charge and not on
recipient on RCM basis

Valuation with
inclusions and
exclusions

Admissibility of ITC

Determination of “Net
Tax” Liability

Reporting of Outward Supplies

1. Check Sales Ledger balance with Sales Register. Both must Tally.
2. Verify Sales Percentage wise. Aggregate should tally with Total Sales Figure.
3. Check GST Payable tax head viz IGST/CGST/SGST Payable and Tally the same with Sales Register.

Bifurcate Supplies into:

Export

Deemed Export

SEZ

NIL Rated

Taxable Supplies

Exempted

Non GST Supply

With
Payment of
Tax

Without
Payment of
Tax

With
Payment of
Tax

Without
Payment of
Tax

B2C Taxable
Supplies

B2B Taxable
Supplies

Large B2C
Invoices

Small B2C
Invoices

Recipient is
liable for
RCM

ECO - TCS

Composite
Taxable
Person

UIN
Holder

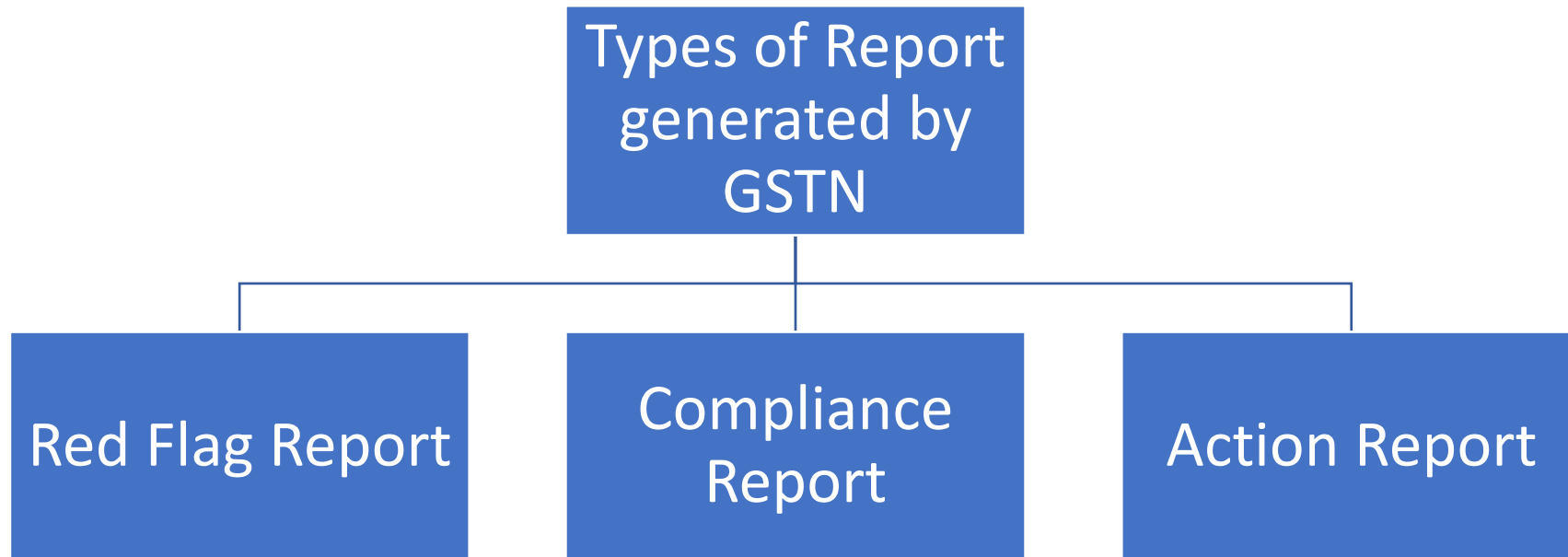
Other
Taxable
Supplies

Inter-State B2C Supplies
having invoice value > Rs.
2.50 Lakhs (Other than ECO)

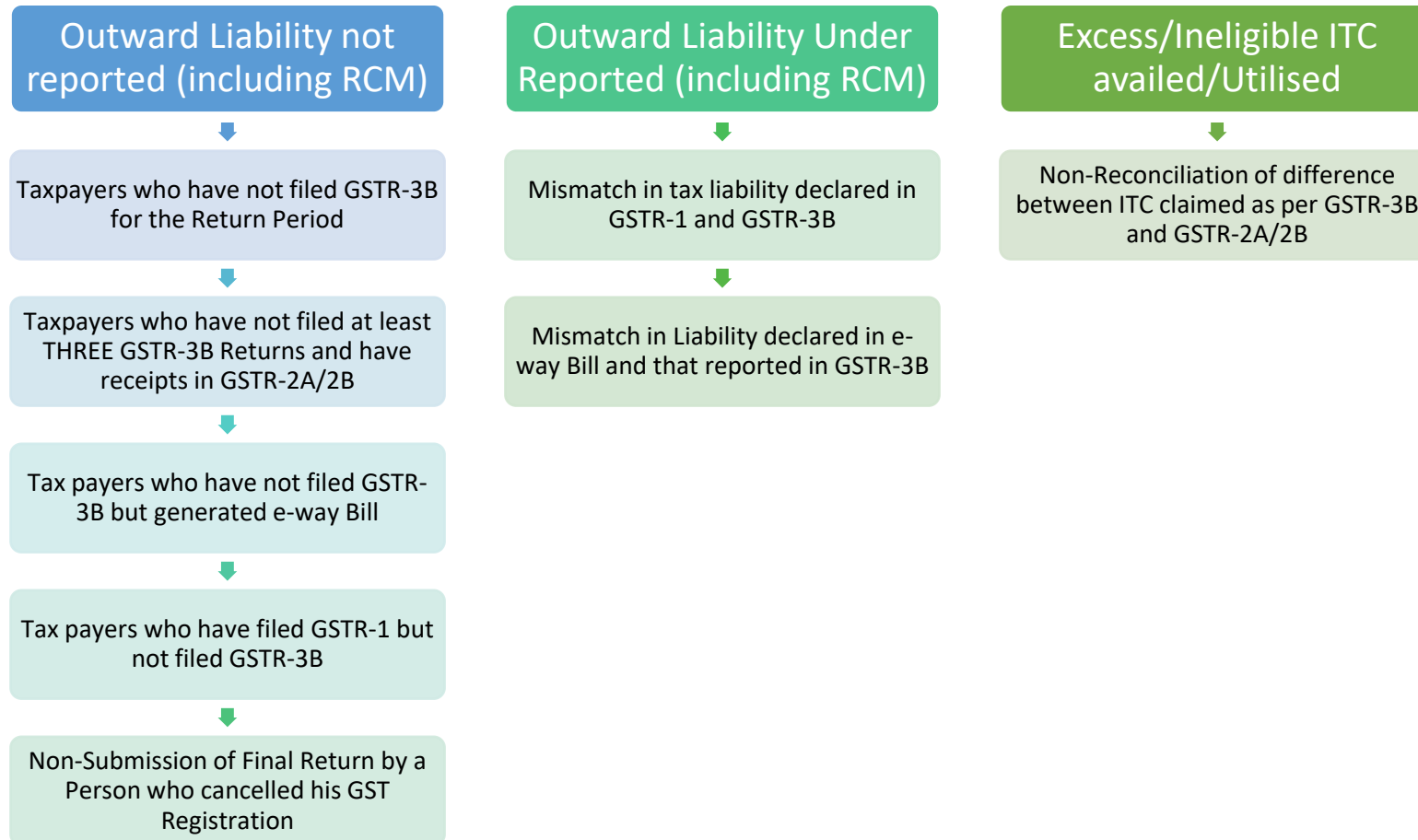
Inter-State B2C Supplies
having invoice value > Rs.
2.50 Lakhs (Through ECO)

Inter-State B2C Supplies having
invoice value upto Rs. 2.50 Lakhs
(State wise details for each rate of
tax net of debit and credit notes]

Intra-State B2C Supplies (incl. Supplies through
ECO). Also report Supplier through ECO
Separately.
[Consolidated details to be provided for each
rate of tax net of debit and credit.]



MIS Report by GSTN



SELF-ASSESSMENT DONE BY THE TAXPAYERS

Persons required to obtain Registration	Annual Aggregate Turnover	Rate Filling Forms	Periodiity
Aggregate Turnover exceeds INR 20 lakhs/10 lakhs (as the case may be) in FY	Up to INR 1.5 Crore	GSTR 1, GSTR 3B	Quarterly/ Monthly
	Above INR 1.5 Crore	GSTR 1, GSTR 3B	Monthly
Aggregate Turnover ranging be tween INR 20 lakhs/10 lakhs and INR 1 crore/75 lakhs (as the case may be)	NA	Can opt for Composition Scheme. CMP-o8	Quarterly
		GSTR 4	Annually
Non-resident taxable persons making taxable supply	NA	GSTR 5	Monthly
Every person supplying online information and database access or retrieval services from a place outside India to a person in India, other than a registered person	NA	GSTR 5A	Monthly
Input Service Distributor, whether or not separately registered under this Act	NA	GSTR 6	Monthly

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Persons required to obtain Registration	Annual Aggregate Turnover	Rate Filling Forms	Periodiity
Persons who are required to deduct tax under section 51 Le TDS, whether or not separately registered under this Act	NA	GSTR 7	Monthly - Only for the month in which the TDS deducted.
Every electronic commerce operator	NA	GSTR 8	Monthly
Every registered person except the persons specified u/s 44	NA	GSTR 9	Annually
Person holding Unique Identification Number (UN)	NA	GSTR 11	Quarterly [In case ofclaiming refund]

Is SCN mandatory for recovery on the basis of GSTR-1 admitted liability?

- Sec. 75(12): Notwithstanding anything contained in section 73 or section 74, where any amount of self-assessed tax in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 79.
- **Explanation.**-For the purposes of this sub-section, the expression "self-assessed tax" shall include the tax payable in respect of details of outward supplies furnished under section 37, but not included in the return furnished under section 39.

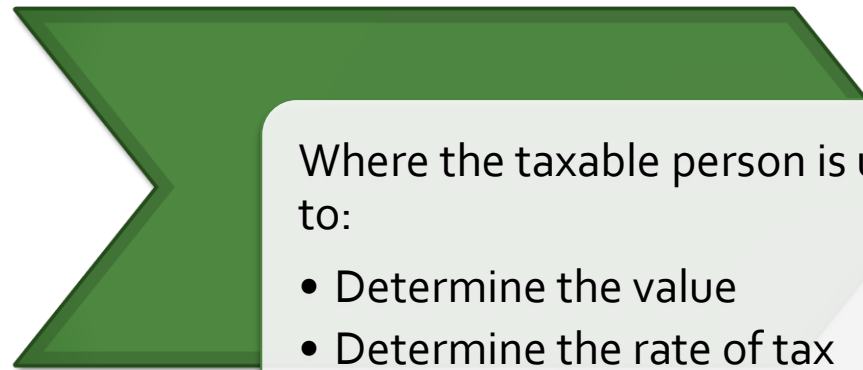
A high-angle, close-up photograph of a road surface. The road is paved with asphalt and features a prominent black and white checkered pattern, likely a finish line or a decorative element. A yellow double line runs parallel to the checkered area. White lane markings are visible on the left side of the frame. The text "Provisional Assessment" is overlaid in the center of the image.

Provisional Assessment

Provisional Assessment Chart

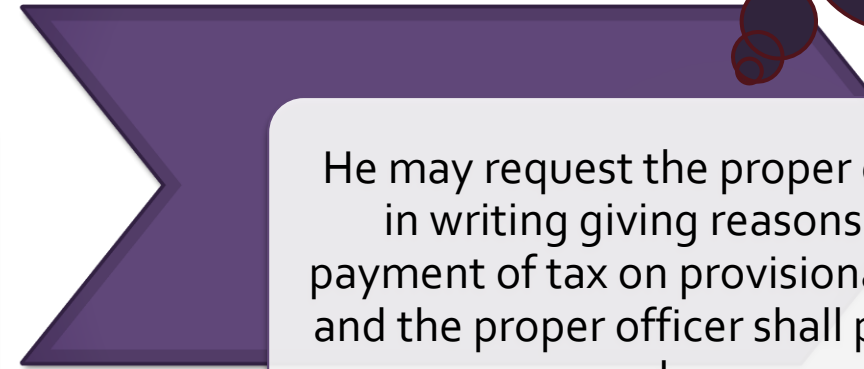
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Professional Advice from us.

Section 60(1): Payment of Tax on Provisional Basis



Where the taxable person is unable to:

- Determine the value
- Determine the rate of tax



He may request the proper officer in writing giving reasons for payment of tax on provisional basis and the proper officer shall pass an order

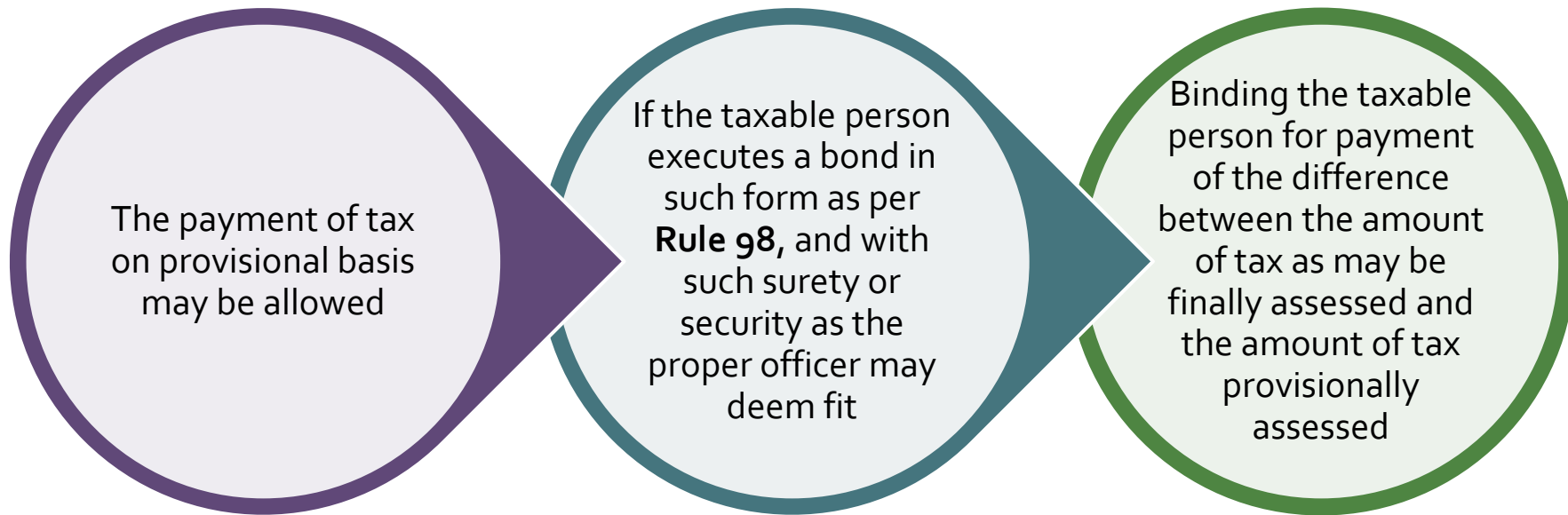
The proper officer shall issue the order within 90 days of such application

PROVISIONAL ASSESSMENT

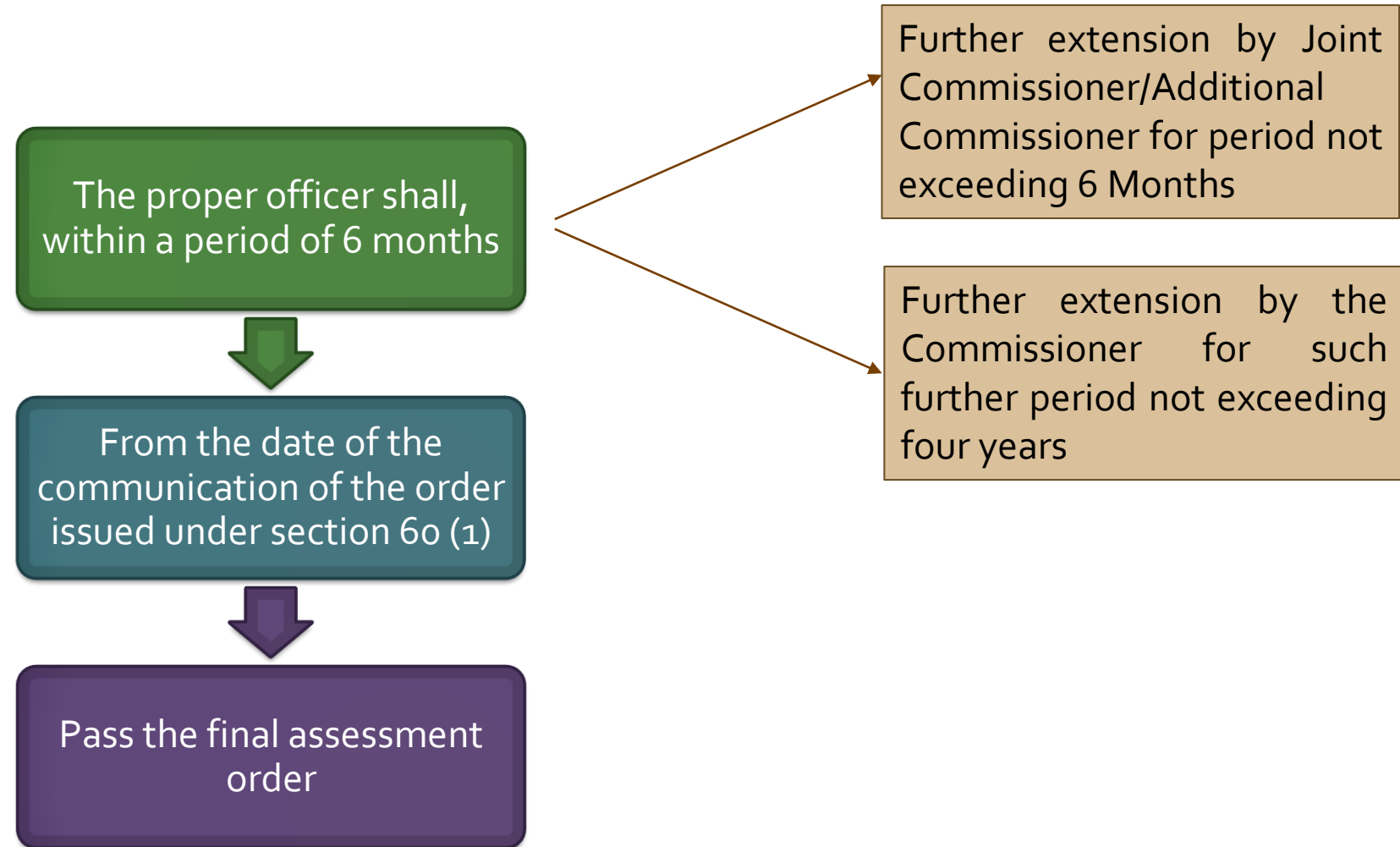
To illustrate, some of the notifications prescribing rate of tax for services are based on fixed percentage of material usage (earth works etc). The actual usage would be known only at the end of the contract. Till then, the assessee could opt for provisional assessment.

They may be uncertainly about the kind of tax (IGST or CGST – SGST) applicable, time of supply, to be treated as ‘supply of goods’ or ‘supply of services’, etc. Sometimes, concessional rate of tax would be subject to conditions. In these cases, no recourse is available to the taxable person to seek provisional assessment of tax. However, in such a case, it is advisable to communicate to the jurisdictional officer about the factual position and legal stand taken. If required the tax could be paid under protest so that it is not barred by time while claiming refund.

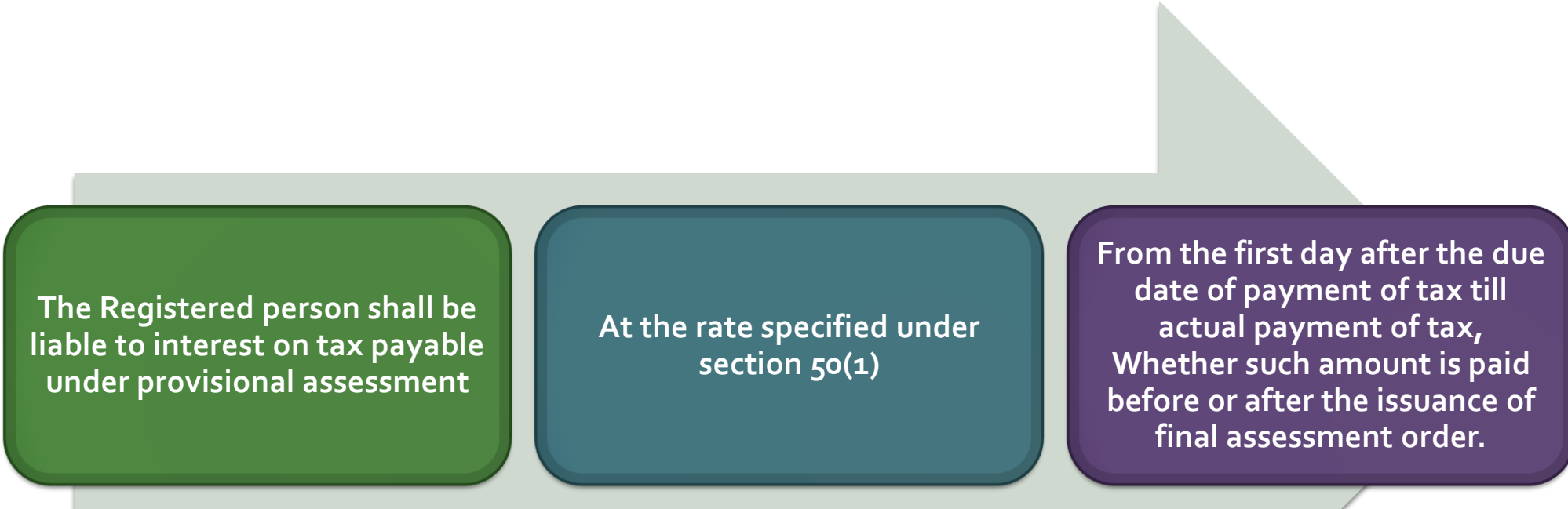
Section 60(2): Condition for Provisional Payment of Tax



Section 60(3): Final Assessment Order for order under section 60(1)



Section 60(4): Interest on Tax payable on Provisional Assessment



The Registered person shall be liable to interest on tax payable under provisional assessment

At the rate specified under section 50(1)

From the first day after the due date of payment of tax till actual payment of tax, Whether such amount is paid before or after the issuance of final assessment order.

Section 60(5): Refund of Tax on Provisional Assessment

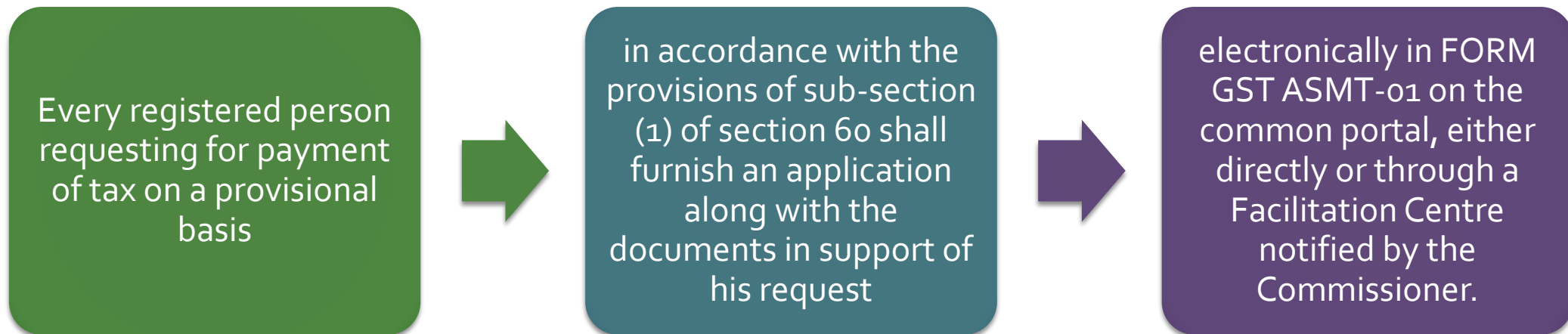
The registered person is entitled to a refund

in consequent to the order of final assessment under section 60(3)

subject to the provision of section 54(8)

Interest shall be paid on such refund as per section 56.

Rule 98(1): Application for Payment of Tax on Provisional Basis

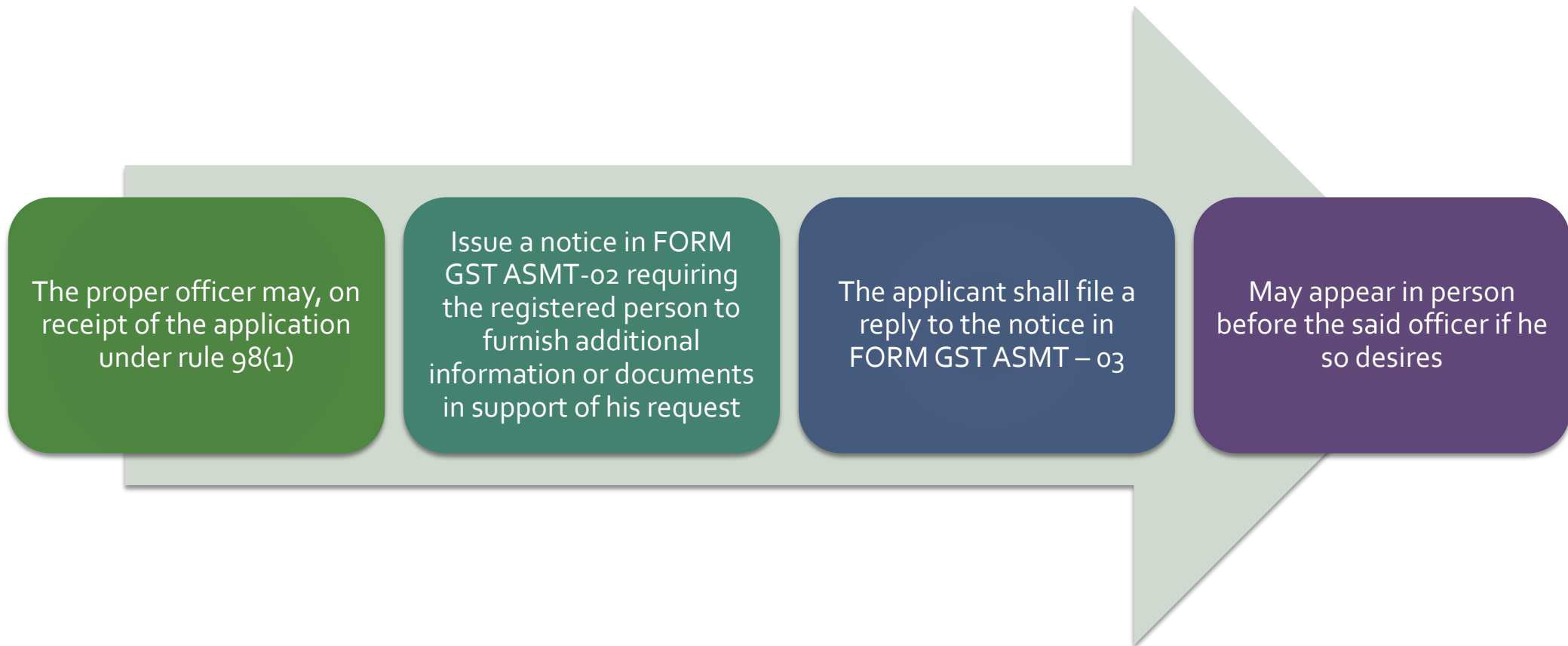


PROCEDURE FOR PROVISIONAL ASSESSMENT

Contents of the Request Form:

- Serial No.
- HSN Code
- Name of the goods/services
- Tax rate [CGST, SGST/UTGST, IGST, Cess]
- Valuation
- Average monthly turnover of the commodity/service

Rule 98 (2): Issuance of Notice for additional information or documents



Rule 6o(3): Order for Provisional Payment of Tax

The proper officer shall issue an order in FORM GST ASMT-04 allowing the payment of tax on a provisional basis



indicating the value or the rate or both on the basis of which the assessment is to be allowed on a provisional basis &



the amount for which the bond is to be executed and security to be furnished not exceeding twenty-five percent of the amount covered under the bond.

Rule 98(4): Execution of Bond along with with a Bank Guarantee

The registered person shall execute bond as per rule 60(2) in form GST ASMT-05



Along with bank Guarantee as per rule 60(3)

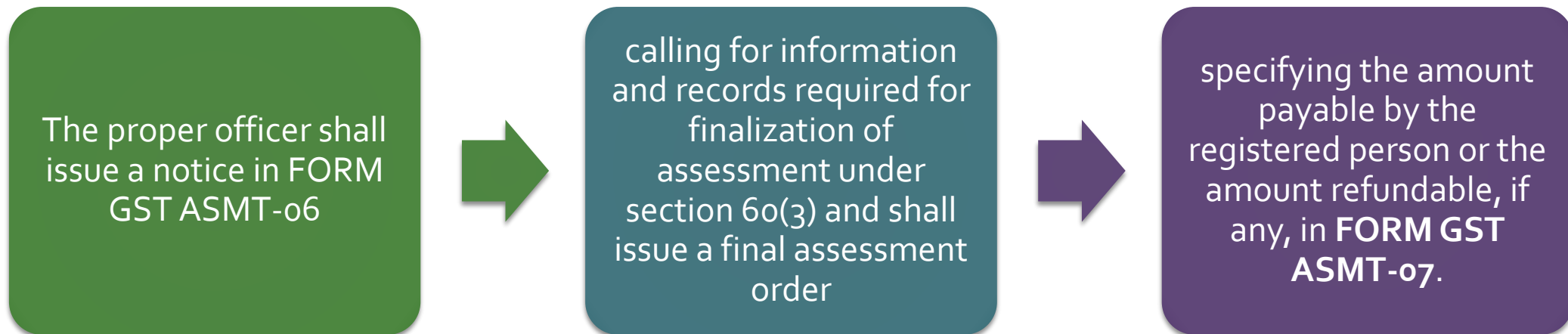
A bond furnished to the proper officer under the State Goods and Services Tax Act or Integrated Goods and Services Tax Act shall be deemed to be a bond furnished under the provisions of the Act and the rules made thereunder.

Explanation: For the purposes of this rule, the expression "amount" shall include the amount of integrated tax, central tax, State tax or Union territory tax and cess payable in respect of the transaction.

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Rule 6o(5): Final Assessment Order



Rule 6o(6): Application for Releasing the Security



The applicant may file
an application in
FORM GST ASMT-o8

for the release of the
security

furnished under rule
6o(4) after issue of the
order under rule 6o(5).

Rule 6o(7): Release of Security

The proper officer shall release the security furnished under rule 6o(4)

after ensuring that the applicant has paid the amount specified in rule 6o(5) &

issue an order in FORM GST ASMT-09

within a period of 7 working days from the date of the receipt of the application under Rule 6o(6).



Form GST AMST-01

Request for provisional Assessment

Form GST ASMT-02

Notice for Documents &/or Information's

Form GST AMST-03

Reply to Notice.& upload documents.

Form GST AMST-04

Order

Registered Person



Proper Officer

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Form GST AMST-05

Furnishing of Security

To Final i.e. Assessment

Form GST ASMT-06

Notice to Seek additional Information Clarification
documents for final assessment

Registered Person



Proper Officer



Form GST AMST-03

Reply to notice & upload document

Form GST ASMT-07

Final assessment order



Registered Person

Proper Officer

PROCEDURE FOR ORDER OF FINAL ASSESSMENT

The Final Assessment Order shall bear certain references starting from the application i.e..

- Provisional Assessment Order Number and the corresponding date
- Reference Number of the Final Assessment Order made in GST ASMT 07 and the corresponding date

The Order shall contain the following aspects:

- Brief facts
- Submissions by the applicant
- Discussion and finding
- Conclusion and order

The order shall specify the amount payable or amount refundable to the registered person, if any.



Form GST AMST-08

Application for Withdraw of Security

Form GST ASMT-09

Order for release of security or rejecting the application

Registered Person



Proper Officer

PROCEDURE FOR FILING AN APPLICATION FOR WITHDRAWAL OF SECURITY

The details of the security to be withdrawn is to be furnished as mentioned below:

- Serial No.
- Mode
- Reference No./Debit entry no. (for cash payment)
- Date
- Amount
- Name of Bank

Taxpayer unable to assess tax or value of supplies

Application for provisional assessment made in
FORM GST ASMT -01 on common portal

FROM GST ASMT-02

Proper office (PO)
Satisfied

FROM GST ASMT-04

PO allows
Provisional
Payment of taxes;
From indicates value,
rate or both, on the
basis of which
assessment is allowed,
amount of bond and
security

FROM GST ASMT-05

PO not Satisfied

FROM GST ASMT-02

Additional information
/documents required by PO

FROM GST ASMT-03

Taxpayer reply to GST ASMT –
02 and furnishing to
documents required

Proper office (PO)
Satisfied

For Information & training purpose not to be considered as
Professional Advice from us.

FROM GST ASMT-05

Taxpayer executes bond along with a security in the form of bank guarantee

FROM GST ASMT-06

PO calls for information and records for finalization of assessment

FROM GST ASMT-07

PO issues final order of assessment specifying amount payable or refundable

FROM GST ASMT -08

Taxpayer files application for release of security

PO may release security amount once it is ensured that all dues have been cleared post finalization of accounts. An order should be passed within seven days from date of receipt of application

Summary of Forms under Provisional Assessment

S. No.	Form No.	Description
1.	Form GST ASMT-01	Application of Provisional Assessment under section 60
2.	Form GST ASMT-02	Notice for seeking additional information/Clarification/Documents for Provisional Assessment
3.	Form GST ASMT-03	Reply to the notice seeking additional information
4.	Form GST ASMT-04	Order of provisional assessment
5.	Form GST ASMT-05	Furnishing of Security
6.	Form GST ASMT-06	Notice for seeking additional information/Clarification/Documents for final assessment
7.	Form GST ASMT-07	Final assessment order
8.	Form GST ASMT-08	Application for withdrawal of security
9.	Form GST ASMT-09	Order for release of security or rejecting the application
10.	Form GST ASMT-10	Notice for Intimating discrepancies in the return after scrutiny
11.	Form GST ASMT-11	Reply to the notice issued under section 61 intimating discrepancies in the return
12.	Form GST ASMT-12	Order of acceptance of reply against the notice under section 61

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Section 62: Assessment of Non-Filers of Returns

When registered person fails to furnish return under section 39 or 45, even after service of notice under section 46

- The proper officer assess tax liability on the basis of best judgement assessment.
- Within a period of 5 years from the date of furnishing Annual Return under section 44 for the relevant year.

When the registered person furnishes a valid return within 30 days of the service of assessment order

- The assessment shall deemed to be withdrawn
- But the liability for interest under section 50(1) & late fee under section 47 shall continue.

Damodar Corporation vs Union of India (2020) 4 GSTJ Online 278 (Ker.)

- Order passed without hearing the petitioner are not legally sustainable.

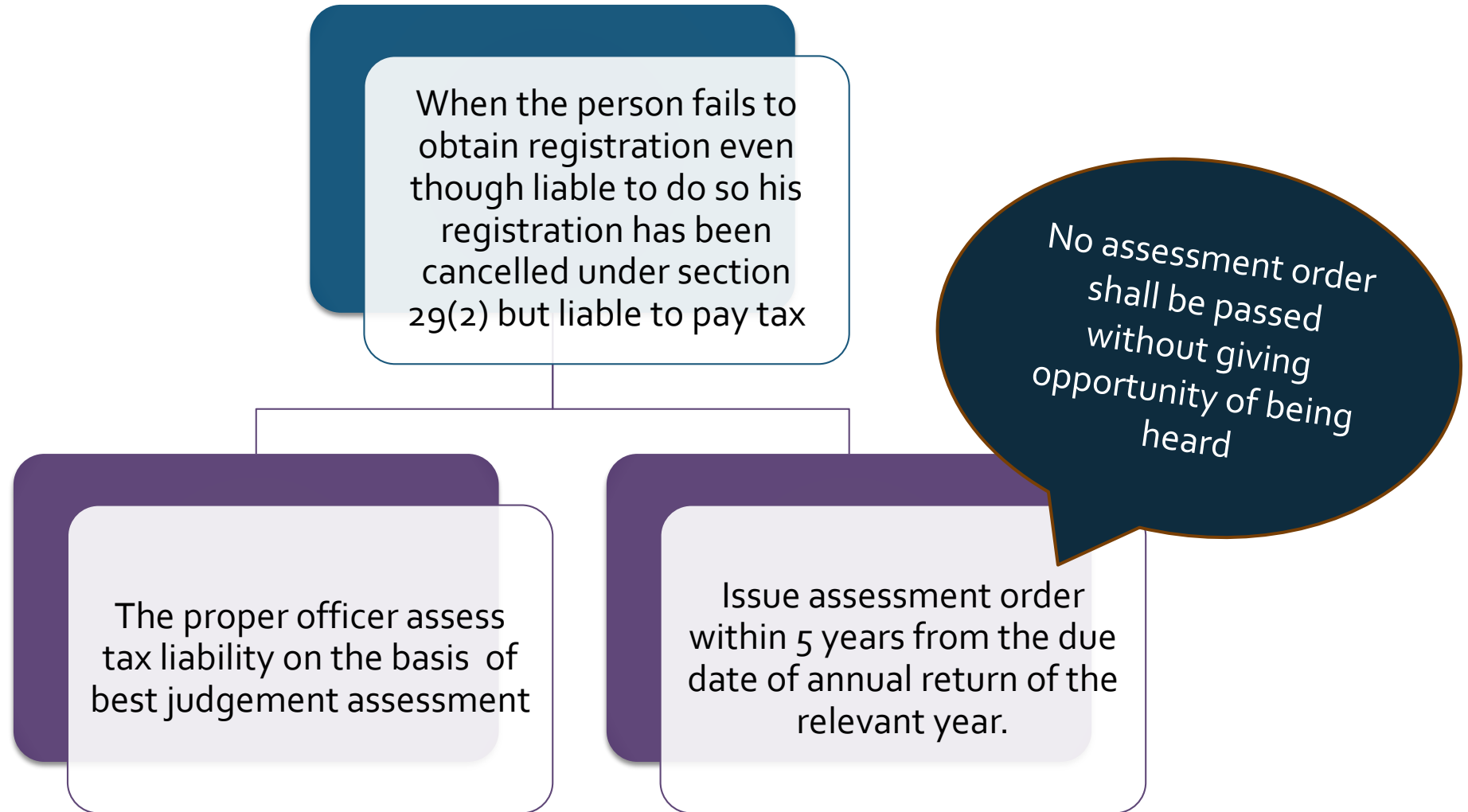
Amani Machine Centre vs State Tax Officer (2020) 4 GSTJ Online 309 (Ker)

- Best Judgement Assessment can be done immediately after detection of the failure to file the return.

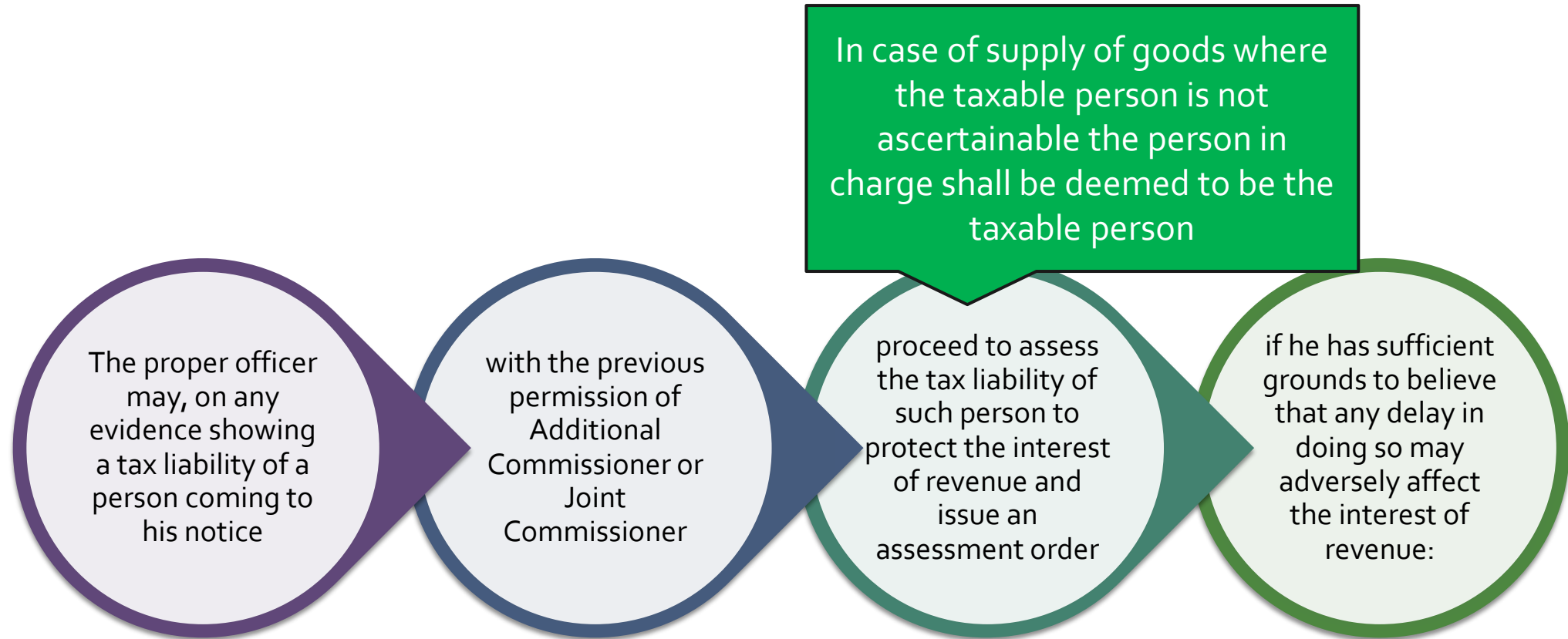
Abra Film International vs Union of India
(2020) 4 GSTJ Online 320 (Ker)

- Best Judgement Assessment will be automatically recalled if the assessee files returns within a period of 30 days of the said assessment order.

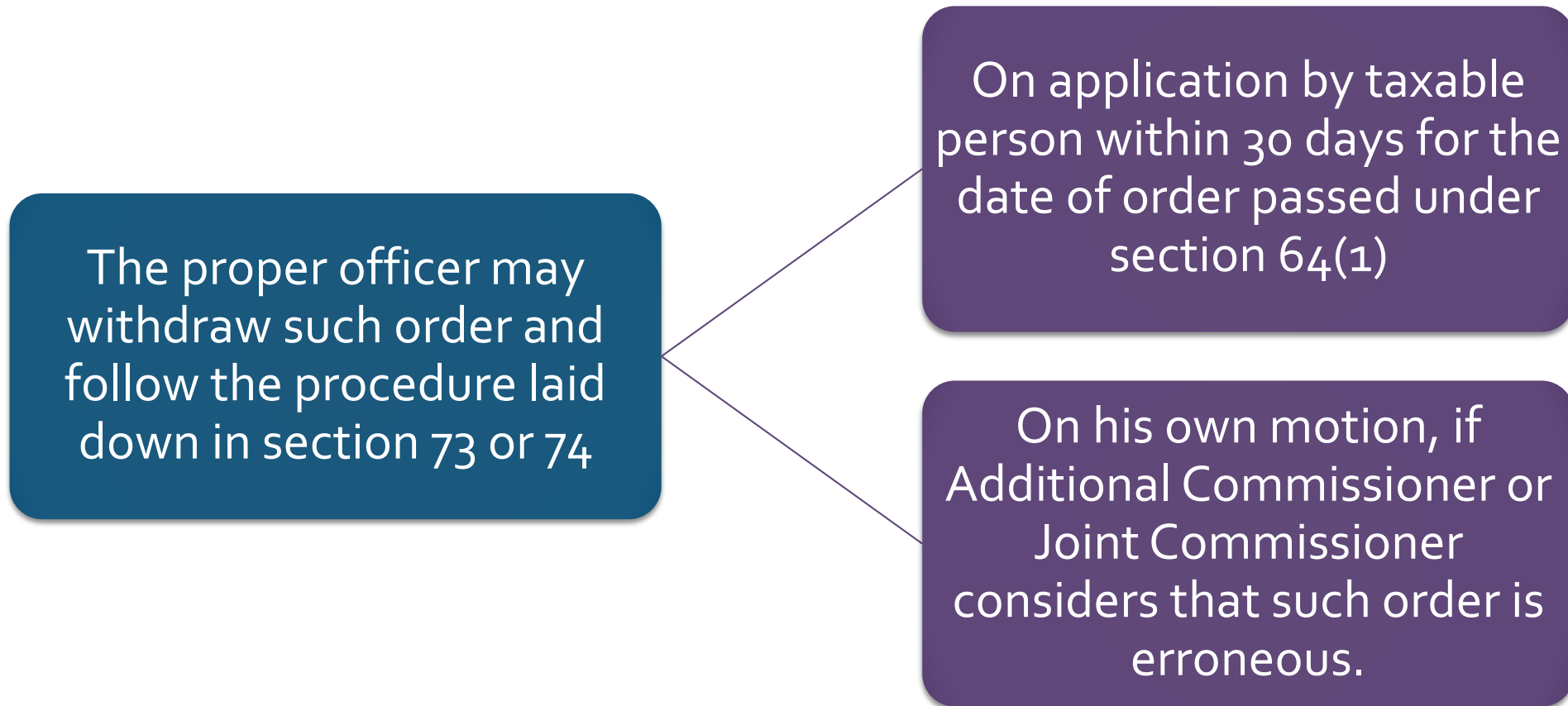
Section 63: Assessment of Unregistered Persons



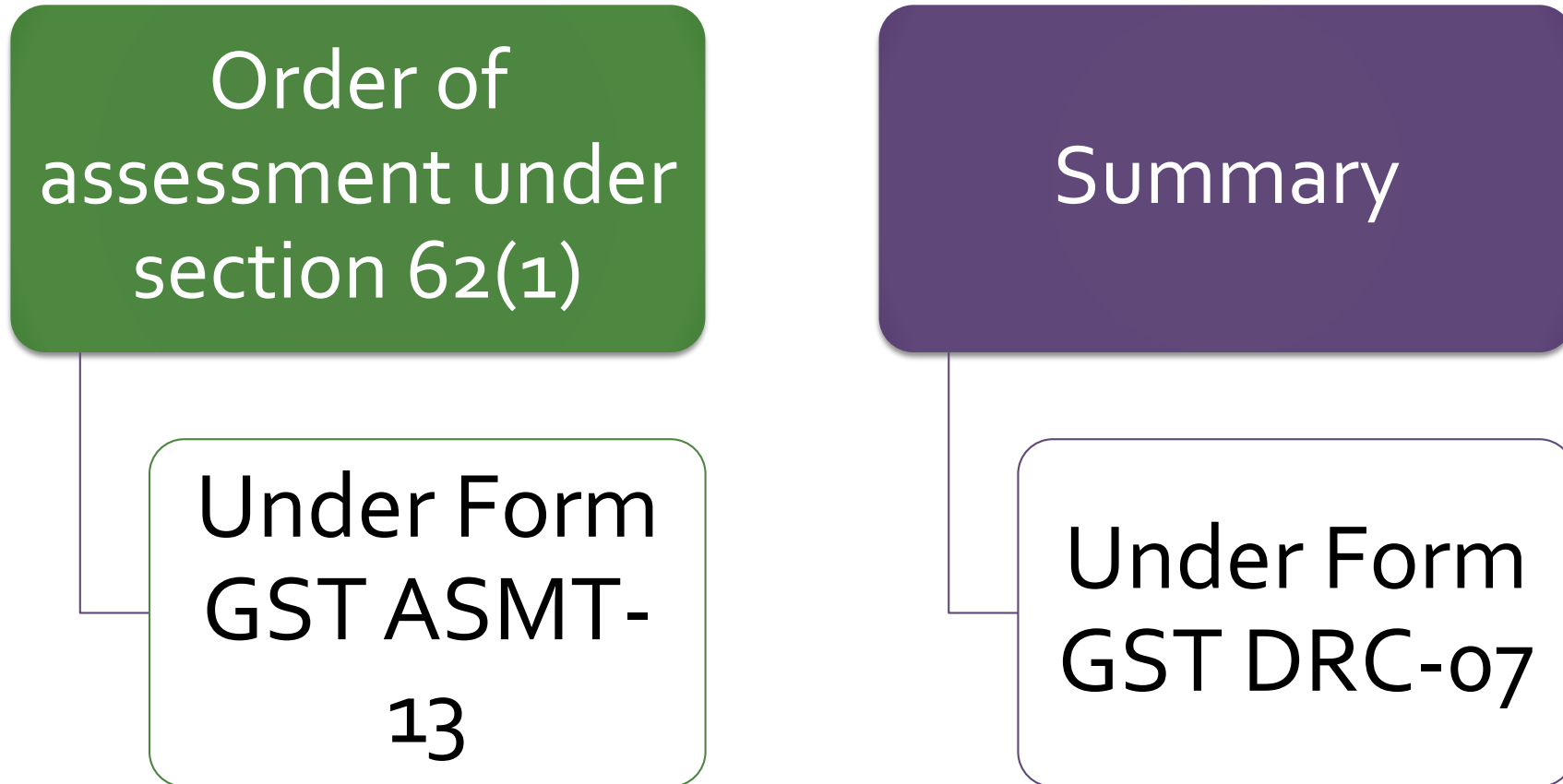
Section 64(1): Summary Assessment in certain special cases



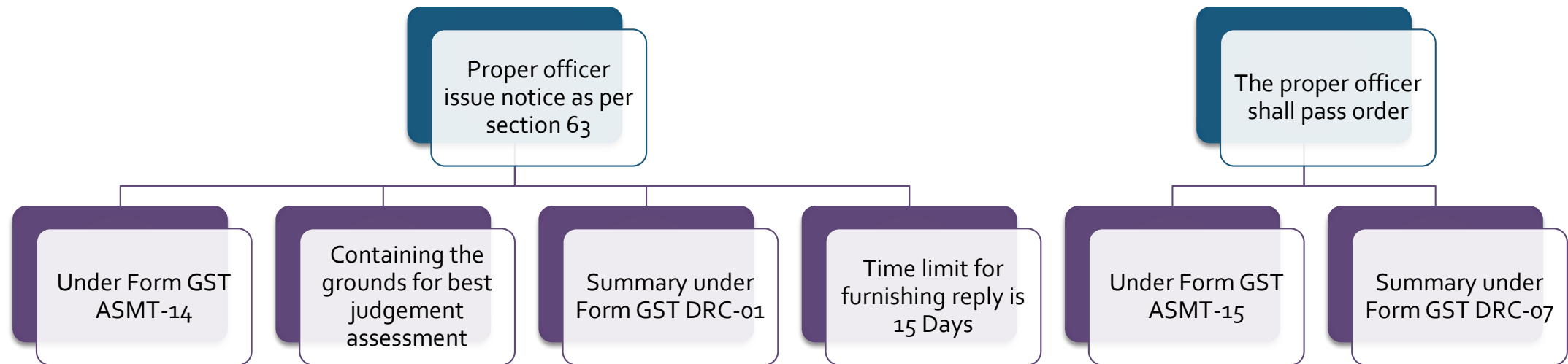
Section 64(2): Withdrawal of order passed under section 64(1)



Rule 100(1): Order or Assessment for Non-Filers of Return



Rule 100(2): Notice for Best Judgement Assessment



Rule 100(3): Order of Summary Assessment Under Special Cases Section 64

Order of Summary assessment for special cases [64(1)]

- Issued under Form GST ASMT-16
- Summary order to be uploaded under Form GST DRC-07

Application for withdrawal of assessment order [64(2)]

- Under Form GST ASMT-17

Order for withdrawal/Rejection of Application u/s 64(2)

- Issued under Form GST ASMT-18

Section 61: Scrutiny of Returns

The Proper officer may scrutinize the return & related particulars

- furnished by the registered person to verify the correctness of the return and inform him of the discrepancies noticed as per rule 99 &
- seek his explanation

The proper officer may initiate action including actions under sections 65, 66 or 67 or proceed to determine tax & other dues under section 73 or 74

- If the explanatory statement not submitted within 30 days/further period permitted of being informed by the proper officer
- Fails to take corrective measures in his return if discrepancy has been accepted

Rule 99: Scrutiny of Return

The proper officer Issue notice in form GST ASMT-10 as per section 61

- Informing of discrepancy & Requiring explanation within 30 days from the date of service of notice or further period permitted by him &
- Quantifying the amount of tax, interest & any other amount payable if any.

The registered person

- May accept the discrepancy & pay tax, interest & other amount or
- Furnish an explanation for the discrepancy in Form GST ASMT-11 to the proper officer

The proper officer shall inform in Form GST ASMT-12

- If the explanation under rule 99(2) is found to be acceptable

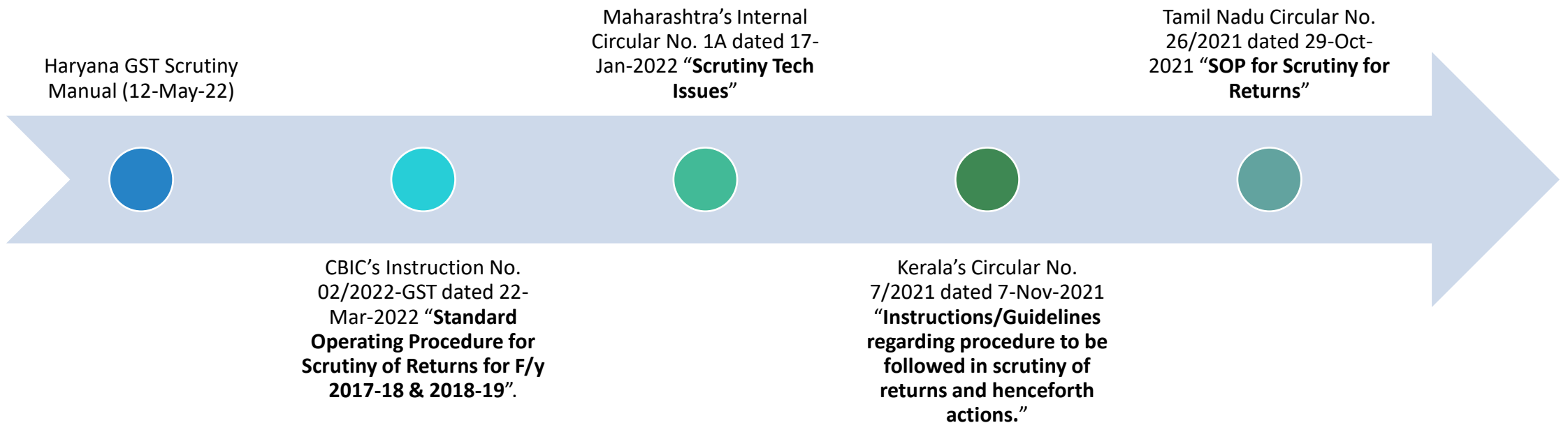
Latest GST Scrutiny Norms and Latest Updates



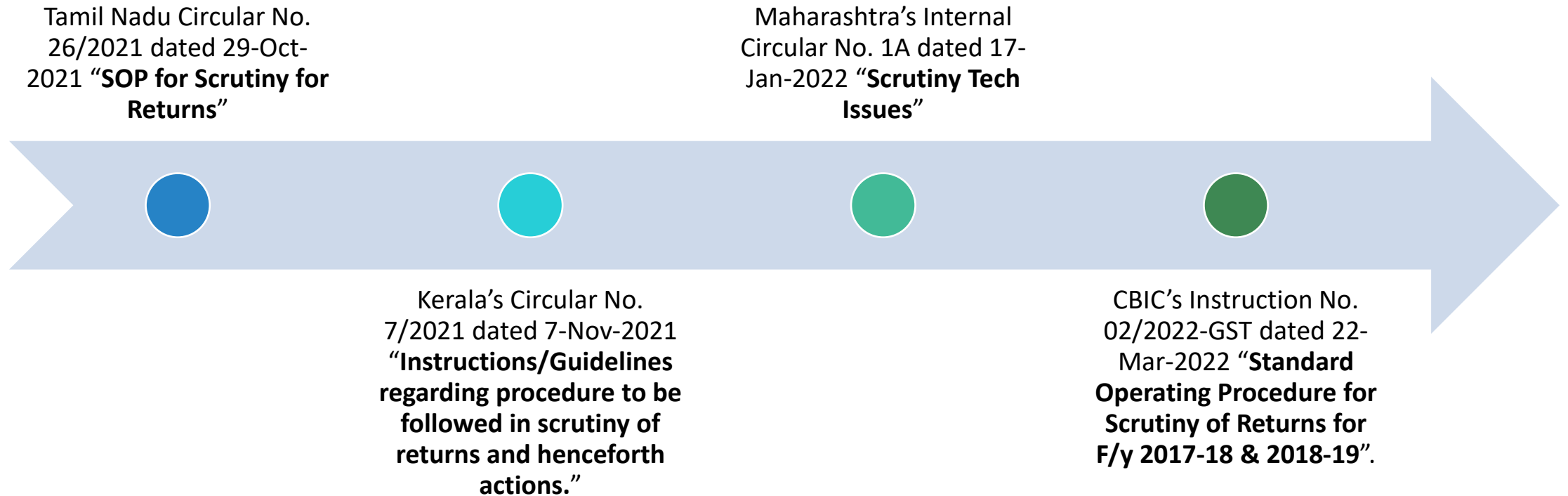


Are you prepared for GST Scrutiny?

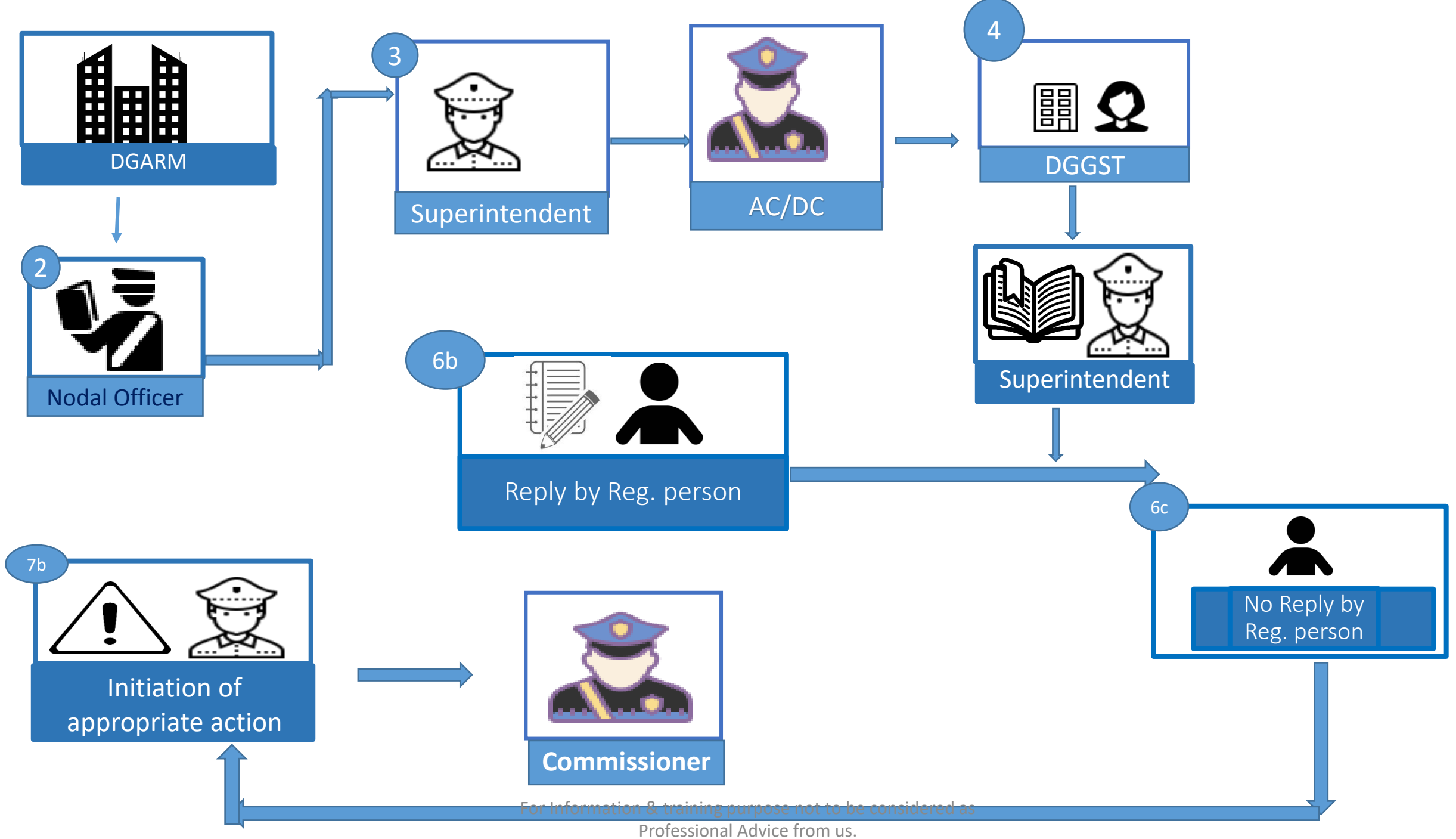
Background of today's discussion



Background of today's discussion



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1



DGARM

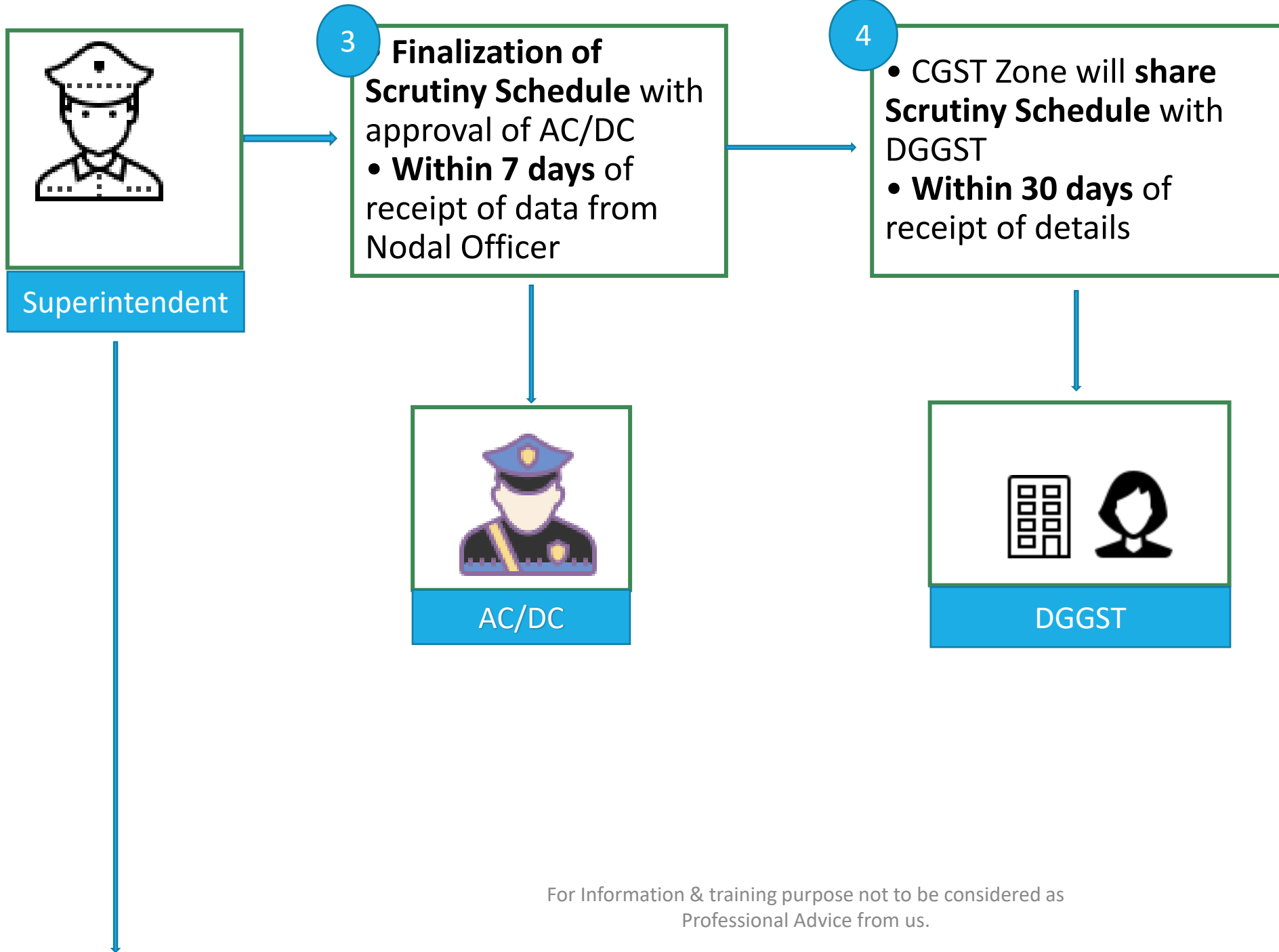
- **DGARM selects returns for scrutiny** based on specific risk parameters.
- Provide information to Nodal Officers

2



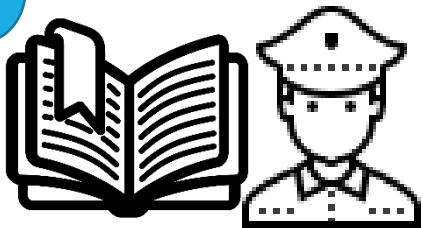
Nodal Officer

- **Nodal officers to distribute list of GSTINs** selected for scrutiny to Superintendent of Central Tax **(within 3 working days)**



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5



Superintendent

- Issue of **Notice** to registered person in Form GST ASMT-10
- Notice would intimate **discrepancies** in return

6a



Discrepancy accepted by
Reg. person

Reg. person would **pay tax, interest** and other amount in **Form GST DRC-03**

- **Inform** Superintendent of the payment made in **Form GST ASMT-11**

6b



Reply by Reg. person

Reply to Superintendent
in Form GST ASMT-11

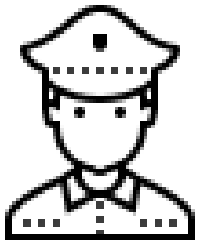
- **Within 30 days** of being informed in Form GST ASMT-10
- Superintendent may permit **further period** to **submit reply**

6c



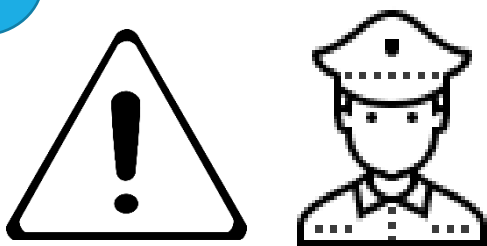
No Reply by
Reg. person

7a



Superintendent

7b



Initiation of appropriate action under Section 73 or Section 74

- Issue of order in **Form GST ASMT-12** for **acceptance of reply** furnished by Reg. Person
- **Within 30 days** from receipt reply in Form GST ASMT-11

Proper Officer to initiate proceedings u/s 73/74 within following timelines:

- When reply received by reg. person is not accepted – **Within 30 days** from receipt of reply
- When no reply is received – **Within 15 days after completion of 30 days** of issuance of notice in **Form GST ASMT-10**



Commissioner

- Cases would be **referred to Commissioner** for taking appropriate action under **Section 65, Section 66 or Section 67**, if required
- **Within 30 days** of receiving reply in Form GST ASMT-11
- Or **within 45 days** of issuance of Form GST ASMT-10, where no reply is received from Reg. person

Documentation to be maintained by Superintendent

Scrutiny Schedule:

- Prepared by Superintendent with the approval of the divisional AC/DC
- Specify the month-wise schedule for scrutiny
- Within 7 days of receipt of details from the nodal officer

Scrutiny Register :

- Maintained by Superintendent for the GSTINs allotted for scrutiny
- **Progress** viz-a-viz Scrutiny schedule to be **monitored by the JPC/Commissioner on monthly basis**

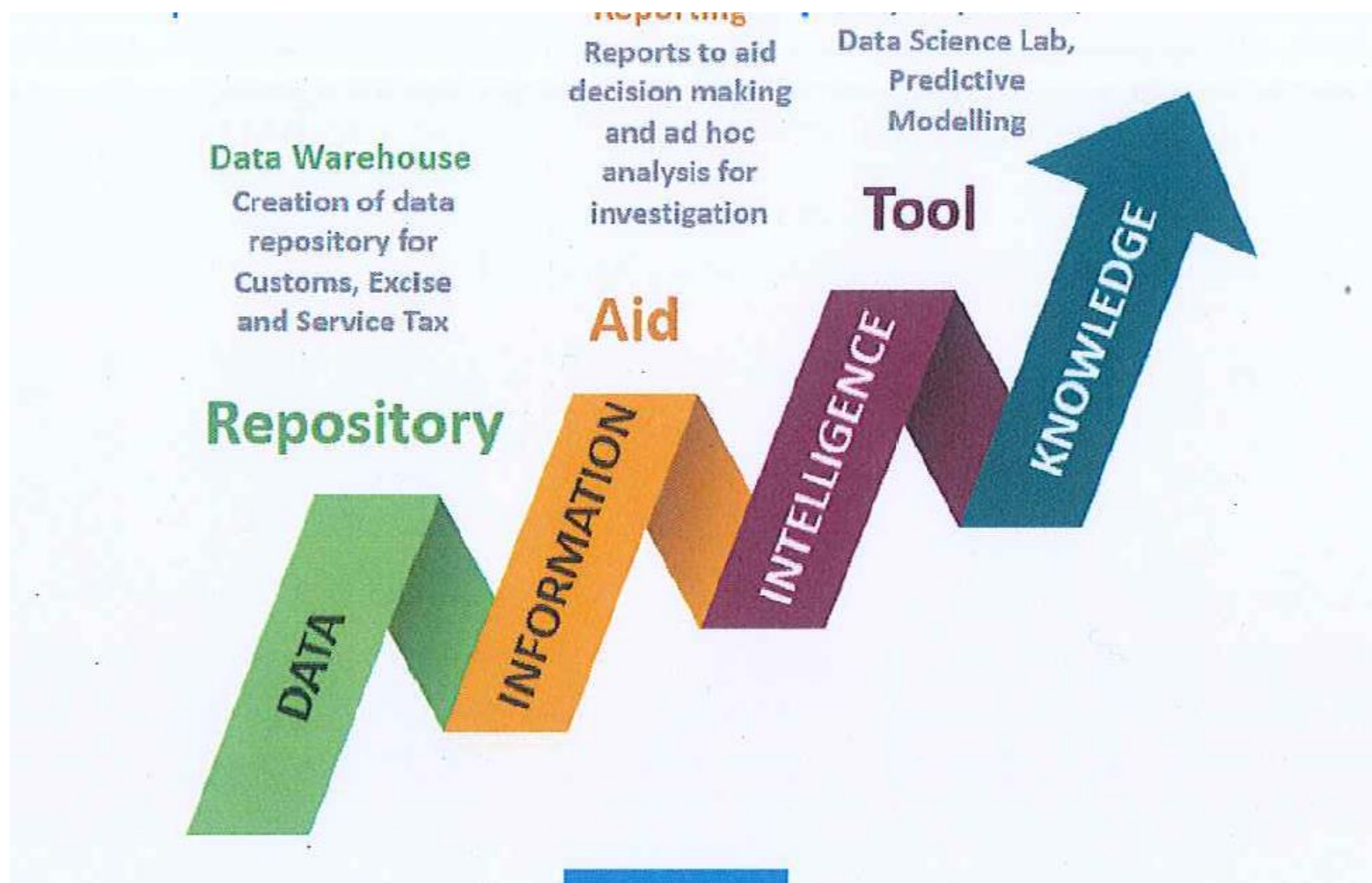
Scrutiny Progress Report :

- Prepared by proper officer i.e. superintendent, at the **end of every month**
- Forwarded to DGGST by **10th day of next month**
- DGGST present the progress report to CBIC, by the **20th of next month**

ADVAIT

Advanced Analytics in Indirect Taxes

Directorate General of Systems & Data Management



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**Enhancing Indirect Tax
revenues**



Increasing taxpayer base



**Supporting data-driven tax
policy formulation**

WHAT'S NEW.



**Analytics on
GST, Customs**



**State of Art
Data
Visualization**



**Real time Data
Capture and
Exchange**



**Predictive &
Fraud
Analytics**



Big Data



**Data Science
Lab**



**Access on
Mobile Devices**



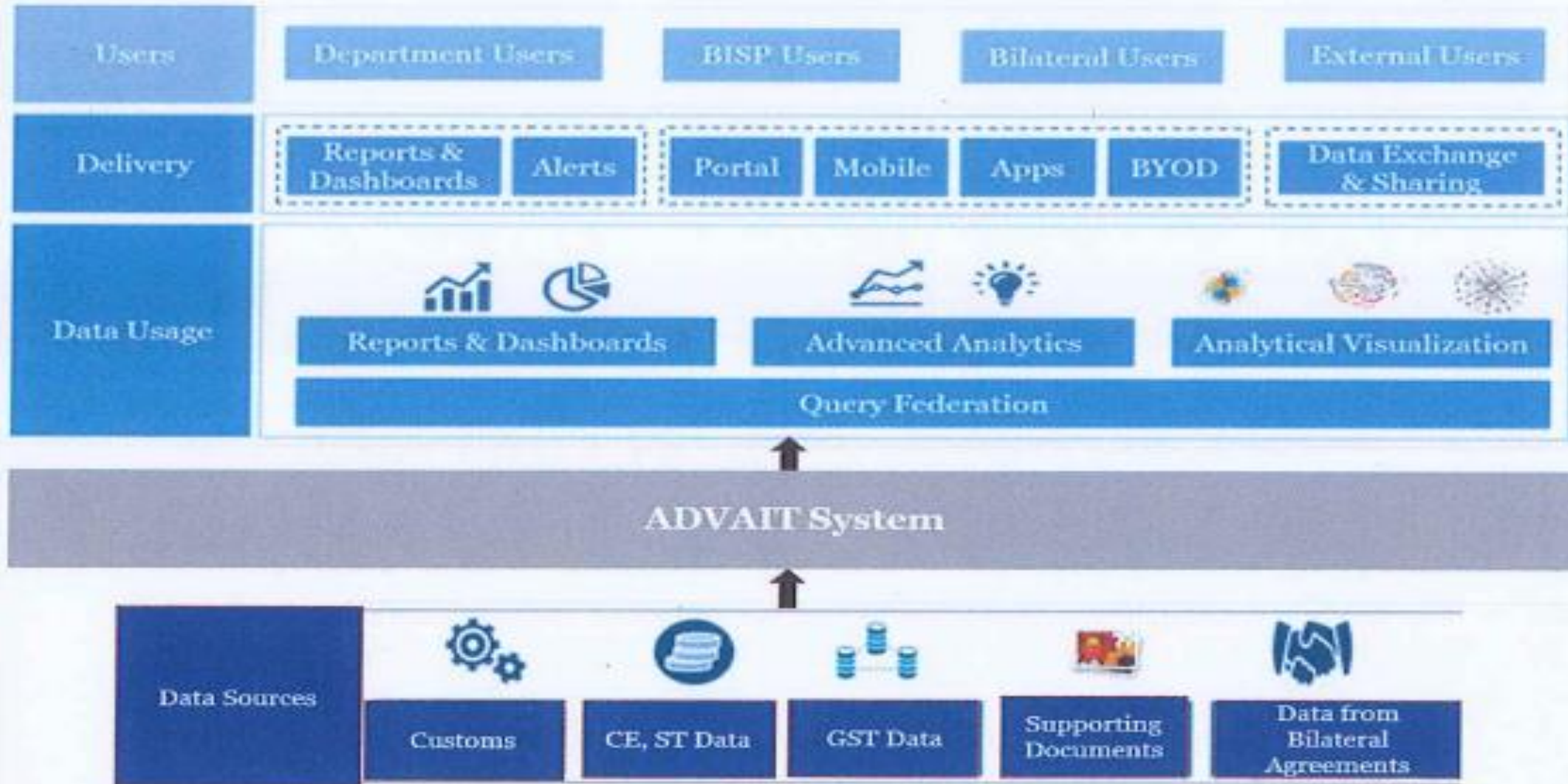
**Public Data
Portal**

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Professional Advice from us.

Key Features of ADVAIT

- Augment the existing capabilities to perform Entity and Fraud related analytics to achieve reduction in fraud and tax leakage and broadening of tax base
- Using high-performance data mining, predictive analytics, risk scoring, text mining, forecasting for predicting revenues from indirect taxes (GST, Customs, historical data of Service Tax and Central Excise)
- Creation of public facing portal where citizens can access aggregated or non-sensitive reports and dashboards
- Perform tax benchmarking between external entities like CBDT or VAT registrations to widen the tax base
- Big Data Capabilities to perform analytics on structured and unstructured data as well as handle much larger volumes of data
- Advanced Data Mining, Data Visualization capabilities to generate user friendly reports and dashboards accessible even on mobile device
- Adoption of machine learning models as basis for decision making

Architecture Overview



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Key Beneficiaries

- Directorate General of Analytics and Risk Management
- GST Policy Wing
- Directorate General of GST Intelligence
- Directorate General of Revenue Intelligence
- Directorate General of Audit, Directorate General of Valuation
- Tax Research Unit
- GST and Customs Commission rates
- External stakeholders

Comprehensive Analytical Tools



DATA MATCHING

- Credit Imbalance- Difference in IGST Paid on imports and credit taken in GSTR 3B
- List of assesses showing difference in turn over between GSTR 1 and GSTR3B
- GSTR9 and Cost Audit Report from MCA



NETWORK ANALYSIS

- Entity Profiling through the creation of 360 degree view
- Identifying cases of the formation of new units or companies to manipulate tax system
- Network of IEC, Customs Broker, Supplier



TEXT MINING

- Extending CTH Granularity Beyond 8 Digits based on specifications like brand, grade, model
- Determining the best matching CTH Code and eliminate any possible mis-classification by analyzing item description
- Predicting Inputs/finished goods by analyzing HS/CTH Code Description



PATTERN RECOGNITION

- Entity Clustering based on parameters like tax paid, commodities imported, services provided and goods manufactured
- Detect Shift in Dwell time / Volume/ Value/ Commodities/ Port of Origin/ Ratios
- Identification of structural shifts pre and post notification



PREDICTIVE ANALYTICS

- Based on risk rules defined by DG-ARM, predicting that an entity is a probable missing /Carousal Trader
- Based on analysis of Offence Database and Modus Operandi Circular, selection of cases for investigation



FORECASTING, ELASTICITY & POLICY STUDIES

- Revenue Forecasting for Customs and GST at ZCDR level
- Elasticity Studies
- What if Simulation based approach to study the impact of change in tax slabs

PATNA NEWS

50 Bihar firms caused ₹171 crore loss in GST tax, raided

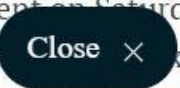
The firms were selected for searches by using data analytics and 360 degree profiling on the instructions of commissioner cum secretary, commercial taxes department, Dr Pratima.

 By HT Correspondent

PUBLISHED ON JUL 11, 2021 11:33 AM IST



The department said it had started tracking the owners of these firms involved in tax evasion. (PTI)

The commercial taxes department on Saturday carried searches at 50 business firms across Bihar and  swindling worth ₹171 crore through fake e-way bills and fraudulent claim of input tax credit (ITC).



Business Intelligence and Fraud Analytics (BIFA)

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The Objective

The key objectives of this program, as listed below, were aimed to empower policy decision-makers, operations & the compliance team with real-time actionable insights:

Detection of tax evasion

Revenue assurance

Creation of statistical insights for policymakers

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User Persona



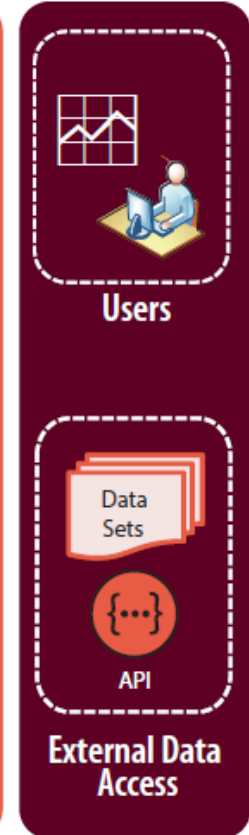
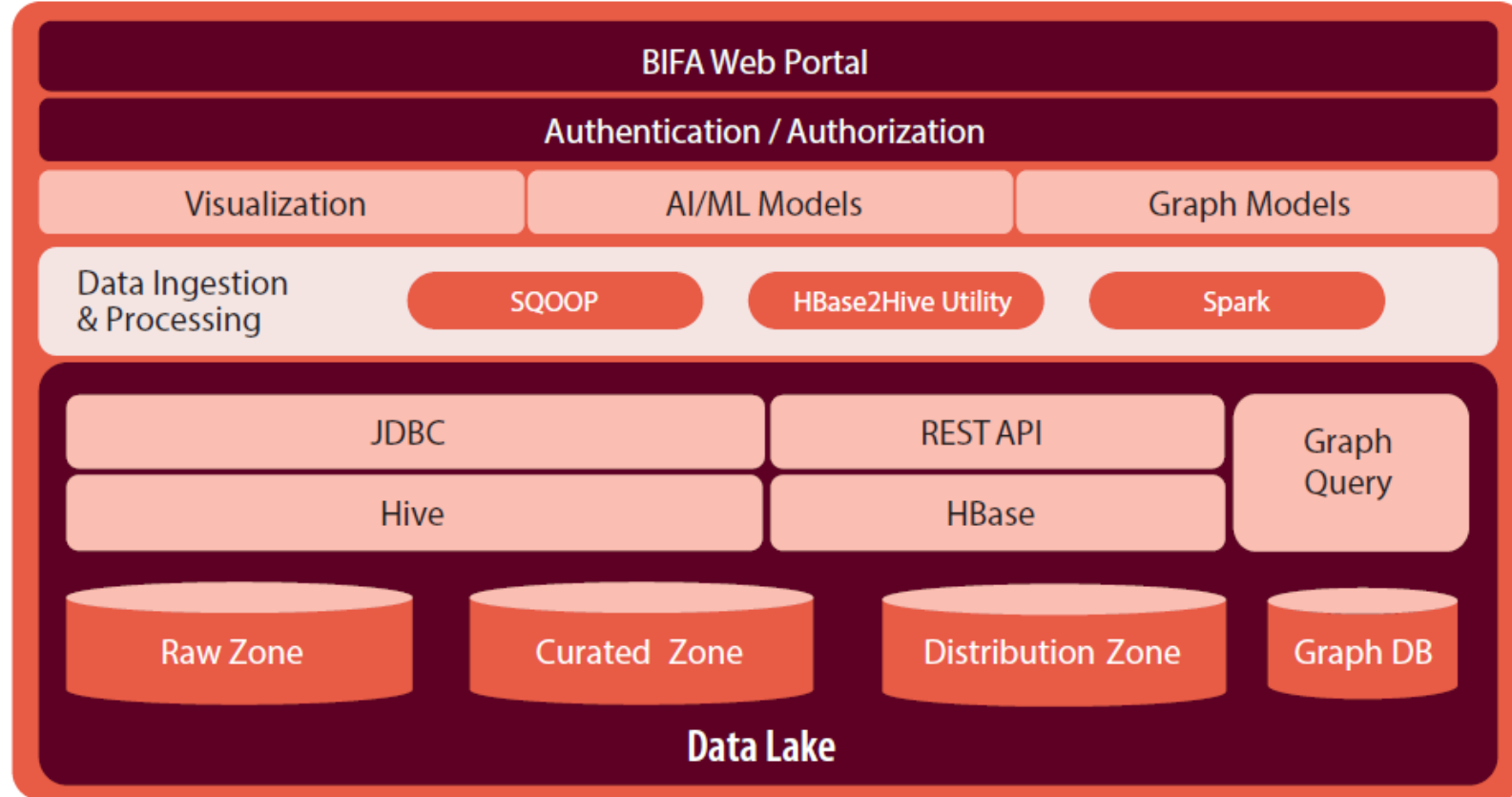
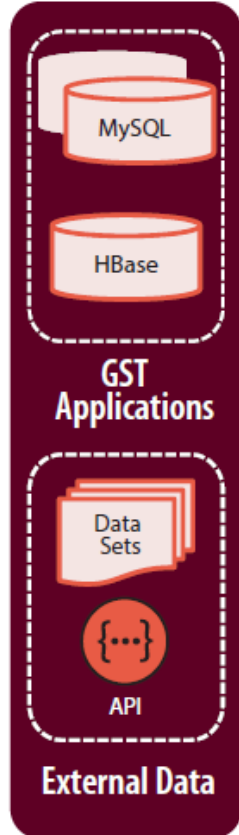
Tax Officer



Policy Maker



Administrator



Infrastructure

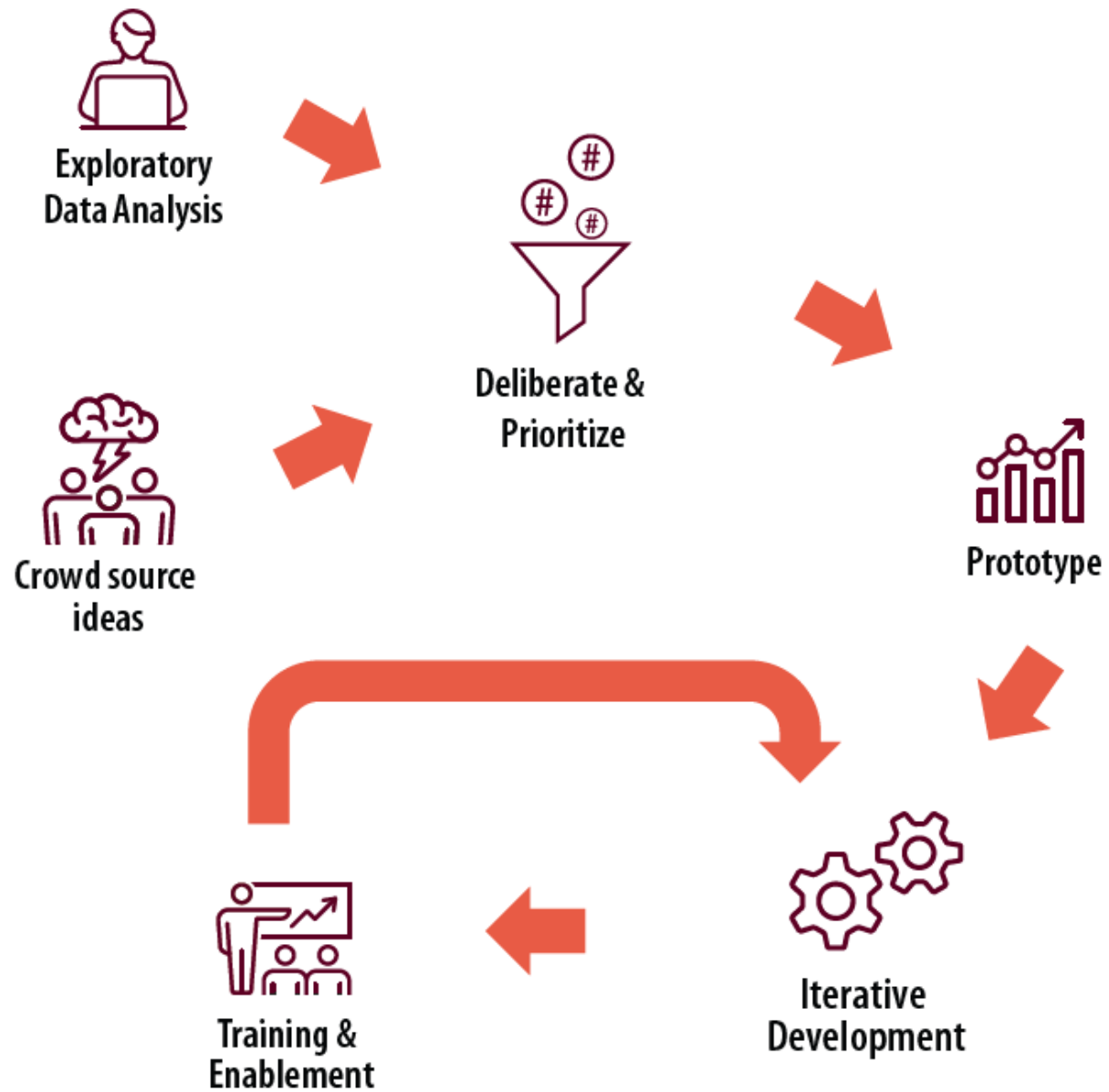
CDH Cluster

Tableau

Neo4J

Python

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Implementation scope involved:

Development and construction of genome data models to support analytics use cases

Migration of approximately 100TB of historical data from over three years from GST's application data stores to a data lake

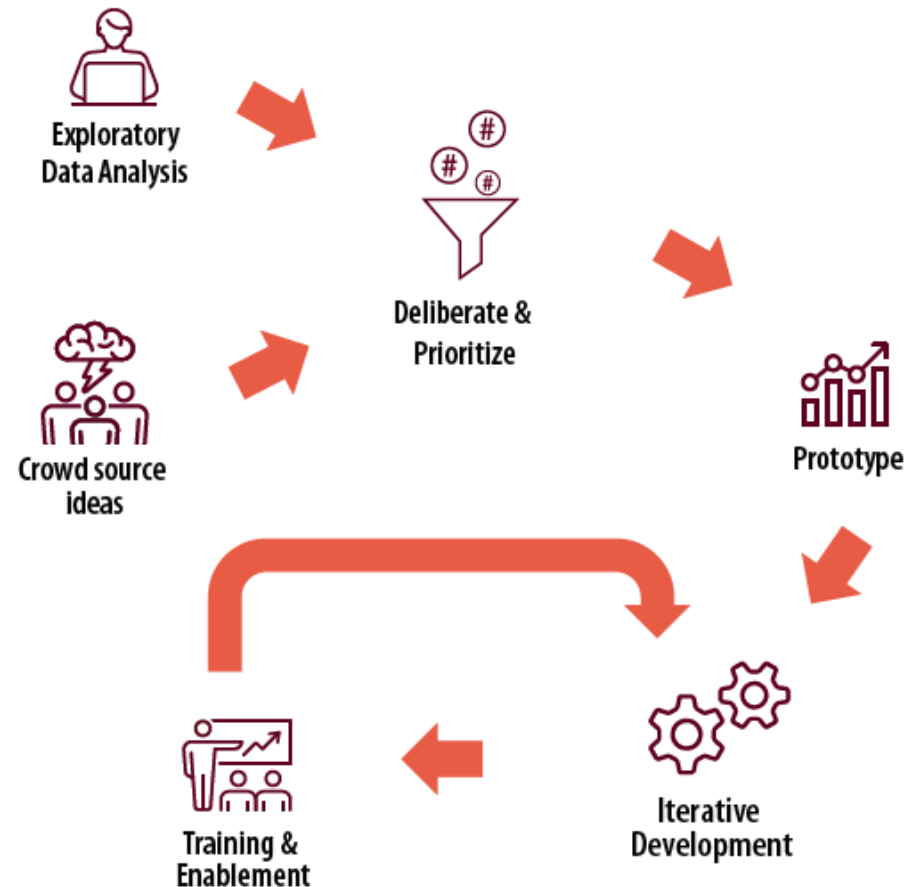
Setting up of graph database with 200 million nodes and two billion edges that represented the taxpayer ecosystem data

Implementation and setup of daily data refresh from GST application's sources to the data lake and automation of the daily batch process

Development and deployment of analytics use cases

Uncovering data patterns using Advanced Analytics

Once the data across internal and external sources were made available on the data lake, the focus was to identify analytics use cases that could utilize the data and deliver insights to GSTN for any action.



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Crowdsource of Ideas

Ideas/use-cases were gathered from Tax/Enforcement Officers, Tax Practitioners, policymakers, which were taken up at subsequent stages of refinement and prioritization. Another method used was to interrogate the experienced investigators to find out heuristic approach used by them to identify fraudsters or malpractices.

Exploratory Data Analysis

EDA was conducted on the raw data from upstream GST application to identify data patterns indicative of fraudulent behavior.

Deliberated & Prioritized

All ideas were deliberated within GSTN's BIFA team, and with due consultation from other stakeholders like policymakers and enforcement officers, wherever required.

Prototype

Prioritized use-cases were then prototyped with data from the Data Lake to assess the feasibility and extent of the impact.

Iterative Development

The use-cases were built iteratively to include features based on feedback and results from the prototype.

Training & Enablement

Users across states and the center were enabled through training programs for each release cycle.

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Leveraging the data mine: Adoption of advanced analytics to gain actionable insights

With over three years of operations, GSTN had accumulated a large amount of data related to taxpayer demographics (~13 mn), invoices (~9 bn), eWay bills (~1.42 bn), tax payments (~150 mn), and the tax returns filed (~530 mn). Data from external sources such as Customs, Direct Taxation system were also available for deriving insights.

Infosys formed a core team to strategize, architect and implement a Data and Analytics Platform to meet the objective set out by GSTN for this initiative.

Scrutiny/Verification
& risk profiling

Historically tax
evasion prone
sectors

Multiple
registrations on
same PAN



Common
items

Re-application for
registration

Live registration -
PAN - CGST
jurisdiction -
offence - booked by
SGST authorities



Detection of Tax Evasion

- **Reconciliation:** Identified mismatches between returns filed by taxpayers and identified potential frauds
- **Anomaly detection:** Used AI/ML techniques to identify potential fraudulent transactions
- **Outlier Analysis:** Used un-supervised learning techniques to identify outliers within similar peer-groups
- **Community Detection:** Used graph algorithms, identified communities of taxpayers involved in fraudulent activities
- **Fraud Propensity Assessment:** Leveraged AI/ML techniques to perform Fraud propensity analysis of individual taxpayers & their transactions

Kerala Risk Parameters

ASMT13 -
Return within 30
days

ITC utilisation
greater than 5
times cash

Turnover above
1crore cash nil

Turnover above
60 percent

2A-3B ITC
Comparison

GSTR9-8D
Difference

ITC availed after
due date

Capital goods
ITC vs Exempted
turnover

GSTR-1 Vs GSTR
3B mismatch

GSTR 3B Vs E-
way bill

Turnover less
than TDS and
TCS

Central GST Risk Parameters - 1

In-eligible ITC claimed from non-genuine taxpayers (NGTPs) whose RC is canceled ab-initio

Excess outward tax in GSTR-1 compared to GSTR-9 /GSTR-3B

Excess Outward tax in E-Way Bills Compared to GSTR-3B

In-eligible ITC claimed from GSTR-3B Non-filers

Excess ITC claimed in GSTR-9/3B which is not confirmed in GSTR-2A or 8A of GSTR-9

Interest on delayed payments made with GSTR 3B

Central GST Risk Parameters - 2

Less turnover is shown in GSTR-1 compared to GSTR-8 (TCS)

Less turnover is shown in GSTR-3B compared to GSTR-7 (TDS)

Less RCM liability disclosed in GSTR 9/3B/4 than shown by suppliers in GSTR-1

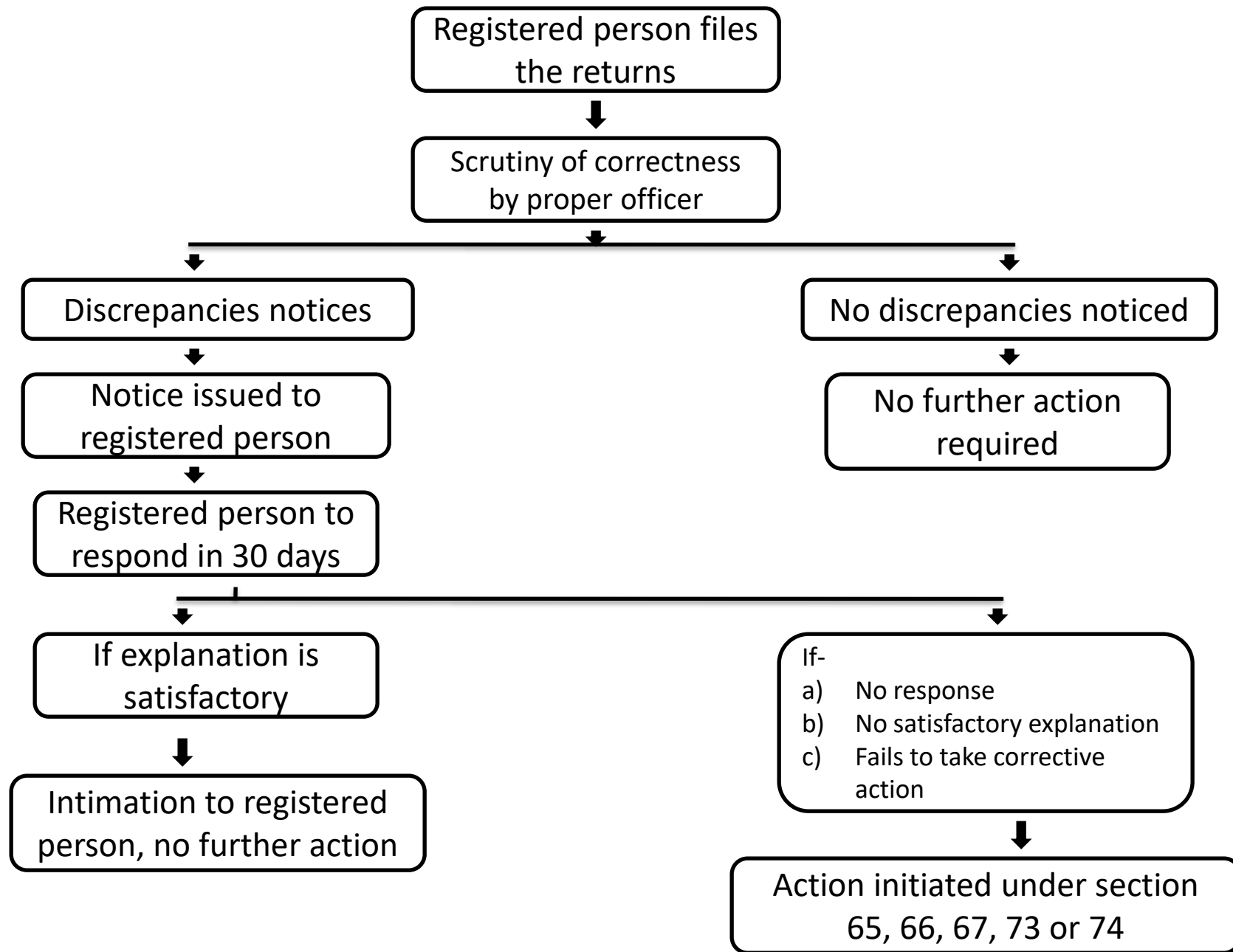
ITC claims after the last date of availing of ITC as per section 16(4) GSTR-3B

ITC on purchase invoices uploaded by the supplier in GSTR-1 filed after the last date of availing - section 16(4)

Excess IGST on imports shown in GSTR_6E vs. ICEGATE data

Excess ISD ITC availed in GSTR9_6G Vs GSTR 2A_ISD

Excess RCM ITC GSTR9_6CDF than liability shown in GSTR 9_4G



WHAT DOES THE WORD “DISCREPANCY” MEAN?

- As per **Black’s Law Dictionary**, 5th Edition, Discrepancy means a difference between two things which ought to be identical, as between one writing and another: a variance. Also discord, discordance, dissonance, dissidence, unconformity; disagreement, difference are also discrepancy.
- Discrepancy has to be distinguished from contradiction. Whereas contradiction in the statement of the witness is fatal for the case, minor discrepancy or variance in evidence will not make the prosecution's case doubtful



S.61 Scrutiny of Returns

- is it Detailed Manual Scrutiny (DMS) as was there in Service Tax era?:NO –
- Can Proper Officer ask for additional documents?: NO, they just need to scrutinize the returns available on their records.
- - If Proper officer doesn't satisfied with reply in ASMT-11, will he directly issue Demand order?: NO, detailed SCN to be given u/s 73/74, detailed reply by Tax Payer should be given. (what is 73/74?, In a bit).

Detailed Simplified Table for Section 61 as below:

Form	Particulars of the form	By
ASMT-10	Notice for intimating discrepancies in the return after scrutiny or returns – Quantify Tax, Interest and any other amount, if possible	Officer
ASMT-11	Reply to the notice issued under section 61 – within 30 days – Either Accept the demand OR furnish an explanation for the discrepancy	Tax Payer
ASMT-12	Order of acceptance of reply against the notice issued under section 61 [CAUTION: IT'S NOT A DEMAND ORDER]	Officer
OUTCOME UNDER S.61	<p>— NO Direct Demand Order</p> <p>EITHER Additional Fact Finding process u/s 65, 66 or 67 as below</p> <p>A. Initiate departmental audit as per section 65</p> <p>B. Initiate Special Audit as per section 66</p> <p>C. Initiate inspection, search and seizure as per section 67</p> <p>OR</p> <p>D. Issue show cause notice u/s 73 & 74 of the CGST Act</p>	



S.65 Audit by Tax Authorities

S.65 Audit by Tax Authorities

- will it be done at Taxpayer's premise?: Yes, or officer may do it 'Desk Audit' at their premise
- is it inspection/search?: NO, the officer might visit the premise, but well intimating before 15 days
- RP need to furnish Books and information.



S.65 Audit by Tax Authorities

1. To be conducted by Commissioner or Any officer authorised by him
2. By General or Specific Order [Criteria not specified, yet]
3. For Such a period
4. At such a frequency
5. At place of Business / At in the office of officer (Desk Audit)
6. Inform at least before 15 working days
7. To be completed within 3 months from “Commencement”
8. Necessary Facility [Premise/Work area etc] is to be provided to the officer
9. To furnish information as required to the officer



S.65 Audit by Tax Authorities

- Can they insist upon spot recovery? - NO
- If they don't agree with the reply to their discrepancies, will it amount to Demand Order? - NO, detailed SCN to be given u/s 73/74 for which detailed reply to be filled.

S.65 Audit by Tax Authorities

- Detailed Simplified Table for S.65 is as below:

Form	Particulars of the Form	By
ADT-01	Notice for conducting audit Officer	Officer
	Communication of any discrepancies observed Officer	Officer
	Reply to be filled	Tax Payer
ADT-02	Audit Report under section 65(6) [Audit Observations] Officer	Officer
OUTCOME UNDER S.65	On conclusion, A. findings to be informed to RP within 30 days & B. Incase officer wants to adjudicate, Issue Show Cause Notice u/s 73 & 74 of the CGST Act	

What is Adjudication u/s 73 or 74?

'Scrutiny of Returns' or
'Audit by department'
doesn't conclude directly
into the Order.

S.74 can be invoked due to
reasons of 'fraud, wilful-
mis statement or
suppression of facts'

S.73 for others than above
reasons.

DEMAND AND RECOVERY

SECTION 73 v/s 74

	Section 73	Section 74
To be Invoked	Other than Fraud OR wilful mis-statement OR Suppression of Facts	FOR Fraud OR wilful-mis statement OR Suppression of Facts
Notice To be issued	Within 33 Months from the due date of Annual Return [3 months prior]	Within 54 Months from the due date of Annual Return [6 months prior]
Statement may be served	For continuing period, Statement can be served instead of Notice	
Reply to SCN		
Passing or Order Max by	Within 3 Years from the due date of Annual Return	Within 5 Years from the due date of Annual Return

What is Adjudication u/s 73 or 74?

- Major difference between these 2 section is,
- A. Penalty
- B. Time barred limit to issue SCN and order

Below is the Summary Table for Penalties under these 2 sections:

What is Adjudication u/s 73 or 74?

Below is the Summary Table for Penalties under these 2 sections:

If Tax and Interest Paid	Section 73	Section 74
Voluntary Before Service of SCN*	NIL	15%
Within 30 days of Issuing SCN**	NIL	25%
Within 30 days of communicating of Order	NA	50%
After above mentioned period	10% of Tax OR 10000 whichever is higher	100%
If self assessed Tax / amount collected as tax no paid within 30 days of due date	10% of Tax OR 10000 whichever is higher	NA

SUB-RULE**PROVIDING FOR**

1. Provides for initiating scrutiny of returns furnished by registered person, based on information available; issue notice on finding discrepancies, seeking explanation, quantifying the liability and extending the period of 30 days if deemed fit.
2. Provides the manner in which registered person may either accept the discrepancy or furnish an explanation to the proper officer.
3. Manner in which proper officer should send the intimation to the registered person in case the information/explanation is, acceptable.

S. No.	Form No.	Purpose
1.	GST ASMT-10	Issuance of notice by proper officer on noticing discrepancies on return
2.	GST ASMT-11	Response by registered person against ASMT-10 by way of accepting the discrepancy or submitting explanation
3.	GST ASMT-12	Intimation by proper officer on finding explanations satisfactory

Sr. No.	Particulars	2017-18	2018-19	2019-20	2020-21	2021-22
1	Due Date for GST Annual Return	31.12.2018	31.12.2019	31.12.2020	31.12.2021	31.12.2022
2	Extended Due Date	05.02.2020	31.12.2020	31.03.2021	28.02.2022	-
Times lines for Bonafide / Genuine Cases						
3	Last date to issue Notice under Section 73(2) (33 Months)	05.11.2022 30.06.2023	30.09.2023	31.12.2023	28.11.2024	30.09.2025
4	Last date to issue Order under Section 73(10) (36 Months)	05.02.2023 30.09.2023 N/N 13/2022 5 th July'2022	31.12.2023	31.03.2024	28.02.2025	31.12.2025
Timelines for Malafide / Fraud Cases						
5	Last date to issue Notice under Section 74(2) (54 Months)	05.08.2024	30.06.2025	30.09.2025	28.08.2026	30.06.2027
6	Last date to issue Order under Section 74(10) (60 Months)	05.02.2025	31.12.2025	31.03.2026	28.02.2027	31.12.2027

Status of limitation period for F.Y.2017-18 to 2019-20:

SR.NO.	Relevant F.Y. to which the demand relates	Due date for furnishing the AR in FORM GSTR-9	Last date for issuance of the show cause notice as per S.73(2) r/w. S.73(10)	Remarks
1	2017-18	05.02.2020 ¹ 07.02.2020	05.11.2022 07.11.2022	
2	2018-19	31.12.2020 ²	30.09.2023	
3	2019-20	31.03.202	21.12.2023	

²Not. No. 80/2020-CT dt. 28.10.2020 refers

³Not. No. 04/2021-CT dt. 28.02.2021 refers.

Status of limitation period for F.Y.2017-18 to 2019-20 [S.74(2) r/w. S.74(10) refers].

SR.NO.	Relevant F.Y. to which the demand relates	Due date for furnishing the AR in FORM GSTR- 9	Last date for issuance of the show cause notice as per S.74(2) r/w. S.74(10)	Remarks
1.	2017-18	05.02.2020 07.02.2020	05.08.2024 07.08.2024	
2.	2018-19	31.12.2020	30.06.2025	
3.	2019-20	31.03.2021	30.09.2025	

Note: Refer slide 44 for further details

Standard Operating Procedure (SOP) for Scrutiny of returns for FY 2017-18 and 2018-19

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Standard Operating Procedure (SOP) for Scrutiny of returns for FY 2017-18 and 2018-19

- Section 61 of the Central Goods and Services Tax Act, 2017 read with rule 99 of Central Goods and Services Tax Rules, 2017 provides for scrutiny of returns and related particulars furnished by the registered person.

Relevant statutory provisions

- **Section 61. Scrutiny of returns:**
- 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.
- In case the explanation is found acceptable, the registered person shall be informed accordingly and no further action shall be taken in this regard.

- In case no satisfactory explanation is furnished within a period of thirty days of being informed by the proper officer or such further period as may be permitted by him or where the registered person, after accepting the discrepancies, fails to take the corrective measure in his return for the month in which the discrepancy is accepted, the proper officer may initiate appropriate action including those under section 65 or section 66 or section 67, or proceed to determine the tax and other dues under section 73 or section 74.”

- **Rule 99. Scrutiny of returns:**
- Where any return furnished by a registered person is selected for scrutiny, the proper officer shall scrutinize the same in accordance with the provisions of section 61 and 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 and also where possible, quantifying the amount of tax, interest and any other amount payable in relation to such discrepancy.

- The registered person may accept the discrepancy mentioned in the notice issued under subrule (1), and pay the tax, interest and any other amount arising from such discrepancy and inform the same or furnish an explanation for the discrepancy in FORM GST ASMT-11 to the proper officer.
- Where the explanation furnished by the registered person or the information submitted under sub-rule (2) is found to be acceptable, the proper officer shall inform him accordingly in FORM GST ASMT-12.”

3. Selection of returns for scrutiny

- Selection of returns for scrutiny is to be based on specific risk parameters
- (DGARM) has been assigned the task to select the GSTINs registered with Central tax authorities, whose returns are to be scrutinized, and to communicate the same to the field formations from time to time through the DDM portal for further action.

- It may be noted that the data provided by the DGARM is generated at a particular point of time which may undergo change at the time of scrutiny of returns by the proper officer due to subsequent compliances carried out by the taxpayer or by the suppliers of the taxpayer. The proper officer shall, therefore, rely upon the latest available data.

Proper officer for scrutiny of returns.

- Scrutiny of returns of a taxpayer may be conducted by Superintendent of Central Tax in-charge of the jurisdictional range of the said taxpayer.

Scrutiny Schedule

- Once the list of GSTINs, whose returns have been selected for scrutiny, is communicated to the field formations, the proper officer, with the approval of the divisional Assistant / Deputy Commissioner, shall finalize a scrutiny schedule.

- Such scrutiny schedule will specify month-wise schedule for scrutiny in respect of all the GSTINs selected for scrutiny.
- The proper officer shall conduct scrutiny of returns pertaining to minimum of 3 GSTINs per month.

Process of scrutiny by the Proper Officer

- The Proper Officer shall scrutinize the returns to verify the correctness of the returns.
- Information available with the proper officer on the system in the form of various returns and statements furnished by the registered person and other various sources like:
- DGARM, ADVAIT, GSTN, E-Way Bill Portal, etc.

- For convenience of proper officers, an indicative list of parameters to be verified is enclosed as **Annexure B**.
- The proper officer is expected to rely upon the information available with him or with the department.
- scrutiny of returns should have minimal interface between the proper officer and the registered person.
- there should normally not be any need for seeking documents/ records from the taxpayers before issuance of FORM GST ASMT-10.

- Proper officer shall issue a notice to the registered person in FORM GST ASMT-10 informing him of the discrepancies noticed and seeking his explanation thereto.
- The payments thus made through FORM GST DRC-03 may also be taken into consideration while communicating discrepancies to the taxpayer in FORM GST ASMT-10.
- The proper officer is required to scrutinize all the returns pertaining to the corresponding Financial Year.

- The registered person may accept the discrepancy mentioned in the notice issued in **ASMT-10** and pay the amount in **DRC-03** and inform the officer in ASMT -11.
- The information submitted in respect of acceptance of discrepancy and payment of dues is found to be acceptable by the Proper Officer, he inform the registered person in **ASMT-12**.

Timelines for scrutiny of returns

- Scrutiny of returns is to be conducted in a time bound manner, so that necessary action to safeguard revenue may be taken up expeditiously. In this regard, the following timelines may be observed by all concerned:



S.no.	Process/Events	Timeline/Frequency
1.	Communication of list of GSTINs selected for scrutiny (by DGARM to the nodal officer of the Commissionerate concerned)	From time to time.

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2.	Distribution of the list of GSTINs selected for scrutiny by the nodal officer to the proper officers concerned.	Within three working days of receipt of the list from DGARM.
3.	Finalization of scrutiny schedule with the approval of the concerned Assistant/Deputy Commissioner	Within seven working days of receipt of the details of the concerned GSTINs from the nodal officer.
4.	Sharing the scrutiny schedule by the zone with DGGST	Within thirty days of receipt of the details of the concerned GSTINs from DGARM.
5.	Issuance of notice by the proper officer for intimating discrepancies in FORM GST ASMT-10 , where required	Within the month, as mentioned in scrutiny schedule for scrutiny of the returns of the said GSTIN
6.	Reply by the registered person in FORM GST ASMT-11	Within a period of thirty days of being informed by the proper officer in FORM GST ASMT-10 or such further period as may be permitted by the proper officer

7.	Issuance of order in FORM GST ASMT12 for acceptance of reply furnished by the registered person, where applicable	Within thirty days from receipt of reply from the registered person in FORM GST ASMT-11
8.	Initiation of appropriate action for determination of the tax and other dues under section 73 or section 74, in cases where no reply is furnished by the registered person.	Within a period of fifteen days after completion of the period of thirty days of issuance of notice in FORM GST ASMT-10 or such further period as permitted by the proper officer.
9.	Initiation of appropriate action for determination of the tax and other dues under section 73 or section 74, in cases where reply is furnished by the registered person, but the same is not found acceptable by the proper officer	Within thirty days from receipt of reply from the registered person in FORM GST ASMT-11
10.	Reference, if any, to the Commissioner for decision regarding appropriate action under section 65 or section 66 or section 67.	Within thirty days from receipt of reply from the registered person in FORM GST ASMT-11 or within a period of forty-five days of issuance of FORM GST ASMT-10, in case no explanation is furnished by the registered person.

Reporting and Monitoring

- A **Scrutiny Register** shall be maintained by the proper officer in respect of the GSTINs allotted for scrutiny.
- The progress of the scrutiny exercise as per the scrutiny schedule shall be monitored by the jurisdictional Principal Commissioner/ Commissioner on monthly basis.
- Further, a **Scrutiny Progress Report**, shall be prepared by the proper officer at the end of every month. The monthly Scrutiny Progress Report for each Commissionerate of the CGST Zone shall be compiled for each month and forwarded to the Director General of Goods and Service Tax (DGGST) by the Principal Chief Commissioner/Chief Commissioner of the concerned Zone by **10th day of the succeeding month**.

- The DGGST, in turn, would present the progress report to the Board, through the GST Policy Wing, by the 20th day of the corresponding month.
- Till the time scrutiny module is made available on the CBIC-GST application/AIO for CBIC officers, the aforesaid interim procedure for scrutiny of returns may be conducted on manual basis. Any communication with the taxpayer for the purpose of scrutiny shall be made with the use of DIN as per the guidelines mentioned in the **Circular No. 122/41/2019-GST** dated 5th November 2019.

- This SOP is envisaged to enable the department to leverage technology and risk-based tools to encourage self-compliance and to conduct scrutiny of returns with minimal interaction with the registered persons. All Principal Chief Commissioners (PCCs)/ Chief Commissioners (CCs) are requested to closely monitor timely scrutiny of returns of the identified GSTINs within their jurisdictions.
- Difficulties, if any, in implementation of these instructions may be informed to the Board.

1. Tax liability on account of table 3.1(a) and table 3.1(b) of GSTR-3B may be verified with table 4,5,6,7A(1),7B(1), 11 and table 11B of GSTR1
 - Where tax liability in respect of Form GSTR 1 exceed of GSTR-3B it may indicate short payment of Tax.
 - Impact of Details in table 11B is reduction in liability for the tax period under consideration as the tax should have already been paid upon receipt of such advance amount.

Outward taxable supplies (GSTR 1 vs GSTR 3B)

Details to be checked

- Tax liability on outward taxable supplies including zero-rated supply furnished in Form GSTR-3B to be verified with the details furnished in Form GSTR-1

Conclusion by Department

- If details furnished in Form GSTR-1 exceed the details furnished in Form GSTR-3B, it may indicate short payment of tax.

2. Tax liability on account of “Inward supplies (liable to reverse charge)” as declared in Table 3.1(d) of GSTR-3B may be verified with the following:.

- **2(i) ITC availed in Table 4(A)(2) and Table 4(A)(3) of FORM GSTR-3B.**

Availment of ITC in excess of liability of RCM supplies may indicate Short payment of Tax liability of RCM supplies or excess availment of ITC in respect of RCM supplies.

Reverse charge liability with corresponding ITC

Details to be checked

- Tax liability of RCM supplies furnished in Form GSTR-3B to be verified with ITC claimed on RCM supplies in Form GSTR-3B.

Conclusion by Department

- Where concerned ITC availed exceeds the RCM liability discharged, it may indicate either short payment of tax liability on account of RCM supplies or excess availment of ITC in respect of RCM supplies.
- **RCM claimed next month?**

2.(ii) ITC in respect of inward supplies attracting reverse charge as available in **Table 3 And 5** (along with the net effect of amendments thereof in **Table 4 and 6** respectively) of **GSTR-2A**.

- Inward supplies attracting reverse charge from registered person, the details of invoices and Dr/Cr note are communicate in Table 3 and 5 of **GSTR-2A** and amendment of that supplies in their **GSTR-1** the detail of such amendment are communicate in table 4 and 5 respectively.
- Detail of such inward supplies from unregistered persons are not communicate in GSTR-2A. Moreover, detail of ITC on account of Import of services also are not communicate in **GSTR-2A**
- Reverse charge services declared in table 3.1(d) of **GSTR-3B** cannot be less than inward supplies attracting reverse charge of **GSTR-2A**

Reverse charge liability from registered persons (GSTR-3B with GSTR-2A)

Details to be checked

- Tax liability of RCM supplies furnished in Form GSTR-3B to be verified with the details of corresponding invoices and debit note/credit notes communicated in Form GSTR-2A.

Conclusion by Department

- Where details furnished in Form GSTR-3B is **less than** the details auto-populated in Form GSTR-2A, it may indicate short payment of tax liability on account of RCM supplies.
- Time of supply of services: Date of payment; or 60 days - supplier's invoice
- Year End transactions in Next FY

- RCM supplies in table 3.1(d) of GSTR -3B are less than inward supplies attracting reverse charge in GSTR-2A it may indicate short payment of tax on account of RCM supplies.
- It may be noted that the said tables in FORM GSTR-2A contain details of supplies attracting forward as well as reverse charge.

2.(iii) Tax/Cess paid in cash as per column 8 of Table 6.1 of GSTR-3B.

- In respect of inward supplies liable to reverse charge, tax/cess is to be paid in cash.
- tax liability off-set in cash should not be less than the liability arising on account of reverse charge as per table 3.1(d) of FORM GSTR-3B.
- Where the tax liability off-set in cash is less than the liability arising on account of reverse charge, it may indicate short payment of tax.

Reverse charge liability compare with the amount paid in cash

Details to be checked

- Tax paid in cash during the relevant month should not be less than the tax liability reported as supplies liable under RCM.

Conclusion by Department

- Where the tax liability offset in **cash is less than the liability** arising on account of reverse charge, **it may indicate short payment of tax.**

3. ITC availed in respect of “Inward supplies from ISD” in Table 4(A)(4) of GSTR-3B may be verified with Table 7 (along with the net effect of amendments thereof in Table 8) of GSTR2A.

ISD Credit (GSTR 3B vs GSTR 2A)

Details to be checked

- The details of ITC availed on 'Inward supplies from ISD' in Form GSTR-3B is to be verified with the ISD credit received in Form GSTR-2A.

Conclusion by Department

- In normal case of excess Credit pass on recovery from?
 - ISD
 - Recipient of ITC

4. ITC availed in respect of “All other ITC” in Table 4(A) (5) of GSTR-3B may be verified with Table 3 and Table 5 (along with the net effect of amendments thereof in Table 4 and Table 6 respectively) of GSTR-2A.
- It may be noted that the said tables in FORM GSTR-2A contain details of supplies attracting forward as well as reverse charge. Therefore, only the supplies against which there is NO or N in column 14 of table 3, column 16 of Table 4, column 15 of Table 5 and column 18 of Table 6 may be considered.

Other ITC (GSTR 3B vs GSTR 2A)

Details to be checked

- The details of ITC availed in respect of inward supplies under the forward charge in Form GSTR-3B13 would be verified with the details auto-populated in Form GSTR-2A.

Conclusion by Department

- A transaction not appearing in Form GSTR 2A may be because of the reason that the recipient has not procured the goods or services and, hence ITC may not be allowed.

Cases for difference of ITC GSTR-2A vs 3B

1. Supplier has reported B2B supplies as B2C supplies in GSTR-1 and they could not amend it till expiry of time limit. So, these transactions have not appeared in GSTR-2A of actual recipient to whom notices served.
2. Few supplies have reported B2B supplies against GSTIN of some other taxpayer instead of actual recipient.
3. Supplier had missed reporting of B2B transactions in his GSTR-1
4. Supplier had reported B2B transactions taxable under forward charge in Table 4B of his GSTR-1 instead of Table 4A.

Cases for difference of ITC GSTR-2A vs 3B

5. B2B transaction in GSTR-1 mistakenly reported as transaction liable to RCM by the supplier.
6. In some of the case replies are received that the ineligible ITC , which has been pointed out in ASMT-10 was already reversed by taxpayer in return of subsequent period, however the format in GSTR-3B is not so exclusive and no separate column is provided for such reversal hence the amount of ITC reversed for previous period is not eligible from the return form itself.

ITC as per Form 2A

During FY 2017-18 and FY 2018-19, there was no restriction under the law for claiming the ITC the invoices should appear in Form GSTR 2A.

If the ITC conditions are satisfied, then the authorities should not disallow the credit to the recipients merely because the transaction is not appearing in GSTR 2A.

The ITC could be availed based on the tax invoices issued by the supplier.

Press Release, Dated October 18, 2018 can be considered in this matter.

Hon'ble Gujarat High Court in the case of New Nalbandh Traders is also there.

New Nalbandh Traders vs State of Gujarat

R/SPECIAL CIVIL APPLICATION NO. 17202 of 2021

Judgement Dated: 23-Feb-2022

- ITC was blocked , under Rule 86A, on the basis of missing trader.
- Taxpayer challenged the same through Writ contending that:
- It received the goods from the said supplier, it also received tax invoices, weighment slips, e-way bills etc. which are the documents prescribed for the purchase under the provisions of the CGST Act, 2017.
- Rule 86A use the words, “Reasons to Believe.” The satisfaction must be reached on the basis of some objective material available before the authority. It cannot be made on the flights of one’s fancies or whims or imagination.

New Nalbandh Traders vs State of Gujarat

R/SPECIAL CIVIL APPLICATION NO. 17202 of 2021

Judgement Dated: 23-Feb-2022

- Rule 86A may subject a bona fide assessee to undue hardship by the blockage of his credit ledger due to the default of his supplier. This may tantamount to equating the default of the recipient with that of the supplier.
- ITC needs to be checked with Conditions as prescribed in GST Laws.

Para 13 (a) of Press Release of 48th GST Council Meeting (17-Dec-2022)

- 13. Issuance of the following circulars in order to remove ambiguity and legal disputes on various issues, thus benefiting taxpayers at large:
 - a. Procedure for verification of input tax credit in cases involving difference in input tax credit availed in FORM GSTR-3B vis a vis that available as per FORM GSTR-2A during FY 2017-18 and 2018-19.

Our view on Para 13 (a) of Press Release of 48th GST Council Meeting (17-Dec-2022)

- Maharashtra State GST has already issued a circular where these differences could be ironed out by declaration from the supplier or a Practicing Chartered Accountant that the tax has been paid to the Government.
- Incase this circular would be replicated in some form, it would be a big relief for the taxpayers reeling under similar notices.

Brief about Maharashtra CA Certificate

a) Mismatch of ITC claim of GSTR-3B and GSTR-2A the proper officer may in case **where difference in ITC claim (CGST+SGST or IGST) per supplier is 2.5 lakh or more**, ask the claimant to obtain certification from Chartered accountant of the said supplier certifying the output transaction and tax paid thereon so as to comply with the provision of section 16 and where difference in ITC is 2.5 lakh or less ,ask the claimant to obtain ledger confirmation of the concerned supplier along with his/her certification.

Brief about Maharashtra CA Certificate

b) For RCM liability issue the proper officer upon receipt of reply from taxpayer under scrutiny may verify whether supplier has paid the due tax on such transactions which have been wrongly reported in Table 4B of GSTR-1.

Brief about Maharashtra CA Certificate

c) In relation to ineligible ITC where taxpayer replies with reference to specific return period, then calculation of reversal in table 4(B) (2) of that specified return period along with transaction list should be obtained from the tax payers and verified with ITC claim, reversal, other reversal, etc. Alternatively, it can be verified from DRC-03 filed by the tax payer, if any.

5. It may be verified that the taxable value declared on account of “Outward taxable supplies (other than zero rated, nil rated and exempted)” in Table 3.1(a) of GSTR-3B is not less than the net amount liable for TCS and TDS credit as per Column 6 of Table 9 of GSTR-2A.

- The details of such TDS and TCS are furnished by the corresponding deductors and operators in their GSTR-7 and GSTR-8 respectively and communicated to the registered person in table 9 of GSTR-2A.
- Besides such supplies, the registered person may have other supplies also.
- A discrepancy on the aforementioned count may indicate short payment of tax.

Value of outward taxable supply with the value auto-populated for TDS/TCS purposes (GSTR 3B vs GSTR 2A)

Details to be checked

- The value of taxable value declared on account of 'outward taxable supplies (other than zero-rated, nil rated and exempted)' in Form GSTR-3B to be compared with the values of TDS and TCS furnished by the corresponding deductors or E-Commerce Operators in their Form GSTR-7 & Form GSTR-8 respectively and communicated to the registered person in Form GSTR-2A.

Conclusion by Department

- Where the value declared in Form GSTR-3B is less than the net amount liable for TDS/TCS as auto-populated in Form GSTR-2A, it would indicate less reporting of the value and hence the short payment of tax.
- GST Liability is on Accrual vs TDS liability is linked with payment

6. Liability on account of outward supplies in Table 3.1(a) and 3.1(b) of GSTR-3B should be verified with the Tax liability as declared in e-way bills.
- Rule 138 of the CGST Rules mandates generation of e-way bill before commencement of movement of goods of consignment value exceeding Rs.50,000.
 - Accordingly, liability declared in table 3.1 (a) and (b) of FORM GSTR-3B should not be less than tax liability as declared in the e-way bills.

GSTR 3B with e-Way bill details

Details to be checked

- The details of outward taxable supplies (both zero-rated and other than zero-rated) as furnished in Form GSTR-3B would be verified with the tax liability declared in e-way bills.

Conclusion by Department

- Where the value declared in Form GSTR-3B is less than the amount of tax liability declared in e-way bills, it would indicate short payment of tax.
- What about value reported for delivery challan, etc?

7. Claim of ITC in respect of supplies from taxpayers whose registrations have been cancelled retrospectively.

- In case of retrospective cancellation of registration of a supplier, the recipient is not entitled to claim ITC in respect of invoices or debit notes issued after the effective date of cancellation of the registration.
- It may be verified whether the registered person has availed ITC in respect of such invoices or debit notes issued by the suppliers after the effective date of cancellation of their registrations.

ITC claim where vendor's registration cancelled retrospectively

Details to be checked

- Where the registration of a supplier is cancelled retrospectively, **the recipient would not be entitled to claim ITC** in respect of the invoices or debit notes issued after such date of cancellation of registration.

Conclusion by Department

- The proper officer would verify whether there is any claim of ITC in respect of supplies made by the cancelled GSTINs.
- The effective date of the cancellation of registrations can be viewed from Form GSTR-2A.

Cases of Vendor Registration Cancelled Retrospectively



Sanchita Kundu vs The Assistant Commissioner of State Tax, Bureau of Investigation, South Bengal

W.P.A. 7231 of 2022 and W.P.A. 7232 of 2022
dated 05.05.2022 (Calcutta High Court)

- The Input Tax Credit (ITC) was **denied** of the Petitioner on purchase of the goods in question from the suppliers and asking the petitioners to pay the penalty and interest under the relevant provisions of GST Act, on the ground that **the registration of the suppliers in question has already been cancelled with retrospective effect covering the transaction period in question.**
- The Petitioners - due diligence - verified the genuineness and identity of the suppliers - the names of those suppliers as registered taxable person were available at the Government portal showing their registrations as valid and existing at the time of transactions - petitioners - limitation -ascertaining the validity and genuineness of the suppliers - done whatever possible - were already available with the Government record.

Sanchita Kundu vs The Assistant Commissioner of State Tax, Bureau of Investigation, South Bengal

W.P.A. 7231 of 2022 and W.P.A. 7232 of 2022
dated 05.05.2022 (Calcutta High Court)

- Petitioners further submit that they have **paid the amount** of purchases in question as well as **tax** on the same not in cash and all transactions were **through banks** and **petitioners are helpless** if at some point of time after the transactions were over, if the respondents concerned finds on enquiries that the aforesaid suppliers (RTP) were fake and bogus and on this basis petitioners could not be penalised unless the department/respondents establish with concrete materials that the transactions in question **were the outcome of any collusion between the petitioners/purchasers** and the suppliers in question.
- Petitioners further submit that all the purchasers in question invoices-wise **were available on the GST portal in form GSTR-2A which are matters of record.**

Sanchita Kundu vs The Assistant Commissioner of State Tax, Bureau of Investigation, South Bengal

W.P.A. 7231 of 2022 and W.P.A. 7232 of 2022
dated 05.05.2022 (Calcutta High Court)

- The Calcutta High Court bench of Justice Md. Nizamuddin has held that ***the Input Tax Credit (ITC) cannot be denied on genuine transactions with suppliers whose GST registration was cancelled after the transaction.***

LGW Industries Limited vs Union of India
WPA No.23512 of 2019
dated 13.12.2021 (Calcutta High Court)

- Notices issued by the respondents concerned for not allowing the petitioners, who are the purchasers of the goods in question and refusing to grant the benefit of input tax credit (ITC) on purchase from the non-existent suppliers and also asking the petitioners to pay penalty and interest under relevant provisions of GST Act.
- Disallowance of input tax credit on the ground that the purchases made by petitioners are from **non-existing suppliers** and the **bank accounts** opened by those suppliers are **on the basis of fake documents** and that the petitioners have **not verified the genuineness and identity of the suppliers** before entering into transaction with those suppliers.

LGW Industries Limited vs Union of India
WPA No.23512 of 2019
dated 13.12.2021 (Calcutta High Court)

- Further grounds of denying the input tax credit benefit to the petitioners are that the registration of suppliers in question have been cancelled with retrospective effect covering the transactions period in question.
- Case remanded to the Authority concerned with direction if it is found that all purchases and transactions in question are genuine and supported by valid documents and transaction in question were made before the cancellation of Registration of those suppliers, the assessee shall be given the benefit of ITC in the question.

Daesung Electric India Pvt Ltd vs Commercial Tax officer, Tiruttani
W.P.Nos.1814 to 1820 of 2017 and WMP Nos.1801 to 1807 of 2017
dated 13.02.2017 (Madras High Court)

- Petitioner challenged the reversal of ITC which was reversed because of cancellation of registration certificate of seller.
- A perusal of details shows that in some cases, the effective date of cancellation of registration certificate, precedes the date of the invoice, while in other cases, the effective date follows the date of the invoice.

Daesung Electric India Pvt Ltd vs Commercial Tax officer, Tiruttani
W.P.Nos.1814 to 1820 of 2017 and WMP Nos.1801 to 1807 of 2017
dated 13.02.2017 (Madras High Court)

- Quite clearly, if, the effective date of cancellation of registration certificate follows the date of invoice, then, the fact the registration certificate was valid on the date, when, the transaction took place, is an aspect, which attains criticality.
- The petitioner's transaction cannot be impacted by subsequent cancellation of registration.
- In such like cases, therefore, logically, the petitioner should be able to claim ITC, on such transactions.



D.Y. Beathel Enterprises vs State Tax Officer (Data Cell), Tirunelveli

HIGH COURT OF MADRAS

W.P.(MD)NOS. 2127, 2117, 2121, 2152, 2159, 2160, 2168, 2177,
2500, 2530, 2532, 2534, 2538, 2539, 2540, 2503 & 2504 OF 2021

W.M.P. (MD) NOS. 1781 & 1791 OF 2021 & OTHER

24-FEBRUARY-2021

Facts of the Case

- Recovery of input tax credit for non-payment of GST by seller.
- Validity of recovery from petitioner-buyer in the absence of similar recovery action against the seller.
- Challenge to automatic reversal of input tax credit from the buyer on non-payment of tax by the seller.

Madras High Court Held:

- The respondent does not appear to have taken any recovery action against the seller on the present transactions.
- When the seller has collected tax from the purchasing dealers, the omission on the part of the seller to remit the tax in question must have been viewed seriously and strict action ought to have been initiated against the seller - in enquiry in question, the seller ought to have been examined and this is all the more necessary, because the respondent has alleged that the petitioners have not even received the goods and had availed input tax credits on the strength of generated invoices.

Madras High Court Held:

- the impugned orders suffers from fundamental flaws of non-examination of seller in the enquiry and non-initiation of recovery action against seller in the first place.
- The impugned orders are quashed and the matters are remitted back to the file of the respondent.

Surana Industries Ltd vs State of Karnataka - Karnataka
Appellate Tribunal, Bangalore

Sales Tax Appeal No. 2680 to 2687 of 2012 Dated: 27-Sep-2017

The onus to prove genuineness of the transaction lies on the Person claiming ITC. If the claim is not substantiated with any document or if any document is found missing then Department has the right to disallow ITC.

In my View:

As the Department is rejecting ITC claims due to Bogus or Fake ITC, it is recommended to keep all necessary documentary evidence ready while availing ITC. There should be monthly reconciliation of ITC with documents so that if something is missing that can be collected timely.

8. Ineligible ITC availed in respect of invoices / debit notes issued by the suppliers who have not filed their GSTR-3B returns for the relevant tax period.
- FORM GSTR-2A of the registered person contains the details of “GSTR-3B filing status” of the supplier in respect of each invoice / debit note received by the registered person.
 - Where the said status is “No”, it indicates the supplier has furnished invoice details in his FORM GSTR-1, but has not furnished the return in FORM GSTR-3B for the corresponding tax period.

ITC claim where the supplier has not furnished Form GSTR-3B

Details to be checked

- Form GSTR-2A provides the GSTR-3B filing status of the supplier in respect of each invoice/debit note received by the registered person.
- The 'No' status indicates the supplier has furnished invoice details in his Form GSTR-1 but has not furnished Form GSTR-3B for the corresponding tax period.

Conclusion by Department

- The availment of ITC in respect of such invoices/debit notes may be checked as it is not allowed.
- On the basis of case discussed earlier the matter could be litigated.

Cases of ITC not paid by Supplier



Quest Merchandising India Pvt. Ltd. vs Govt. of NCT of Delhi
W.P. (C) 6093 of 2017
dated 26.10.2017 (Delhi High Court)

- The concerned provision (DVAT) to not include a buyer who has bona fide entered into the purchase transactions with validly registered dealers who have issued the tax invoices against the transaction.

Arise India Limited vs Govt. of NCT of Delhi
W.P. (C) 2016 of 2015
dated 26.10.2017 (Delhi High Court)

- In the event that the selling dealer has failed to deposit the tax collected by him from the purchasing dealer, the remedy for the Department would be to proceed against the defaulting selling dealer to recover such tax and not deny the purchasing dealer the ITC.
- Where, however, the Department is able to come across material to show that the purchasing dealer and the selling dealer acted in collusion then the Department can proceed under Section 40A of the DVAT Act.

Sri Vinayaga Agencies v. Assistant Commissioner,
W.P. Nos. 2036 to 2038 of 2013,
dated 29.01.2013 (Madras High Court)

- Law does not empower the tax authorities to reverse the ITC availed, on a plea that the selling dealer has not deposited the tax. It can revoke the input credit only if it relates to the incorrect, incomplete or improper claim of such credit.

Gheru Lal Bal Chand v. State of Haryana
Civil Writ Petition No.6573 of 2007
dated 23.09.2011 (P&H High Court)

- The law need to distinguish between honest and dishonest dealers.
- Law cannot put such onerous responsibility on the assessee otherwise, it would be difficult to hold the law to be valid on the touchstone of Articles 14 and 19 of the Constitution of India.
- In the absence of any malafide intention, connivance or wrongful association of the assessee with the selling dealer or any dealer earlier thereto, no liability can be imposed on the principle of vicarious liability.
- Taxpayer cannot be forced to substantiate its truthfulness by running from pillar to post to collect the material for its authenticity.

Sri Ranganathar Valves P L vs Assistant Commissioner, Coimbatore
Writ Petition No. 4126 to 4129 of 2016
dated 04.09.2020 (Madras High Court)

- Disallowance of ITC on the ground that selling dealer from whom the petitioner had purchased the goods had not paid tax to the Government.
- Input Tax Credit cannot be disallowed on the ground that the seller has not paid tax to the Government, when the purchaser is able to prove that the seller has collected tax and issued invoices to the purchaser.

9. Whether GSTR-3B of a tax period is filed after the last date of availment of ITC in respect of any invoice / debit note as per section 16(4). In such cases, no ITC shall be availed in the return.
- It may also be noted that vide proviso to sub-section (4) of section 16, for FY 2017-18, availment of ITC was allowed beyond the due date of furnishing of return for the month of September, 2018 till the due date of furnishing of the return in FORM GSTR-3B for the month of March, 2019 subject to the condition that the details of the said invoices / debit notes should have been furnished by the suppliers in their FORM GSTR-1 till the due date of furnishing of FORM GSTR-1 for the month of March, 2019.

ITC availed beyond time limit prescribed under Section 16(4)

Details to be checked

- ITC claimed after the statutory time limit shall be disallowed and therefore to be disallowed.

Conclusion by Department

- In respect of FY 2017-18, the due date of claiming ITC was extended up to the due date of furnishing return for the March 2019.

10. ITC availed in respect of “Import of goods” in Table 4(A)(1) of FORM GSTR-3B may be verified with corresponding details in Table 10 and Table 11 of FORM GSTR-2A

- Wherever required, the details of such imports may also be cross-verified from ICEGATE portal.

ITC on import of goods (GSTR 3B with GSTR 2A)

Details to be checked

- The details of ITC availed in respect of 'import of goods' as furnished in Form GSTR- 3B would be verified with details in Form GSTR-2A

Conclusion by Department

11. Whether the registered person has made reversals of ITC in accordance with provisions of rule 42 and rule 43 of the CGST Rules.

- Rule 42 of the CGST Rules provides for manner of determination of input tax credit in respect of inputs or input services and reversal thereof.
- Rule 43 provides for manner of determination of input tax credit in respect of capital goods and reversal thereof in certain cases. The registered person avails ITC in table 4(A) of FORM GSTR-3B and reverses in Table 4(B). It may be verified whether requisite reversals have actually been made by the said registered person.

Reversal of ITC under Rule 42 and Rule 43

Details to be checked

- The proper officer would verify whether requisite ITC reversals have actually been made in Form GSTR-3

Conclusion by Department

- Rule 42 of the CGST Rules provides the manner of determining the reversal of ITC in respect of inputs or input services and Rule 43 provides for the manner of determination of ITC reversal in respect of capital goods.

12. Whether the registered person has paid interest liability in terms of section 50

- As per section 50 of the CGST Act a registered person is required to pay interest on delayed payment of tax. It may be verified whether interest payable as per the provisions of section 50 of the CGST Act has actually been paid by the registered person.

13. Whether the registered person has paid late fee in terms of section 47 in respect of returns/ statements.

- As per section 47 of the CGST Act a registered person is required to pay late fee for delayed filing of returns / statements under the Act. It may be verified whether late fee payable as per the provisions of section 47 of the CGST Act has actually been paid by the registered person.

Interest and Late Fee

Details to be checked

- The proper officer would verify that the registered person has paid the interest liability on late payment of tax, on excess claim of ITC, etc. as per Section 50 of the CGST Act.
- The payment in respect of late fee for late filing of the returns would also be verified by the proper officer.

Conclusion by Department

- Retrospective amendment for Interest on Net Tax Liability not Gross Tax Liability.

What Department wants?

- The SOP issued by the CBIC suggests that the tax authorities would primarily check the differences arising out of the details furnished by the registered persons with those furnished by the other stakeholders such as its suppliers, TDS/TCS deductor, etc.

Claim of ITC on account of IGST paid on import of goods vis-a-vis actual IGST paid while import of goods

Details to be checked

- Those import transactions may be made by air under air way bills, import of goods from SEZ or import by ocean mode of transport as the case may be.

Conclusion by Department

- In initial phase of the GST system many importers have not reported their GSTIN in bill of entries, therefor information of IGST paid on such import might had not been transmitted to GSTN.

Claim of ITC on account of IGST paid on import of goods vis-a-vis actual IGST paid while import of goods

Details to be checked

- Those import transactions may be made by air under air way bills, import of goods from SEZ or import by ocean mode of transport as the case may be.

Action by Taxpayer

- Submit the list of all bill of entries of which ITC on import of goods was claimed in GSTR-3B.
- Match it with details of bill of entries appearing in Part D of GSTR-2A / 2B of the corresponding period.
- For mismatch verify those bill of entries on ICEGATE portal.

Mis-match of ITC claim on account of IGST paid on import of goods pertains to import by courier

Details to be checked

- Some courier companies are allowed as an authorized importer specially in Air mode.
- The duty, where leviable is paid by the courier company on behalf of importers before taking delivery of the parcels.

Conclusion by Department

- IGST paid on import of goods pertains to import by courier of which data is not available on ICEGATE portal.

Mis-match of ITC claim on account of IGST paid on import of goods pertains to import by courier

Details to be checked

- Some courier companies are allowed as an authorized importer specially in Air mode.
- The duty, where leviable is paid by the courier company on behalf of importers before taking delivery of the parcels.

Action by Taxpayer

- Submit the details namely, airway bill or any other document stating details of transport by air, courier bill of entry evidencing payment of IGST, assessment note containing the details of imported goods, courier note, certificate of authorized courier importer, etc. may be accepted if found proper.

Interest Monthly or Annually?

Issue

- As a policy of financial year based return scrutiny what will be the date from which interest is to be calculated?

Remark

- The interest under GST is required to be calculated according to return period taking into consideration the due date for making payment under GSTR- 3B of the concerned return period.
- The liability on account of mismatches of the transaction covered in the particular return period shall be considered as the liability of that return period for this purpose.

In some cases, the ITC claim of GSTR-3B vis a vis GSTR-2A the ITC claims appears to be in excess of available.

Issue

- Whereas, while filing of GSTR-9 (annual return) taxpayer had reconciled the differences in Table-8 of GSTR-9.

Remark

- “Any other ITC availed but not specified above” as well as ITC claimed in subsequent financial year in Column 8C of GSTR-9 should also be considered for reconciliation.

Current Reconciliation Statements

GSTR 3B vs GSTR 2A for ITC purposes

GSTR 3B vs GSTR 1 for matching the outward supply details

Recommended Reconciliation Statements

Reverse Charge from registered persons

- Transactions of RCM appearing in GSTR 2A should be mapped with the RCM tax liability paid through GSTR 3B

ITC on Reverse charge Transactions

- Liability paid under reverse charge is to be mapped with the ITC claimed on reverse charge

Taxable value appearing in GSTR 2A for TDS purposes

- Value of taxable supply in GSTR 3B would be required to be reconciled with taxable value in GSTR 2A

Value of tax liability declared in e-way bills

- GSTR 3B to be reconciled with details reported for e-way bill purposes

CBIC have prescribed the monetary limits within for issuance of Show Cause Notices as per Circular No. 31/05/2018-GST, dated 09-Feb-2018 which is as follows

Particulars	Superintendent	AC/DC	ADC/JC
Amount of CGST (including Cess) involved in a case	Demand <= Rs. 10 Lakhs	Rs. 10 Lakhs < Demand <= Rs. 1 Crore	Demand > Rs. 1 Crore
Amount of ICGST (including Cess) involved in a case	Demand <= Rs. 20 Lakhs	Rs. 20 Lakhs < Demand <= Rs. 2 Crore	Demand > Rs. 2 Crore
Amount of ICGST and CGST (including Cess) involved in a case	Demand <= Rs. 20 Lakhs	Rs. 20 Lakhs < Demand <= Rs. 2 Crore	Demand > Rs. 2 Crore

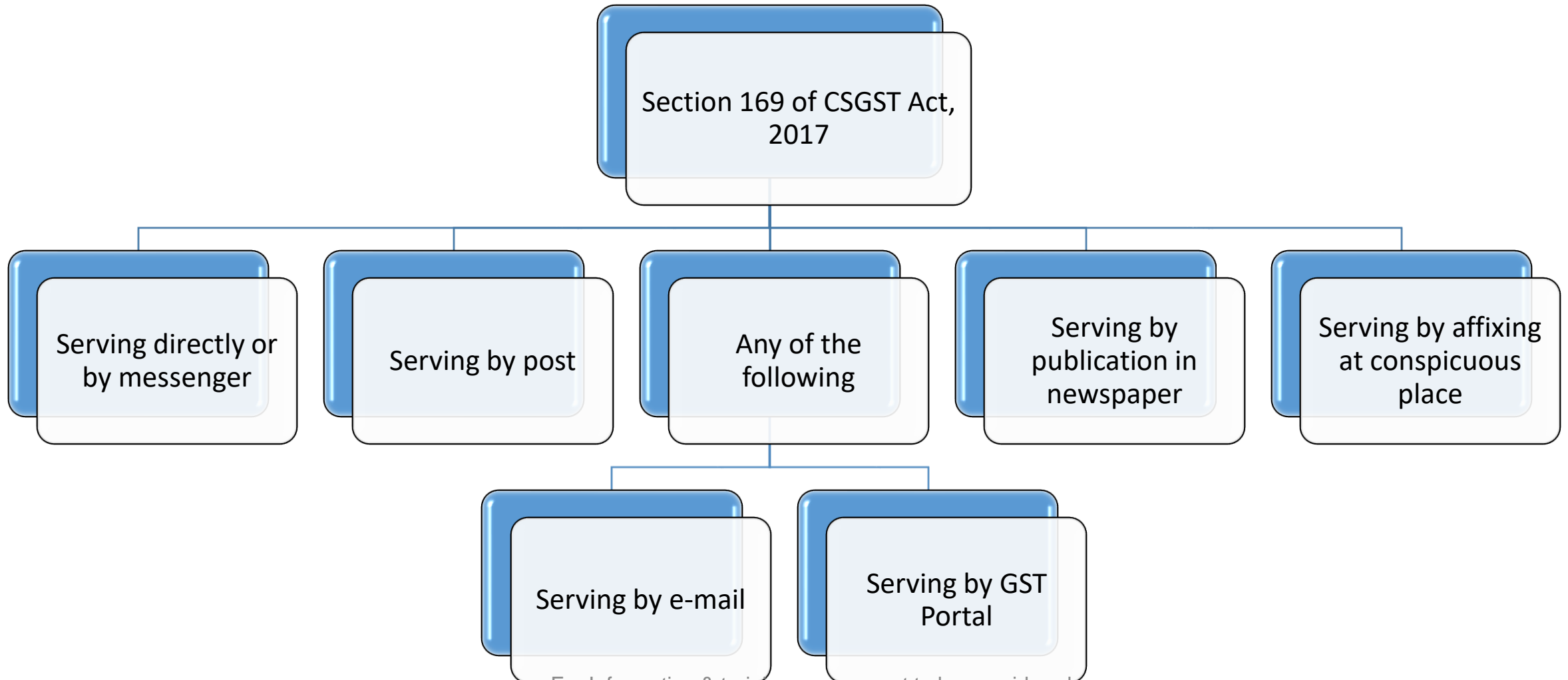
GENERAL DISCIPLINES RELATING TO DETERMINATION OF TAX

1. Opportunity of personal hearing shall be given to the taxpayer.
2. Adjournment maximum 3 times to each party.
3. Amount demanded in order must not exceed the amount mentioned in SCN
4. Interest is payable whether or not determined in the Order.
5. Officer issuing Order must be different from him who issued Audit Report.

GENERAL DISCIPLINES RELATING TO DETERMINATION OF TAX

6. Adjudication proceedings deemed to be concluded if not decided within stipulated time period.
7. Where the service of notice is stayed by an order of a Court or Appellate Tribunal, the period of such stay shall be excluded.
8. Order passed by the Proper Officer shall be a Speaking Order.
9. The Interest shall create automatic charge whether or not specified in the order determining the tax liability.
10. Direct recovery proceedings U/s 79 shall be initiated for any pending self-assessed tax liability along with interest in accordance with the returns furnished either GSTR-1 or GSTR-3B.

Service of Notice in certain circumstances



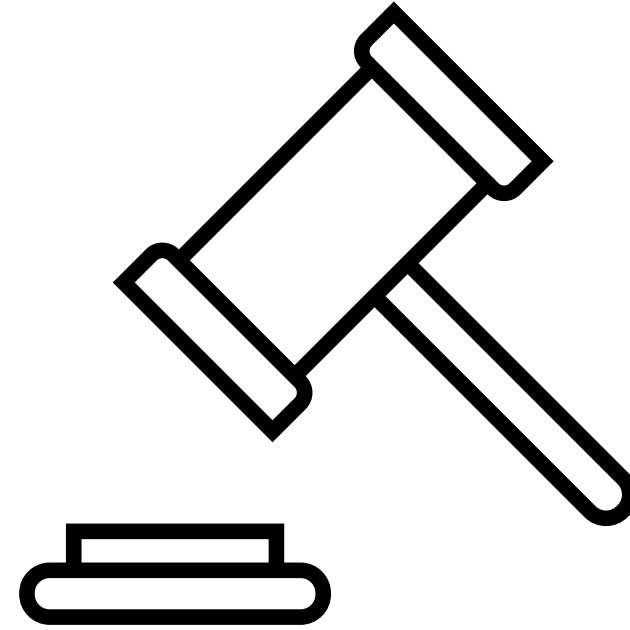


GST Appeals

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For Information & training purpose not to be

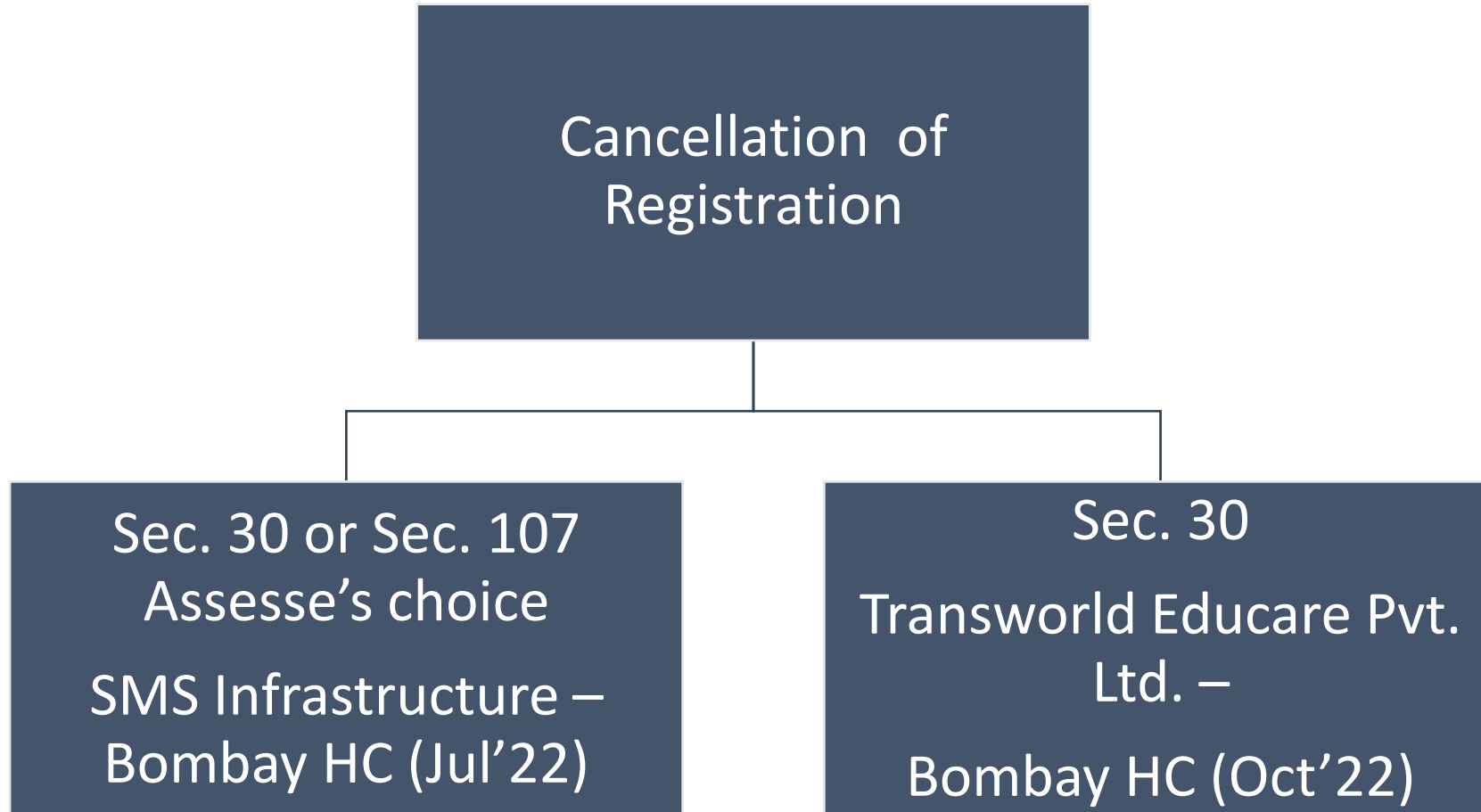


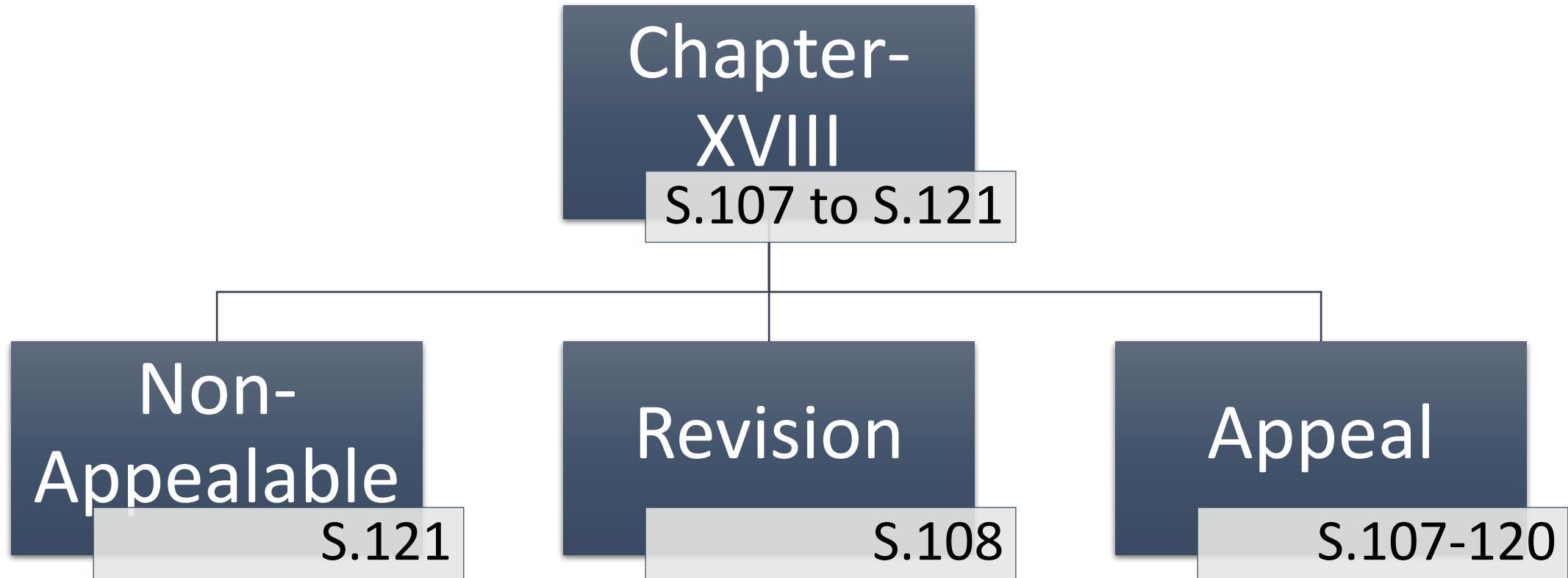
Appeals & Revision

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Sec. 30 vs Sec. 107





TSIP – Sec. 121



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Section 121 Non appealable decisions and orders

No appeals can be filed against following orders -

Where order/direction given by commissioner or other authority to **transfer the proceedings** from one officer to another officer

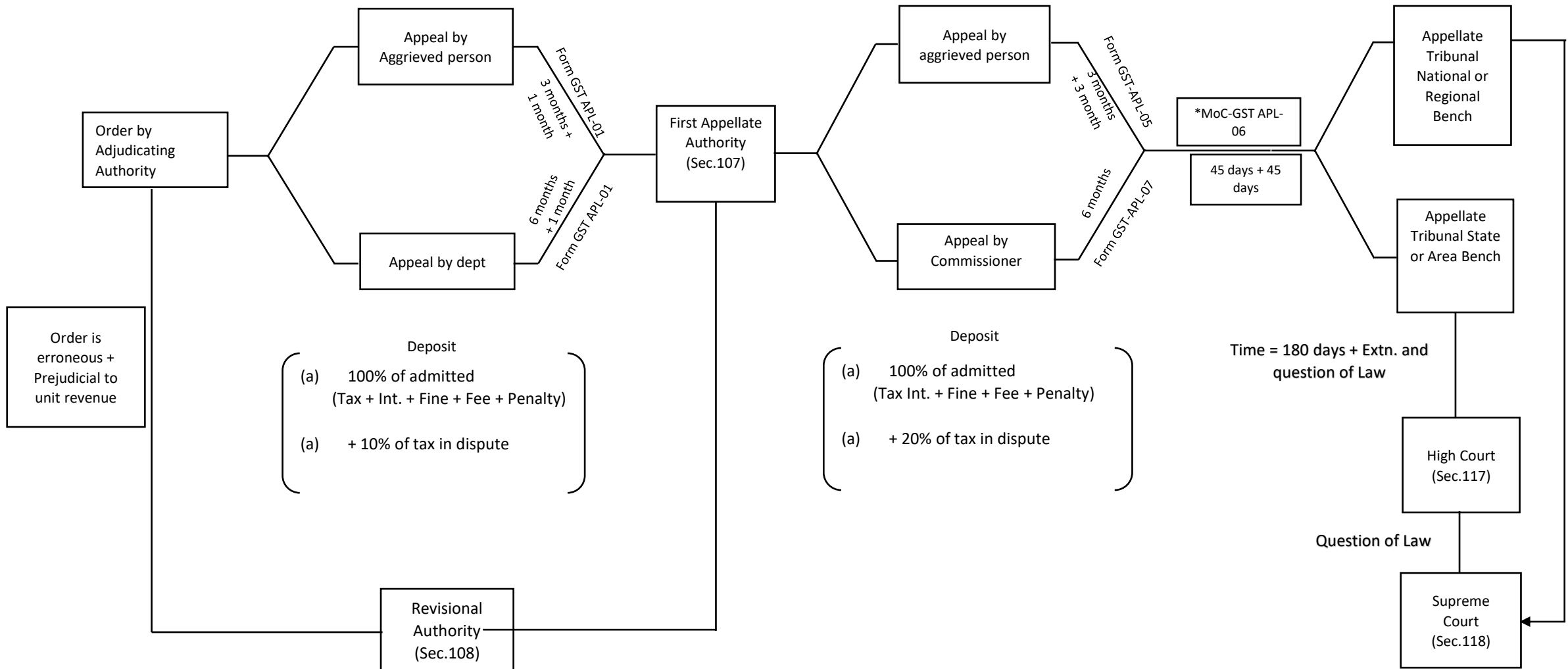
Where order has been given for **seizure or retention** of **books of accounts, register and other documents** (S.67(2))

In case order of **prosecution** under this Act (S.132(6))

In case of order passed u/s 80 where amount paid in **instalment** (S.80)

	Appeals	Revision
Assessee	✓	✗
Department	✓	✓

SUMMARY OF APPELLATE PROVISIONS



***Memorandum of Cross Objections**

For Information & training purpose not to be considered as Professional Advice from us.

APPELLATE HIERARCHY IN GST

Stage	Appeal to be filed before	Against order of	Who can file appeal	Section	Rules	Form
First	Appellate Authority	Adjudicating Authority	1. Any aggrieved person 2. Commissioner	107	108 To 109,109A, 112	GST APL-01 & GST APL- 03
Second	Appellate Tribunal	1. Appellate Authority 2. Revisional Authority	1. Any aggrieved person 2. Commissioner	109 To 113	110 To 111	GST APL-05 GST APL-07
Third	High court	1. State Bench or Area Bench of Appellate Tribunal	1. Any aggrieved person	117	114	GST APL-08
Fourth	Supreme Court	1. National Bench or Regional Benches of Appellate Tribunal 2. High Court	1. Any aggrieved person	118	-	-

GST APL-01

- Appeal to Appellate Authority

GST APL-02

- Acknowledgement of submission of appeal

GST APL-03

- Application to the Appellate Authority under sub-section (2) of Section 107

GST APL-04

- Summary of the demand after issue of order by the Appellate Authority, Tribunal or Court

GST APL-05

- Appeal to the Appellate Tribunal

GST APL-06

- Cross-objections before the Appellate Authority / Appellate Tribunal

GST APL-07

- Application to the Appellate Tribunal under sub section (3) of Section 112

GST APL-08

- Appeal to the High Court under section 117

Section 107. Appeals to Appellate Authority.

SS (1)

Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person.

Section 107. Appeals to Appellate Authority.

SS (2)

The Commissioner may, on his own motion, or upon request from the Commissioner of State tax or the Commissioner of Union territory tax, call for and examine the record of any proceedings in which an adjudicating authority has passed any decision or order under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, for the purpose of satisfying himself as to the legality or propriety of the said decision or order and may, by order, direct any officer subordinate to him to apply to the Appellate Authority within six months from the date of communication of the said decision or order for the determination of such points arising out of the said decision or order as may be specified by the Commissioner in his order.

Section 107. Appeals to Appellate Authority.

SS (3)

Where, in pursuance of an order under sub-section (2), the authorised officer makes an application to the Appellate Authority, such application shall be dealt with by the Appellate Authority as if it were an appeal made against the decision or order of the adjudicating authority and such authorised officer were an appellant and the provisions of this Act relating to appeals shall apply to such application.

Section 107. Appeals to Appellate Authority.

SS (4)

The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months, as the case may be, allow it to be presented within a further period of one month.

Section 107. Appeals to Appellate Authority.

SS (5)

Every appeal under this section shall be in such form and shall be verified in such manner as may be prescribed.

Section 107. Appeals to Appellate Authority.

SS (6)

No appeal shall be filed under sub-section (1), unless the appellant has paid-

- a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and
- b) a sum equal to ten per cent. of the remaining amount of tax in dispute arising from the said order, 1[subject to a maximum of twenty-five crore rupees], in relation to which the appeal has been filed.

2[Provided that no appeal shall be filed against an order under sub-section (3) of section 129, unless a sum equal to twenty-five per cent. of the penalty has been paid by the appellant.]

Section 107. Appeals to Appellate Authority.

SS (7)

Where the appellant has paid the amount under sub-section (6), the recovery proceedings for the balance amount shall be deemed to be stayed.

Section 107. Appeals to Appellate Authority. SS (8)

The Appellate Authority shall give an opportunity to the appellant of being heard.

Section 107. Appeals to Appellate Authority.

SS (9)

The Appellate Authority may, if sufficient cause is shown at any stage of hearing of an appeal, grant time to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.

Section 107. Appeals to Appellate Authority.

SS (10)

The Appellate Authority may, at the time of hearing of an appeal, allow an appellant to add any ground of appeal not specified in the grounds of appeal, if it is satisfied that the omission of that ground from the grounds of appeal was not wilful or unreasonable.

Section 107. Appeals to Appellate Authority.

SS (11)

The Appellate Authority shall, after making such further inquiry as may be necessary, pass such order, as it thinks just and proper, confirming, modifying or annulling the decision or order appealed against but shall not refer the case back to the adjudicating authority that passed the said decision or order:

Provided that an order enhancing any fee or penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund or input tax credit shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order:

Provided further that where the Appellate Authority is of the opinion that any tax has not been paid or short-paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised, no order requiring the appellant to pay such tax or input tax credit shall be passed unless the appellant is given notice to show cause against the proposed order and the order is passed within the time limit specified under section 73 or section 74.

Section 107. Appeals to Appellate Authority. SS (12)

The order of the Appellate Authority disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for such decision.

Section 107. Appeals to Appellate Authority.

SS (13)

The Appellate Authority shall, where it is possible to do so, hear and decide every appeal within a period of one year from the date on which it is filed:

Provided that where the issuance of order is stayed by an order of a court or Tribunal, the period of such stay shall be excluded in computing the period of one year.

Section 107. Appeals to Appellate Authority.

SS (14)

On disposal of the appeal, the Appellate Authority shall communicate the order passed by it to the appellant, respondent and to the adjudicating authority.

Section 107. Appeals to Appellate Authority.

SS (15)

A copy of the order passed by the Appellate Authority shall also be sent to the jurisdictional Commissioner or the authority designated by him in this behalf and the jurisdictional Commissioner of State tax or Commissioner of Union Territory Tax or an authority designated by him in this behalf.

Section 107. Appeals to Appellate Authority.

SS (16)

Every order passed under this section shall, subject to the provisions of section 108 or section 113 or section 117 or section 118 be final and binding on the parties.

Rule 108. Appeal to the Appellate Authority.- SS(1)

An appeal to the Appellate Authority under sub-section (1) of section 107 shall be filed in FORM GST APL-01, along with the relevant documents, either electronically or otherwise as may be notified by the Commissioner, and a provisional acknowledgement shall be issued to the appellant immediately.

Rule 108. Appeal to the Appellate Authority.- SS(2)

The grounds of appeal and the form of verification as contained in FORM GST APL-01 shall be signed in the manner specified in rule 26.

Rule 108. Appeal to the Appellate Authority.- SS(3)

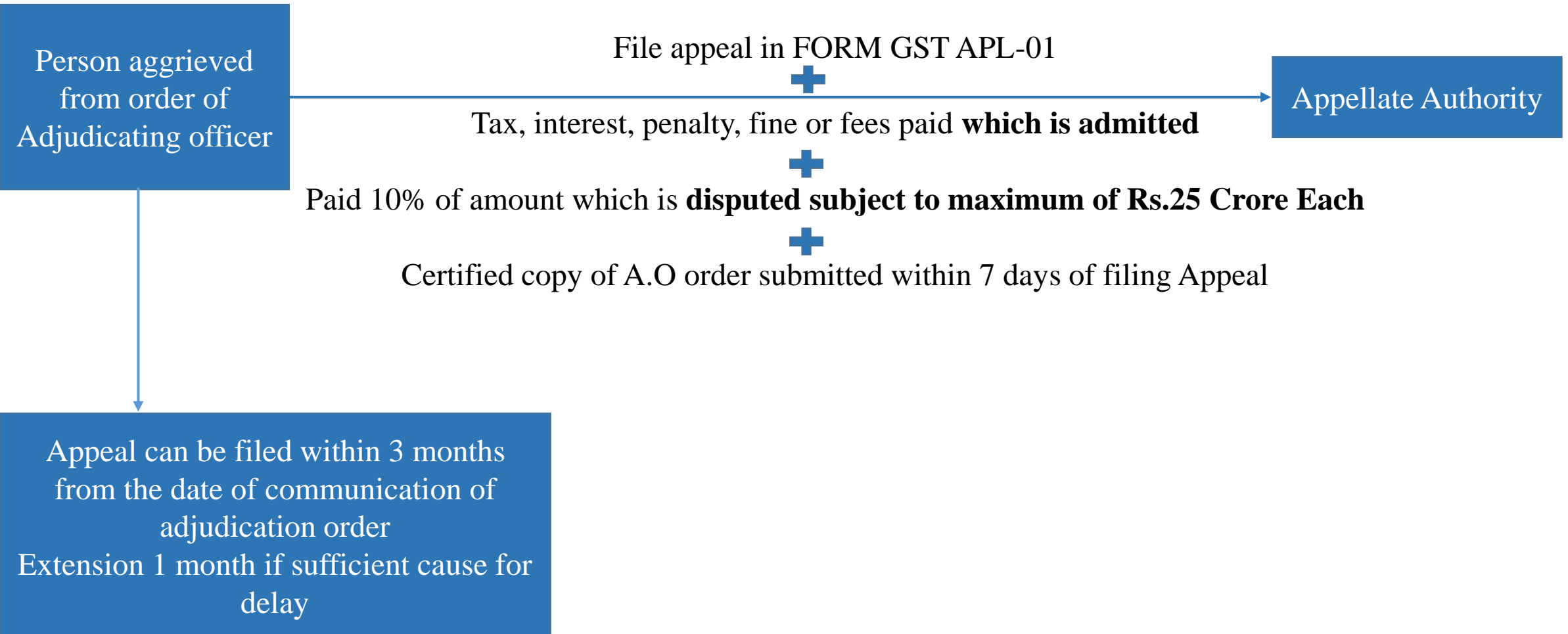
A certified copy of the decision or order appealed against shall be submitted within seven days of filing the appeal under sub-rule (1) and a final acknowledgement, indicating appeal number shall be issued thereafter in FORM GST APL-02 by the Appellate Authority or an officer authorised by him in this behalf:

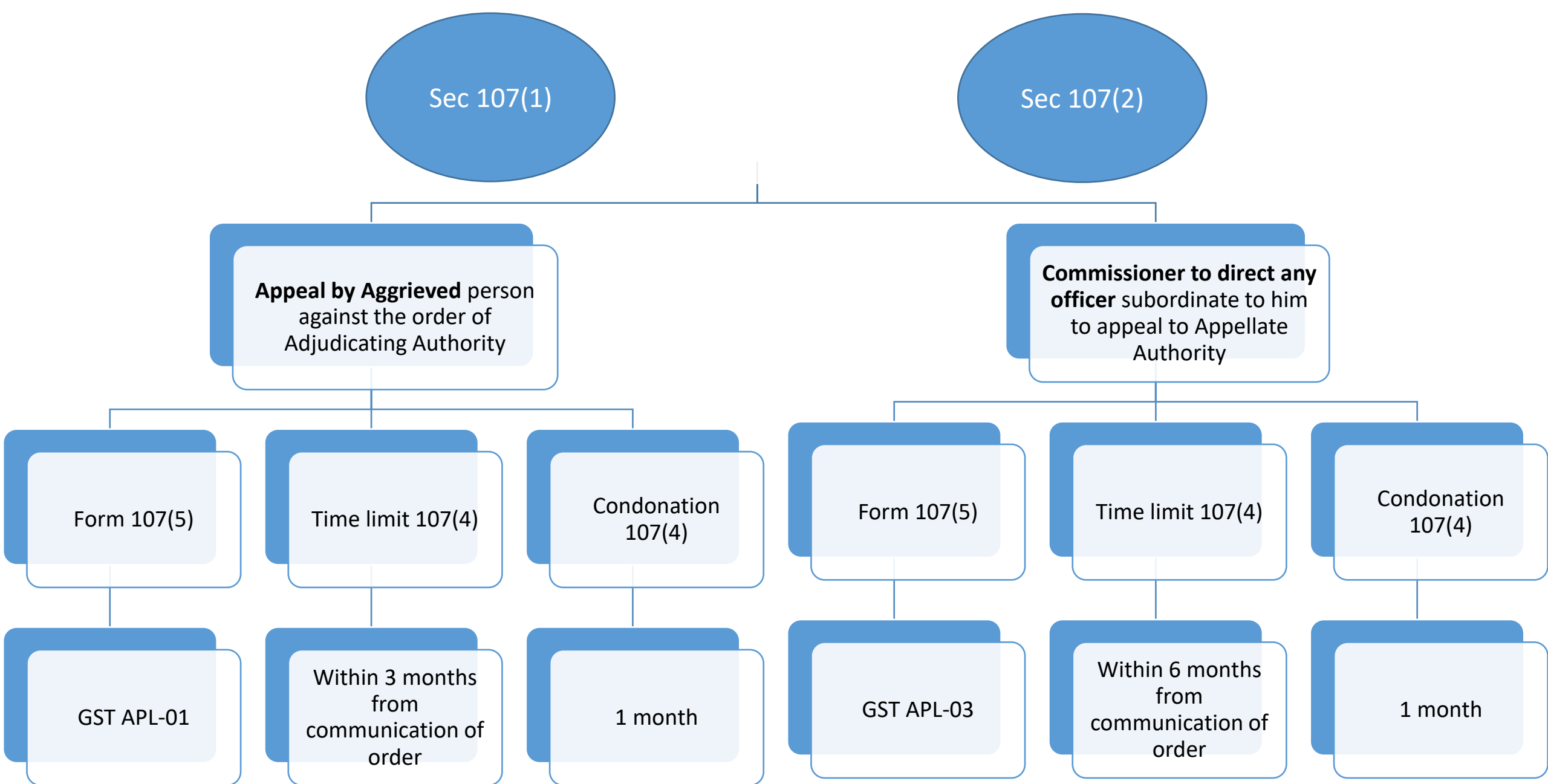
Provided that where the certified copy of the decision or order is submitted within seven days from the date of filing the FORM GST APL-01 , the date of filing of the appeal shall be the date of the issue of the provisional acknowledgement and where the said copy is submitted after seven days, the date of filing of the appeal shall be the date of the submission of such copy.

Explanation. -For the provisions of this rule, the appeal shall be treated as filed only when the final acknowledgement, indicating the appeal number, is issued.

Section 107 Appeals to Appellate Authority

Situation when appeal filed by aggrieved person





Upon Issuance of
Adjudication
Order

First Appellate Authority

- u/s 107 of CGST Act
- Read with Rule 108,109 and 112
- Within 3+1 months from date of communication



Appeal to Tribunal

- u/s 112 of CGST Act.
- Read with Rule 110,111 and 112
- Within 3+3 months from date of communication



Appeal to High Court

- Read with Rule 114
- u/s 117 of CGST Act
- Within 180 days+ as may be allowed by high court



Appeal to Supreme Court

- u/s 118 of CGST Act
- Read with Rule 115
- Within 60 days from date of communication

A decorative background on the left side of the slide. It features several dark grey paper airplanes scattered across a dark grey surface. One yellow paper airplane is positioned in the center, with two horizontal white lines extending from its tail towards the left, suggesting a path or trajectory.

First Appeal against Adjudication Order

- A person who is aggrieved by a decision or order passed against him by an adjudicating authority, can file an appeal to the Appellate Authority.

1st Appeal: Time Limit

Time Limit

- The time limit for the party to file an appeal before the AA is 3 months from the date of communication of the impugned order.

Condonation

- But the AA may condone a delay of up to one month.

1st Appeal: Forms



Whether entire amount of tax, interest, penalty, fine or fee has to be remitted before preferring appeal?

**Demands
which are
not
contested**

- Entire amount of such demands (tax, interest and penalty) shall have to be remitted.

**Demands
which are
contested**

- A sum equal to 10% of the remaining amount of tax in dispute arising from the said order shall have to be remitted.

Pre-Deposit under CGST

An appeal shall be filed only if the appellant has paid → Full amount of admitted tax dues → Pre-deposit of 10% of disputed dues, subject to a maximum of 25 crores.



Sec 107(3)

Where, in pursuance of an order under sub-section (2), the authorised officer makes an application to the Appellate Authority, such application shall be dealt with by the Appellate Authority as if it were an appeal made against the decision or order of the adjudicating authority and **such authorised officer were an appellant and the provisions of this Act relating to appeals shall apply to such application.**

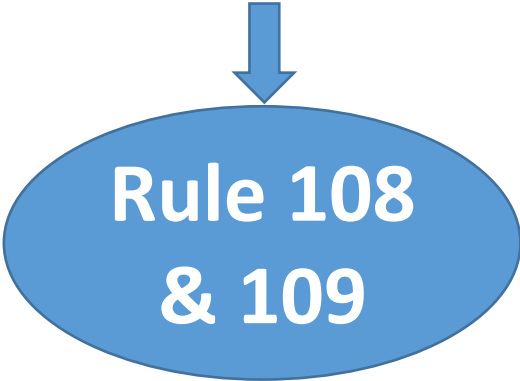
Sec 107(4)

The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of **three months or six months**, as the case may be, allow it to be presented **within a further period of one month.**

Sec 107(5)

Every appeal under this section shall be in such **form** and shall be verified in such **manner as may be prescribed**

Sec 107(6) Pre Deposit –Mandatory



Rule 108
& 109

No appeal shall be filed under sub-section (1), unless the appellant has paid—

- (a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and
- (b) a sum equal to ten percent of the remaining amount of tax in dispute arising from the said order, [subject to a maximum of twenty-five crore rupees,] in relation to which the appeal has been filed:

Amendment of section 107

10 Appeals to Appellate Authority.

BUDGETARY
PROPOSAL

Section 107(6):- No appeal shall be filed under sub-section (1), unless the appellant has paid-

- (a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and
- (b) a sum equal to ten per cent. of the remaining amount of tax in dispute arising from the said order 1 [subject to a maximum of twenty five crore rupees], in relation to which the appeal has been filed.

“Provided that no appeal shall be filed against an order under sub-section (3) of section 129, unless a sum equal to twenty-five per cent. of the penalty has been paid by the appellant.”.

Analysis

- Appeal against order of detention and seizure of goods in transit can now be made only after making pre deposit of 25% of penalty as levied under Section 129(3).
- This is in lieu of deposit of 10% of tax amount .
- This will lead to blockage of working capital.

Sun mac Enterprises Vs. The Commissioner of Central Excise (Madras High Court)

- Inability to pay Pre- Deposit can't be ground to entertain a Writ Jurisdiction
- Appeal Number : Writ Petition No. 285 of 2018 & WMP. No. 340 of 2018
- Date of Judgement/Order : 09/01/2018

Conditions for Admissibility of Writ Petition 2021 (9) TMI 480 – Supreme Court in the Assistant Commissioner of State Tax And Others Versus M/S Commercial Steel Limited

The existence of an alternate remedy is **not an absolute bar** to the maintainability of a writ petition under Article 226 of the Constitution.

But writ petition can be entertained in exceptional circumstances where there is:

- i. A breach of fundamental rights;
- ii. A violation of the principles of natural justice;
- iii. An excess of jurisdiction; or
- iv. iv. A challenge to the vires of the statute or delegated legislation.

As there was **no violation of the principles of natural justice** since a notice was served on the person in charge of the conveyance. In this backdrop, it was not appropriate for the High Court **to entertain a writ petition.**

Once appeal is accepted what about payment of balance amounts demanded? Would that be considered as demand stayed?

- Yes, as per Section 107(7)
- where the appellant has paid the required pre-deposit,
- the recovery proceedings for the balance amount shall be deemed to be stayed.

Is it mandatory on the part of Appellate Authority to provide opportunity of hearing?

- As per Section 107(8),
- Appellate Authority shall have to give opportunity of hearing to the appellant.

Whether parties to an appeal could seek adjournment of the hearing?

- As per Section 107(9) the Appellate Authority may, grant adjournment of personal hearing if sufficient cause is shown at any stage of hearing of an appeal.
- However as per Proviso Section 107(9), **no such adjournment shall be granted more than three times to a party** during hearing of the appeal.

Sec 107(10)

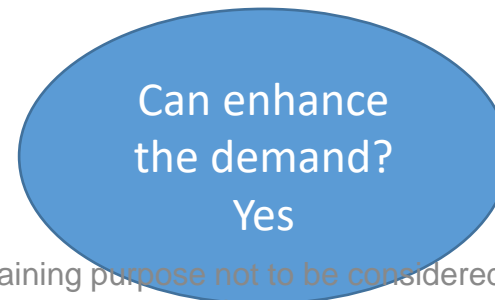
The Appellate Authority may, at the time of hearing of an appeal, allow an appellant to add any ground of appeal not specified in the grounds of appeal, if it is satisfied that the omission of that ground from the grounds of appeal was not wilful or unreasonable.

Sec 107(11)

The Appellate Authority shall, after making such further inquiry as may be necessary, pass such order, as it thinks just and proper, **confirming, modifying or annulling the decision or order appealed against** but shall not refer the case back to the adjudicating authority that passed the said decision or order:



No fresh
Adjudication



Can enhance
the demand?
Yes

Provided that an order enhancing any fee or penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund or input tax credit shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order:

Provided further that where the Appellate Authority is of the opinion that any tax has not been paid or short-paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised, no order requiring the appellant to pay such tax or input tax credit shall be passed unless the appellant is given notice to show cause against the proposed order and the order is passed within the time limit specified under section 73 or section 74.

Sec 107(12)

The order of the Appellate Authority disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for such decision.

Sec 107(13)

The Appellate Authority shall, where it is possible to do so, **hear and decide every appeal within a period of one year** from the date on which it is filed: Provided that where the issuance of order is stayed by an order of a court or Tribunal, the period of such stay shall be excluded in computing the period of one year.

Sec 107(14)

On disposal of the appeal, the Appellate Authority shall communicate the order passed by it to the appellant, respondent and to the adjudicating authority.

Sec 107(15)

A copy of the order passed by the Appellate Authority shall also be sent to the jurisdictional Commissioner or the authority designated by him in this behalf and the jurisdictional Commissioner of State tax or Commissioner of Union Territory tax or an authority designated by him in this behalf.

Sec 107(16)

Every order passed under this section shall, **subject to** the provisions of **section 108** or **section 113** or **section 117** or **section 118** be **final and binding** on the parties.

Orders of
Appellate Tribunal

Appeal to HC

Appeal to SC

Powers of Revisional
Authority

Appeal U/s 107 (16)

113

Order of Appellate Tribunal

117

Appeal to High Court

118

Appeal to Supreme Court

Rule 108 Appeal to the Appellate Authority

- (1) An appeal to the Appellate Authority **under sub-section (1) of section 107** shall be filed in **FORM GST APL-01**, along with the relevant documents, either electronically or otherwise as may be notified by the Commissioner, and a provisional acknowledgement shall be issued to the appellant immediately.
- (2) The grounds of appeal and the form of verification as contained in **FORM GST APL-01** shall be signed in the manner specified in rule 26.

(3) A certified copy of the decision or order appealed against shall be submitted **within seven days of filing the appeal under sub-rule (1)** and a final acknowledgement, indicating appeal number shall be issued thereafter in **FORM GST APL-02** by the Appellate Authority or an officer authorised by him in this behalf:

Provided that where the certified copy of the decision or order is **submitted within seven days** from the date of filing the FORM GST APL-01, **the date of filing of the appeal shall be the date of the issue of the provisional acknowledgement** and where the said copy is **submitted after seven days**, the **date of filing of the appeal shall be the date of the submission of such copy.**

Explanation.—For the provisions of this rule, the appeal shall be treated as filed only when the final acknowledgement, indicating the appeal number, is issued.

Rule 109 Appeal to the Appellate Authority

- (1) An application to the Appellate Authority **under sub-section (2) of section 107** shall be made in **FORM GST APL-03**, along with the relevant documents, either electronically or otherwise as may be notified by the Commissioner.
- (2) A certified copy of the decision or order appealed against shall be submitted **within seven days of the filing the application under sub-rule (1)** and an appeal number shall be generated by the Appellate Authority or an officer authorised by him in this behalf.

Appeal by Aggrieved person against the order of Adjudicating Authority

Commissioner to direct any officer subordinate to him to appeal to Appellate Authority

Pre-Deposits

Mandatory Pre Deposit =AA

- a. Full amount of undisputed tax/interest/penalty/fine
- b. 10% of disputed TAX amount
Subject to max 25 Crores (each)
i.e Rs. 50 crores

No Pre Deposits

Appellate Authority (Rule 109A)

Ordered Passed By (N/N 55/2017)

i) Addt. Comm/Joint Comm.

Comm. (Appeal)

ii) Asst.Comm. /D.Comm. or Superintendent

Any officer not below the rank of joint Comm.

AA shall not refer the case back for fresh adjudication.

Rule 110 & 111 deals procedure related with Appeal to the Appellate Tribunal

Rule 112 - Production of Additional Evidence

Additional Evidence means an evidence other than the evidence produced by him during the proceeding before Adjudicating Authority or the Appellate Authority or Appellate Tribunal

The appellant shall not be allowed to produce before the Appellate Authority or the Appellate Tribunal any evidence, whether oral or documentary except in following :-

EXCEPTIONS :

i.e. Cases where Additional Evidence can be produced

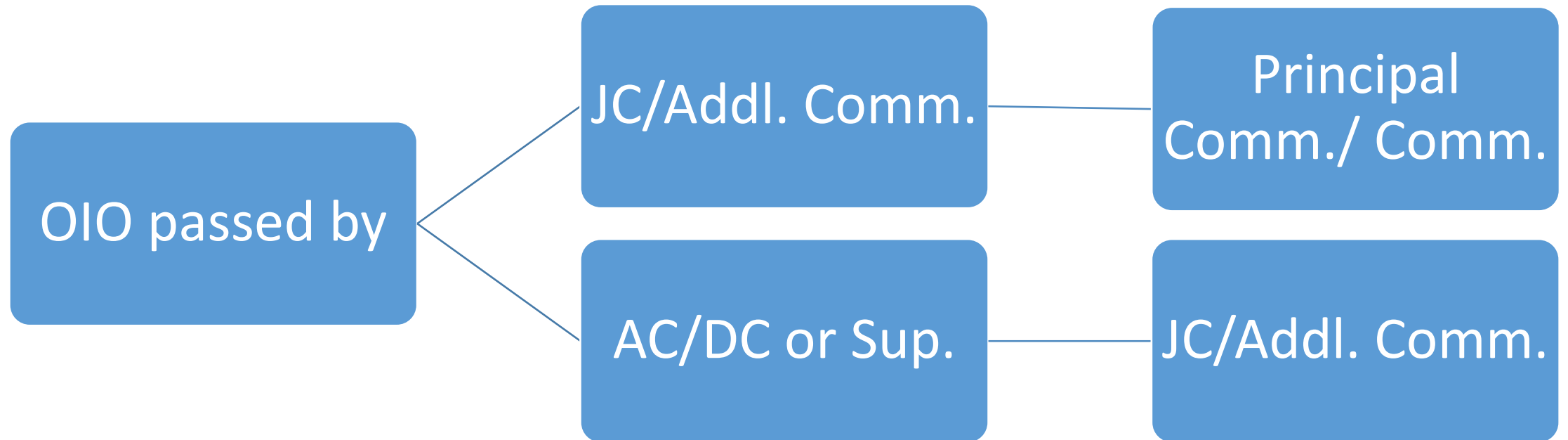
where the adjudicating authority or the Appellate Authority has refused to admit evidence which ought to have been admitted

where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the adjudicating authority or the Appellate Authority

where the appellant was prevented by sufficient cause from producing before the adjudicating authority or the Appellate Authority any evidence which is relevant to any ground of appeal

where the adjudicating authority or the Appellate Authority has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

REVISIONAL AUTHORITY or purposes of Sec 108 [N/N 05/2020 – CT (dated 13-Jan-20)]



RA is Supervising Authority to keep check on OIO passed by GST Officers

OIO is
Erroneous
Pre-Judicial to Revenue
Illegal/Improper/Ignoring
Material Facts



Process of Revision:
a) Operation of “OIO”
stayed
b) Revised – RO passed

What is Revision & Review?

Revision: The act of Examining again in order to remove any defect or grant relief against the irregular or improper exercise or non exercise of jurisdiction.

Review: - Re-examination or re-consideration - An act of looking after something again with a view of correction or improvement.

Revisional Authority

- The Revisional Authority can, on his own, or on request from the Commissioner of SGST/CGST, examine the records of any proceeding. He will examine the records if he considers that any decision by any subordinate officer is-
 - Prejudicial to the interest of the revenue
 - Illegal or
 - Improper or
 - Not taking into account certain (whether or not available at the time of issuance of the order) or
 - An observation was made by the C&AG

If he thinks it is necessary, he can stay the order for a time period as he deems fit. The person concerned will be given an opportunity of being heard.

Types of Orders

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graph TD; A[Types of Orders] --> B[Order in Original (OIO)]; A --> C[Orders in Appeal (OIA)];
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Order in
Original (OIO)

Orders in
Appeal (OIA)

Section 3 (Administration) – (Officers under CGST Act 2017)

a). **Principal Chief Commissioner / Chief Commissioner CGST:-** Principal Chief commissioner/ Chief commissioner are the senior most officer who has administrative control over all the officers within his zone . For the purpose of the Act , country is divided in 21 Zones and each zone is under supervision of Principal Chief commissioner or Chief Commissioner of Central Zone . Senior grade Chief Commissioner will be designated as Principal Chief Commissioner, though both have same powers

b). **Director General** – Offices of Director General have been created for monitoring some specified functions ie , DG GST Intelligence, DG GST Audit Etc .Powers have been delegated to them vide [Notification No. 14/2017-CT dated 1-7-2017](#)

c). **Principal Commissioner/Commissioner of Central Tax** : [Notification No 2/2017 –CT dated 19.06.2017](#) notified 107 Commissionerate's in each 21 Zones and Principal Commissioner/Commissioner of Central Tax is Administrative in-charge of the Commissionerate's.

d). **First Appellate Authority of Central Tax** – These are Commissioner of Central Tax (Appeals) or Additional Commissioner of Central Tax (Appeals) or *Joint Commissioner of Central Tax (Appeals)*.

e). **Commissioner of Central Tax (Audit)** The Government vide [notification No. 2/2017-CT dated 19-6-2017](#) has appointed 48 Commissioners of Central Tax (Audit) for the purpose of GST Act.

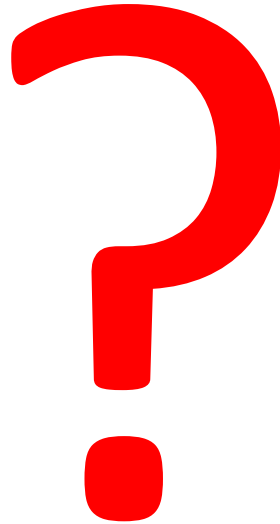
f). **Additional and Joint Commissioners:** There are Additional Commissioner/s and Joint Commissioner/s of Central Tax in each Commissionerate.

g). **Deputy Commissioner, Assistant Commissioner and Superintendent** – Each Commissionerate is divided into divisions and each division is under administrative control of 'Deputy Commissioner of Central Tax' or 'Assistant Commissioner of Central Tax'.

Time Limit for Revision

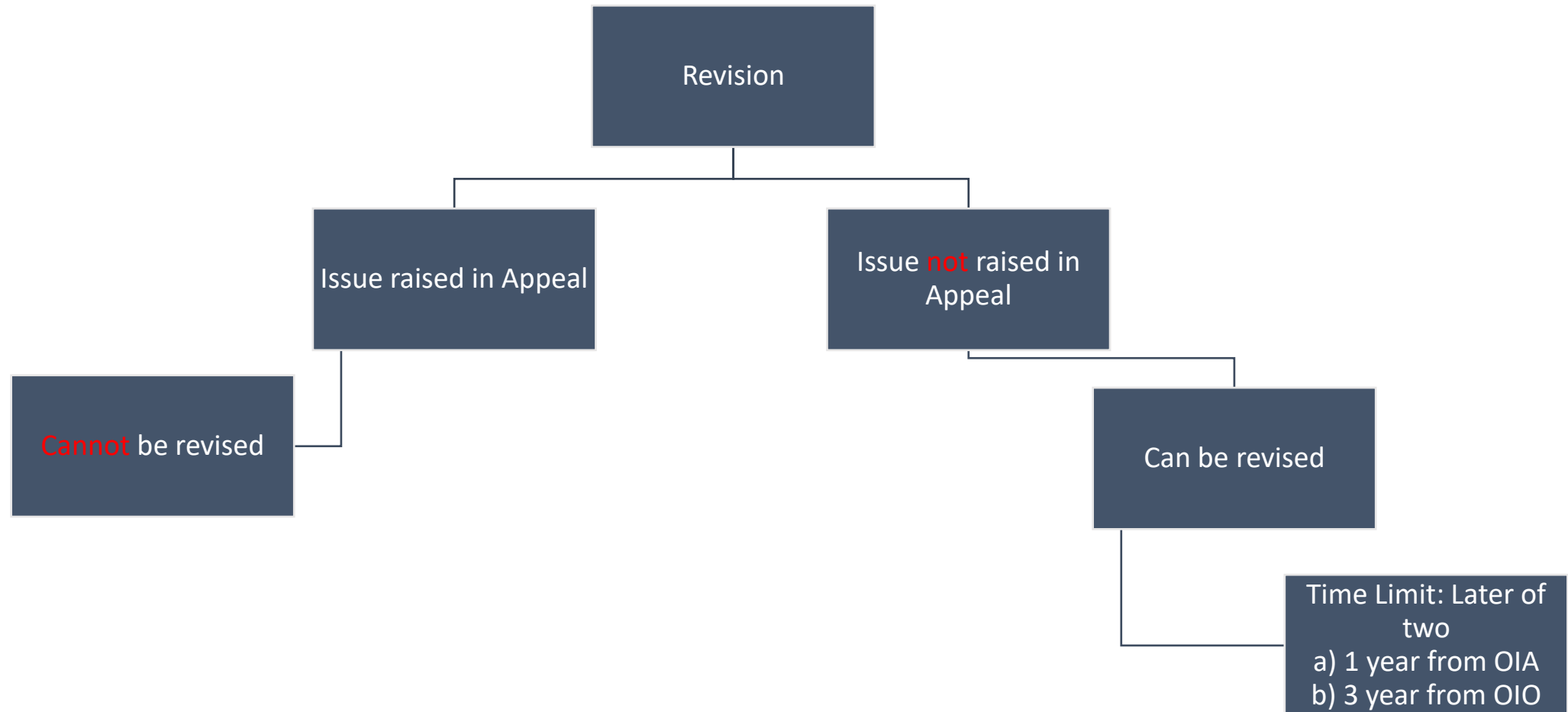
- After 6 months
- Upto 3 years

Time Limit of Documents



For Information & training purpose not to be considered as
Professional Advice from us.

If Order is in Appeal: No Revision till appeal is decided



Appeal against Order of Revision

- Appellate Tribunal

When is revision not allowed?

The Chief Commissioner or Commissioner will not revise the order if-

- The order was already under appeal
- 6 months have not passed from the date of order (i.e., there is time left for appeal)
- More than three years have passed after the date of order
- The order has already been taken for revision
- The Chief Commissioner or Commissioner can pass an order on any point which has not been raised in any appeal. Such order must be passed before one year from the date of the appeal order or before three years.

If the order is stayed by the order of a Court or Tribunal, the period of the stay will be excluded.

Mindset of Department in IDT Regime was ...?

- (a) Tax Payer Friendly
- (b) Professional Friendly
- (c) Both of the above
- (d) None of the above

CBEC issued a Circular No. 967/1/2012-CX dated 01-01-2013

- (a) If appeal is not filed by assessee, **recovery proceedings should start immediately after statutory period of appeal is over** [90days in case of appeal before CESTST and 60days in case of appeal before Commissioner (Appeals)].
- (b) *If appeal is filed* but **application for stay is not made**, **recovery proceedings should start immediately** on filing appeal before commissioner (Appeal) or CESTAT as applicable.

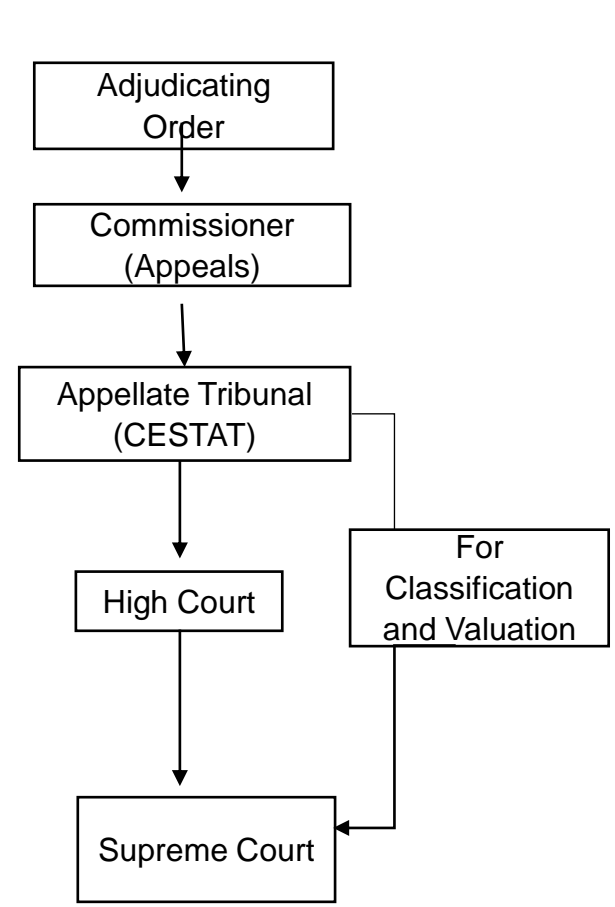
CBEC issued a Circular No. 967/1/2012-CX dated 01-01-2013

- (c) If appeal is filed and application for stay has been made by assessee, recovery proceedings to be initiated 30days after filing of appeal before commissioner (Appeal) [where lower authority had dropped the demand but Commissioner (Appeals) **confirms** the demand]or CESTAT as applicable. [whether or not stay has been granted by the commissioner (Appeals) or CESTAT].
- (d) If Commissioner (Appeals) confirms demand in the O-I-O (Order in original) passed by lower authority [i.e both confirm the demand], **recovery proceedings should be initiated immediately** (i.e. **without even waiting for filing of appeal by assessee**).

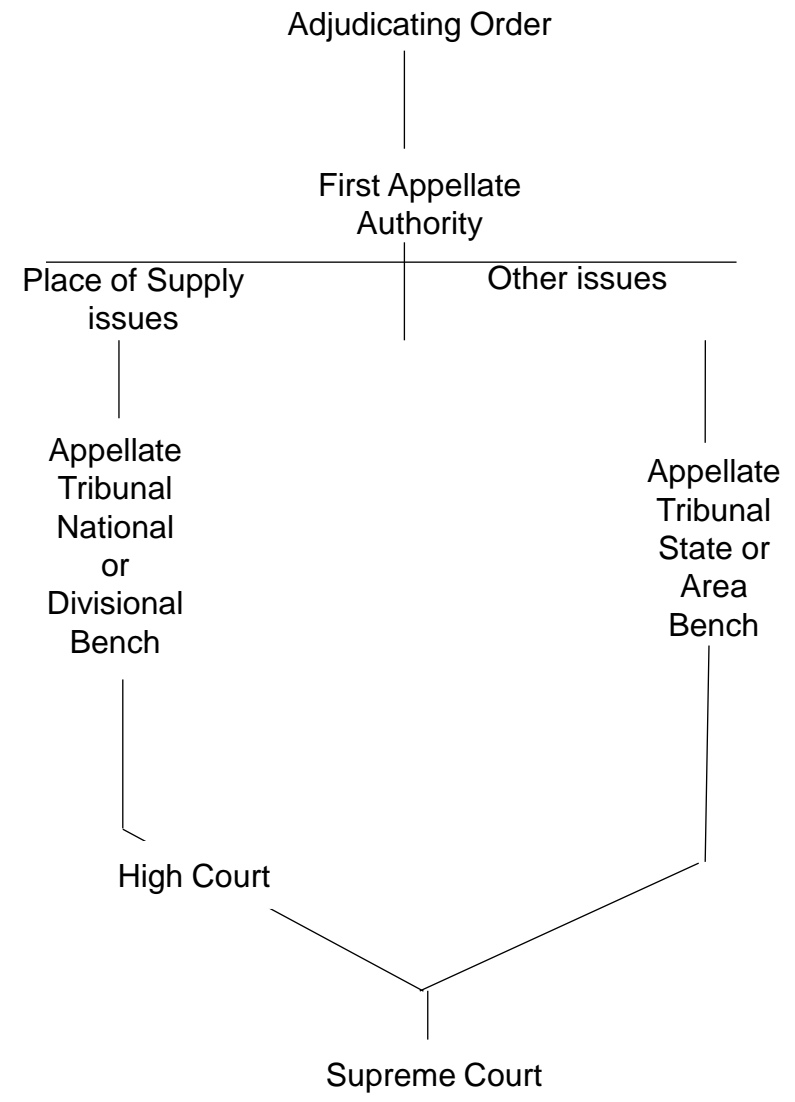
Mindset of Department in IDT Regime was ...?

- (a) Tax Payer Friendly
- (b) Professional Friendly
- (c) Both of the above
- (d) None of the above

IDT REGIME



GST REGIME



What is Appeal?

An appeal is a continuation of proceedings/orders wherein the entire proceedings/orders are again left open for consideration by the Appellate Authorities.

Can department be aggrieved person?

- The expression “any person aggrieved” does not mean the “the revenue” it only means the assessee or person other than the revenue. - CCE, Ahmedabad vs. Narendra P. Umrao, 1984 (15) ELT 275 (Tribunal)

Can a third person be considered “aggrieved person”?

- Appeal before the Delhi VAT Tribunal U/s 76 of DVAT Act can be filed by a person affected by the order of the Commissioner U/s 84 (i.e. Determination of Question) in the case of third party.
- Ex- The Commissioner determines the matter U/s 84 in the case of M/s ABC; the appeal can also be filed by M/s XYZ if he is aggrieved from the said Commissioner’s order. By going through provisions of Sec 74(1) and 84(8), the DVAT Tribunal held that determination orders are binding not only on the applicant but also to other dealers and the subordinate officers, thus, are right in *rem*.
- Thus, the third party can also be considered as person aggrieved.
- C.L. Micromed vs. CIT, 2015 (1487/ATVAT/2012-13 dated 18.02.2015) Tri.- Delhi

Adjudicating Authority

- Section 2(4) defines adjudicating authority to mean any authority appointed or authorized to pass any order or decision under this Act. However, the following are not covered under the ambit of adjudicating authority:
- Central Board of Customs & Excise
- Revisional Authority
- Authority for Advance Ruling
- Appellate Authority for Advance Ruling
- Appellate Authority
- Appellate Tribunal

Therefore an order passed by an officer other than the revisionary as well as the other authorities mentioned above could be contested before the Appellate Authority.

Example

- Assessee : Turnover Rs. 100 Lakhs
- Local Sales: CGST & SGST @9% each
- Paid: 9 Lakhs each
- Department passed Order: Valuation Rs. 200 Lakhs, GST Rate @28%
- Demand Order: Rs. 38 Lakhs (19+19)
- Thus Department has objected both Valuation & Classification (GST Rate)

Appeal by Assessee

Option	Challenge	Accepted Demand & Paid	Contested	Pre-Deposit
1	Both Valuation & Rate	0	38 Lakhs	3.80 Lakhs
2	Valuation	10 Lakhs	28 Lakhs	2.80 Lakhs
3	Classification	18 Lakhs	20 Lakhs	2.00 Lakhs



Available

From
Date

Rate

What is a Sufficient Cause?

- Sufficient cause has not been defined in GST Laws.
- So Sufficient cause varies from case to case. It cannot be weighted in golden scale. It has to vary from circumstances to circumstances.
- So we can also say that “sufficient cause” essentially means adequate or enough.
- There cannot be any scientific formula to define Sufficient cause.

What type of order could the Appellate Authority pass?

Confirming

Modifying

Annuling
(invalid)

the decision or order appealed against.

What type of order could the Appellate Authority pass?

The First Appellate Authority can

- confirm,
- modify or
- Annul

the decision but will not refer the case back to the authority.

The order shall be in writing giving details as to determination. The Appellate Authority shall, along under section 107(11) issue a summary of the order in **FORM GST APL-04** clearly indicating the final amount of demand confirmed.

Whether Appellate Authority could refer the case back to Adjudicating authority?

- As per Section 107(11) the Appellate Authority
- may pass order
- **but does shall not refer the case back to the Adjudicating Authority.**

Time limit for the decision



The order must be passed within 1 year from the date of filing the appeal.



If the order is stayed by an order of a Court or Tribunal, the period of such stay shall be excluded in from the one year period.

Composition of Appellate Tribunal

CENTER						STATE					
National Bench			Regional Bench			State Bench			Area Bench		
JM	TM	TM	JM	TM	TM	JM	TM	TM	JM	TM	TM
To hear appeals involving issues relating to POS (in cases where one of the issues involved relates to POS (Sec 109))						To hear appeals involving issues relating to other than POS					

MEMORANDUM OF CROSS OBJECTIONS CAN BE FILED within 45 days from the receipt of notice in Form **GST APL-06** (Condonation-45days).

FEES =1000/- (For every 1 lakh of tax, penalty etc) max 25000/- per act i.e (Rs. 2000 max Rs. 50000) No fee for Rectification.

SUPREME COURT

- PIL filed to SC for its constitution

- Tribunal can remand back

HIGH COURT

SUPREME COURT

Sec 112

Appeal to Appellate Tribunal (GSTAT)
Against the order of Appellate Authority



Pre-Deposits

Mandatory Pre Deposit =AT

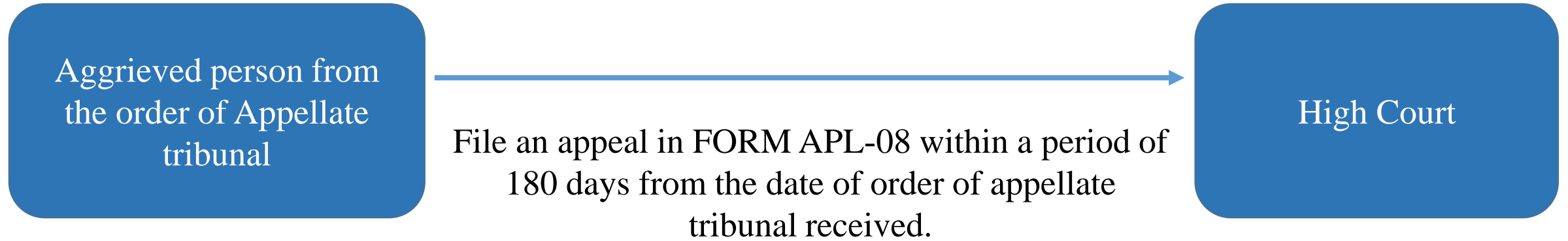
- a. Full amount of tax/interest/penalty/fine
- b. b. 20% of remaining amt of tax in dispute
(in addition to 10%) **Subject to max 50 Crores**

Sec 117

Appeal to High Court

**Against the order of Appellate Tribunal (State/Area Tribunal)
where disputed point is other than Place of Supply**

Section 117 Appeal to High Court (HC)



Procedure to be adopted by High Court (HC)

Step-I HC shall admit an appeal only in case when he is satisfied that matter involved Substantial question of Law.

Step-II IF High court is satisfied above that, shall formulate the question and appeal shall be heard only on formulate question And respondent allowed to argue that the case does not involve such question.

Step-III HC may determined only those issues which- (a) Has not been determined by Tribunal, or (b) Has been wrongly determined by Tribunal

Step-IV Case heard by a bench of at least two judges of HC and decide on the basis of majority of such judges.

Step-V In case of difference of opinion of judges on any point or points that same shall be forward to additional judge and accordingly decide by majority.

NOTE :- Pre deposit of all tax dues is required to pay otherwise the inherent powers of HC have to be invoked for obtaining a stay pending disposal of appeal.

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Section 118 Appeal to Supreme Court

Against which order appeal shall be filed to Supreme Court?

Against order of HC, OR

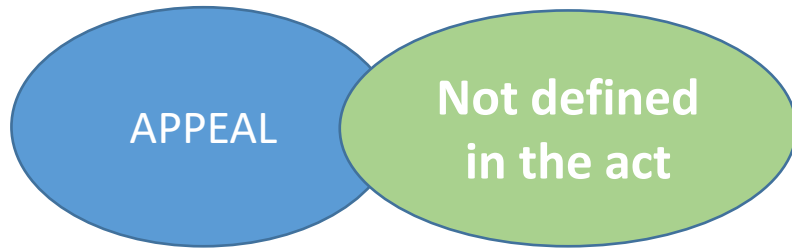
Against order of Tribunal in case of matter related with “Place of Supply”

NOTE:- As per sec. 119, Sums due to govt. as result of an order passed by Tribunal or HC and an appeal has been preferred to HC or Supreme Court, shall be payable in accordance with the order so passed.

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Sec 119

Payment of Due confirmed by AT or HC :- Notwithstanding that an appeal has been preferred to the High Court or the Supreme Court, sums due to the Government as a result of an order passed by the Tribunal or an order passed by the High Court, as the case may be, shall be payable in accordance with the order so passed by AT or HC.



“An Appeal under any law is an application to a higher court for a reversal of the decision of a court. Appeals arise when there are any legal disputes.

Disputes arise due to non-compliance of taxpayer with the provisions under law.

ADJUDICATION ORDER

The initial resolution of this dispute is done by a departmental officer by a quasi judicial process resulting into the issue of an initial order known as **Adjudication order**.

Rights to Appeal

- Rights to appeal is a statutory right, it is not constitutional right.
- Right to appeal is a vested Right.
- CIT v. Ashoka Engineering Co. (1992) 194 ITR 645 (SC) it was held assessee and that it has to be spelt from the words of the statute, If any, providing for an appeal. But it is an equally wellsettled proposition of law that, if there is a provision conferring a right of appeal, it should be read in a reasonable, practical and liberal manner.
- (CIT v. Bengal Card Board Industries And Printers (P). Ltd. (1989) 176 ITR 193 (Cal), CIT v. Kerala Transport Co. (2000)242 ITR 263 (Ker). In Hoosein Kasam Dada (India) Ltd vs. The State of Madhya Pradesh & Ors. (1953) 4 STC 114 (SC) : AIR 1953 SC 221
- **Garikapati Veerayya vs. Subhiah Choudhry- AIR 1957 SC 540**
- **Hoosein Kasam Dada (India) Ltd. vs. State of M.P. – 1983 (13) ELT 1277 (SC)**
- **Thirumalai Chemicals Ltd. vs. UOI- 2011 (268) ELT 296 (SC)**
- **Sumages Pharma Pvt. Ltd. vs. CCE- 1987 (89) ELT 139 (Tribunal)**

Rights to Appeal

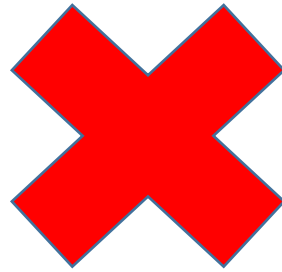
- Is right to file an appeal a natural right or Creature of statute?

Right by statute

- Ganga Bai vs. Vijayakumar – AIR 1974 SC 1126
- Anant Mills vs. State of Gujarat- AIR 1975 SC 1234

Are the following orders?

Notice
Summons
Audit Memos



In Commissioner of Central Excise, Haldia v. Krishna Wax (P.) Ltd. (2020) 77 GST 562 (SC). The Supreme Court held that an **internal order is not a decision or determination** and hence **can not be appealed against an order or decision in general parlance** refers to any which effects right and liabilities issued by the department.

Illustrative list of orders under GST

- Cancellation of registration
- Tax Not paid, short paid, input tax wrongly availed under section 73 without willful misstatement of facts or fraud
- Tax Not paid, short paid, input tax wrongly availed under section 74 with willful misstatement of facts or fraud
- Order of refund
- Rejection of LUT
- Order of provisional assessment, reassessment, summary assessment

Aggrieved Person

Meaning of 'person Aggrieved'

- “Aggrieved” means one whose pecuniary interest is directly affected by the adjudication, one whose right of property may be established or divested thereby.”

[‘Advanced Law Lexicon- P. Ramantha Aiyar]

- right of appeal to be exercised by the persons permitted by the statute to prefer appeal subject to conditions regarding filling the appeals.
- Appeal – person aggrieved and locus-stand!
- ❖ Can a customer or receipt of goods or services file the appeal? No
- Mahindra and Mahindra Ltd. vs. CCE- 1983 (13) ELT 974 (Tribunal)
- Jagat Industries vs. CCE - 1998 (104) ELT 566 (Tribunal)

APPEAL WHO CAN FILE IT?

- Rohit Pulp and Paper Mills vs. CCE – 2000 (120) ELT 566 (Tribunal)
- Ahisma Mines and Minerals Ltd. vs. Designated Authority – 2002 (142) ELT 71 (Tribunal)
- Oil Dale Trading Private Ltd. vs. CCE. 1983 (140 ELT 1835 (Tribunal)
- Polychem Ltd. vs. Collector – 1987 (30) ELT 1007 (Tribunal)

Important Definitions

Adjudicating Authority – **Sec2(4) of CGST Act, 2017 -amended as per the Finance (No.2) Act,2019**
Means any authority appointed or authorized to pass any order or decision under this act but **does not include :**

Central Board of Indirect Taxes and Customs

Revisional Authority

Authority for Advance Ruling

National Appellate Authority for Advance Ruling *

Appellate Authority for Advance Ruling

Appellate Authority

Appellate Tribunal

Anti-Profiteering Authority u/s 171(2)*

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Section 120 Appeal not be filed in certain cases

(A) HC In case where Monetary limit has been fixed filing by department

(B) IF Due to monetary limits, if department does not file an appeal in a case then it shall not preclude that such officer would not be file an appeal for same or similar issue or question of law in any other case.

(C) Appellate cannot contend that the CGST officer has acquiesced in the decision on the disputed issues by not filing an appeal or application due to on account of monetary limits.

(D) Tribunal or court hearing such appeal or application shall have regard to circumstances for non filing of appeal or application by CGST officer due to on account of monetary limits.

Section 121 Non appealable decisions and orders

No appeals can be filed against following orders -

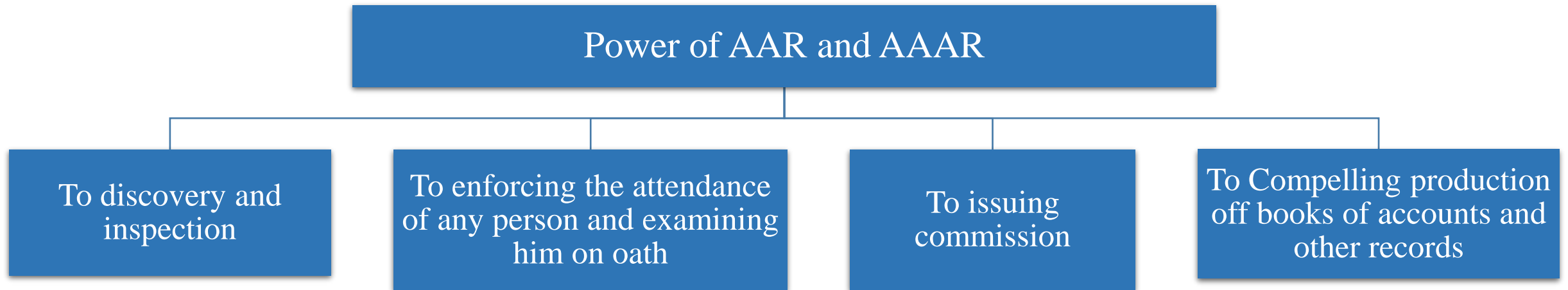
Where order/direction given by commissioner or other authority to **transfer the proceedings** from one officer to another officer

Where order has been given for **seizure or retention** of **books of accounts, register and other documents** (S.67(2))

In case order of **prosecution** under this Act (S.132(6))

In case of order passed u/s 80 where amount paid in **instalment** (S.80)

Section 105 Power of AAR and AAAR



NOTE:- Power of AAR/AAAR as powers if a civil court.

Section -100 Appeal to Appellate authority

Person aggrieved
from order of AAR

OR

Concerned officer

Can file to + Fees of Rs. 10,000

Can file appeal to

AAAR

Time limit to file an appeal to AAAR

Within 30 days from the date on which the ruling sought to be appealed against is communicated to the concerned officer.

Extension allowed by AAAR further 30 days

Section -101 Order of AAAR

Order of AAAR

Within 90 days from the date of filling of appeal

Confirm the AAR order
OR
Modify the AAR order

Copy of AAAR order
forwarded to

Applicant

Concerned officer

Jurisdictional officer

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NOTE:-1

No Advance ruling
can be issued IF
AAAR members has
differ opinion.

Production of Additional evidence before the Appellate authority or Appellate Tribunal

The appellate shall not be allowed to produce additional evidence EXCEPT in following circumstances

Evidences which has refused to admit by AA which ought to have been admitted, or

Adjudicating officer or AA called upon to produce evidence and appellant was prevented by sufficient cause.

Appellant was prevented by sufficient cause from producing evidences before adjudicating officer or AA, which is relevant to any ground of appeal.

AA has made the order appealed against without giving sufficient opportunity to adduce evidence relevant to any ground of appeal.

NOTE:-1 Appellate authority or Appellate tribunal shall not be admitted any evidences unless to examine the evidences or documents or to cross examine any witness produced by appellant.

NOTE:-2 Reasons for admitted evidence to be recorded in writing.

Section 113 Order of Appellate Tribunal

Order of appellate tribunal

```
graph TD; A[Order of appellate tribunal] --> B[To confirm, modifying, annulling the decision or order appealed against which.]; A --> C[Refer back the case to Appellate authority or Revisional authority or Adjudicating authority for fresh adjudication after taking additional evidence, if necessary.];
```

To confirm, modifying, annulling the decision or order appealed against which.

Refer back the case to Appellate authority or Revisional authority or Adjudicating authority for fresh adjudication after taking additional evidence, if necessary.

Rectification of mistake

If any error apparent on face of records, rectification of such error

On own motion if noticed by
Appellate tribunal

Brought to noticed by commissioner
or SGST/UTGST commissioner

Brought to noticed by other party to the
appeal

Appellate Tribunal shall rectify Within a period of 3 months from the date of order

NOTE:- Rectification shall be made after giving a opportunity of being heard.

Time limit for disposal of appeal ?

Within a period of 1 year from the date on which appeal is filed.

Copy of order communicate to

Appellate authority or Revisional
authority or Original Adjudicating

Appellant

Jurisdictional commissioner or commissioner of
state tax or union territory tax

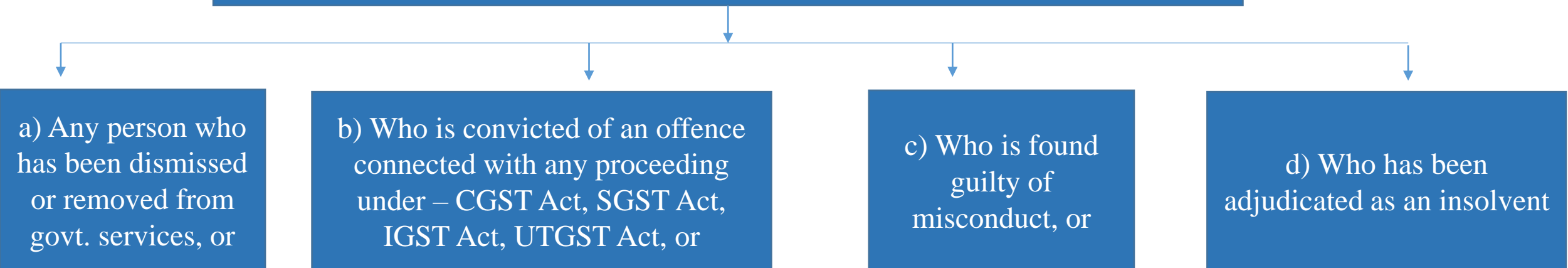
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Section 116 Authorised Representative

Who can act as a authorised representative ?

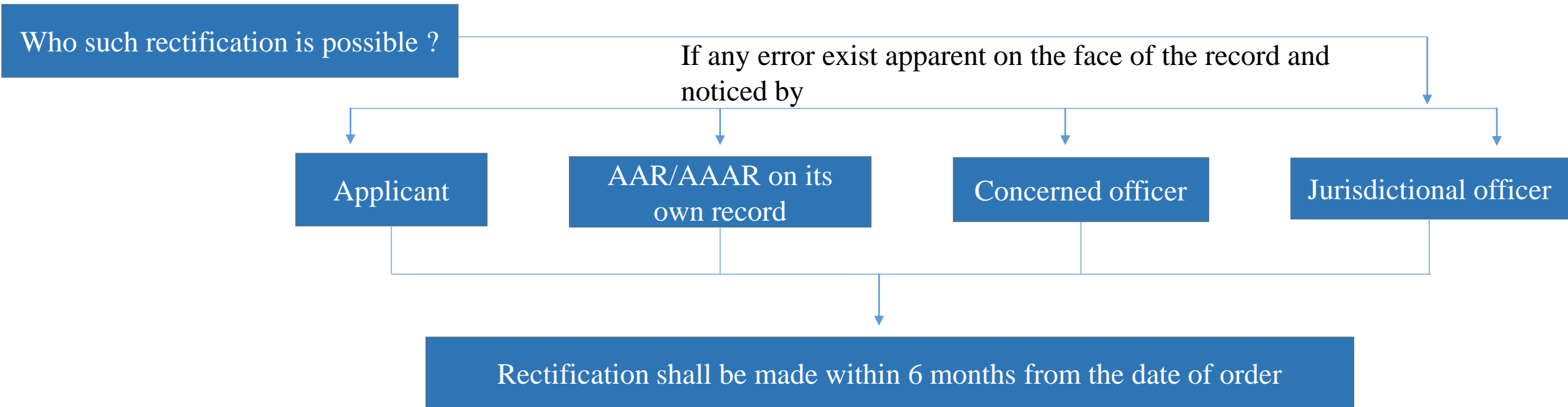
- a) Relatives or regular employees of appellant,
- b) An advocate who is in a practice in any court of India and who has not been debarred from practice by any Indian court,
- c) Any chartered accountant, cost accountant or company secretary who holds certificate of practice and has nor been debarred from practice.
- d) A retired officer of commercial tax department, who had worked in a post not below rank of Group-B gazette officer for a minimum period of 2 years but he is barred up to 1 year after retirement or resignation to become authorised representative.
- e) GST Practitioner on behalf of concerned registered person.

Who cannot act as a authorised representative?



NOTE:- Person disqualified under SGST/UTGST Act shall be deemed to be disqualified under CGST Act.

Section -102 Rectification of Advance Ruling giving by AAR/AAAR



Section -103 Applicability of Advance Ruling

Advance Ruling pronounce by AAR/AAAR is binding only.

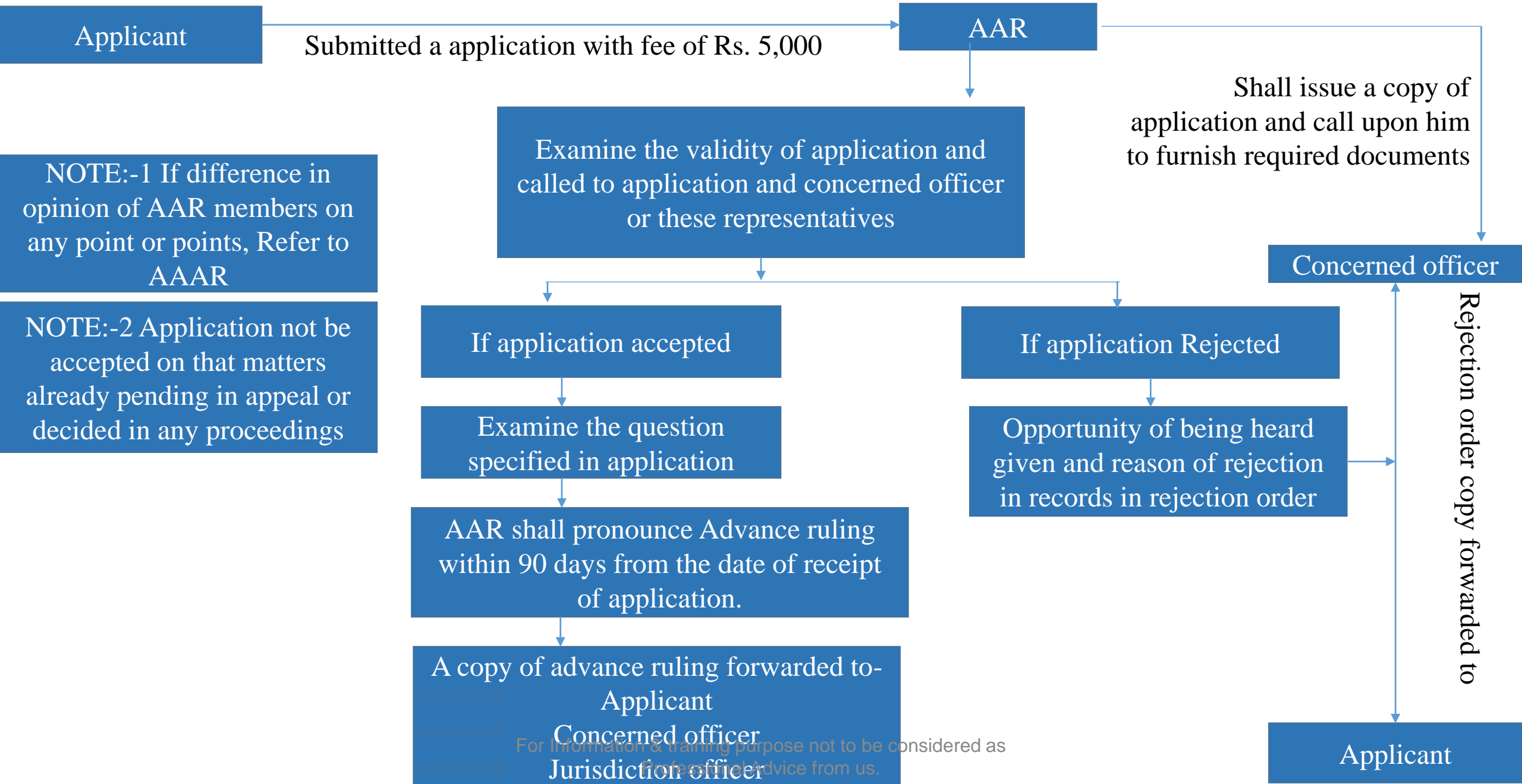
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graph TD; A[Advance Ruling pronounce by AAR/AAAR is binding only.] --> B[On applicant who had sought it.]; A --> C[In respect of matter referred for advance Ruling]; A --> D[Concerned officer or Jurisdictional officer of the applicant];
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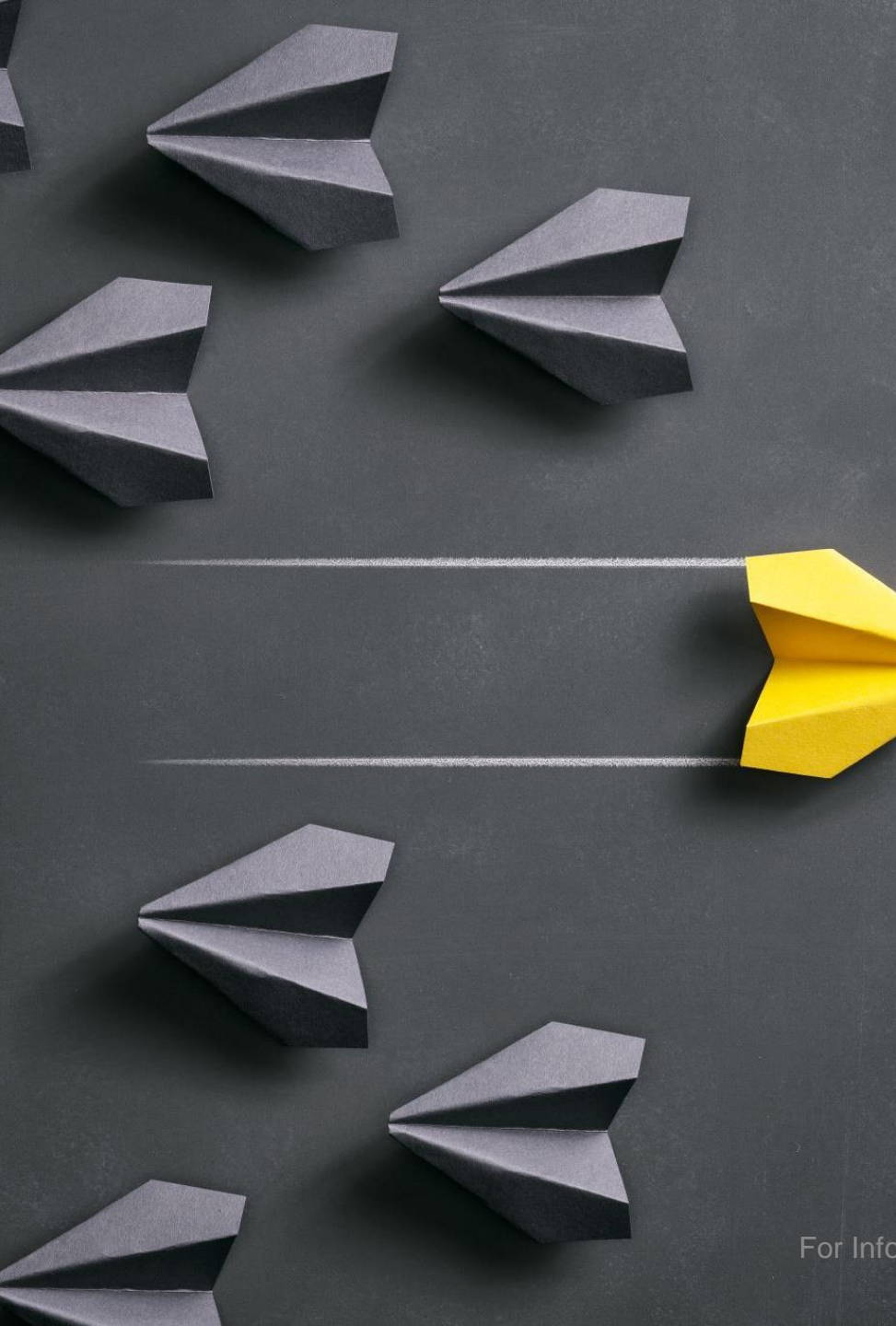
On applicant who
had sought it.

In respect of matter referred for
advance Ruling

Concerned officer or
Jurisdictional officer of the
applicant

Section -98 Procedure for obtaining Advance Ruling





Whether Appellate Authority could refer the case back to Adjudicating authority?

- As per Section 107(11) the Appellate Authority may pass order but does shall not refer the case back to the Adjudicating Authority.

What is Refer back or Remand of case?

- Returning case back to the lower authority against whom appeal is filed.
- Sometimes, the matter is remanded (refer the case back to Adjudicating Authority) as an easy course

Refer back or Remand: view of Courts

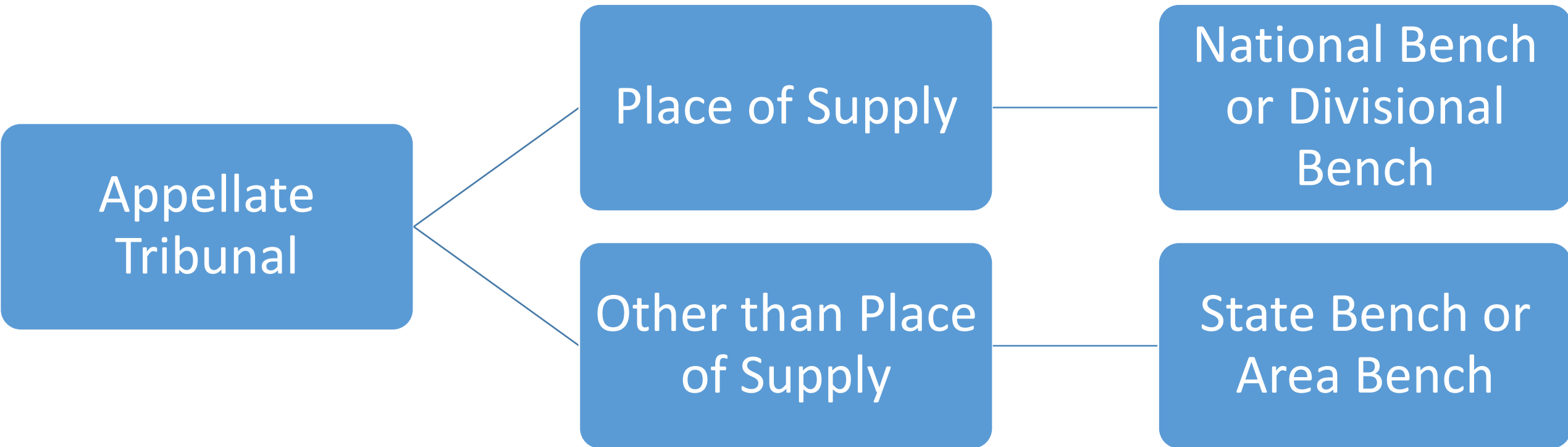
- Remand to lower authorities was superfluous (unnecessary) and tribunal could have decided the matter itself, **when the matter was fully argued and all relevant material were before the tribunal.** - MG Shahani & Co. (Delhi) Ltd. vs CCE (SC) , 1994 (73) ELT 3
- **If material on record is sufficient to analyse evidence & arrive at factual conclusion then matter should not be remanded instead order should be passed on merits.** - L'oreal India Pvt. Ltd vs UOI (HC-Bombay), 2014 (35) STR 72
- **When Tribunal has considered the evidence as sufficient to record a finding on merits, the case should be decided by the Tribunal itself.** - Dimple Overseas vs. CC (SC), 1995 (80) ELT 10

Whether the Appellate Authority can enhance the penalty or fee?

- *First Proviso* to Section 107(11) lays down certain conditions for an order enhancing any fee or penalty or fine in lieu of confiscating goods etc.
- However, certain conditions are mentioned in the *Proviso* itself before issuing such order. The appellant should have been given a reasonable opportunity of showing cause against the proposed order enhancing penalty or fine etc.
- Thus, giving harmonious interpretations of law we can say that the Appellate Authority has the powers to enhance the penalty or fine etc.

2nd Appeal: Appellate Tribunal

- The Tribunal is the second level of appeal, where appeals can be filed against the orders-in-appeal passed by the AA or order in revision passed by revisional authority, by any person aggrieved by such an order-in-appeal/Order in revision.
- The law envisages constitution of a two-tier Tribunal i.e. National Bench/Regional Benches and the State Bench/ Area Benches.



2-Tier

Appellate
Tribunal

Issue

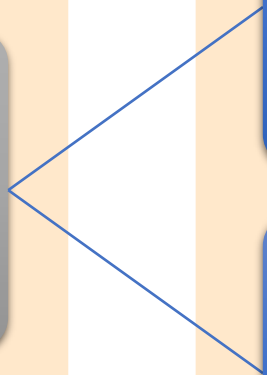
Place of Supply

Other than
Place of Supply

Bench

National or
Regional

State or Area



2nd Appeal: Time Limit for aggrieved person

Time Limit

- The time limit for the party to file an appeal before the Appellate Tribunal is 3 months from the date of communication of the impugned order.

Condonation

- But the AT may condone a delay of up to 3 (three) months for appeal & 45 days for cross objections.

2nd Appeal: Time Limit for Department

Time Limit

- 6 months from the date on which the said order has been passed for determination of such points arising out of the said order as may be specified by the Commissioner in his order.

Condonation

- But the AT may condone a delay of up to 3 (three) months for appeal & 45 days for cross objections.

Summary of time limits for AT

Time Limits for	Assessee	Department
Appeal	3 months from the date of receipt of the order	6 months from the date of receipt of the order
Cross-Objection	45 days from the date of receipt of notice of appeal	
Form: Appeal	APL-05	APL-07

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2nd Appeal: Forms



Can Tribunal refuse to admit appeal?

- As per Section 112(2) the Tribunal has discretion to refuse to admit such appeal in cases where the appeal involves –
 - tax amount or input tax credit or
 - the difference in tax or the difference in input tax credit involved or
 - amount of fine, fees or amount of penalty determined by such order,does not exceed Rs 50,000/-.

Whether entire amount of tax, interest, penalty, fine or fee has to be remitted before preferring appeal?

**Demands
which are
not
contested**

- Entire amount of such demands (tax, interest and penalty) shall have to be remitted.

**Demands
which are
contested**

- A sum equal to 20% of the remaining amount of tax in dispute arising from the said order shall have to be remitted.

20% is in addition to 10% or it should be net-off?

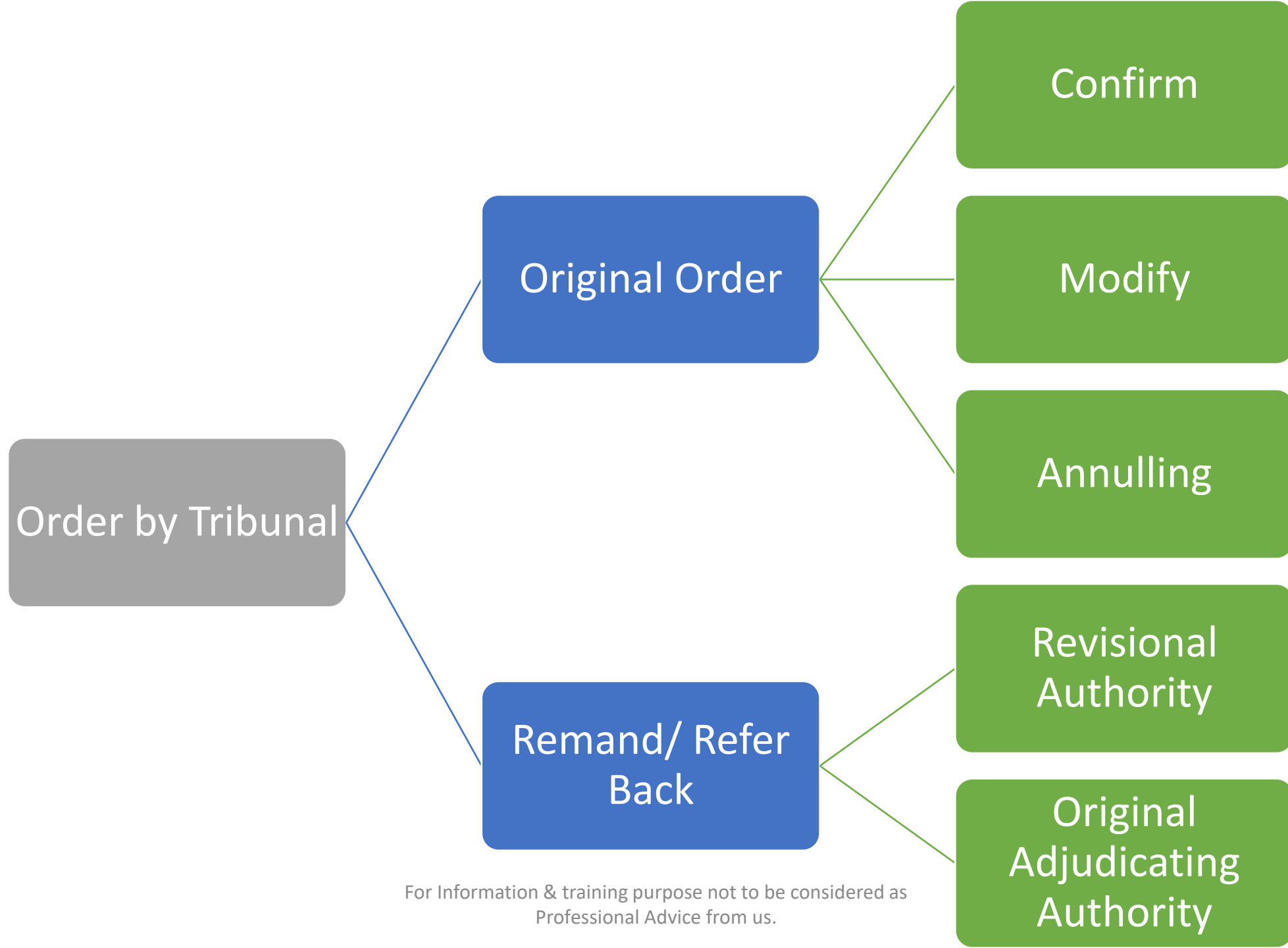
- This amount (20%) is in addition to the pre-deposit paid while filing appeal before Appellate Authority. – Section 112 (8)

Whether payment of balance amounts of demand would be stayed?

- As per Section 112(9) where the appellant has paid the required pre-deposit (as per Section 112(8)), the recovery proceedings for the balance amount shall be deemed to be stayed till the disposal of the appeal.

Whether parties to an appeal could seek adjournment of the hearing?

- As per Section 113(2) the Appellate Authority may, grant adjournment of personal hearing if sufficient cause is shown at any stage of hearing of an appeal.
- However as per Proviso Section 113(2), **no such adjournment shall be granted more than three times to a party** during hearing of the appeal.



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Once appeal is accepted what about payment of balance amounts demanded? Would that be considered as demand stayed?

- Yes, as per Section 107(7) where the appellant has paid the required pre-deposit, the recovery proceedings for the balance amount shall be deemed to be stayed.

Whether parties to an appeal could seek adjournment of the hearing?

As per Section 107(9) the Appellate Authority may, grant adjournment of personal hearing if *sufficient cause* is shown at any stage of hearing of an appeal.

- However as per Proviso Section 107(9), no such adjournment shall be granted more than **three times** to a party during hearing of the appeal.

What is a Sufficient Cause?

- Sufficient cause has not been defined in GST Laws.
- So Sufficient cause varies from case to case. It cannot be weighted in golden scale. It has to vary from circumstances to circumstances.
- So we can also say that “sufficient cause” essentially means adequate or enough.
- There cannot be any scientific formula to define Sufficient cause.

2nd Appeal: Appellate Tribunal

- The Tribunal is the second level of appeal, where appeals can be filed against the orders-in-appeal passed by the AA or order in revision passed by revisional authority, by any person aggrieved by such an order-in-appeal/Order in revision.
- The law envisages constitution of a two-tier Tribunal i.e. National Bench/Regional Benches and the State Bench/ Area Benches.

Procedure in Appeal before Tribunal

Section 112(1) of GST Act :

Appeal to be filed within 3/6 months from the date on which the order sought to be appealed against is communicated to the person preferring the appeal.

Section 112(5) of GST Act

On receipt of notice of filing of appeal, the party against whom the appeal has been preferred may file memorandum of cross-objections within 45 days of receipt of notice against any part of the order appealed against and such cross objections shall be disposed of by the Tribunal as appeal presented within the specified time.

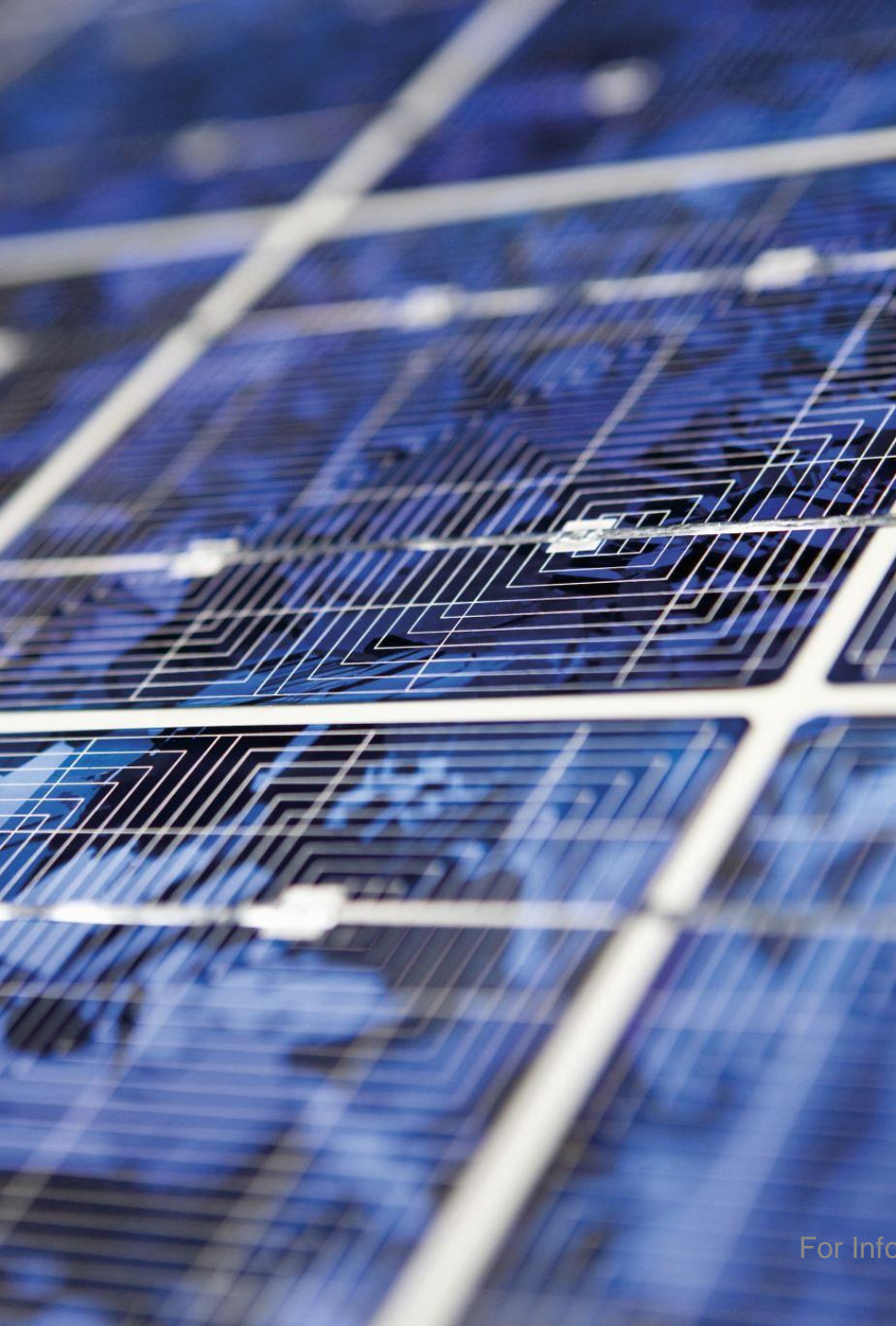
Procedure in Appeal before Tribunal

Section 112(6) of GST Act :

The Appellate Tribunal may admit an appeal within three months after the expiry of the period referred to in sub-section (1), or permit the filing of a memorandum of cross-objections within forty-five days after the expiry of the period referred to in sub-section (5) if it is satisfied that there was sufficient cause for not presenting it within that period.

Summary of time limits for AT

Time Limits for	Assessee	Department
Appeal	3 months from the date of receipt of the order	6 months from the date of receipt of the order
Cross-Objection	45 days from the date of receipt of notice of appeal	45 days from the date of receipt of notice of appeal
Form: Appeal	APL-05	APL-07



2nd Appeal:

Forms

Any person aggrieved
FORM GST APL-05



Any authorised officer
on direction of the
Commissioner **FORM**
GST APL-07

Can Tribunal refuse to admit appeal?

As per Section 112(2) the Tribunal has discretion to refuse to admit such appeal in cases where the appeal involves –

- tax amount or input tax credit or
- the difference in tax or the difference in input tax credit involved or
- amount of fine, fees or amount of penalty determined by such order,

does not exceed Rs 50,000/-.

Pre-Deposit before Tribunal under GST Act

Section 112(8) of GST

- Full amount of tax, interest, fine and penalty arising from the impugned order as is admitted by him and
- Sum equal to 20% of the remaining amount of TAX in dispute in addition to the amount deposited u/s 107(6) arising from the order subject to a maximum of Rs.50 Cr in relation to which the appeal has been filed.

Whether entire amount of tax, interest, penalty, fine or fee has to be remitted before preferring appeal?

Demands
which are
not
contested

- Entire amount of such demands (tax, interest and penalty) shall have to be remitted.

Demands
which are
contested

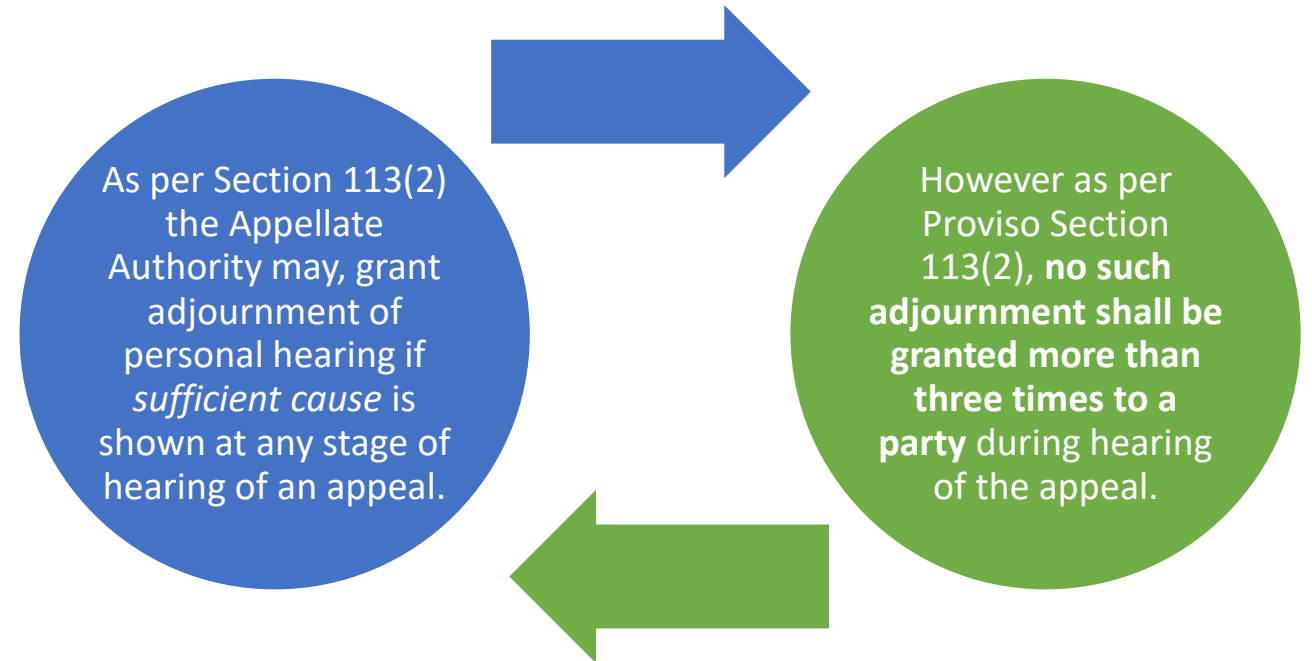
- A sum equal to 25% of the remaining amount of tax in dispute arising from the said order shall have to be remitted.

Whether payment of balance amounts of demand would be stayed?

- As per Section 112(9) where the appellant has paid the required pre-deposit (as per Section 112(8)), the recovery proceedings for the balance amount shall be deemed to be stayed **till the disposal of the appeal.**



Whether parties to an appeal could seek adjournment of the hearing?



Review Appeals by Revenue before Tribunal under GST Act

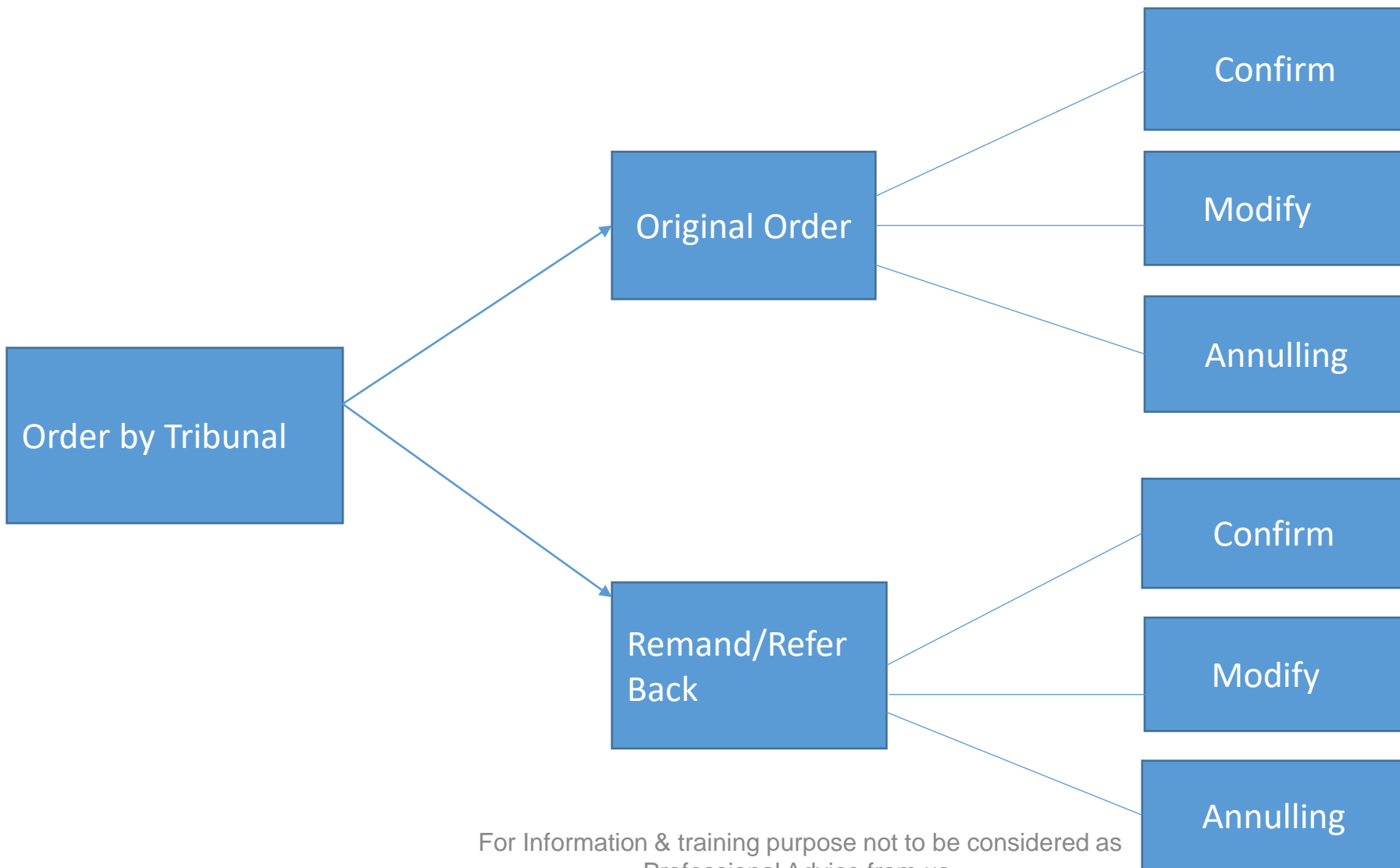
Sec 112(3) of GST Act: The Department may file an appeal before the Tribunal against the order of the Appellate Authority or the Revisional Authority within (6) months from the date on which the said orders has been passed.

Sec 112(4) of GST Act:

An application shall be dealt with by the Appellate Tribunal as if it were an appeal made against the order under sub-section (11) of section 107 or under subsection (1) of section 108 and the provisions of this Act shall apply to such application, as they apply in relation to appeals filed under sub-section (1).

Orders of Appellate Tribunal

- The Appellate Tribunal may conform, modify or annul the decision or order appealed against or may refer the case back to the AA or to the adjudicating authority or revisional authority, with such directions as it may think fit, for a fresh adjudication or decision after taking additional evidence if necessary. (Section 113(1))
- The Appellate Tribunal may grant time to parties on sufficient cause being shown, however no more than three such adjournments can be given. (Section 113(2))
- Tribunal may amend its order to rectify any mistake apparent on record, suo-motu or if such mistake is brought to its notice by any of the parties within a period of three months from the date of order. (Section 113(3))
- To enhance the demand the Tribunal has to provide a reasonable opportunity of being heard. (proviso to Sec 113(3))
- The Appellate Tribunal shall wherever it is possible to do so hear and decide every appeal within one year from date of filing. (Section 113(4))
- Copy of order shall be served on the concerned parties. (Section 113(5))



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Question

Framing

Fitment Order

Appeal before High Court

- **Section 117(2) of both CGST and SGST**

Section 117 provides that any person aggrieved by any order passed by the State Bench or Area Benches of the Appellate Tribunal may file an appeal to the High Court and the High Court may admit such appeal, if it is satisfied that the case involves a substantial question of law

- Appeal to be filed within 180 days, but High Court has the power to condone delay on sufficient cause being shown.

Appeal before Supreme Court

- • An appeal shall lie to the Supreme Court—
 - (a) from any order passed by the National Bench or Regional Benches of the Appellate Tribunal; or
 - (b) from any judgment or order passed by the High Court in an appeal made under section 117 in any case which, on its own motion or on an application made by or on behalf of the party aggrieved, immediately after passing of the judgment or order, the High Court certifies to be a fit one for appeal to the Supreme Court.

Centre-State or inter-state differences relating to treatment of supply as inter-state or intra-state or differences relating to place of supply

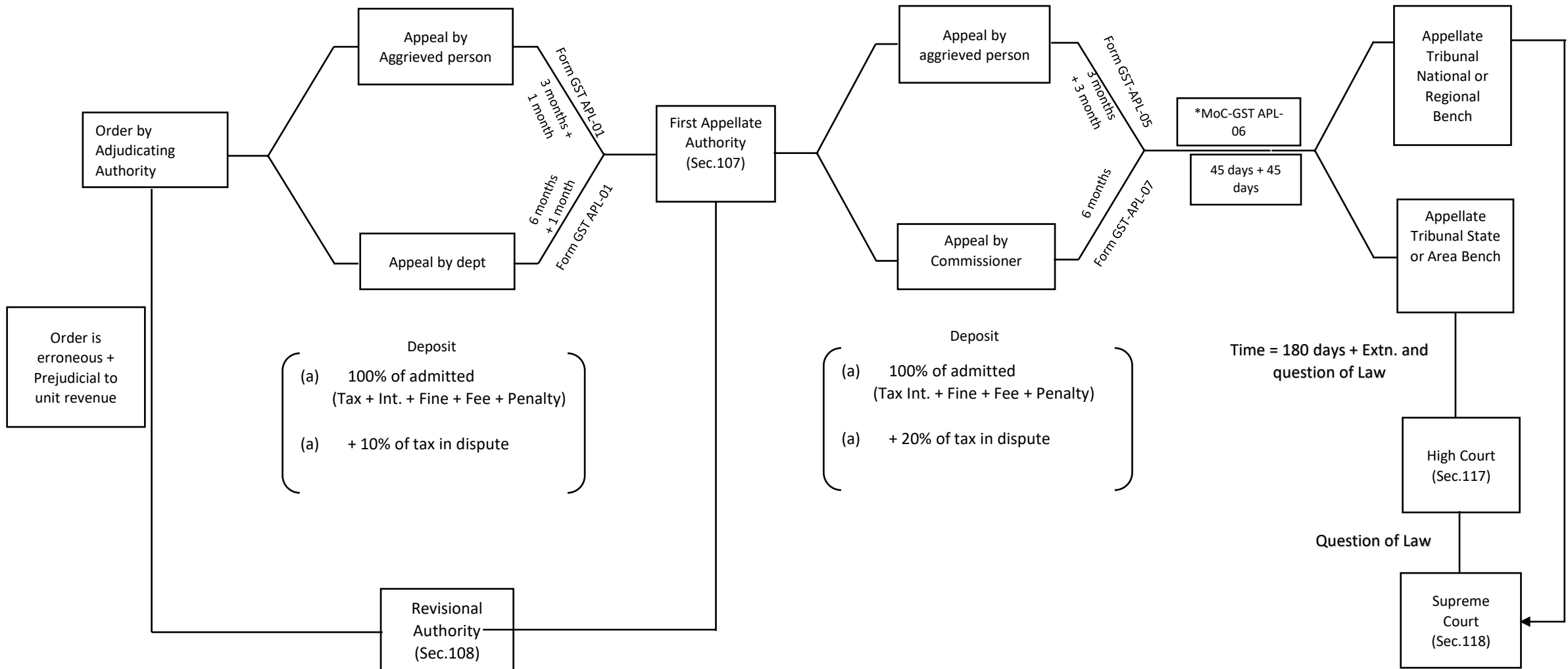
Appeals not to be filed in certain cases

- (3) Notwithstanding the fact that no appeal or application has been filed by the GST Officer pursuant to the orders or instructions or directions issued under sub-section (1), no person, being a party in appeal or application shall contend that the GST officer has acquiesced in the decision on the disputed issue by not filing an appeal or application.
- (4) The Appellate Tribunal or court hearing such appeal or application shall have regard to the circumstances under which appeal or application was not filed by the GST Officer in pursuance of the orders or instructions or directions issued under subsection (1).

Appeals not to be filed in certain cases

- (1) The Board may, on the recommendation of the Council, from time to time, issue orders or instructions or directions fixing such monetary limits, as it may deem fit, for the purposes of regulating the filing of appeal or application by the GST officer under the provisions of this Chapter.
- (2) Where, in pursuance of the orders or instructions or directions, issued under sub-section (1), the GST officer has not filed an appeal or application against any decision or order passed under the provisions of this Act, it shall not preclude such GST officer from filing appeal or application in any other case involving the same or similar issues or questions of law.

SUMMARY OF APPELLATE PROVISIONS



***Memorandum of Cross Objections**

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Grounds of Appeal

- Constitutional
- Time barring
- Not a reasoned order or non- speaking order
- Without application of mind
- Not given fair or reasonable hearing
- SCN is Vague- on the basis of presumption and assumptions
- Authority has not acted as quasi judicial authority
- Deemed acceptance of an appeal

Sec 75(4)- Opportunity of being heard

An opportunity of being heard 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

Sec 75(6) - Speaking Order

- The proper officer, in this order, shall set out the relevant facts and the basis of his decisions.

Sec 75(13)- One penalty for one default

- 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.

Sec 75(7)- Notice and order should be on same lines

- 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 grounds specified in the notice.

No Penalty is imposable in case of Retrospective amendment

- In one of its historic judgments rendered in the case of **J.K. Spinning and Weaving Mills Ltd. vs. UOI – 1987 (32) ELT 234 (SC)**, the Supreme Court held that it would be against all principles of legal jurisprudence to impose a penalty on a person or to confiscate his goods for an act or omission which was lawful at the time when such act was performed or omission made, but subsequently made unlawful by virtue of any provision of law

Penalty is not imposable when issue relates to the statutory interpretation

- In the case of **Uniflex Cables Ltd. vs. CCE – 2011 (271) ELT 161 (SC)**, the Supreme Court dealt with the issue with regard to the imposition of penalty where the issue involved was of interpretational nature. Taking note of the fact that the Commissioner himself had found that it was only a case of interpretational nature, the Supreme Court quashed the order of the Commissioner imposing the penalty as also the order of the Tribunal so far as it confirmed the imposition of penalty on the Appellant.

DIN

- CBIC vide its **Circular No 128/47/2019-GST** has mandated that in all the communications (except in exceptional circumstances) with the assessee (including on e-mails), Documents Identification No is required to be mentioned.
- DIN can be confirmed by the assessee online at **Cbic.gov.in**
- All the communication with the assessee which does not contain DIN shall be treated Invalid and shall be considered as never been issued.

Monetary limits for SCN – 31/2018 (Circular)

Designation of Officer	Monetary limit of the amount of CGST (including cess) for issuance of show cause notices & orders u/s 73 & 74 of CGST	Monetary limit of the amount of IGST (including cess) for issuance of show cause notices & orders u/s 73 & 74 of CGST Act made applicable to IGST	Monetary limit of the amount of CGST and IGST (including cess) for issuance of show cause notices & orders u/s 73 & 74 of CGST Act made applicable to IGST
Superintendent	Up to Rs. 10 lakhs	Up to Rs. 20 lakhs	Up to Rs. 20 lakhs
Deputy or Assistant Commissioner	Above Rs. 10 lakhs up to Rs. 1 crore	Above Rs. 20 lakhs up to Rs. 2 crore	Above Rs. 20 lakhs up to Rs. 2 crore
Additional or Joint Commissioner	Above Rs. 1 Crore	Above Rs. 2 Crore	Above Rs. 2 Crore

Notice and order should be on same lines(Order beyond SCN)

- The adjudicating authority has to pass his order within the parameter of the allegations levelled in the show cause notice
- In the case of Commissioner of customs, **Mumbai v. Toyo Engineering India Ltd. [(2006) 7 SCC 592]** , the apex court while delivering judgement under para 16 held that, the department cannot travel beyond the scope of the show cause notice

Power of Limitation

- Order cannot be issued beyond the time limit mentioned U/s 73(10) and 74(10)
- In view of section 74(2), SCN is required to be issued at least **6 months prior** to the time limit of issuing order which is 5 years from “DUE DATE” for furnishing annual return of relevant F.Y. or date of erroneous refund {i.e. within 4 years 6 months from due date of annual return}
- Annual return F.Y. 17-18: 31.01.2020, order can be passed upto 30.01.2025. Order passed after this date is invalid.
- SCN issued after 31.07.2024 will be time- barred

SEC 115 - Interest on refund of amount paid for admission of appeal.

- Where an amount paid by the appellant under sub-section (6) of section 107 or sub-section (8) of section 112 is required to be refunded consequent to any order of the Appellate Authority or of the Appellate Tribunal,
- Interest at the rate specified under section 56 (i.e. 9%) shall be payable in respect of such refund from the date of payment of the amount till the date of refund of such amount.

Show Cause Notices to Taxpayers Under GST Act Mandatory to Upload on Website – Mere E-Mail is not Suffice.[Akash Garg Vs State of M.P, vide order dated 19.11.2020]

- The Honorable Madhya Pradesh Court in case of Akash Garg Vs State of M.P, vide order dated 19.11.2020 held that statutory procedure prescribed for communicating show-cause notice or order under Rule 142(1) of CGST Act is required to be followed mandatorily by the revenue.
- Rule 142 prescribes the manner to upload show-cause notices on Website.
- Thus, a mere e-mail of show-cause notices to the taxpayer would not suffice. Upload of such notices on the website is mandatory.

Cognizance for Extension of Limitation [Suo Moto W.P. (C) No. 3/2020 dated on July 10, 2020]

- The Hon'ble Supreme Court in Re: Cognizance for Extension of Limitation [Suo Moto W.P. (C) No. 3/2020 dated on July 10, 2020] w.r.t. I.A. No. 48461/2020 observed that service of notices, summons and exchange of pleadings/documents, is a requirement of virtually every legal proceeding and that the service of notices, summons and pleadings etc. have not been possible during the period of lockdown because this involves visits to post offices, courier companies or physical delivery of notices, summons and pleadings.
- The Court therefore, considered it appropriate to direct that such services may be effected by e-mail, FAX, commonly used instant messaging services, such as WhatsApp, Telegram, and Signal etc.
- However, if such services are made by means of said instant messaging services, then in addition thereto, the service of the same document/documents must be made via e-mail on the same date.

CROSS EMPOWERMENT

- **Show cause notice**

Authority empowered to issue show cause notice

- ❖ 'Proper officer'

- ❖ Sec- 2(91)

- ❖ Circular No. 3/3/2017 –GST dt. 05-07-2017

Section – 2(91) , Central Goods And Services Tax Act, 2017

- "**proper officer**" in relation to any function to be performed under this Act, means the Commissioner or the officer of the central tax who is assigned that function by the Commissioner in the Board;

Section - 6, Central Goods And Services Tax Act, 2017

(1) Without prejudice to the provisions of this Act, the officers appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act are authorised to be the proper officers for the purposes of this Act, subject to such conditions as the Government shall, on the recommendations of the Council, by notification³³, specify.

(2) Subject to the conditions specified in the notification issued under sub-section (1),—

(a) where any proper officer issues an order under this Act, he shall also issue an order under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as authorised by the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, under intimation to the jurisdictional officer of State tax or Union territory tax;

(b) where a proper officer under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under this Act on the same subject matter.

[2021] 125 taxmann.com 188 (SC)

Canon India Private Limited v. Commissioner of Customs

- **Section 28 of the Customs Act, 1962** - Recovery - Of duty or tax not levied/paid or short-levied/paid or erroneously refunded - Proper Officer - Appellant importers had imported cameras/goods which were released without any customs duty after being allowed benefit of exemption notifications as per law by Deputy Commissioner of Customs being Proper officer - Later, a show cause notice was issued under section 28(4) by Additional Director General DRI, alleging that Customs Authorities had been induced to clear cameras by wilful mis-statement and suppression of facts about cameras - However, it was found that section 28(4) empowers recovery of duty not paid, part paid or erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts and, reassessment and recovery of duties contemplated by section 28(4) is by same authority and not by any superior authority such as Appellate or Revisional Authority - Further, it is impermissible to allow an officer, who has not passed original order of assessment to reopen assessment on ground that duty was not paid/not levied, by original officer who had decided to clear goods and who was competent and authorized to make assessment - Whether therefore, when cameras had been cleared for import by Deputy Commissioner of Customs who decided that cameras were exempted, Additional Director General of DRI was not proper officer to exercise power under section 28(4) and thus, entire proceedings initiated by Additional Director General of DRI for recovery of duty not paid under section 28(4) were invalid, without any authority of law and liable to be set-aside - Held, yes [Paras 14,15 and 23].

[2021] 125 taxmann.com 188 (SC)

Canon India Private Limited v. Commissioner of Customs

- An officer who did assessment, could only undertake reassessment under section 28(4) of Customs Act, hence, goods, cameras having been cleared for import by a Deputy Commissioner of Customs who decided that goods were exempted, Additional Director General of DRI was not proper officer to exercise power under section 28(4)

DIR officers are not proper officers

- Judgement by Larger bench of 3
- The expression 'the' in Section 28 indicates that the re-assessment by way of issuance of SCN is to be done by the same officer who has initially assessed- 'the' is difference from 'a/an'
- Where the statute confers the same power to perform an act on different officers, the two officers cannot exercise their power in the same case. Where one officer has exercised his powers of assessment, the power to order re-assessment must also be exercised by the same officer or his successor and not by another officer of another department though he is designated to be an officer of the same rank.- Doctrine of Comity

- **Parallel proceedings cannot be initiated by State GST authorities on the same subject matter**

Raj Metal Industries & Anr. v. UOI & Ors. [W. P. A. 1629 of 2021,]

Facts:-

- Raj Metal Industries (“the Petitioner”) has filed this petition challenging the actions initiated by the State GST Authorities (“the Respondent”) with respect to summons issued dated October 19, 2020 under Section 70 of the WBGST Act
- Challenging blocking of the electronic credit ledger on December 8, 2020 being challenged the vires of Rule 86A of the West Bengal Goods and Services Tax Rules, 2017 (“the WBGST Rules”)/ Central Goods and Services Tax Rules, 2017 (“the CGST Rules”) & Section 16(2)(c) of the WBGST Act/ CGST Act
- Further, the proceedings were already pending against the Petitioner on the same subject matter under the CGST Act.

Raj Metal Industries & Anr. v. UOI & Ors. [W. P. A. 1629 of 2021,]

Issues:-

Whether the summon issued and proceedings initiated by the Respondent is in violation of the Section 6(2)(b) of the WBGST Act?

Held:-

The Hon'ble Calcutta High Court in W. P. A. 1629 of 2021, dated March 24, 2021 stayed the summons and proceedings thereunder and held that the summons issued by the Respondent is, prima facie, in violation of Section 6(2)(b) of the WBGST Act.

Parallel proceedings cannot be initiated by State
GST authorities on the same subject matter

Certain relevant judgement on stated issue

- The Hon'ble Punjab & Haryana High Court in **Kaushal Kumar Mishra v. Additional Director General & Anr. [CWP21387-2020 (O&M)**, decided on February 12, 2021] dismissed the petition and refused to interfere with the investigations undertaken by the competent authorities against the proprietor, for alleged misuse and fake availment of Input Tax Credit ("ITC. Further, the Court held that where different officers appointed are independently investigating altogether different matters involving contraventions of prima facie cognizable and punitive offences under CGST Act, without any overlapping, such investigation is not barred by Section 6(2)(b) of the CGST Act.

Certain relevant judgement on stated issue

- The Hon'ble Allahabad High Court in **G.K. Trading Company v. Union of India & Ors. [Writ Tax No. 666 of 2020, dated 2.12.2020]** dismissed the petition filed for prohibiting another proper officer to initiate any inquiry/proceeding on the same subject-matter. The Court observed and held that, there was no proceeding initiated by a proper officer against the assessee on the same subject-matter referable to Section 6(2)(b) of the CGST Act as it was merely an inquiry by a proper officer under Section 70 of the CGST Act.
- Koenig Solutions Pvt. Ltd. Vs. UOI – 2021-TIOL-1013-HC-DEL-GST
- Himanshu Balram Gupta vs. UOI – 2020-TIOL-2241-HC-AHM-GST.

Overlapping/Different Jurisdictions [Sec .6 (2)(b)]

- Koenig Solutions Pvt. Ltd. Vs. UOI – 2021-TIOL-1013-HC-DEL-GST
- Raj Metal Indus. Vs. UOI – 2021-TIOL-744HC-KOL-GST
- Himanshu Balram Gupta vs. UOI – 2020-TIOL-2241-HC-AHM-GST.
- Kaushal Kumar Mishra vs. ADG, Ludhiana ZU-2021-TIOL-387-HC-P & H-GST

The powers vested in Commissioner u/s. 69 be further delegated by him

- Nathalal Maganlal Chauhan vs. State of Gujarat-2020 (35) GSTL 145 (Guj.)

Authority which initiates will conclude

- RAJ METAL INDUSTRIES-Kolkatta HC 2021-TIOL-744HC-KOL-GST
Proceedings pending before CGST , simultaneously initiated by SGST

The stay on arrest grantable in case of GST frauds

- Govind Enterprises vs. State of UP -2019 (27) GSTL 161 (All.)

PERIOD OF LIMITATION APPLICABILITY IN GST of SUPREME COURT SUO MOTO ORDER

Order in Suo Motu Writ Petition No. 3/2020
dated 23.03.2020 (Now alive till further
orders)

Order in Suo Motu Writ
Petition No. 3/2020 dated
08.03.2021 (Now has
become infructuous)

Order in SCAORA
Interlocutory Application for
restoration of Suo Motu Writ
Petition No. 3/2020 dated
27.04.2021 (seems to
extended the scope of order
dated 23.03.2020)

Order in Suo Motu Writ Petition No. 3/2020 dated 23.03.2020

- This Court has taken Suo Motu cognizance of the situation arising out of the challenge faced by the country on account of Covid-19 Virus and **resultant difficulties that may be faced by litigants across the country in filing their** petitions/applications/suits/appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and/or State).

- To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the country including this Court, **it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings.**

- We are exercising this power under **Article 142 read with Article 141** of the Constitution of India and declare that this order is a binding order within the meaning of Article 141 on all Courts/Tribunals and authorities.
- This order may be brought to the notice of **all High Courts for being communicated to all subordinate Courts/Tribunals** within their respective jurisdiction.

Order in SCAORA Interlocutory Application for restoration of Suo Motu Writ Petition No. 3/2020 dated 27.04.2021

- We also take judicial notice of the fact that the steep rise in COVID-19 Virus cases is not limited to Delhi alone but it has engulfed the entire nation. The extraordinary situation caused by the sudden and second outburst of COVID-19 Virus, thus, requires extraordinary measures to minimize the hardship of litigant–public in all the states. **We, therefore, restore the order dated 23rd March, 2020 and in continuation of the order dated 8th March, 2021 direct that the period(s) of limitation, as prescribed under any general or special laws in respect of all judicial or quasi judicial proceedings, whether condonable or not, shall stand extended till further orders.**

- It is further clarified that the period from 14th March, 2021 till further orders shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.

- We have passed this order in exercise of our powers under Article 142 read with Article 141 of the Constitution of India. Hence it shall be a binding order within the meaning of Article 141 on all Courts/Tribunals and Authorities.
- This order may be brought to the notice of all High Courts for being communicated to all subordinate courts/Tribunals within their respective jurisdiction.

Meaning of 'Judicial Proceedings'

- Section 2 (i) of the Criminal Proceeding Code defines Judicial Proceeding:
- "**judicial proceeding**" includes any proceeding in the course of which evidence is or may be legally taken on oath.
- Judicial Proceedings Includes Trial and Inquiry but not Investigation.

- **Section-70 of the CGST Act, 2017**
- **Power to summon persons to give evidence and produce documents.**
- 70. (1) The proper officer under this Act shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry in the same manner, as provided in the case of a civil court under the provisions of the Code of Civil Procedure, 1908 (5 of 1908).
- **(2) Every such inquiry referred to in sub-section (1) shall be deemed to be a “judicial proceedings” within the meaning of section 193 and section 228 of the Indian Penal Code (45 of 1860).**

Meaning of 'Quasi-Judicial Proceedings'

- **“Quasi-judicial Proceedings”:**
- Similar to but not exactly the same as judicial proceedings.
- Quasi-judicial proceedings are similar to but not exactly court proceedings.
- Deal in facts and give decision by considering Law. e.g Tribunals/CIT(A)
- No formal Affidavits are filed.

- The term also implies that these authorities are not routinely responsible for holding such proceedings and often may have other duties.
- E.g National Human Rights Commission, Dispute Rederessal Commissions, ITAT, GSTAT, CCI etc.
- Judicial bodies are Courts like High Court, District Court or Supreme Court etc.

Refer VIKAS WSP Ltd. & ORS. V Director Enforcement
2021 376 ELT 201. The order cannot be made
universally applicable i.e in PMLA , Bank a/c
attachment valid for 1 year. It will not extend. e.G
Period of Detention 60 days will not extend.

Quasi Judicial Authority

- Appellate authority is quasi judicial authority
- Indian National Congress (I) v. Institute of Social Welfare, (2002) 5 SCC 685
- The dictionary meaning of the word quasi is “not exactly” and it is just in between a judicial and administrative function. It is true, in many cases, the statutory authorities were held to be quasi-judicial authorities and decisions rendered by them were regarded as quasi-judicial

- In Orient Paper Mills Ltd. vs. UOI – 1978 (2) ELT J 345 (SC) . It was held that adjudication, appeal and revision are quasi-judicial proceedings and the same would get vitiated if administrative considerations , namely departmental clarifications and Board rulings influence the quasi-judicial authority.
- In Asst. Collector of C. Ex vs. National Tobacco of India Ltd. – 1978 (2) ELT 416 (SC), it was held that the assessment of tax on a person or property is of a quasi-judicial character, therefore, the rules of natural justice have to be followed and assessment is a quasi judicial process involving due application of mind to the facts as well as to requirements of law.

- Article 141--- Law declared by Supreme Court to be binding on all courts
- Article 142--- 1) The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe.

- (2) Subject to the provisions of any law made in this behalf by Parliament, the Supreme Court shall, as respects the whole of the territory of India, have all and every power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself.
- Article 142 of the Constitution, confers on the Hon'ble Supreme Court a plenipotentiary power to pass any order to do complete justice in any cause or matter pending before it.

CIRCULAR NO. 157/13/2021 DATED
20.07.2021



Clarification regarding extension of
limitation under GST Law in terms of
Hon'ble Supreme Court's Order dated
27.04.2021.

The extract of the Hon'ble Supreme order dated 27th April 2021 is reproduced below for reference:

“We, therefore, restore the order dated 23rd March, 2020 and in continuation of the order dated 8th March, 2021 direct that the period(s) of limitation, as prescribed under any general or special laws in respect of **all judicial or quasi-judicial proceedings**, whether condonable or not, **shall stand extended till further orders**. It is further clarified that the period from 14th March, 2021 till further orders shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings. We have passed this order in exercise of our powers under Article 142 read with Article 141 of the Constitution of India. Hence it shall be a binding order within the meaning of Article 141 on all Courts/Tribunals and Authorities.”

OBSERVATIONS OF THE LEGAL OPINION

i) Hon'ble Supreme Court has stepped into to grant extensions only with reference to judicial and quasi-judicial proceedings in the nature of appeals/ suits/ petitions etc. and has not extended it to every action or proceeding under the CGST Act.

ii) As on date, the Orders of the Hon'ble Supreme Court apply to appeals, reviews, revisions etc., and not to original adjudication.

iii) Even under category judicial and quasi-judicial proceedings , Hon'ble Supreme Court Order, applies only to a list which needs to be pursued within a time frame fixed by the respective statutes.

iv) Wherever proceedings are pending, judicial or quasi-judicial which requires to be heard and disposed off, cannot come to a standstill by virtue of these extension orders. Those cases need to be adjudicated or disposed off either physically or through the virtual mode based on the prevailing policies and practices besides instructions if any.

v) The following actions such as scrutiny of returns, issuance of summons, search, enquiry or investigations and even consequential arrest in accordance with GST law would not be covered by the judgment of the Hon'ble Supreme Court.

vi) As regards issuance of show cause notice, granting time for replies and passing orders, the present Orders of the Hon'ble Supreme Court may not cover them even though they are quasi-judicial proceedings as the same has only been made applicable to matters relating to petitions/applications/suits, etc

CLARIFICATIONS OF THE LEGAL OPINION

(a) Proceedings that need to be initiated or compliances that need to be done by the taxpayers:-These actions would continue to be governed only by the statutory mechanism and time limit provided/ extensions granted under the statute itself. Various Orders of the Hon'ble Supreme Court would not apply to the said proceedings/ compliances on part of the taxpayers.

(b) Quasi-Judicial proceedings by tax authorities:- The tax authorities can continue to hear and dispose off proceedings where they are performing the functions as quasi-judicial authority. This may inter alia include disposal of application for refund, application for revocation or cancellation of registration, adjudication proceedings of demand notices, etc.

Similarly, appeals which are filed and are pending, can continue to be heard and disposed off and the same will be governed by those extensions of time granted by the statutes or notifications, if any

(c) Appeals by taxpayers/ tax authorities against any quasi- judicial order:- Wherever any appeal is required to filed before Joint/ Additional Commissioner (Appeals), Commissioner (Appeals), Appellate Authority for Advance Ruling, Tribunal and various courts against any quasi-judicial order or where a proceeding for revision or rectification of any order is required to be undertaken, the time line for the same would stand extended as per the Hon'ble Supreme Court's order.

TITBITS OF APPEALS

- No Pre deposit in case of Refund Appeals.
- If Online Order then Online Appeal, if manual Order then Manual Appeal.
- No specific Format of Memorandum of Cross Objections in case of First Appellate Authority.
- Online gearing through VIDYO app and Online Vkalatnama to be submitted. Should be in proper dress.

- Difference in Income Tax and GST Appeals 1) Detailed Appeal Drafting in GST 2) First Appeal can be by Department in GST 3) No Pre Deposit waiver in GST 4) Max 3 adjournments 5) Directory time period of 1 year for disposal. 6)1st Appeal may lie to JC/Addl/ Comm, as per order passing authority.
- **Appeal be made to both CGST & SGST authorities? –No** As per the GST Act, CGST & SGST/UTGST officers are both empowered to pass orders. As per the Act, an order passed under CGST will also be deemed to apply to SGST. If an officer under CGST has passed an order, any appeal /review/revision/ rectification against the order will lie only with the officers of CGST, vice a versa for SGST.

- **Payment of excise service tax pre –Deposit** Pre-deposit can be made through CGST Credit (even of arrears of excise duty and service tax)- Dell International Service v. CCT(2019) 365 ELT 813 (CESTAT). Circular No. 58/32/2018-GST, dated 4-9-2018 and also circular No. 42/16/2018- GST dated 13-4-2018 and submitted that the Circular very clearly states that the arrears of central excise duty, service tax or wrongly availed Cenvat credit under the old law is permissible to be paid through the utilization of amounts available in the electronic Credit Ledger.

- **In case of transfer of appellate authority**
- **Same officer to hear and decide the case** The requirement of fair hearing involves decision being taken by the officer who heard the case. If after hearing, that particular officer is transferred, normal rule would be that the successor must hear the arguments afresh before he could pass an order. **Laxmi Devi v. State of Bihar, (2015) 10 SCC 241.** So Stringent is this right that it mandates that **the person who heard and considered the objections can alone decide them;** and not even his successor is competent to do so even on the basis of the materials collected by his predecessor

Condonation of delay by appellate authority S. 107(4) CGST Act

- Authorities created by statute cannot apply limitation Act, 1963. They cannot condone delay unless empowered by statute- Om Parkash v. Ashwini Kumar Bassi (2010) 258 ELT 5(SC)
- M.P. Steel Corporation v. commissioner of Central Excise [2015] 319 ELT 373 (SC) (A.K.SIKRI AND ROHINTON FALI NARIMAN, JJ.)

- Provisions of limitation Act do not apply to Tribunal, Other quasi-judicial authorities; but principles there in may be extended to proceedings before Tribunal and other quasi-judicial authorities so as to advance cause of justice.
- Time spent in pursuing remedy before wrong forum bona fide would stand excluded but period prior to institution of initiation of any abortive preceeding cannot be excluded which is principle which has been derived from section 14 of the limitation act.

Effect of withdrawal of Appeal

- In its recent decision of the Supreme Court for a matter pertaining to income tax **commissioner of income-tax, central-I v. Ansal Housing And construction Ltd. [2020] 116 taxmann.com 322** held that when an appeal is withdrawn due to circular the effect of the same would be dismissed as withdrawn **leaving the question of Law open**. Similar view as taken by the Bombay High court Commissioner of CGST, **ST & Central Excise vs. Cea Raj Constructions [2018] 98 taxmann.com 169**.

Summary of Forms Used in Appeals

S. No.	FORM No.	CONTENT
1	GST APL-01	Appeal to Appellate Authority by Taxpayer
2	GST APL-02	Acknowledgement of submission of appeal
3	GST APL-03	Application to the Appellate Authority by Department under sub-section (2) of section 107
4	GST APL-04	Summary of the demand after the issue of order by the Appellate Authority, Tribunal or Court
5	GST APL-05	Appeal to the Appellate Tribunal
6	GST APL-06	Cross-objections before the Appellate Tribunal
7	GST APL-07	Application to the Appellate Tribunal under subsection (3) of section 112
8	GST APL-08	Appeal to the High Court under section 117

RECENT CIRCULARS

CIRCULAR NO. 158/14/2021 DATED
06.09.202

Clarification regarding extension of time limit
to apply for revocation of cancellation of
registration in view of Notification No.
34/2021-Central Tax dated 29th August, 2021

The extract of the Notification No. 34/2021-Central Tax dated 29th August, 2021 is given below for reference:

The Government, on the recommendations of the Council, hereby notifies that where a registration has been cancelled under clause (b) or (c) of sub-section (2) of section 29 of the said Act and - the time limit for making an application of revocation of cancellation of registration under sub-section (1) of section 30 of the said Act falls during the period from the 1st day of March, 2020 to 31st day of August, 2021, the time limit for making such application shall be extended upto the 30th day of September, 2021.

CLARIFICATIONS REGARDING EXTENSION OF TIME LIMIT FOR APPLICATION FOR REVOCATION OF CANCELLATION OF REGISTRATION

All applications are covered under the scope of the said notification irrespective of the status of the applications

(i) application for revocation of cancellation of registration has not been filed by the taxpayer

(ii) application for revocation of cancellation of registration has already been filed and which are pending with the proper officer

(iii) application for revocation of cancellation of registration was filed, but was rejected by the proper officer and taxpayer has not filed any appeal against the rejection -

(iv) application for revocation of cancellation of registration was filed, the proper officer rejected the application and appeal against the rejection order is pending before appellate authority-

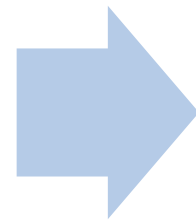
(v) application for revocation of cancellation of registration was filed, the proper officer rejected the application and the appeal has been decided against taxpayer

With effect **from 01.01.2021**, proviso to sub-section (1) of section 30 of the CGST Act has been inserted which provides for **extension of time for filing application for revocation of cancellation of registration**

- by 30 days by Additional/ Joint Commissioner and
- by another 30 days by the Commissioner.

CLARIFICATIONS REGARDING THE TIME LIMIT OF 30 DAYS

(i) where the thirty days' time limit falls between 1st March, 2020 to 31st December, 2020, there is no provision available to extend the said time period of 30 days under section 30 of the CGST Act



The time limit to apply for revocation of cancellation of registration stands extended up to 30th September, 2021 only

(ii) where the time period of thirty days since cancellation of registration has not lapsed as on 1st January, 2021 or where the registration has been cancelled on or after 1st January, 2021,



The time limit for applying for revocation of cancellation of registration shall stand extended as follows:

(a) Where the time period of 90 days (initial 30 days and extension of 30 + 30 days) since cancellation of registration has elapsed by 31.08.2021

(b) Where the time period of 60 days (and not elapsed by 31.08.2021 Where the time period of 60 days (and not 90 days) since cancellation of registration has

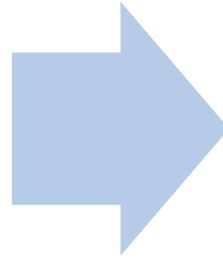
(c) Where the time period of 30 days (and not registration has elapsed by 31.08.2021 (c) Where the time period of 30 days (and not 60 days or 90 days) since cancellation of registration has elapsed by 31.08.2021

the time limit to apply for revocation of cancellation of registration stands extended upto 30th September 2021, without any further extension of time by Joint Commissioner/ Additional Commissioner/ Commissioner.

the time limit to apply for revocation of cancellation of registration stands extended upto 30th September 2021, with the extension of timelines by another 30 days beyond 30.09.2021 by the Commissioner, on being satisfied, as per proviso to section

the time limit to apply for revocation of cancellation of registration stands extended upto 30th September 2021, with the extension of timelines by another 30 days beyond 30.09.2021 by the Joint/ Additional Commissioner and another 30 days by the Commissioner, on being satisfied, as per proviso to section 30(1) of the CGST Act

Circular no. 156/12/2021 21st
June,2020



Clarification in respect of applicability
of Dynamic Quick Response (QR) Code
on B2C invoices and compliance of
notification 14/2020- Central Tax
dated 21st March, 2020 - Reg.

Notification No. 14/2020-Central Tax, dated 21st March 2020 had been issued which requires Dynamic QR Code on B2C invoice issued by taxpayers having aggregate turnover more than 500 crore rupees, w.e.f. 01.12.2020.

Further, vide notification No. 06/2021-Central Tax, dated 30th March 2021, penalty has been waived for non-compliance of the provisions of notification No.14/2020 – Central Tax for the period from 01st December, 2020 to 30th June, 2021, subject to the condition that the said person complies with the provisions of the said notification from 1st July, 2021

Issues

1	Whether Dynamic QR Code is to be provided on an invoice , issued to a person, who has obtained a Unique Identity Number as per the provisions of Sub Section 9 of Section 25 of CGST Act 2017?	Any person, who has obtained a Unique Identity Number (UIN) as per the provisions of Sub-Section 9 of Section 25 of CGST Act 2017, is not a “registered person” as per the definition of registered person provided in section 2(94) of the CGST Act 2017. Therefore, any invoice, issued to such person having a UIN, shall be considered as invoice issued for a B2C supply and shall be required to comply with the requirement of Dynamic QR Code.
2	UPI ID is linked to the bank account of the payee/ person collecting money. Whether bank account and IFSC details also need to be provided separately in the Dynamic QR Code along with UPI ID?	UPI ID is linked to the bank account of the payee/ person collecting money. Whether bank account and IFSC details also need to be provided separately in the Dynamic QR Code along with UPI

Issues

3	In cases where the payment is collected by some person other than the supplier (ECO or any other person authorized by the supplier on his/ her behalf), whether in such cases, in place of UPI ID of the supplier, the UPI ID of such person, who is authorized to collect the payment on behalf of the supplier, may be provided?	Yes. In such cases where the payment is collected by some person, authorized by the supplier on his/ her behalf, the UPI ID of such person may be provided in the Dynamic QR Code, instead of UPI ID of the supplier.
4	In cases, where receiver of services is located outside India, and payment is being received by the supplier of services in foreign exchange, through RBI approved modes of payment , but as per provisions of the IGST Act 2017, the place of supply of such services is in India, then such supply of services is not considered as export of services as per the IGST Act 2017; whether in such cases, the Dynamic QR Code is required on the invoice issued , for such supply of services, to such recipient located outside India?	No. Wherever an invoice is issued to a recipient located outside India, for supply of services, for which the place of supply is in India, as per the provisions of IGST Act 2017, and the payment is received by the supplier in foreign currency, through RBI approved mediums, such invoice may be issued without having a Dynamic QR Code, as such dynamic QR code cannot be used by the recipient located outside India for making payment to the supplier.

Issues

5 In some instances of retail sales over the counter, the payment from the customer is received on the payment counter by displaying dynamic QR code on digital display, whereas the invoice, along with invoice number, is generated on the processing system being used by supplier/ merchant after receiving the payment. In such cases, it may not be possible for the merchant/ supplier to provide details of invoice number in the dynamic QR code displayed to the customer on payment counter. However, each transaction i.e. receipt of payment from a customer is having a unique Order ID/ sales reference number, which is linked with the invoice for the said transaction. Whether in such cases, the order ID/ reference number of such transaction can be provided in the dynamic QR code displayed digitally, instead of invoice number.

In such cases, where the invoice number is not available at the time of digital display of dynamic QR code in case of over the counter sales and the invoice number and invoices are generated after receipt of payment, the unique order ID/ unique sales reference number, which is uniquely linked to the invoice issued for the said transaction, may be provided in the Dynamic QR Code for digital display, as long as the details of such unique order ID/ sales reference number linkage with the invoice are available on the processing system of the merchant/ supplier and the cross reference of such payment along with unique order ID/ sales reference number are also provided on the invoice.

Issues

6 When **part-payment has already been received by the merchant/ supplier, either in advance or by adjustment** (e.g. using a voucher, discount coupon etc), before the dynamic QR Code is generated, **what amount should be provided in the Dynamic QR Code for “invoice value”?**

The purpose of dynamic QR Code is to enable the recipient/ customer to scan and pay the amount to be paid to the merchant/ supplier in respect of the said supply. When the part-payment for any supply has already been received from the customer/ recipient, in form of either advance or adjustment through voucher/ discount coupon etc., **then the dynamic QR code may provide only the remaining amount payable by the customer/ recipient against “invoice value”**. The details of total invoice value, along with details/ cross reference of the partpayment/ advance/ adjustment done, and the remaining amount to be paid, should be provided on the invoice.

VKC Footsteps India (P.) Ltd V. Union Of India [2020]

Explanation (a) to substituted rule 89(5) which denies refund of 'unutilised input tax' paid on 'input services' as part of 'input tax credit' accumulated on account of inverted duty structure is in conformity with section 54(3)

VKC Footsteps India (P.) Ltd V. Union Of India [2020]

Clause (ii) of the first proviso to Section 54(3) is not merely a condition of eligibility for availing of a refund but a substantive restriction under which a refund of unutilized ITC can be availed of only when the accumulation is relatable to an inverted duty structure, namely the tax on input goods being higher than the rate of tax on output supplies. There is therefore no disharmony between Rule 89(5) on the one hand and Section 54(3) particularly Clause (ii) of its first proviso on the other hand. Explanation (a) to Rule 89(5) in defining 'Net ITC' to mean ITC availed on inputs (goods) is, as a matter of fact, entirely in line with the main provision, Section 54(3).

Mr G Natarajan's submission indicates an aberration where a registered person with a single product with an inverted duty structure is neither able to use the unutilized ITC for the payment of tax on output supply nor is allowed a refund. On the other hand, a registered person with products involving an inverted duty structure and otherwise, is in a position to utilize the ITC availed on input services for payment of tax on turnover not having an inverted rate structure. Mr G Natarajan has given the following example:

The formula in Rule 89(5)

Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services) x Net ITC ÷ Adjusted Total Turnover} – tax payable on such inverted rated supply of goods and services (emphasis supplied)


Sec. 54 (REFUND OF TAX)

(3) Subject to the **provisions of sub-section (10)**, a **registered person** may claim **refund of any** unutilised input tax credit at the end of any tax period.

Provided that **no refund of** unutilised input tax credit shall be allowed in cases other than—

- I. zero-rated supplies made **without payment of tax**;
- II. where the credit has accumulated on account of rate of tax on **inputs being higher than the rate of tax on output supplies** (other than nil rated or fully exempt supplies), **except supplies of goods or services or both as may be notified** by the Government on the recommendations of the Council:

i.e. Export/
Supply to SEZ
under Bond/
LUT




N.N. 5/2017 for
goods N.N.
15/2017 for
services (Services
as specified in
5(b) of schedule
II) (construction)



Sec. 54 (REFUND OF TAX)

Provided further that no refund of unutilised input tax credit shall be allowed in cases where the **goods exported** out of India are subjected to **export duty**:

Provided also that no refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of **drawback** in respect of central tax or claims refund of the integrated tax paid on such supplies.



Para 40 of
circular
125/44/2019

Sec. 54 (REFUND OF TAX)

Sec. 2(106) "tax period" means the period for which the return is required to be furnished;

This point is relevant, as in case of exports the period of two years is to be checked from relevant date INDIVIDUALLY and when the two or more relevant dates fall under same tax period then the relevant date from latter should be considered, as there can be SINGLE application for a Tax period. As per Law applicant can file refund application at the end of Tax Period only, and the situation is beyond his control. But in this artificial bunching should be avoided to extend the period of Limitation and minimum tax period for which refund can be applied should be considered.

SEC. 2(62) Input Tax

“Input tax” in relation to a registered person, means the central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes—

- a) the integrated goods and services tax charged on import of goods;
- b) the tax payable under the provisions of sub-sections (3) and (4) of section 9;
- c) the tax payable under the provisions of sub-sections (3) and (4) of section 5 of the Integrated Goods and Services Tax Act;
- d) the tax payable under the provisions of sub-sections (3) and (4) of section 9 of the respective State Goods and Services Tax Act; or
- e) the tax payable under the provisions of sub-sections (3) and (4) of section 7 of the Union Territory Goods and Services Tax Act,

but does not include the tax paid under the composition levy;

SEC. 2(63) (Input Tax Credit)

“Input tax credit” means the credit of input tax

Recent Case Laws on Refund

[2020] 118 taxmann.com 81 (Gujarat) VKC Footsteps India (P.) Ltd. v. Union of India

Explanation (a) to Rule 89(5) of CGST Rules, 2017 which denies the refund of “unutilized input tax “ paid on “input services” as part of “input tax credit” accumulated on account of inverted duty structure is held to be ultravires the provisions of sub section (3) of section 54 of CGST ACT, 2017

Refund - Tax - Rule 89(5) as originally introduced was substituted vide Notification No. 21/2018-Central Tax, dated 18-4-2018 prescribing a revised formula for determining refund on account of inverted duty structure; **revised formula inter alia excluded input services from scope of 'net input tax credit' for computation of refund amount under rule and, thus, substituted rule 89(5) denied refund on input tax credit availed on input services and allowed relief of refund of input tax credit availed on inputs alone –**

- Section 54(3) allows refund of any unutilized ITC but Rule 89(5) restricts refund to Inputs. [Para 23]
- Clause (ii) of proviso to section 54(3) also deals with both supply of goods and services and not only supply of goods [Para 23].
- Law in section 54(3) has been wrongly interpreted in Circular No. 79/53/2018 dated 31-12-2018 to deny refund of ITC on input services. [Para 24]
- Explanation (a) to Rule 89(5) which denies refund of unutilized Input tax on input services is ultra vires the provisions of section 54(3) [Para 25].
- Therefore refund of input services be also allowed under inverted duty structure [Para 27].

- Court drew support from first discussion paper on GST issued by empowered committee dated 10-11-2009 [Para 16]; International VAT/GST Guidelines published on Feb 2006 [Para 17]; FAQ on GST dated 31-03-2007 [Para 18].
- Court also drew support from Delhi High Court in Intercontinental Consultants & Technocrats affirmed by Supreme Court to hold that rule which goes beyond statute is ultra vires.
- Supreme Court decision in Lohara Steel Industries quoted to lay down that offending portion which is severable can be struck down.

No Refund on entire unutilized ITC accumulated on account of being subjected to an inverted Duty Structure

Tvl. Transtonnelstroy Afcons Joint venture v. Union of India [Madras High Court]

- (1) Section 54(3)(ii) does not infringe Article 14.
- (2) Refund is a statutory right and the extension of the benefit of refund only to the unutilized credit that accumulates on account of the rate of tax on input goods being higher than the rate of tax on output supplies by excluding unutilized input tax credit that accumulated on account of input services is a valid classification and a valid exercise of legislative power

(3) Therefore, there is no necessity to adopt the interpretive device of reading down so as to save the constitutionality of Section 54(3)(ii).

(4) Section 54(3)(ii) curtails a refund claim to the unutilized credit that accumulates only on account of the rate of tax on input goods being higher than the rate of tax on output supplies. In other words, it qualifies and curtails not only the class of registered persons who are entitled to refund but also the imposes a source-based restriction on refund entitlement and, consequently, the quantum thereof.

(5) As a corollary, Rule 89(5) of the CGST Rules, as amended, is in conformity with Section 54(3)(ii). Consequently, it is not necessary to interpret Rule 89(5) and, in particular, the definition of Net ITC therein so as to include the words input services.

Fake Invoicing Transaction

Mediator/
KINGPIN

- * For Penalty - covered under **Sec 122(1A)**
- * For Prosecution- under **Sec 132**
- * Provisional Attachment- under **Sec 83(Budgetary)**



**Retains the benefit of a transaction
and at whose instance such
transaction is conducted**



Invoice ✓
Supply ✗
Invoice ✗
But G/S ✓
Bogus Bill ITC – without
Receipt of G/S ISD

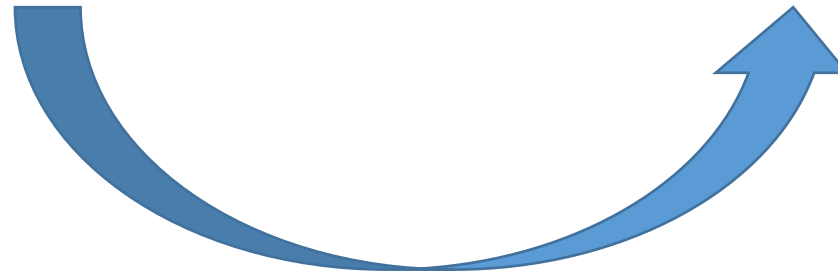
Supplier





Receiver

- For Penalty -covered under Sec 122(1)
- For Prosecution- under Sec 132
- Provisional Attachment- under Sec 83

- For Penalty -covered under Sec 122(1)
- For Prosecution- under Sec 132
- Provisional Attachment- under Sec 83




GSTR 3B
GSTR 1- **Filed**
GSTR 2A- **Reflected**


GSTR 3B
GSTR 1- **Filed**
Cannot file GSTR-1 if GSTR-3B is not
filed for **2 months or 1 quarter**

If Liability in GSTR-3B < GSTR-1 will
lead to :
* **Cancellation (Rule 21)**
* **Suspension (Rule 21 A)**

Rule 86B Pay 1% in Cash , credit can
be utilised upto 99%

Fake Invoicing

- No definition of Fake Invoicing is given in GST Law. It is an Economic Offence . It can be Invoice Supply , Invoice but G/S Bogus Bill
- Check Jurisdiction on receipt of summon and the other legal issues like DIN etc. For the checking the Jurisdiction one must check :- Who is the Proper Officer? (He must be an authorized person). Person cannot be put to prejudice by having multiple assessments by center and state

- **Confirm whether the invoice is indeed fake or not.**

⇒ If it is indeed fake and credit is reversed with interest – Intimate the Department

⇒ If it is not fake – One can go for Writ Remedy in the High Court

- In this case question of penalty may arise later on even if reversed
- Income tax disallowance will arise in case of fake invoice.
- Question whether reversal=not availed is still a question mark(Partibha Processors, Bombay Dyeing –
–
-If assessee reverses credit on his own without utilising then it will be presumed as never been taken.)

Fake Invoicing

- One should submit the evidences and documents on receipt of DRC-01.
- For goods you have to submit: E-way Bill, Vehicle No., Toll Receipts , Transport Documents, For Services, its difficult as it leaves no trail but e.g in advertisement Services, hoarding etc. documents can be furnished.
- Statements can be cross verified . Statements made under duress can be retracted within reasonable time of Receipt of copy. Statement made, can be retracted but within a reasonable time as held in VINOD SOLANKI (SC)(Civil Appeal FEMA matter)- SC says Statement retracted are relevant but becomes weak and need corroborative Evidences)
- If person alleges that Statement is made under coercion/ duress then it will not be presumed but he needs to establish.
- It is not mandatory for a person to make statement appearing for the summon. One has a Right of Silence during Summon proceedings.

Fake Invoicing

- Presence of Tax Professional during Statement –There are contradictory views available in this regard in various judgements . In few custom and other cases, it allowed Visible Distance but not Hearing Distance.
- Burden of proof is on Department to prove Fake Invoicing. If assessee furnishes documents , the officer cannot ignore the submissions, against principle of Natural Justice.

- You have to evaluate arrest provisions- whether these are applicable or not. Decision as to Anticipatory Bail is to be carefully examined. Its very difficult to get anticipatory bail in Economic Offences involving high stakes.
- Check that Principle of Natural Justice is followed and adherence to norms concerning Ladies. Can refer to Human Right Commission.

Other Points

1. Simultaneous Investigation by Center and State GST Authorities for same period is not allowed. A person cannot be put to adjudication under both.

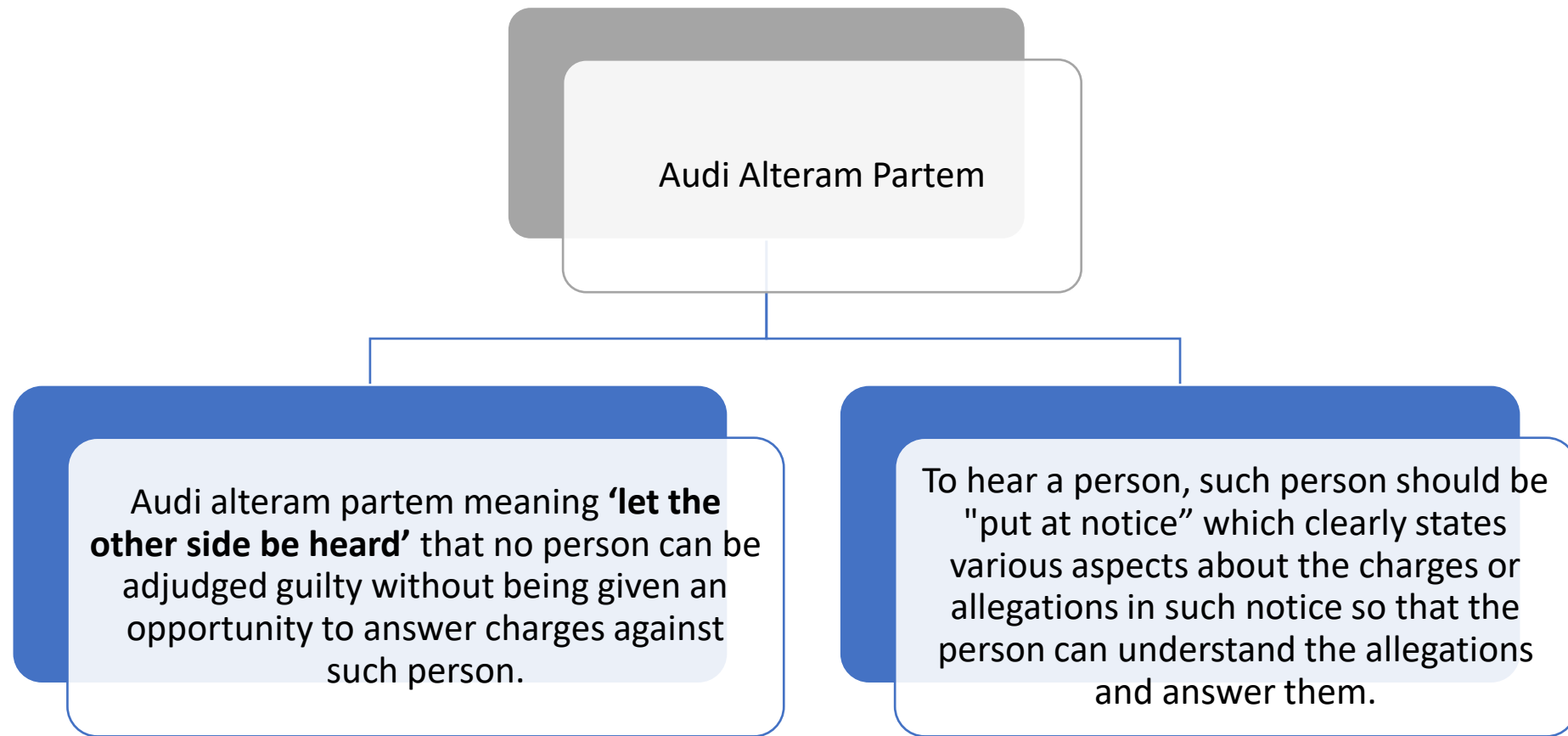
Eg. If person has state jurisdiction then center cannot assess. It can be challenged as violation of Article 14 (Equality Before Law)

- Sri Balaji Rice Mill, vs The State Of Andhra Pradesh (WRIT PETITION No.20786 of 2020)
- Krishna ShivRam Hegde – Kerala High Court
- Raj Metal Industries & Anr. Vs. Union of India & Ors (W.P.A. 1629 OF 2021) Anurag Suri Vs. DGGSIT (WP (c) no. 158 of 2020)

2. Maximum detention under section 167 CRPC is 60 days

3. Bail is the rule, not the jail, if a person cooperates even if Cognizable + Non Bailable -> No Need to arrest, held in case of **Naresh Kumar Mangla-SC. In Vimal Yashwantgiri Goswami vs. State Of Gujarat (GHC)** -The powers of arrest under section 69 are to be exercised with lot of care and circumspection. Prosecution should normally be launched only after the adjudication is completed. To put it in other words, there must be in the first place a determination that a person is liable to a penalty. Till that point of time, the entire case proceeds on the basis that there must be an apprehended evasion of tax by the assessee.

4. Any professional filing Returns cannot be arrested directly, unless found involved and defending client in Fake Invoice cases as a counsel is not challengeable, as ones job is to defend. **Canon India (P.) Ltd. v. Commissioner of Customs [2021] 125 taxmann.com 188 (SC)[09-03-2021]**



- In GST ,as with every legislation, this notice is called “show cause notice” and this show cause notice is a mandatory requirement for raising demands.
- Any other communication, letter, endorsement, suggestion or advisory from tax Department cannot be considered to be a show cause notice.
- Notice is thus a sine qua non for any demand proceedings and SCN is the one that ‘sets the law in motion’

Audi Alteram Partem

The rule of audi alteram partem is a principle of natural justice

Maneka Gandhi v. Union of India (1978) 1 SCC 248

- The rule of audi alteram partem mandates of giving the other side an opportunity of being heard and it was recognised as a part of article 21 of the constitution making it a fundamental right available to the citizens by the 7 judge bench of the Hon'ble Supreme Court of India by Majority decision of J. PN Bhagwati
- Being a fundamental right hence it is available to all assesses and not given a reasonable opportunity of being heard frustrates the proceedings

Validity of Show Cause Notice issued by an officer in excess of monetary limit

Pahawa Chemicals (P) Ltd. vs. CCE – 2005 (181) ELT 339 (SC).

Show Cause Notice – a ‘condition precedent’ to a demand Show Cause Notice –

- Gokak Patel Volkart Pvt. Ltd. vs. CCE -1987 (28) ELT 53 (SC)
- Madhumilan Syntex Pvt. Ltd. vs. UOI -1981 (35) ELT 349 (SC)
- Metal Forgings vs. UOI-2002 (146) ELT 2141 (SC)

Mere letter or communication asking for payment is not a ‘show cause notice’

- Metal Forgings vs. UOI (supra)
- CC vs. Merchant Impex – 2012 (276) ELT 458 (Kar.)
- Steel Ingots vs. UOI – 1988 (36) ELT 529 (MP)

Is oral show cause notice valid? Can a show cause notice be waived?

- CC vs. Virgo Steels – 2002 (141) ELT 598 (SC)
- National Co-op. Bank Ltd vs CST (Audit)-2018 (15) GSTL 202 (Kar.)

Show Cause Notice shall not be based on conjunctures, assumptions and surmises

Oudh Sugar Mills Ltd. vs. UOI - 1978 (2) ELT (J172) (SC)

Show Cause Notice must be in writing?

Voltas Ltd. vs. CCE – 2000 (121) ELT 802 (Tri-Mum.)

Notice must contain all essential details

CCE vs. Brindavan Beverages (P) Ltd.-2007 (213) ELT 487 (SC)

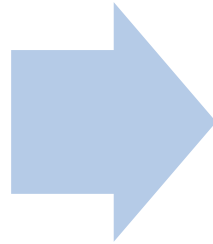
Show cause notice to indicate the amount demanded

- Hindustan Aluminium Corp. Ltd. vs. Supdt. of C.Ex. - 1981 (8) ELT 642 (Del.)
- JBA Printing Inks Ltd. vs. UOI -1980 (6) ELT 121 (Mad)
- Gwalior Rayon (Wgt.) Ltd.vs. UOI -1982 (10) ELT 844 (MP).

Revisional Authority (RA)

- *On its own motion**
- *On information received by him**
- *On request of SGST/UTGST Commissioner**

May call for & examine all records.



Revisional Authority – Sec 2(99) of CGST Act, 2017

Means any authority appointed or authorized for revision of decision or orders as referred to in sec 108

Revision Authority

Ordered passed by (N/N S/2020)

i) Addt. Comm/Joint Comm.	Principal Comm./Comm.
ii) Addt. Comm/D Comm. or Superintendent	J.Comm/Addt.Comm

1. Sec 108 of CGST ACT gives power to Revisional Authority to revise the order of officer subordinate to him if it is prejudicial to interest of Revenue, erroneous, illegal or improper
2. As per Sec. 108(2)(b) The Revisional Authority shall not exercise any power under sub-section (1), if the period specified under sub-section (2) of section 107 has not yet expired which is six months from the date of communication of the said decision.

For Information & training purpose not to be considered as Professional Advice from us.

RA cannot revise following orders

- Order subject to appeal before AA/AT/HC/SC
- Order having period before 6 months, & after 3yrs from communication of order
- Order already taken for revision
- Revisional order

RA may pass an order on any point not raised in any appeal before AA/AT/HC/SC, before expiry of:-

*1 yr. from date of order in appeal, (or)

*3 yr. from date of initial order, whichever i later

SEC 161 – Rectification

- Without prejudice to the provisions of section 160, and notwithstanding anything contained in any other provisions of this Act,
- any authority, who has passed or issued any decision or order or notice or certificate or any other document,
- **may rectify any error which is apparent on the face of record** in such decision or order or notice or certificate or any other document,
- either on its own motion or where such error is brought to its notice by any officer appointed under this Act or by the affected person
- within a period of three months from the date of issue of such decision or order or notice or certificate or any other document.

- **Provided** that no such rectification shall be done after a period of six months from the date of issue of such decision or order or notice or certificate or any other document:
- **Provided further** that the said period of six months shall not apply in such cases where the rectification is purely in the nature of correction of a clerical or arithmetical error, arising from any accidental slip or omission:
- **Provided also** that where such rectification adversely affects any person, the principles of natural justice shall be followed by the authority carrying out such rectification.

Points to be considered for Grounds of Appeal

Jurisdiction

Approvals

DIN

Limitation Period

Speaking Order

Mode of Service

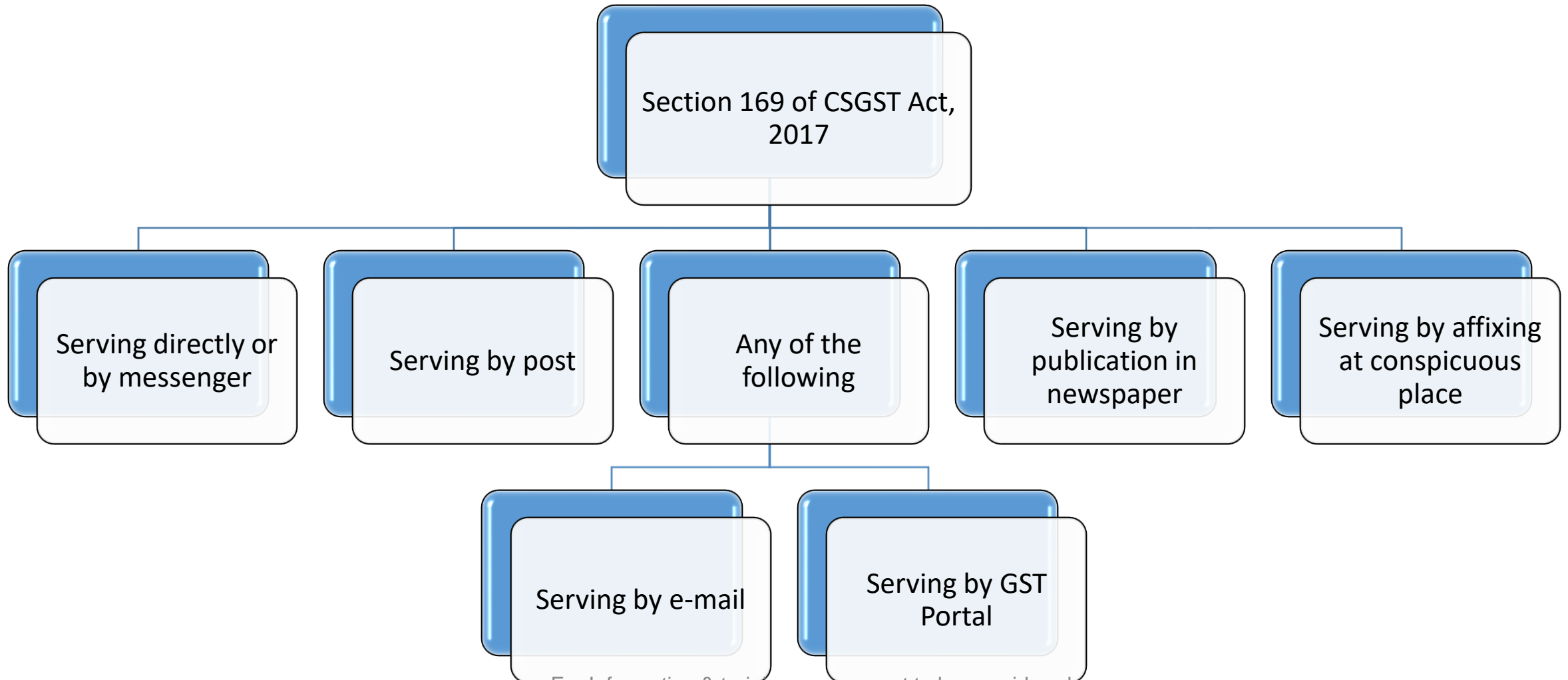
Proper Officer

Pre-SCN
consultation

Order issues beyond
SCN

For Information & training purpose not to be considered as
Professional Advice from us.

Service of Notice in certain circumstances



Unitac Energy Solutions (I) Pvt. Ltd. vs Asstt. State Tax Officer, SGST
Deptt. Kollam - Kerala High Court
WP(C).No.28573 OF 2019(V) Dated 20-Oct-2019

Non filing of GST return cannot be a reason for detention of Goods.

Peeyush Kumar Jain vs UOI - Allahabad High Court
CRIMINAL MISC. BAIL APPLICATION No. - 21223 of 2022
Dated: 1-Sep-2022

No Rule To Deny Bail In Case Of Grave Economic Offence": Allahabad HC Grants Bail To Businessman Accused Of Stashing ₹196 Crore In Cash

Vipul Chitalia v. CBI and Anr. - Bombay High Court BA/3810/2021 Dated: 11-Aug-2022

Not Necessary To Refuse Bail In Every Case Of Economic Offence:
Bombay High Court On Granting Relief To Vipul Chitalia In PNB Scam
Case

Paras Jain vs UOI - Allahabad High Court
Criminal Misc. Bail Application No. 21848 of 2022
Dated: 29-Jul-2022

Seriousness of Offence alone cannot be the basis for Granting Bail:
Allahabad HC releases GST Accused from Custody after 5 Months

Leny Saju vs Sales Tax Officer (STO) - Kerala High Court

O.P. No. 2677 of 2001 R Dated: 25-Jan-2001

The Registration is a formality and the Officers should realise that they are Public Servants and not MASTERS, who can act according to their LIKES and DISLIKES. Therefore, a rational approach is always expected.

It is pointed out that the delay in issuing certificates for one reason after another is not at all justified and oblique motives are suspected.

Therefore, Dept. is to show maximum co-operation to the needs of the Petitioner & issue the certificates within a period of one month

VEERA VITTALA EXPORTS vs STATE OF KARNATAKA - Karnataka High Court

Sales Tax Revision Petition No. 6 of 2019 Dated: 16-Jul-2021

Second Appellate Authority cannot condone 36-day delay - Kar. HC

KARNATAKA VALUE ADDED TAX ACT, 2003, Sections 65(1), 62, 62(1), 62(2) and 62(3) — Order of assessment — Limitation period for appeal against — Provisions of law are clear that appeal has to be preferred with 30 days of order — Admitted not complied with by assessee — Sub-section (3) of Section 62 provides the Appellate Authority to admit appeal by condoning period upto 180 days — Here appeal preferred certainly after 30+180 days — There was again delay of more than 36 days — There can be no extension of limitation even by Second Appellate Authority keeping in view Section 62(3) beyond period of 180 days — Impugned order of Tribunal dismissing appeal on ground of limitation — Proper. (paras 2, 3, 4 and 7)

Thought on Limitation Act'1961

When the proceedings are required to be initiated within a particular period provided under the Statute, the same are required to be initiated within the said period. - Supreme Court in UOI vs Citibank NA (2022)

Limitation Act'1961 does not come to when reference to the same is not provided.

In GST dates & time lines are specific and even Condonation have specific times (for example 30 days in 1st Appeal S.107)

In GST procedure is time specific and Department doesn't have power to condone delays beyond time lines.

There is not specific mention of Limitation Act'1961 and therefore even Department Officers can't provide you relief wrt time lines

This is a major challenge in getting relief wrt Condonation of Delay Applications

We all should strictly follow the Procedure & timelines in GST

Curil Tradex Pvt Ltd vs The Commissioner, DGST – Delhi HC

WP (C) 10408/2022 Dated: 26-Aug-2022

GST Registration cannot be cancelled merely on the basis of Letter received from DC alleging that the Firm is non-existent - Delhi High Court

Held:

A perusal of the record clearly demonstrates that neither was the letter dated 06.04.2022 furnished to the petitioner, nor was the petitioner given any notice of inspection.

Principal Commissioner CGST vs Bushrah Export House Two

Star - Allahabad High Court

Writ C No. 29052/2021 Dated: 5-Sep-22

Allegations in SCN should be clear and specific and the findings cannot go beyond the allegations levelled in SCN

Shyam Sunder Girdhar Gopal vs The State of Rajasthan - Rajasthan High Court

D.B. Civil Writ Petition No. 7778/2021 Dated : 8-Sep-2022

While submitting the Form #GST DRC-06 the petitioner selected the option of personal hearing as "No"

Later Assessment Order was passed and Assessee claimed that such order was passed in violation of "Principles of Natural Justice".

Assessee approached High Court against the Order.

High Court held that it was the explicit desire of the petitioner not to opt for personal hearing. Hence, the impugned orders cannot be branded as having been passed in breach of principles of natural justice.

Maharaja Cables vs Commissioner, State Tax Indore (M.P.) - Madhya Pradesh High Court Writ Petition No 6110/2020 Dated : 02-Sep-22

Bonafide mistake in this case:

As per the agreement with the supplier, the petitioner was to deliver the goods at the factory at Bhopal, however, the address on the E-way bill was mentioned at the registered office of the consignee at Indore, instead of Bhopal.

Revenue authorities initiated proceedings U/s 129 raising liability of additional tax as well as penalty.

High Court held that the mistake while generating the E-way bill was an inadvertent human error and there was no intention to evade the tax liability particularly, when the vehicle number which was transporting the goods was the same.

In view of the above and the mistake in question being bonafide, the impugned orders are quashed. However, Department will be at liberty to consider the case of the petitioner for the imposition of a minor penalty, while treating the mistake in question, to be a clerical mistake.

Purabdhani Enterprise vs State of Gujarat - Gujarat High Court R/Special Civil Application NO 5999/2022 Dated: 7-Jul-2022

Interesting Case on Cancellation of GST Registration

SCN-1 issued on 9.11.2021 alleging, “registration has been obtained by means fraud, wilful misstatement or suppression of facts”.

Registered Person replied and proceedings were dropped on 15.11.2021.

A new SCN-2 was issued on 26.11.2021, "Why registration should not be cancelled?" This SCN has same grounds as earlier one.

Registered Person replied but GST Registration was cancelled on 1.12.2021 stating that, “during physical verification of your premises by the Anti-Evasion of team of DGGI, Ahmedabad Zone, your firm found to be non existent and not conducting business from the principal place of business and are engaged in availing/passing on fraudulent ITC. Therefore, your registration is liable for cancellation”.

Registered Person filed revocation application on 4.2.2022 but that has been pending undecided since long with the authorities.

Registered Person approached Gujarat High Court and Court directed the Officer to decide the said revocation application.

Now GST Registration issues has reached the stage that High Court directions are required for the Officer to pass revocation order It is their Duty to do so within time but alas, its GST

India Yamaha Motor Pvt. Ltd. vs The Assistant Commissioner - Madras High Court

WP No. 19044/2019 & 18404/2019 Dated: 29-Aug-2022

These are not my words but crux of the Judgement I'm going to share... Please read and share your views.

Registered Person "filed" his July'2017 return and not "submitted".

As the error was discovered, he approached department for rectification of the error. As per Scheme of Return filing in GST, he could not file returns of subsequent month on time and they were also delayed.

But the person ensured that he pays due taxes on time.

He paid taxes for Jul'17, Aug'17 Sep'17 & Oct'17 on time but after rectification of defect "filed" & "submitted" the Return.

Department issued SCN for Interest U/s 50 of Rs. 5 Crores (approx).

Yes, you read it right: ₹5 Crores

Later due to amendment in Sec. 50, this Interest was reduced to Rs. 1.19 Crores by the Madras High Court in this Judgement.

Citykart Retail Private Limited vs The Commissioner of Commercial Taxes - Allahabad High Court WRIT - C No. - 22285 of 2019 Dated: 06-Sep-2022

The goods were being transported through vehicle no. was DL01M6498, however, on account of some technical error, the vehicle number could not be registered, as such, the vehicle number was not reflected in Part-B of the e-way bill which led to the seizure of the goods.

Where the technical glitch arising out of the number plates bearing Delhi Number was recorded and it was advised that while filling the form, it should be filled in a particular manner as the form which accepts the e-way bill does not have any provision for zero to be mentioned. Petitioner argues that the error in not filling the Form in part B of the e-way bill was on account of the technical glitch which itself was realized by the department who had issued the Circular dated 18.03.2018.

Allahabad High Court held that, explanation offered by Assessee for not filling the Part-B of e-way bill, is clearly supported by the Circulars issued by Finance Ministry wherein the problem arising in filling the Part-B of e-way bill was noticed and advisories were issued later.

Allahabad High Court allows Assessee's writ against detention order with a direction to Revenue to refund the amount collected, as there was only technical glitch which resulted in incomplete e-way bill and prima-facie no intent to evade the duty can be ascertained. There is no allegation that the goods being transported were being transported without payment of tax.

Rajeev Yuvajana Sangham vs The State of AP - Andhra Pradesh High Court

Writ Petition No. 16162/2022 Dated: 24-Aug-2022

The Hon'ble High Court of Andhra Pradesh vide its order dated 24.08.2022 in the matter of Rajeev Yuvajana Sangham Vs. The State of AP & Others in Writ Petition No. 16162 of 2022, held that the services of cleaning & Maintenance of toilets at different bus stations would be exempt from payment of GST under Notification No. 12/2017 – Central Tax (Rate), dated 28.06.2017

Kaushal Kadel vs State of West Bengal - Calcutta High Court MAT 1169 & 1170/2021 Dated: 8-Sep-2022

Allegations levied for claiming Fake ITC in SCN

Due to ignorance in reply to SCN pleads is his innocence and that he has not done any fraudulent activities or any illegal business and his business is legal

Department did not accepted the reply and passed Order against him

Calcutta High Court held that he can be granted one more opportunity to submit a proper reply and the adjudicating authority can decide the matter after affording an opportunity of personal hearing to the person.

Commissioner of Trade Tax, UP vs Radico Khetan Ltd - Supreme Court Civil Appeal 6396/2009 Dated: 19-Sep-2022

Assessment Proceeding Completed in 1984

Re-assessment was done in 1988

Assessee has transferred Goods, Plant and Machinery during FY 1985-86

Revenue exercised the Powers in Sec. 34 of UP Trade Tax to recover amount as per Re-assessment Order.

Supreme Court held that

Powers in Sec. 34 can be exercised when twin conditions are satisfied

- 1) Transfer of Immovable Properties
- 2) Transfer during Pending of Proceedings

As in this case neither of the conditions are satisfied therefore, Sec. 34 can't be invoked.

Ramani Suchit Malushte vs Union of India

Writ Petition No. 9331/2022 Dated: 21-Sep-2022

Unsigned order of GST registration cancellation has no 'effect in eyes of law' - Bombay High Court

GST Cancellation Order was not digitally signed which is needed Rule 26(3)

Tulsi Ram and Company - Allahabad High Court Writ Tax No. 1237 of 2022 Dated: 23-Sep-2022

Pre-deposit of 10% was made by through electronic credit ledger but the Additional Commissioner, Jhansi had rejected the appeal on the ground that the mandatory deposit should have been made from the cash ledger.

Assessee filed Writ Petition against this Rejection Order. Allahabad High Court held that pre deposit can be made from ITC.

Reliance has been placed upon the clarificatory circular, issued by Government of India, on 06.07.2022 wherein it has been clarified that any payment towards output tax, whether self-assessed in the return or payable as a consequence of any proceeding instituted under the provisions of GST Laws, can be made by utilization of the amount available in the electronic credit ledger of a registered person.

Assistant Commissioner, Commercial Tax Department, Jaipur vs Asha Oil Traders - Rajasthan High Court DB Sales Tax Revision Petition No. 1/2015 Dated: 12-Jan-2022

Invoices issued by the selling dealer found to be FALSE Selling Dealer has not deposited Tax and its registration was cancelled retrospectively

it will be impossible for the petitioner to prove that the selling dealer has paid tax or not as while making the payment, the invoice including tax paid or not he has to prove the same and the petitioner has already put a summary on record which clearly establish the amount which has been paid to the selling dealer including the purchase amount as well as tax amount."

We are of the opinion that rule 18 if it is accepted, then the respondents will to take undue advantage and cause harassment

Purchasing Dealer could not be held responsible for failure by the Selling Dealer and to be allowed Input Tax Credit.

Retrospective cancellation of registration of Selling Dealer does not affect the right of Purchasing Dealer for Deduction (ITC).

Seema Gupta vs Union of India - Delhi High Court WP (C) 10986/2022 Dated: 27-Sep-22

Renting of Immovable Property for his own residence by a Proprietor shall be exempt from RCM of GST or say exempt from GST.

Tvl. Lucky Mydeen Briyani vs The Commissioner of GST and Central Excise, Madurai Division - Madras High Court

W.P(MD).No. 20035/2022 Dated: 29-Aug-2022

The assessee engaged a private accountant for the purpose of filing returns and he alone had access to the GST portal for filing returns.

During the Covid-19 Pandemic, the business shut down and further, the petitioner was suffering with ill-health.

Hence, the petitioner was unable to conduct the accountant and file his returns.

The assessee could not file his GST Returns for continuous period of six months.

Department issued SCN on 02-Dec-21 which remained un-replied.

In Aug'2022 when the Accountant opened GST Portal, he came to know that GST Registration has been cancelled vide order dated 04-Jan-2022.

Assessee attempted to file a representation through online to revoke the cancellation of registration.

The same was not accepted, since the request for revocation is not filed within the statutory limitation of 90 (30+60) days.

Madras High Court in this matter, considering COVID allowed conditional WRIT Petition

Conditions as follows:

The petitioners must file their returns for the period prior to & subsequent to the cancellation of registration, if such returns have not been already filed.

Tax defaulted which has not been paid prior to cancellation along with interest for such belated payment of tax and fine and fee fixed for belated filing of returns for the defaulted period, without adjusting from unutilized ITC

ITC shall not be utilized until it is scrutinized and approved by an appropriate or a competent officer of the Department.

The respondents may also impose such restrictions/limitation on petitioners as may be warranted to ensure that there is no undue passing of Input Tax Credit

Question???

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Thanking You

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