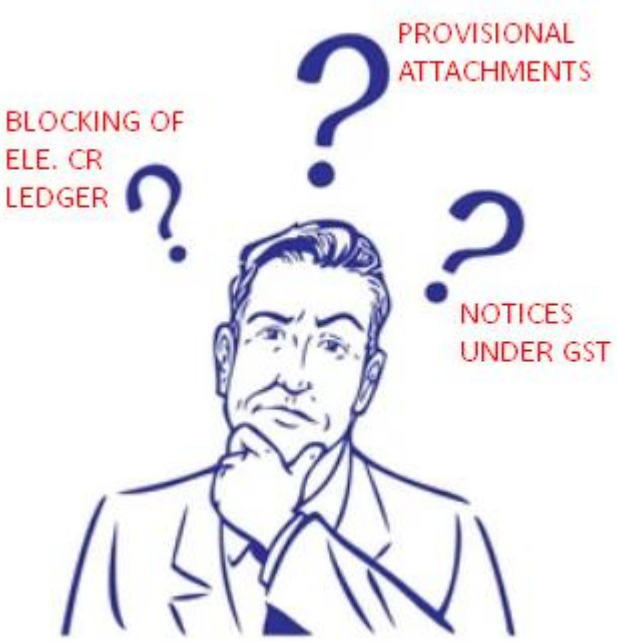

CA Sumit Shingala

04/10/2023

[1]Rule 86A. Conditions of use of amount available in electronic credit ledger.-

1. The Commissioner or an officer authorised by him in this behalf, not below the rank of an Assistant Commissioner, having reasons to believe that credit of input tax available in the electronic credit ledger has been fraudulently availed or is ineligible[2] in as much as-
    a) the credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under rule 36-
        i. issued by a registered person who has been found non-existent or not to be conducting any business from any place for which registration has been obtained[3]; or
        ii. without receipt of goods or services or both; or
    b) the credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under rule 36 in respect of any supply, the tax charged in respect of which has not been paid to the Government; or
    c) the registered person availing the credit of input tax has been found non-existent or not to be conducting any business from any place for which registration has been obtained[4]; or

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[1] . Inserted vide Notification No. 75/2019 – CT dated 26.12.2019.

[2] Fraudulently and ineligible are two distinct terns. The (a) to (d) applies to term ineligible .

[3] If the supplier has not updated the place of his business, and is found not conducting business at a registered place ?

[4] If the registered person himself has defaulted in updating his business place, and is found not conducting business at a registered place ?

d) the registered person availing any credit of input tax is not in possession of a tax invoice or debit note or any other document prescribed under rule 36,

may[5], for reasons to be recorded in writing, not allow debit of an amount equivalent to such credit in electronic credit ledger for discharge of any liability under section 49 or for claim of any refund of any unutilised amount.

2. The Commissioner, or the officer authorised by him under sub-rule (1) may[6], upon being satisfied that conditions for disallowing debit of electronic credit ledger as above, no longer exist, allow such debit.
3. Such restriction shall cease to have effect after the expiry of a period of one year from the date of imposing such restriction."

[5] May – is to be read as "shall" - Dee Vee Projects Ltd. v. Government of Maharashtra — [2022] 135 taxmann.com 189/91 GST 159 (Bom.)
[6] "may" – does it mean that despite of having exhausted the reasons for which blocking was done, still Comm. Can continue blocking? – the answer is no -wheresoever "discretion" is granted, it becomes a quasi-judicial function.

Interpretation of the Section :

"8. From a reading of rule 86A of the Rules of 2017, it is seen that the first part of the rule deals with the conditions that are required to be fulfilled in order to invoke the powers under the Rule, and the second part of the rule provides for the consequences that would follow in case rule 86A of the Rules of 2017 is invoked by the competent authority. As stated earlier, the foremost condition to enable the competent authority to invoke rule 86A of the Rules of 2017 would be that credit of input tax should be available in the electronic credit ledger as on the date the competent authority decides to invoke rule 86A of the Rules of 2017. Such credit which is available in the electronic credit ledger should be the result of fraudulent transactions. Unless the competent authority is fully satisfied that there is a *prima facie* case for invoking rule 86A of the Rules of 2017, he cannot invoke rule 86A, as the consequence/result of the same would be having a direct bearing not only on the business of the registered person, but also on his credentialities. In exercise of the powers under rule 86A of the Rules of 2017, the competent authority is entitled to disallow the registered person from debiting the ITC available in the electronic credit ledger for a limited period, and therefore, it can be said that such action taken by the competent authority is on a provisional basis. The recovery of ITC following any order passed under rule 86A of the Rules of 2017 would be governed by sections 73 & 74 of the Act of 2017 and in the present case, the said stage has not yet reached." K-9 ENTERPRISES *Versus* STATE OF KARNATAKA *W.P. Nos. 104242, 104243, 104246, 104247, 104250 and 104251 of 2023 (T-RES), decided on 27-7-2023*

1. The Term - “Reasons to Believe” – litigative

- For forming belief, there must be ‘material’ before the authority
    - The material has to be ‘tangible’
- Decisions rendered w.r.t. sec 147/148 of Income-tax Act, 1961 are relevant.

- Blocking of ITC merely based on communication of another authority that same was availed on strength of fake invoices, was not sustainable when GST authority who had blocked such ITC and issued show cause notice for its appropriation had no tangible material to form any belief to this effect

- Decisions rendered interpreting expression 'reasons to believe' in context of section 147 of Income-tax Act, 1961 are relevant for interpretation of said expression appearing in rule 86A of CGST Rules, 2017

- Thus, initiation of such proceedings, which have adverse consequences, can be resorted to only if the specific conditions, as enacted, are satisfied. As stated above, rule 86A of the Rules also provides for a drastic measure of blocking ITC. The same can be resorted to only if the conditions specified therein are fully satisfied. The existence of a 'reason to believe' that the ITC has been availed fraudulently or the conditions of ineligibility, as specified in clauses (*a*) to (*d*) of rule 86A of the Rules, are satisfied, is necessary to trigger the action under rule 86A of the Rules. In the absence of 'reasons to believe' that the given criteria are satisfied; recourse to measure under rule 86A of the Rules is impermissible.

Sheo Nath Singh v. *Appellate Assistant Commissioner of Income-tax* Calcutta: [1972] 3 SCC 234

The Hon'ble Supreme Court had interpreted the expression 'reason to believe' in the context of section 34(1A) of the Income-tax Act, 1922 and had observed as under:

'10. .....There can be no manner of doubt that the words "reason to believe" suggest that the belief must be that of an honest and reasonable person based upon reasonable grounds and that the Income-tax Officer may act on direct or circumstantial evidence but not on mere suspicion, gossip or rumour.....'

In *ITO, I Ward, District VI, Calcutta & Ors.* v. *Lakhmani Mewal Das* [1976] 3 SCC 757

The Supreme Court emphasized that the expression 'reason to believe' could not be construed as 'reason to suspect'

The Supreme Court had, in the context of re-opening of the assessment under section 147 of the Income-tax Act, 1961, construed the expression 'reason to believe', to denote reasons, which are based on tangible material and have "a live link with the formation of the belief." This view was also followed by the Supreme Court in a later decision in the case of *ITO, Ward No. 16(2)* v. *Techspan India (P.) Ltd.* [2018] 92 taxmann.com 361/255 Taxman 152/[2018] 6 SCC 685

'12. The powers of the Income-tax Officer to reopen assessment though wide are not plenary. The words of the statute are "reason to believe" and not "reason to suspect" The reopening of the assessment after the lapse of many years is a serious matter. The Act, no doubt, contemplates the reopening of the assessment if grounds exist for believing that income of the assessee has escaped assessment. The underlying reason for that is that instances of concealed income or other income escaping assessment in a large number of cases come to the notice of the Income-tax Authorities after the assessment has been completed. The provisions of the Act in this respect depart from the normal rule that there should be, subject to right of appeal and revision, finality about orders made in judicial and quasi-judicial proceedings. It is, therefore, essential that before such action is taken the requirements of the law should be satisfied. The live link or close nexus which should be there between the material before the Income-tax Officer in the present case and the belief which he was to form regarding the escapement of the income of the assessee from assessment because of the latter's failure or omission to disclose fully and truly all material facts was missing in the case. In any the link was too tenuous to provide a legally sound basis for reopening the assessment. The majority of the learned Judges in the High Court, in our opinion, were not in error in holding that the said material

could not have led to the formation of the belief that the income of the assessee respondent had escaped assessment because of his failure or omission to disclose fully and truly all material facts. We would, therefore, uphold the view of the majority and dismiss the appeal with costs'.

Dee Vee Projects Ltd. v. Government of Maharashtra — [2022] 135 taxmann.com 189/91 GST 159 (Bom.)

"33. It must be noted that the power under rule 86-A which in effect is the power to block ECL to the extent stated earlier is drastic in nature. It creates a disability for the tax payer to avail of the credit in ECL for discharge of his tax liability, which he is otherwise entitled to avail. Therefore, all the requirements of rule 86-A would have to be fully complied with before the power thereunder is exercised. When this rule requires arriving at a subjective satisfaction which is evident from the use of words, "must have 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 ones fancies or whims or imagination. The power under rule 86-A is an administrative power with quasi-judicial hues exhibited in aforestated twin pre-requisites and has civil consequences for a tax payer in the sense, it acts as an obstruction to right of a tax payer to utilize the credit available in his ECL. Any administrative power having quasi-judicial shades, which brings civil consequences for a person against whom it is exercised, must answer the test of reasonableness. It would mean that the power must be exercised fairly and reasonably by following the principles of natural justice."

Sr. No.	Act	ITC Wrongly Availed	Interest	Penalty
1	CGST/SGST	9717290	@ 24%	@ 15%

The grounds and quantification are given below :

Based on information available with this office your supplier Anmol Enterprise has not conducted any business from any place for any period during which registration has been obtained and found a FAKE/BOGUS UNIT. Therefore, your firm does not satisfies the conditions u/s 16 of CGST/SGST Act and uses of ITC under Rule 86(A)(1).

7. Mr. Sharma would submit that the inquiry is in progress. He fairly conceded that although 7 months have elapsed, since the ITC came to be blocked yet, no show cause notice has been issued till this date under Section 73 or 74 respectively as the case may be. He would submit that the object of blocking the ITC in exercise of power under Rule 86A of the Rules is to protect the interest of the Revenue. In such circumstances referred to above, Mr. Sharma prays that there being no merit in this writ application, the same be rejected.

24.4 It has been held in a catena of judgments that a bona fide recipient should be made to suffer on account of a supplier's default. In Quest Merchandising India Pvt. Ltd. v. Govt. of NCT of Delhi, W.P. (C) 6093 of 2017, dated 26-10-2017 (Delhi High Court) [2018 (10) G.S.T.L. 182 (Del.)], the assessee had duly paid the tax to the supplier, but the supplier had not deposited the tax with the Government. The assessee argued that the purchasing dealer can check on the web portal of the department if the selling dealer is a fictitious person or a person whose registration stands cancelled. The Court held that the purchasing dealer was being asked to do the impossible, i.e. to anticipate the selling dealer who will not deposit the tax collected by him from such purchasing dealers to the Government, and therefore

avoid transacting with such selling dealers. The Delhi High Court read down the concerned provision 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. The Court explained that such provision, if not read down, is violative of Article 14 of the Constitution for being inherently arbitrary. The only case when such provision applies is if the tax authorities come across some material to show that the purchasing dealer and the selling dealer, acted in collusion in detriment to the exchequer. However, in the event that the selling dealer has failed to deposit the tax collected, the remedy for the authorities is to proceed against the defaulting selling dealer to recover such tax and not to deny the purchasing dealer his input. The Supreme Court affirmed the said case and dismissed the Revenue's petition seeking special leave to appeal against this decision.

25. In the result, this writ application succeed in part and is partly allowed accordingly. The impugned order of blocking of the ECL of the writ applicant is hereby quashed and set aside. The respondents are at liberty to pass a fresh order under Rule 86A of the Central Goods and Service Tax Rules, 2017 in accordance with law and in the light of the observations made hereinabove.

2. Principles of Natural Justice: Whether gran of Hearing "prior to blocking" is necessary ?

K-9 ENTERPRISES *Versus* STATE OF KARNATAKA

W.P. Nos. 104242, 104243, 104246, 104247, 104250 and 104251 of 2023 (T-RES), decided on 27-7-2023

- Rule 86A is a provision that secures interest of revenue; since nature of order passed under Rule 86A is provisional, a post-decision hearing could be granted to petitioners which would comply with principles of natural justice

29. The power under rule 86A of the Rules of 2017 is of an enabling kind and it is conferred on the competent authority to secure the interest of the Revenue. The said power is exercised by the competent authority on the basis of the material made available to him pending investigation, and therefore, as stated earlier, the order passed under rule 86A of the Rules of 2017 is virtually provisional in nature. When an assessee who faces serious hardship and civil consequences as a result of the said orders, raises a plea that invoking of the drastic power under rule 86A was unwarranted and the same was done without holding a proper enquiry and the action was initiated based on a report which is not sound and proper, it becomes imperative to hear the assessee on these aspects of the matter. It is in this background, I am inclined to follow the principle stated by the High Court of Bombay in *Dee Vee Projects Ltd.'s* case *supra*, wherein it is held that given the nature of power provided under rule 86A though the statute does not provide for a personal hearing before passing any order under the said Rule, it has to be read into the provisions of the said rule which is not expressly provided therein, so that a post-decisional or remedial hearing could be granted to the person/assessee affected by blocking of his electronic credit ledger.

C.B. Gautam v. *Union of India* [1993]1 SCC 78/[1992] 65 Taxman 440/[1993] 199 ITR 530 (SC),

the Hon'ble Supreme Court has held that the mere fact that reasons were required to be recorded in writing and the same will not substitute an opportunity of being heard and even if the Statute does not stipulate such a requirement, opportunity of showing cause must be afforded by way of compliance with minimal requirement of natural justice where the provision involves adverse civil consequences

3. Whether "recording of reasons in writing" is necessary?

Dee Vee Projects Ltd. v. Government of Maharashtra — [2022] 135 taxmann.com 189/91 GST 159 (Bom.)

"37. There is another reason which we would like to state here to support our conclusion just made. The power under rule 86-A is of enabling kind and it is conferred upon the Commissioner for public benefit and, therefore, it is in the nature of a public duty. Essential attribute of a public duty is that it is exercised only when the circumstances so demand and not when they do not justify its performance (see *Commissioner of Police, Bombay* v. *Gordhandas Bhanji* : AIR (39) 1952 Supreme Court 16). It would then mean that justification for exercise of the power has to be found by the authority by making a subjective satisfaction on the basis of objective material and such satisfaction must be reflected in the reasons recorded in writing while exercising the power.

38. Examined in the light of above principles of law, the provisions made in rule 86-A would require the Competent Authority to first satisfy itself, on the basis of objective material, that there are reasons to believe that credit of input tax available in ECL has been fraudulently or wrongly utilised and secondly to record these reasons in writing before the order of disallowing debit of requisite amount to the ECL or requisite refund of unutilised credit, is passed or otherwise the order of blocking the ECL under rule 86-A would be unsustainable in the eye of law. This is also the view taken in the case of *M/s HEC India LLP* v. *Commissioner of GST and Central Excise Audit-II and another* (WA No. 2341 of 2021 dated 16-9-2021), which commends to us. Then, as stated earlier, a remedial hearing followed by confirmation or revocation of the order would be necessary."

VIJAY JAISWAL *Versus* ASSISTANT COMMISSIONER, WEST BENGAL GOODS AND SERVICES TAX

F.M.A. No. 1017 of 2022 and I.A. No. CAN 1 of 2022, decided on 6-9-2022

Department should disclose reasons for which electronic credit ledger was blocked and details of authority who blocked it, and order on merits after granting opportunity of personal hearing

NEW NALBANDH TRADERS *Versus* STATE OF GUJARAT

R/Special Civil Application No. 17202 of 2021, decided on 23-2-2022

Word 'may' used with second prerequisites of Rule 86A of CGST Rules viz. 'recording of reasons in writing' to be construed as 'must', meaning thereby, reasons must be recorded in writing in each and every case

4. Can reasons recorded be supplemented by way of an affidavit before the Court ?

RAJNANDINI METAL LTD. *Versus* UNION OF INDIA

C.W.P. No. 26661 of 2021 (O&M), decided on 31-5-2022

11. The impugned order in the present case when tested on the touchstone of the provision contained in Rule 86A and the law referred to herein above, we find that the reason to invoke the power conferred under Rule 86A of CGST Rules against the petitioner is an intelligence report received from Principal Chief Commissioner, Central Excise and Central Tax, Vadodara Zone regarding a racket of firms indulging in fake judicial and passing of illicit ITC. Merely by recording that some investigation is going-on a drastic far-reaching action under Rule 86A of the CGST

Rules cannot be sustained. There is no reason recorded by the Authority for exercising power under Rule 86A of the CGST Rules, 2017 which would show independent application of mind that can constitute reasons to believe which is *sine qua non* for exercising power under Rule 86A of the CGST Rules. It is trite law that a speaking order has to be self-sustainable and respondents at this stage cannot be allowed to justify the same by adding reasons to it by filing additional affidavits. From the reading of the order it is evident that it is bereft of any material or 'reason to believe' that the petitioner is guilty of fraudulent transaction or is ineligible under Section 16 of the CGST Act.

5. What may happen if the wrongly availed ITC is already utilised, fully or partially ? Whether Negative Blocking is possible and permissible ?

SAMAY ALLOYS INDIA PVT. LTD. *Versus* STATE OF GUJARAT

R/Special Civil Application No. 18059 of 2021, decided on 3-2-2022

In the case on hand, it is not in dispute that the amount of input tax credit available in the electronic credit ledger as on the date of blocking of ledger was Nil. If no input tax credit was available in the ledger, the blocking of electronic credit ledger under Rule 86A of the Rules and insertion of negative balance in the ledger would be wholly without jurisdiction and illegal.

34. Accordingly, in case where (i) Credit of input tax is not available in the electronic credit ledger or (ii) such credit has already been utilised, the powers conferred under Rule 86A cannot be invoked.

35. Further, Rule 86A is not the rule which entitled the proper officer to make debit entries in the electronic credit ledger of the registered person. The rule merely allows the proper officer to disallow the registered person debit from the electronic credit ledger for the limited period of time and on a provisional basis. In case debit entries are made by the proper officer, the same will tantamount to permanent recovery of the input tax credit and certainly permanent recovery is governed by the statutory provisions (Section 73 or 74 of CGST Act) and it certainly travels beyond the plain language and underlined intent Rule 86A.

54. We are not impressed with the submission of Mr. Sharma that the Legislature has consciously used the expression "equivalent to such credit" instead of the words "equivalent to such "available" credit". The emphasis which is sought to be placed by Mr. Sharma is on the non-usage of word "available". In our opinion, the expression "equivalent to such credit" necessarily implies the available credit. The absence of the word "available" would not make any difference.

6. Whether the ITC Availed, but payment not made within 180 days, would enable the PO to block ITC ? (what is the meaning of words “in as much as” used in Rule 86A)

SUNNY JAIN *Versus* UNION OF INDIA

W.P. (C) No. 6444 of 2022 and C.M. Nos. 19502 & 33763 of 2022, decided on 5-12-2022

13. The words "inasmuch as" as used in Rule 86A(1) of the CGST Rules qualify the word "ineligible". The expression "inasmuch as" is not of a wide import; it is used in a restrictive sense to qualify the subject.

14. According to A Dictionary of Modern Legal Usage by Bryan A. Garner, second edition, the expression "inasmuch as" is defined as:

"In modern AmE usage, the standard spelling of each group is inasmuch as and insofar as, both single words except for the final element. In modern BrE, usage is split: inasmuch as is standard and the expression in so far as is preferred as four separate words. However the phrase is spelled, through, inasmuch as is almost always inferior to because or since."

15. If the expression "inasmuch as" is considered as synonymous with 'because' or 'since', the sub clauses of Rule 86A(1) of the CGST Rules would qualify the word "ineligible" and exclude the possibility of expanding the import of the said word. In *Empire State Bldg. Corp.* v. *City of N.Y* 274 N.Y.S.2d 208, the Appellate Division of the Supreme Court of New York, First Department, interpreted the meaning of a clause that read as: "this act shall not authorize the imposition of a tax on any transaction by or with the United States of America insofar as it is immune from taxation.". The court construed the said clause, which used the expression "insofar as", to restrict the immunity from taxation only to the extent it is made immune. The court held that, "so where the tax is in terms levied upon the

transaction, a person who is a party to that transaction is immune when the transaction has been made immune, and otherwise not." The expression "insofar as" is used synonymously as the expression "inasmuch as".

16. According to the Oxford English Dictionary, 'inasmuch' is defined as: "In so far as, to such a degree as".

17. It is clear from the above that the expression "inasmuch as" cannot be considered as an expression that is used in an expansive sense, it qualifies the subject and restricts the provision that it qualifies.

18. The use of the expression "inasmuch as" restricts the scope of ineligibility to the conditions as set out in sub clauses of rule 86A(1) of the CGST Rules. It is only if any of these conditions are satisfied that the restriction under rule 86A(1) can be imposed in respect of ITC on the ground that the ITC available in the taxpayer's ECL is 'ineligible'.

24. A conjoint reading of rule 37 of the CGST Rules and the proviso to section 16(2) of the CGST Act leaves no room for doubt that a taxpayer is entitled to avail of ITC in the first instance even though he has not paid the supplier for the goods/services. He has to, however, reverse the same with interest by including the amount of ITC availed as a part of his output liability, if he does not make the payment to the supplier within the stipulated period of 180 days.

In Nipun A. Bhagat v. State of Gujarat *R/SCA/14931/2020*, the GST Authority had blocked the Writ Applicant's ITC under Rule 86A of the CGST Rules to recover the taxes on another company where the Writ Applicant was a Director. The Gujarat High Court observed that Rule 86A of the CGST Rules can be invoked by the Commissioner, or an Officer authorized by him, by citing reasons to believe why ITC in the ledger has been fraudulently availed.

The High Court observed that in the present case, there were no reasons provided by the GST Authority for invoking Rule 86A of the CGST Rules. Relying upon various judgements, the High Court held that unlike Section 179 of the Information Technology Act, 2000; the Sales Tax Act, 1956 does not have a provision for fostering the liability of a company to pay tax on its directors. Thus, the High Court allowed the application in the favor of the Petitioner and ordered the GST Authority to unblock the ITC.

In Ambika Creation v. Commissioner, Govt. of Gujarat *C/SCA/17564/2021*, the Gujarat High Court held that once the ITC in electronic credit ledger is blocked, on the expiry of a period of one year, it would be automatically unblocked. In this case, even after the lapse of a period of one year, the GST Authority did not unblock the ITC and allow the taxpayer to use the pending ITC.

The Gujarat High Court held that after the expiry of the statutory period of one year, there is no discretion left on the GST Authority to not unblock the ITC. Only a fresh order would prevent the taxpayer from using the ITC available. The High Court also noted that the GST Authority would be held personally liable for the loss suffered by the taxpayer in case a similar case came up next time.

LIST OF CASES WHERE NOTICES ARE ISSUED

Sl. No.	Notice in Form	Relating to	Action required
1	REG-03	Registration related information (New or amendment)	Reply in REG-04 within 7 working days
2	REG-17	SCN ‘’why the registration not be cancelled	Reply in REG-18 within 7 working days
3	REG-23	SCN for revocation of cancellation of registration	Reply in REG-24 within 7 working days
4	GSTR-3A	Default notice to non-filers of GST returns	File GST returns (1/3B/4/8) within 15 days
5	CMP-05	SCN non- eligibility to be a Composition dealer	Reply in CMP-06 within 15 days
6	RFD-08	SCN on rejection of GST refund made	Reply in RFD-09 within 15 days

7	PCT-03	SCN for misconduct by the GST Practitioner	Reply within SCN prescribed time limit
8	ASMT-02	Addl. Information for Provisional assessment	Reply in ASMT-03 within 15 days
9	ASMT-06	Addl. Information for final assessment	Reply in ASMT-03 within 15 days
10	ASMT-10	Intimation of discrepancy in GST return after scrutiny	Reply in ASMT-11 within SCN time or 30 days
11	ASMT-14	SCN – Assessment u/s.63 (BJ)	Personal appearance within 15 days
12	ADT-01	Notice for conducting Audit u/s.65	Attendance within time prescribed in the Notice
13	RVN-01	Notice by Revisional Authority	Reply or Appear, with DRC-03 before 7 working days
14	DRC-01	SCN for tax demand	Reply in DRC-06 within 30 days of the Notice
15	DRC-10	Notice for Auction of goods	Pay thro DRC-09 and appear as per the Notice

The Hon'ble CEGAT, Northern Bench, New Delhi in their Order dated 09.05.2003 in the case of Secure Industries Ltd., 2003 (155) ELT 529 (T-Delhi) has followed the decision of the Hon'ble Rajasthan High Court in the case of PGO Processors P. Ltd. 2000 (122) ELT 26 (Raj) following the decision of the Hon'ble Supreme Court in the case of Sahi Ram vs.Avtar Singh 1999 (4) SCC 511 wherein the Apex Court has directed that the Show Cause Notice should be accompanied by the copies of all the documents relied upon. The Apex Court in their decision in the case of Sanghi Textiles Processors Vs. U.O.I. 1993 (65) ELT 357 (SC) has held that the noticee has a right to be given inspection of the seized record and be supplied copies of essential evidence relied upon by the Department at Government cost. In view of this, the documents relied upon in the Show Cause Notice have to be provided to the noticee (s) along with the Show Cause Notice.

Board's Circular No. 268/102/96-CX dated 14.11.96 may be referred to. In this Circular, a reference has been made to the judgment of the Hon'ble Supreme Court in the case of **Commissioner of Central Excise Vs.H.M.M Ltd –1995 (76) ELT 497 (SC)** wherein the Hon'ble Court has observed that to invoke the extended period, the Show Cause Notice must put the assessee to notice which of the various commissions or omissions stated in the proviso to Section 11A(1) is committed. The judgment has also stressed on the need for investigations to establish willful withholding of information with an intention to evade Central Excise duty. Similarly in the case of **Collector of Central Excise vs.Chemphar Drugs and Liniments – 1989 (40) E.L.T. 276 (S.C.)**, the Hon'ble Supreme Court has observed that to invoke the extended period of time, something positive other than mere inaction or failure on the part of the manufacturer or producer or conscious or deliberate withholding of information when manufacturer knew otherwise, is required to be established. Further, where the Department had full knowledge about the facts, and the manufacturer's action or inaction is based on their belief that they were required or not required to carry out such action or inaction, the extended period cannot be invoked. Similar view has been held by the Hon'ble Supreme Court in the case of Easland Combines Vs Collector of Central Excise, Coimbatore – 2003 (152) ELT 39 (SC) and Padmini Products Vs Collector of Central Excise – 1989 (43) E.L.T. 195 (S.C.).

Section 83. Provisional attachment to protect revenue in certain cases.-

[1][(1) Where, *after the initiation* of any proceeding under Chapter XII, Chapter XIV or Chapter XV, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue it is necessary so to do, he may, by order in writing, attach provisionally, any property, including bank account, belonging to the taxable person or any person specified in sub-section (1A) of section 122, in such manner as may be prescribed.]

(2) Every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order made under sub-section (1).

Rule 159. Provisional attachment of property. -

(1) Where the Commissioner decides to attach any property, including bank account in accordance with the provisions of section 83, he shall pass an order in FORM GST DRC-22 to that effect mentioning therein, the details of property which is attached.

(2) The Commissioner shall send a copy of the order of attachment 1[in FORM GST DRC-22] to the concerned Revenue Authority or Transport Authority or any such Authority to place encumbrance on the said movable or immovable property, which shall be removed only on the written instructions from the Commissioner to that effect.

(3) Where the property attached is of perishable or hazardous nature, 2[and if the person, whose property has been attached] pays an amount equivalent to the market price of such property or the amount that is or may become payable 3[by such person], whichever is lower, then such property shall be released forthwith, by an order in FORM GST DRC-23, on proof of payment.

(4) Where 4[such person] fails to pay the amount referred to in sub-rule (3) in respect of the said property of perishable or hazardous nature, the Commissioner may dispose of such property and the amount realized thereby shall be adjusted against the tax, interest, penalty, fee or any other amount payable 4[such person].

(5) Any person whose property is attached may5[file an objection in FORM GST DRC-22A] to the effect that the property attached was or is Not liable to attachment, and the Commissioner may, after affording an opportunity of being heard to the person filing the objection, release the said property by an order in FORM GST DRC- 23.

(6) The Commissioner may, upon being satisfied that the property was, or is No longer liable for attachment, release such property by issuing an order in FORM GST DRC- 23.