



*At Finance Ministry, North Block,  
New Delhi, Feb 2021*



*At Finance Ministry, North Block,  
New Delhi, Oct 2019*


# ***BURNING ISSUES UNDER GST***

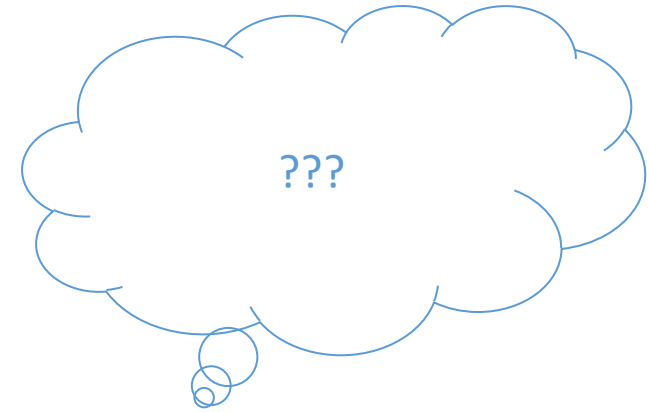
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## ***NOTICES, COMMON MISTAKES AND AMENDMENTS***



**CA SWAPNIL MUNOT**

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# Important Recent Changes in GST

## INTEREST PAYABLE IN CASE OF ITC AVAILED WRONGLY, ONLY IF IT IS UTILSIED.

[ Sec 50(3) , (Notification No 09/2022–Central Tax Dated 5th Jul 2022)]:

- Section 50 (3) amended With Retrospective effect from 1st July 2017, to provide that **the Interest is payable if Input tax credit Wrongly availed and utilised.**
- If taxpayer has availed wrong ITC but he has not utilised the same, then No Interest is payable
- This provision is **amended retrospectively w.e.f. 01.07.2017** to avoid disputes for the past period.
- Also, Rule 88B(3) is inserted to prescribe the manner for calculation of interest in such cases by  
Notification No 14/2022–Central Tax Dated 5th Jul 2022.
- **Also interest rate is reduced to 18% from 24%.**

# TRANSFER OF CASH LEDGER BALANCE UNDER SAME PAN FROM ONE GSTIN TO



## ANOTHER: [ Sec 49(10)] [ Section 110 of Finance Act 2022]

- A registered person may, on the common portal, **transfer any amount of tax, interest, penalty**, fee or any other amount available in the electronic cash ledger under the Act **to** the electronic cash ledger for central tax or integrated tax of a **distinct person** as specified in sub-section (4) or, as the case may be, sub-section (5) of section 25, in **FORM GST PMT-09**: Subject to condition that no such transfer is allowed if such registered person has unpaid liability in its liability register.
- Vide Finance Act 2022, Sec 49(10) was substituted to provide for transfer of balance in Electronic Cash ledger among same PAN GSTIN. Said provision is now made effective by Notification No 09/2022–Central Tax Dated 5th Jul 2022
- Also Rule 87(14) is inserted to prescribe the procedure for the same by Notification No 14/2022–Central Tax Dated 5th Jul 2022



# ACTIVATION OF SUSPENDED GST REGISTRATION

[ Notification No 14/2022 -Central Tax, Dated 05/07/2022 ]

- **AUTOMATIC REVOCATION OF SUSPENDED REGISTRATION AFTER FILING ALL PENDING RETURN:**
  - **Proviso to Rule 21A(4)** - In case of any registration is suspended but not cancelled by officer, then the same shall be revoked upon the filing of all pending GST Returns by the taxpayer.
  - This benefit is application to situation, where registration is suspended but not cancelled by officer and in between, all pending returns are filed

# **ITC IMPACT ON SALE OF DUTY CREDIT SCRIP / MEIS / RODTEP**

[ Notification No 14/2022 -Central Tax, Dated 05/07/2022 ]

- **NO ITC REVERSAL REQUIRED ON SALE OF DUTY CREDIT SCRIP:**

- **Explanation 1 to Rule 43(d) CGST Rules 2017**: Value of supply of Duty Credit Scrips specified in Notification No. 35/2017-Central Tax (Rate), dated the 13th October, 2017 is excluded from the aggregate value of exempt supply for the purpose of Rule 42 and Rule 43 of CGST Rules 2017.
- **Accordingly, No ITC reversal will be required on Sale of Duty Credit Scrip / MESI / RODTEP.**

# Manner of CALCULATION OF INTEREST ON DELAYED PAYMENT OF TAXES

[ Notification No 14/2022 -Central Tax, Dated 05/07/2022 ]

- **Rule 88B** Inserted in CGST Rules 2017, to prescribe the manner of calculation of interest in case of late filing of return, late payment of tax or utilization of incorrect ITC.

| Particulars                                   | Period for Calculation of Interest  |
|---|---|
| In case of Late filing of Return →            | On amount of Taxes <b>paid through cash ledger</b> , <u>from</u> due date of filing return to the date of filing the return   |
| In Case of Tax Unpaid/Short Paid →            | <u>From</u> the date on which such Tax was due <u>To</u> the date of payment of such Tax  |
| In case of Wrongly ITC Availed and Utilised → | <p><u>From</u> the date of Utilisation of such ITC <u>to</u> the Date of Reversal/Payment of such ITC.</p> <ul style="list-style-type: none"> <li>○ <u>Date of utilization of such input tax credit shall be taken to be due date of return or actual date of filing whichever is earlier.</u></li> <li>○ Interest Tax Credit shall be treated as utilized the day when the balance in Electronic Credit Ledger falls below the input tax credit wrongly availed</li> </ul> |

# EXPORT VALUE IN CASE OF REFUND

## ▪ EXPORT VALUE IN CASE OF REFUND OF ITC FOR ZERO RATED SUPPLY OF GOODS AND SERVICES

### WITHOUT PAYMENT OF TAX UNDER RULE 89(4)

- Following Explanation is added in Rule 98(4), in order to determine value of Export of Goods

Explanation. – For the purposes Rule 89(4), the **value of goods exported out of India shall be taken as**

- i) FOB value declared in the Shipping Bill or Bill of Export form, as the case may be; or
- ii) the value declared in tax invoice or bill of supply

**whichever is less**

- It means, while calculating refund, in case of Export of goods under LUT, lower of below Export value to be considered:
  - a) FOB value as declared on shipping bill
  - b) Value as declared in Tax Invoice
- **Due to this rule now, Refund amount will now be reduced**





# CLARIFICATION ON GST APPLICABILITY ON PENAL RECEIPTS

- **PARA 5 (E) OF SCHEDULE II OF CGST ACT 2017: Below Activity is treated as Supply**
  - **Agreeing to the obligation to Refrain from an act or**
  - **To tolerate an act or a situation, or**
  - **To do an act**
  
- Now it is clarified that such activity is Taxable only if there is **“EXPRESS / IMPLIED AGREEMENT”** regarding – to refrain from doing, to tolerate act or to do an act

# GST APPLICABILITY ON PENAL RECEIPTS [ Circular No 178/10/2022 GST ]

- It is now clarified that below receipts/activity are not taxable:
  - Payments such as **liquidated damages for breach of contract**,
  - **Forfeiture of salary** or recovery of bond amount in the event of the employee leaving the employment before the minimum agreed period,
  - **Fine / Penalty** that the supplier or a banker imposes, for **dishonor of a cheque**
  - Damages resulting from - damage to property, negligence, piracy, unauthorized use of trade name, copyright,
  - Penalty stipulated in a contract for delayed construction of houses
  - Forfeiture of earnest money by a seller in case of breach of an agreement to sell immovable property.
  - **Compensation given by government** on termination of any contract, details/clause for the same was not expressly covered in agreement.
  - **Penalty/Fine imposed for violation of laws such as** - traffic violations, or for violation of pollution norms or other laws, penalties imposed on discovering mining of excess mineral beyond the permissible limit,

# GST APPLICABILITY ON PENAL RECEIPTS [ Circular No 178/10/2022 GST ]



- **It is clarified that below activity are taxable:** [As it constitute consideration for the supply of a facility]
- **Late Payment Fee/ Fine / Penalty:** Contract may provide that payment by the recipient of goods or services shall be made before a certain date and failure to make payment by the due date shall attract late fee or penalty
- **Ticket / Tour Booking:**
  - ✓ Contract for transport of passengers may stipulate that the ticket amount shall be partly or wholly forfeited if the passenger does not show up.
  - ✓ Contract for package tour may stipulate forfeiture of security deposit in the event of cancellation of tour by customer.
  - ✓ Amount forfeited in the case of non-refundable ticket for air travel or security deposit or earnest money forfeited in case of the customer failing to avail the travel, tour operator or hotel accommodation service or such other intended supplies, should be assessed at the same rate as applicable to the service contract,



# **GST APPLICABILITY ON PENAL RECEIPTS [ Circular No 178/10/2022 GST ]**

- **It is clarified that below activity are taxable:** [As it constitute consideration for the supply of a facility]
- **Amount paid for pre closure of loan / termination of lease / Contract:**
  - ✓ Facilitation supply of allowing cancellation of an intended supply against cancellation fee / forfeiture of a part or whole of consideration or security deposit, in such cases should be assessed as the principal supply
  - ✓ **Contract for lease of movable / immovable property may stipulate** that the lessee shall not terminate the lease before a certain period and if he does so he will have to pay certain amount as early termination fee.
  - ✓ Some banks similarly charge pre- payment penalty if the borrower wishes to repay the loan before the maturity of the loan period
  - ✓ Amounts paid for - early termination of lease or for pre-payment of loan or the amounts forfeited on cancellation of service by the customer
- **Valuation aspect in such case :** These supplies are ancillary to the principal supply for which the contract is signed, they shall be eligible to be assessed as the principal supply. Naturally, such payments will not be taxable if the principal supply is exempt ]



# RE-CREDIT IN CASE OF REPAYMENT OF REFUND

# RE-CREDIT IN CASE OF REPAYMENT OF REFUND

[ Circular No. 174/06/2022-GST dated 6<sup>th</sup> July 2022 ]

- Following categories of refund sanctioned erroneously, **re-credit of amount in the electronic credit ledger** can be done through FORM GST PMT-03A, on deposit of such erroneous refund along with interest and penalty, wherever applicable, by the taxpayer
  - a. Refund of IGST obtained in contravention of sub-rule (10) of rule 96.
  - b. Refund of unutilised ITC on account of export of goods/services without payment of tax.
  - c. Refund of unutilised ITC on account of zero-rated supply of goods/services to SEZ developer/Unit without payment of tax.
  - d. Refund of unutilised ITC due to inverted tax structure.

# RE-CREDIT IN CASE OF REPAYMENT OF REFUND

[ Circular No. 174/06/2022-GST dated 6<sup>th</sup> July 2022 ]

- **Procedure for re-credit of amount in electronic credit ledger:**
  - The taxpayer shall **deposit** the amount of erroneous **refund** along with applicable interest/penalty, **through FORM GST DRC-03** by debit of amount from electronic **cash ledger**.
  - While making the payment through FORM GST DRC-03, the taxpayer shall **clearly mention the reason for making payment** in the text box
  - **Taxpayer shall make a written request**, in format 'Annexure-A', to jurisdictional proper officer to re-credit the amount equivalent to the amount of refund thus paid back
  - **Proper officer** on being satisfied of request in Annexure A, **shall re-credit an amount in electronic credit ledger**, equivalent to the amount of erroneous refund so deposited by the registered person, by passing an order in FORM GST PMT-03A, preferably within a period of 30 days.



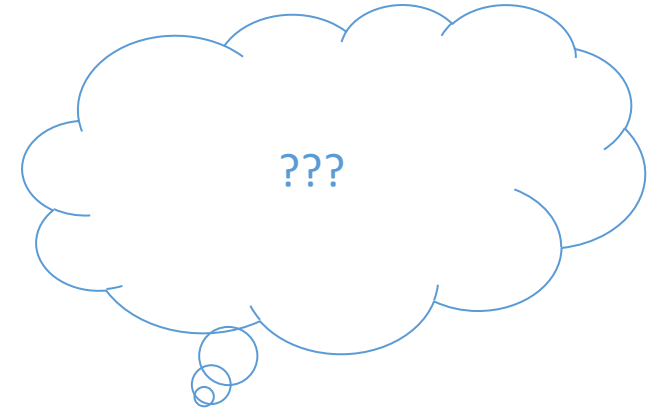


# Changes in Disclosure of GSTR 3B – relating to ITC

# Changes in Disclosure of GSTR 3B relating to ITC

- Table 4 of GSTR 3B – Eligible ITC

|  |  |
|--|--|
| <p><b>Table 4(A) – ITC Available</b></p>   | <p><b>(+)</b> ITC which is disallowable under Sec 17(5) is to be first added in Sr. No 4A.</p> <p><b>(+)</b> ITC which is auto populated in GSTR 2B but said goods are not yet received by company, is to added in Sr. No 4A.</p>  |
| <p><b>Table 4(B) – ITC Reversed</b></p>  | <p><b>(-)</b> ITC which is disallowable under Sec 17(5) is to be reduced from Sr. No. 4B</p> <p><b>(-)</b> ITC which is auto populated in GSTR 2B but said goods are not yet received by company, is to reduced from Sr. No 4B.</p> <p><b>(-)</b> ITC Reversal in case where payment is not made to supplier within 180 days is to be reported here</p>  |
| <p><b>Table 4(C) – Net ITC</b></p>   |  |
| <p><b>Table 4(D) – Other</b></p> <p><i>(This is just for disclosure purpose)</i></p> | <ul style="list-style-type: none"> <li>ITC which Reversed in earlier month due to non payment to supplier within <b>180 days, now reclaimed</b> in this current month in Sr. no. 4A, is to be separately again to be disclosed in Table 4D.</li> <li><b>Time barred ITC</b> as per Sec 16(4) and <b>ITC Restricted due to POS provision</b> ( CGST+SGST of another state ) is to be disclosed here.</li> </ul> |



# OTHER IMPORTANT CHANGES/CLARIFICATION

# GST UNDER RCM ON RESIDENTIAL DWELLING

- **GST on Renting of Residential Dwelling is payable under RCM by recipient (who is GST Registered Taxpayer):** [Notification No. 05/2022 – CT Rate dated 13<sup>th</sup> July 2022]

| Sl. No | Category of Supply of Services  | Supplier of Service | Recipient of Service  |
|--------|---|---------------------|-----------------------|
| 5AA    | Service by way of renting of residential dwelling to a registered person. | Any person          | Any registered person |

- **In below case of Renting of Residential Premises, GST under RCM is payable by recipient of service ( who is registered under GST ), if it is used for -**
  - Office
  - Guest House
  - Residence of Company employee
- If residential property is taken on rent by GST Registered person, **for his personal residence**, then RCM is not applicable and it will be exempted.

- **ITC can be used payment of output tax as payable as consequences of departmental proceedings:**

[Circular No. 172/04/2022-GST dated 6<sup>th</sup> July 2022 ]

**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

- **E-INVOICE IS APPLICABLE FROM 1<sup>ST</sup> OCT 2022** for taxpayer whose turnover is more than **Rs 10 crore** from any of the preceding year from 2017
- Annual Return for FY 2021-22 : It is now compulsory to report HSN Summary in GSTR 9 of outward supply of FY 2021-22



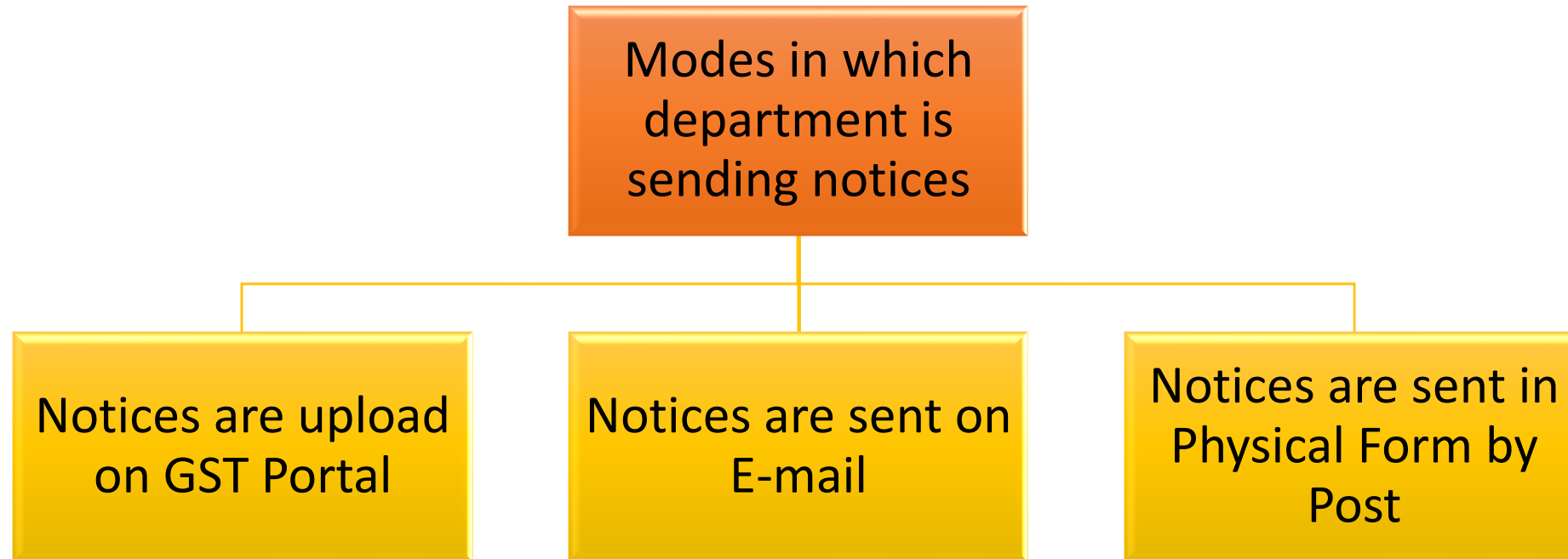
# HANDLING GST NOTICES AND LITIGATION

## IN GENERAL, NOTICES ARE RECEIVED FOR -

- Input Tax not paid by Supplier
- Supplier is not existent now
- GSTR 3B and 2A mismatch
- Ineligible ITC availed
- Interest not paid
- RCM Liability not paid
- Supplier has paid tax after Sep date
- GSTR 1 and 3B Difference
- Import ITC not reflecting
- Difference - E Way bill & GSTR 1 difference
- ITC reversal due to payment not made to supplier within 180 days



# MODES IN WHICH NOTICES ARE SENT BY OFFICER



## ❖ RECOMMENDATION:

Taxpayer to maintain “Tracking Sheet” on Notices received, containing details of -

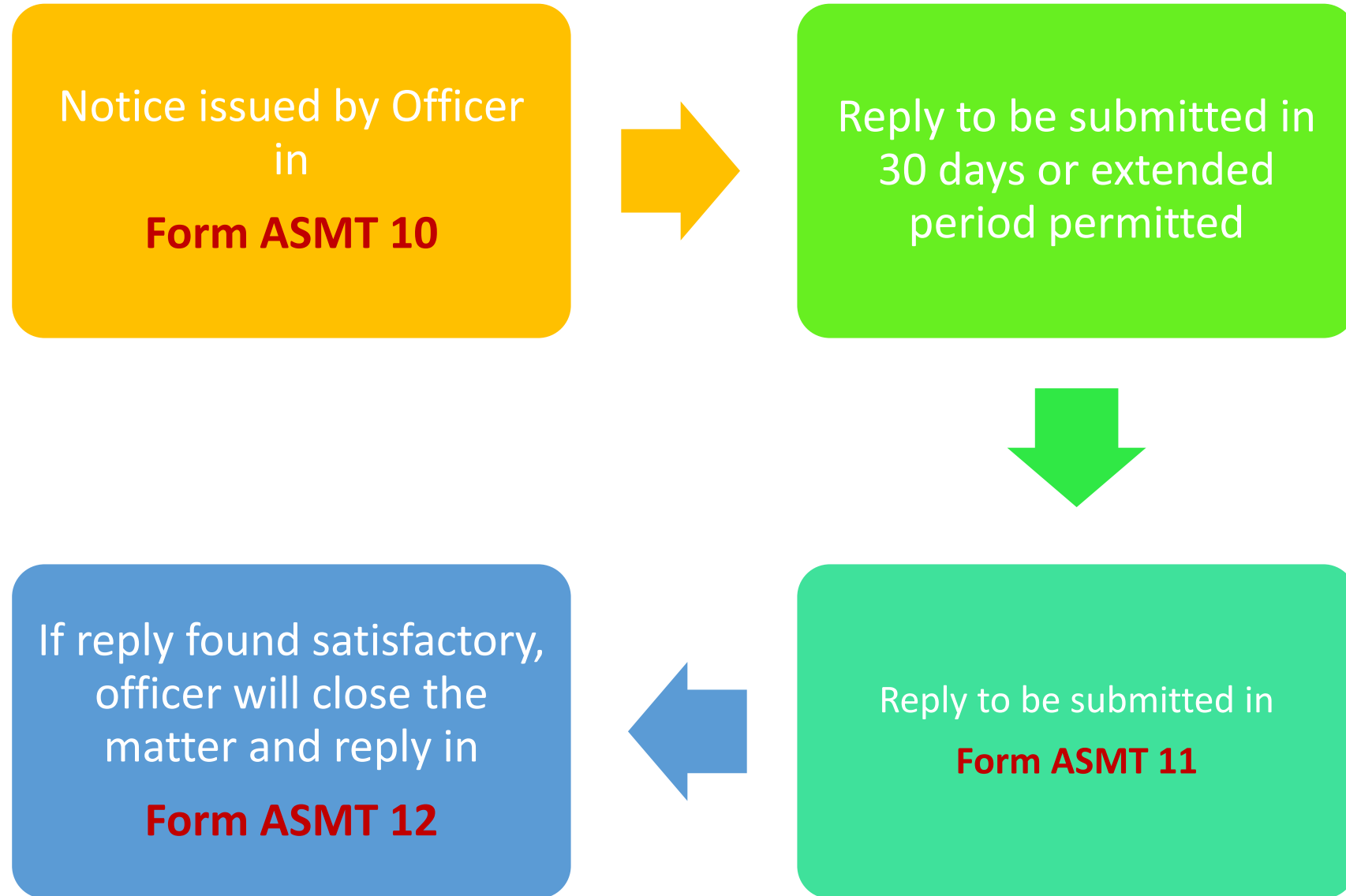
“Date of notice, date of receipt of notice, ( envelop to be kept in record), authority who has sent it, mode of receipt of notice, details of reply and date of submission of reply etc”



## COMMON ISSUES OBSERVED -

- Taxpayer is not aware that officer has sent notice
- Sometime client is not aware of submission made by consultant
- Every Notice will be have two points:
  - ✓ Fact Based - Arithmetic / Calculation oriented allegation
  - ✓ Law Based - Legal Provision related allegation
  
- Reconciliation of ITC as per GSTR 3B vs 2A is not prepared
- Reply is not submitted in proper way : There is format of reply ( like ASMT 10 is required to be replied in ASMT 11 )
- Taxpayer is not aware of who is his jurisdictional officer – whether State GST or Central GST ?

# SCRUTINY OF RETURNS : Sec 61 read with Rule 99



# SCRUTINY OF RETURNS : Sec 61 read with Rule 99

## STANDART NOTIFIED Form ASMT 10 and Form ASMT 11

### FORM GST ASMT - 10

[See rule 99(1)]

Reference No.:Date:

To \_\_\_\_\_

GSTIN:

Name :

Address :

Tax period - F.Y. -

#### Notice for intimating discrepancies in the return after scrutiny

This is to inform that during scrutiny of the return for the tax period referred to above, the following discrepancies have been noticed:

<<text>>

You are hereby directed to explain the reasons for the aforesaid discrepancies by -----  
- (date). If no explanation is received by the aforesaid date, it will be presumed that you have nothing to say in the matter and proceedings in accordance with law may be initiated against you without making any further reference to you in this regard.

Signature

### FORM GST ASMT - 11

[See rule 99(2)]

#### Reply to the notice issued under section 61 intimating discrepancies in the return

|                               |               |       |
|-------------------------------|---------------|-------|
| 1. GSTIN                      |               |       |
| 2. Name                       |               |       |
| 3. Details of the notice      | Reference No. | Date  |
| 4. Tax Period                 |               |       |
| 5. Reply to the discrepancies |               |       |
| Sr. No.                       | Discrepancy   | Reply |
|                               |               |       |

6. Amount admitted and paid, if any -

| Act | Tax | Interest | Others | Total |
|-----|-----|----------|--------|-------|
|     |     |          |        |       |
|     |     |          |        |       |

7. Verification-

I \_\_\_\_\_ hereby solemnly affirm and declare that the information given hereinabove is true and correct to the best of my knowledge and belief and nothing has been concealed therefrom.

Signature of Authorised Signatory

Name

Designation / Status -----

# SCRUTINY OF RETURNS : Sec 61 read with Rule 99

## STANDART NOTIFIED Form ASMT 12

**FORM GST ASMT-12**  
*[See rule 99(3)]*

Reference No.: \_\_\_\_\_ Date: \_\_\_\_\_

To  
GSTIN  
Name  
Address

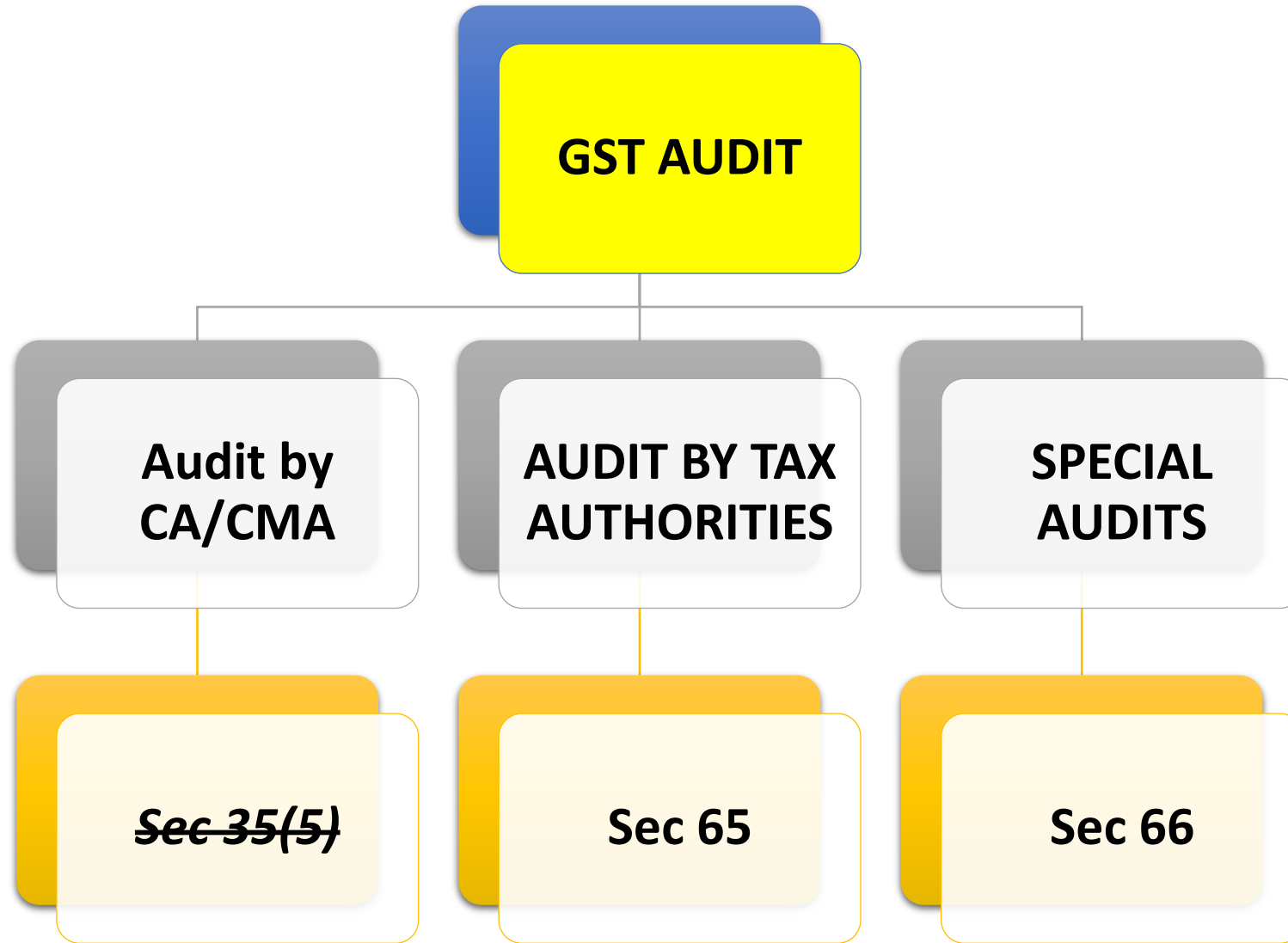
Tax period - \_\_\_\_\_ F.Y. - \_\_\_\_\_  
ARN - \_\_\_\_\_ Date - \_\_\_\_\_

**Order of acceptance of reply against the notice issued under section 61**

This has reference to your reply dated ----- in response to the notice issued vide reference no. ----- dated --- . Your reply has been found to be satisfactory and no further action is required to be taken in the matter.

Signature  
Name  
Designation

# TYPES OF GST AUDIT:



## Points to be taken care:

- **Take acknowledgement** of all information submitted.
- **Take letter** - Ask officer to give list of required information – either on mail or on letter signed by him
- **Extension letter** - If it is difficult to provide information asked in given period, submit letter to officer that, we will submit the information in --- days , giving the reason for the same.

# Inspection, Search and Seizure – SEC 67:

- **Sec 67(5) Copies of documents seized:**
  - ✓ The person from whose custody any documents are seized under sub-section (2)
  - ✓ **shall be entitled to make copies** thereof or take extracts therefrom in the presence of an authorised officer at such place and time as such officer may indicate in this behalf,
  - ✓ except where making such copies or taking such extracts may, in the opinion of the proper officer, prejudicially affect the investigation

# Summon – SEC 70 read with Rule 132:

- (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.
- (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.
- Standardised Format of Summon is specified vide Circular No 128/47/2019 GST dated 23<sup>rd</sup> Dec 2019

**SUMMONS**

[under Section 70 of the Central Goods and Services Tax Act, 2017]

To .....

.....  
(Name and address)

WHEREAS, I,..... am making inquiry in connection with .....under the Central Goods and Services Tax Act, 2017.

AND WHEREAS, I consider your attendance necessary to

(a) give evidence and / or

(b) produce documents or things of the following description in your possession or under your control:

1. ....

2. ....

3. ....

NOW, THEREFORE, in exercise of powers vested in me under Section 70 of the Central Goods and Services Tax Act, 2017, I do hereby summon you to appear before me in person on ..... (date) at ..... (time) at the office of.....(office address).

Inquiry as aforesaid is deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code, 1860 (45 of 1860) and non-compliance of this summon is an offence punishable under Section 174 & 175 of the Indian Penal Code, 1860.

Given under my hand and seal of office to-day the.....day of .....(month), 20...(year) at .....(place of issue).

Name .....

Signature .....

Designation.....

Seal of Office.

# REQUIREMENT OF DIN

- Keeping government objective of **accountability and transparency** , Document Identification Number – DIN system was introduced on all communication / notices from GST Department from 23<sup>rd</sup> Dec 2019 . It would also provide the taxpayer a digital facility to verify any communications and its genuiness.
- **Any communication** from GST or Custom or Central Excise department **without a computer generated DIN, would be treated as invalid and shall be deemed to be as if it has never been issued.**
- In exceptional circumstances, notice can be issued without DIN, on satisfaction of below condition:
  - ✓ Exceptional reason to be recorded in writing in the file. Such exceptional reason can be :
    - Technical difficulties in generating DIN or
    - When communication is to be made at short notice/urgent situation & authorised officer is outside the office.
  - ✓ Such communication/notice should expressly state that, it has been issued without a DIN.
  - ✓ Said communication is regularised within 15 working days of its issuance - (i) by post facto approval of superior officer (ii) mandatorily generating DIN after post facto approval



# REQUIREMENT OF DIN

- **Circular No 122/41/2019** GST dated 5<sup>th</sup> Nov 2019 and **Circular No 128/47/2019** GST dated 23<sup>rd</sup> Dec 2019
- Format of DIN is as under:

The format of the DIN shall be **CBIC-YYYY MM ZCDR NNNNNN** where,

- (a) **YYYY** denotes the calendar year in which the DIN is generated,
- (b) **MM** denotes the calendar month in which the DIN is generated,
- (c) **ZCDR** denotes the Zone-Commissionerate-Division-Range Code of the field formation/Directorate of the authorized user generating the DIN,
- (d) **NNNNNN** denotes 6 digit alpha-numeric system generated random number.

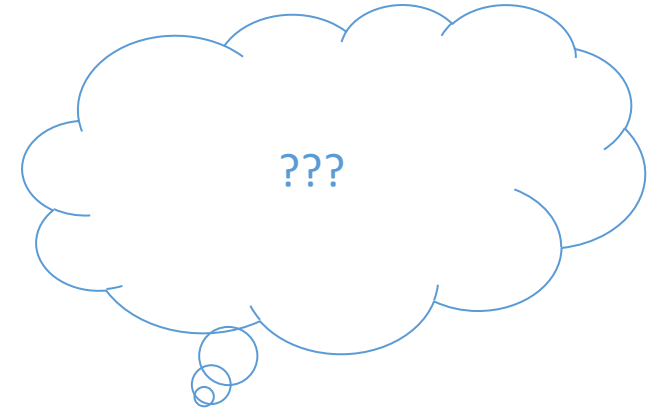
- Importance of DIN :

charge to ensure its successful implementation. **It is reiterated that any specified document that is issued without the electronically generated DIN shall be treated as invalid and shall be deemed to have never been issued.** Therefore, it is incumbent upon all officers concerned to strictly adhere to these instructions.

# E WAY BILL PENALTY INCREASED TO 200%

| CASE  | TAXABLE GOODS WILL BE RELEASED ON PAYMENT OF                                       | EXEMPTED GOODS WILL BE RELEASED ON PAYMENT OF                        |
|---|--|--|
| Case where owner of goods comes forward for payment of Tax/Penalty          | Penalty equal to 200% of tax   | Penalty equal to 2% of Value of goods or Rs 25000, Whichever is less |
| Case where owner of goods does not comes forward for payment of Tax/Penalty | Penalty equal to 50%* of Value of Goods<br>OR<br>200% of tax , whichever is higher | Penalty equal to 5% of Value of goods or Rs 25000, Whichever is less |

- Transporter has been given an option to get his conveyance released upon payment of applicable penalty or Rs. 1 lakh whichever is less



**Important Recent**  
**Favourable**  
**Judgements of**  
**Courts**

# CASE LAWS : ITC DENIED – NON-EXISTING SUPPLIER



❖ **LGW INDUSTRIES LIMITED & ORS. (CALCUTTA HIGH COURT) (WPA No. 23512 of 2019 (DOJ: 13/12/2021))**

✓ ITC can not be denied to recipient if supplier is found non existence, in case of genuine transactions

○ **FACTS** - GST authorities on inquiry, they came to know that the **suppliers from whom the petitioners/buyers are claiming to have purchased the goods in question are all fake and non-existing** and the bank accounts opened by those suppliers are on the basis of fake documents **and petitioners' claim of benefit of input tax credit are not supported by the relevant documents.** Further grounds of denying the ITC benefit to the petitioners by the respondents are that the **registration of suppliers in question has already been cancelled** with retrospective effect covering the transactions period in question.

○ **PETITIONER CONTENTION** - **Transactions in question are genuine** and valid by relying upon **all the supporting relevant documents** required under law. Petitioners with their due diligence have verified the genuineness and identity of the suppliers in question and more particularly 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 in question**



# CASE LAWS : ITC DENIED – NON-EXISTING SUPPLIER



❖ **LGW INDUSTRIES LIMITED & ORS. (CALCUTTA HIGH COURT) (WPA No. 23512 of 2019 (DOJ: 13/12/2021))**

- **PETITIONER CONTENTION** - Petitioners further submit that **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 purchases in question invoices-wise were available on the GST portal in form GSTR-2A**
- **COURT FINDINGS** - These writ petitions are disposed of by **remanding these cases to the respondents concerned to consider afresh the cases** of the petitioners on the issue of their entitlement of benefit of ITC in question **by considering the documents which the petitioners want to rely** in support of their claim of genuineness of the transactions in question **and shall also consider as to whether payments on purchases in question along with GST were actually paid or not** to the suppliers (RTP)



# CASE LAWS : ITC DENIED – NON-EXISTING SUPPLIER



❖ **LGW INDUSTRIES LIMITED & ORS. (CALCUTTA HIGH COURT) (WPA No. 23512 of 2019 (DOJ: 13/12/2021))**

- **COURT FINDINGS** - Also to consider as to whether the transactions and purchases were made before or after the cancellation of registration of the suppliers. If it is found upon considering the relevant documents that all the transactions in question are genuine and supported by valid documents and transactions in question were made before the cancellation of registration of those suppliers , **in that event the petitioners shall be given the benefit of input tax credit in question.**

**These cases of the petitioners shall be disposed of in the light of observation made above and by passing a reasoned and speaking order after giving effective opportunity of hearing to the petitioners and by dealing with the judgments petitioners want to rely at the time of hearing of the cases, within eight weeks from the date of communication of this order.**



# CASE LAWS : PROVISIONAL ATTACHMENT

- ❖ **RADAR KRISHNA INDUSTRIES V. STATE OF HIMACHAL PRADESH** (Civil Appeal No 1155 of 2021 - Arising out of SLP(C) No 1688 of 2021)
- ✓ Provisional attachment only after the formation of opinion based on tangible material : SC
- The provisional attachment was ordered against the appellant while invoking section 83 of the GST Act. The appellant instituted a writ petition challenging the orders of provisional attachment. The High Court dismissed the said writ petition on the ground that provisional attachment could not be challenged in a petition under Article 226 on the ground that an alternative and efficacious remedy of an appeal under section 107 was available. It filed an appeal against the order.
- ✓ **The Honorable Supreme Court observed** that the High Court has erred in dismissing the writ petition on the ground that it was not maintainable. Moreover, the power to order a provisional attachment of property of taxable person including a bank account is draconian in nature and conditions which are prescribed by statute for a valid exercise of power must be strictly fulfilled. The exercise of power for ordering a provisional attachment **must be preceded by a formation of an opinion by the Commissioner that it is necessary so to do for purpose of protecting the interest of government revenue.**

## CASE LAWS : PROVISIONAL ATTACHMENT

- ❖ **RADAR KRISHNA INDUSTRIES V. STATE OF HIMACHAL PRADESH** (Civil Appeal No 1155 of 2021 - Arising out of SLP(C) No 1688 of 2021)
  - Before ordering a provisional attachment, the Commissioner must form an opinion on basis of tangible material that the assessee is likely to defeat the demand if any, and that therefore, it is necessary so to do.
  - **The SC held that in the instant case, there was a clear non-application of mind by the Joint Commissioner.** There was a breach of the mandatory requirement of Rule 159(5) and Commissioner was clearly misconceived in law in coming into the conclusion that he had discretion on whether or not to grant an opportunity of being heard. **The Commissioner shall be duty-bound to deal with objections to attachment by passing a reasoned order which must be communicated to the taxable person** whose property would be attached. Therefore, it was held that the appeal would be allowed and order of High Court was liable to be set aside and **the writ petition filed by the appellant under Article 226 of Constitution shall stand allowed by setting aside the order of provisional attachment**



# CASE LAWS : REGISTRATION CANCELLED – FAKE INVOICING



❖ **Bright Star Plastic Industries v. Additional Commissioner of Sales Tax (W.P.(C)No.15265 of 2021)**

✓ Registration of purchasing dealer cannot be cancelled for fraud committed by selling dealer: HC

- **The Show-cause notice was issued to the petitioner for cancellation of registration alleging the claim of ITC on fake invoices issued by a non-existent supplier. It filed the reply but registration was cancelled holding that clarification submitted was not satisfactory. It filed for revocation of cancellation of registration but it was also rejected. Thereafter, the appeal was filed before the Appellate Authority and the same was also rejected. It filed a writ petition against the same.**
- **The Honorable High Court observed** that the department would have to show that somehow the purchasing dealer and selling dealer acted in connivance to defraud the revenue. **However, the department failed to show that the petitioner as a purchasing dealer deliberately availed of the ITC in respect of the transactions with an entity knowing that such an entity was not in existence. Thus, the department was directed to restore the petitioner's registration by issuing appropriate orders/directions.**



# CASE LAWS : REFUND OF TAX COLLECTED DURING INVESTIGATION



## ❖ **Shri Nandhi Dhall Mills India (P.) Ltd. v. Senior Intelligence Officer, Director General of Goods & Service Tax**

(W.P. No.5192 of 2020 and WMP. No.6135 of 2020)

✓ Amount admitted & paid under stress of investigation can't lead to self-assessment tax, liable to be refunded:

Madras HC

- An investigation was conducted at the premises of the petitioner's company and various documents and registers were seized. **In course of that investigation, a statement was recorded from Managing Director (MD) that it had not discharged its GST liability correctly.** The petitioner submitted that it has no liability to tax and MD and **officials were forced to accept liability** to tax and the admission was, by no means, voluntary. The visit was on the eve of Deepavali and investigation was carried out in an intrusive and acrimonious fashion.
- **Assessee filed a writ petition for the refund of Rs.2 crores paid at the time of the investigation.**
- The Department submitted that the petitioner has been engaging in large scale tax evasion and has not been paying tax that it is legitimately bound to pay. During investigation, It had voluntarily offered to remit tax.



# CASE LAWS : REFUND OF TAX COLLECTED DURING INVESTIGATION



- ❖ **Shri Nandhi Dhall Mills India (P.) Ltd. v. Senior Intelligence Officer, Director General of Goods & Service Tax**  
(W.P. No.5192 of 2020 and WMP. No.6135 of 2020)
  - **The very fact that the petitioner had remitted not one but two instalments of tax would reveal that the payments were voluntary** as, if they had been coerced as alleged, the payments would have stopped with the first instalment.
  - ✓ **The Honorable High Court observed that merely because an assessee has, under the stress of the investigation, signed a statement admitting tax liability and has also made a few payments as per the statement, cannot lead to self-assessment or self-ascertainment.** The ascertainment contemplated under Section 74(5) is of the nature of self-assessment and amounts to a determination that is unconditional, and not one that is retracted as in the present case.
  - ✓ **It was noted that records did not contain any ascertainment of tax liability by the revenue officer. Therefore, it was held that amount collected, of Rs. 2 crores shall be refunded to the petitioner**



# CASE LAWS : TAX NOT PAID BY SUPPLIER



## ❖ **D.Y. Beathel Enterprises v. State Tax Officer, Tirunelveli (W.P.(MD)No.2127 of 2021)**

- ✓ ITC availed by buyer can't be reversed for non-deposit of tax by seller without examining & initiation of recovery proceedings against seller: Madras HC.
- The petitioners were traders in Raw Rubber Sheets and they purchased goods from the seller. **The sale consideration was paid only through banking channels** including the tax component. They claimed ITC on basis of returns filed by sellers. **Later, during the inspection, the department observed that seller failed to pay any tax to the Government. The department, without involving the seller, passed an order levying the entire liability on the petitioners. They challenged the order and filed a writ petition.**
- The department submitted that the petitioners had availed input tax credit on the premise that tax had already been remitted to the Government, by their sellers. When it turned out that the sellers have not paid any tax and the petitioners could not furnish any proof for the same, the department was entirely justified in proceeding to recover the same from the petitioners.



# CASE LAWS : TAX NOT PAID BY SUPPLIER



## ❖ D.Y. Beathel Enterprises v. State Tax Officer, Tirunelveli (W.P.(MD)No.2127 of 2021)

- ✓ ITC availed by buyer can't be reversed for non-deposit of tax by seller without examining & initiation of recovery proceedings against seller: Madras HC.
- **The Honorable High Court observed that the department does not appear to have taken any recovery action against the seller.** When it came out that 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 very seriously and **strict action ought to have been initiated against him.**
- **The examination of the seller is a necessary step. Thus, the orders against the petitioners were liable to be quashed and matter remitted back and enquiry should be made against the seller.**



# CASE LAWS : EWAY BILL – Valuation discrepancy

❖ **K.P. Sugandh Ltd. v. State of Chhattisgarh (WPT No. 36 of 2020)**

❖ Discrepancies in valuation of goods cannot be the ground for detention of goods under transport: Chatt HC.

- **The petitioner was a manufacturer of Pan Masala and Tobacco Products.** It dispatched goods to its customer and **issued a tax invoice as well as an e-way bill generated** and handed the same to the incharge of the conveyance. **The vehicle was intercepted by the officials of the Department** and asked for the details of the consignment. The driver at the time of interception produced before the authorities the relevant invoice bill and also produced the e-way bill.
- **The authorities seized the vehicle and the goods on the grounds of there being discrepancies in the valuation of the goods** and thereafter detained the vehicle and the goods. Thereafter the petitioner moved an application for release of the vehicle. Without considering any of the contentions raised by the petitioner, the authorities assessed the tax payable on the goods and the penalty for the purpose of releasing the goods and the vehicle. It filed a writ petition to seek relief.

# CASE LAWS : EWAY BILL – Change in Route



- ❖ **K.P. Sugandh Ltd. v. State of Chhattisgarh ((WPT No. 36 of 2020))**
- ❖ Discrepancies in valuation of goods cannot be the ground for detention of goods under transport: Chatt HC.
  - **The Honorable High Court observed that the authorities detained goods of the petitioner under transport, as well as the vehicle on the ground that there were discrepancies in valuation of goods being transported, i.e., valuation, did not seem to have been properly conducted. However, undervaluation of goods in the invoice couldn't be a ground for the detention of goods and vehicles for a proceeding to be drawn under section 129. Therefore, the Court directed the authorities to release the goods belonging to the petitioners based on the invoice bill as well as the e-way bill**
- ❖ **KARNATAKA TRADERS VS STATE OF GUJARAT (GUJARAT HC) [ R/Special Civil Application No. 19549 of 2021 (DOJ: 09/12/2021)]**
- Goods in transit cannot be confiscated for change route or undervaluation of goods unless authority justified to evade payment of tax



# CASE LAWS : EWAY BILL – Typographical /Clerical Error



## ❖ Godrej Consumer Products Ltd. Vs.. ACST&E-Cum- GIB/HP/ Godrej Consumer/11-02-2020/HC-67

- Incorrect distance mentioned in the EWB due to typographic error resulting in expiry of the validity period
- **Held: Typographic error may be treated as a minor one and in such case**, if the demand and penalty have been levied by the proper officer u/s 129, the same need to be refunded to the supplier.

## ❖ Umiya Enterprise Vs.. Assistant State Tax Officer, 2020-VIL-50-KER

- Detention of goods on the ground that tax on invoice shown as CGST: SGST as against IGST but e-way bill declared correct tax as IGST
- **Held: The High Court observed that a clerical error on the invoice will not prejudice the Revenue.** Since there is no question of evasion of tax; goods to be released on executing a simple bond instead of issuing bank guarantee for the demand raised.





## ❖ Ranjana Singh Vs Commissioner Of State Tax And 2 Others [WRIT TAX No. - 1084 of 2021 ]

- **Held: The Allahabad High Court has imposed the penalty/fine on the GST Department for unnecessary harassment** for copying the electricity bill for granting GST Registration.
- The petitioner, Ranjana Singh applied for grant of registration under the Act through online mode. On submission of the application, an inspection was made at the business premises of the petitioner and thereafter, notice was issued for providing certain information and documents in support thereof.
- On submission of reply, by means of the impugned order, the application of the petitioner was rejected, against which the petitioner preferred an appeal before the respondent, which too has been dismissed.
- Unnecessary harassment by officer for the copy of electricity bill for granting registration, penalty imposed 15000/- for officer by Allahabad HC
- **The writ petition is allowed with cost of Rs. 15,000/-, which shall be deposited before the High Court State Legal Services Committee, Allahabad within a period of 20 days from today. The respondents are at liberty to recover the cost from the erring Officer.**

# CASE LAWS : ITC Blocking



❖ **Advent India PE Advisors Private Limited Vs The Union of India and Ors [ Bombay HC - WRIT PETITION NO. 2320 OF 2021 ]**

○ **Petitioner Contention:** the input tax credit was blocked on January 26, 2020 and since more than 20 months have lapsed by now, by operation of law, the petitioner is entitled to relief claimed in this writ petition.

○ **Department Contention:** The Department was in communication with the taxpayer seeking reconciliation statements for the difference in their GST returns namely GSTR-2A and GSTR-3B from FY 2017-18 to 2020-21.

The last letter from the department addressed to taxpayer was sent on 31.05.2021 asking for reconciliation between ITC stated in monthly returns and annual returns. However, the reply from the taxpayer is still awaited. Instead of furnishing the documents the taxpayer has filed a writ petition.

○ **Held:** If indeed the respondents were of the view that the petitioner had not been cooperating with the department, they ought to have proceeded against it in a manner known to law. **However, to say that reply is awaited and hence lifting of the restriction has not been resorted to is clearly illegal.** Having regard to the decision of this Court in Writ Petition (L) No. 128 of 2021 (M/s. Aegis Polymers vs. Union of India and Ors.), we find no reason to keep this writ petition pending.



# CASE LAWS : ITC Blocking



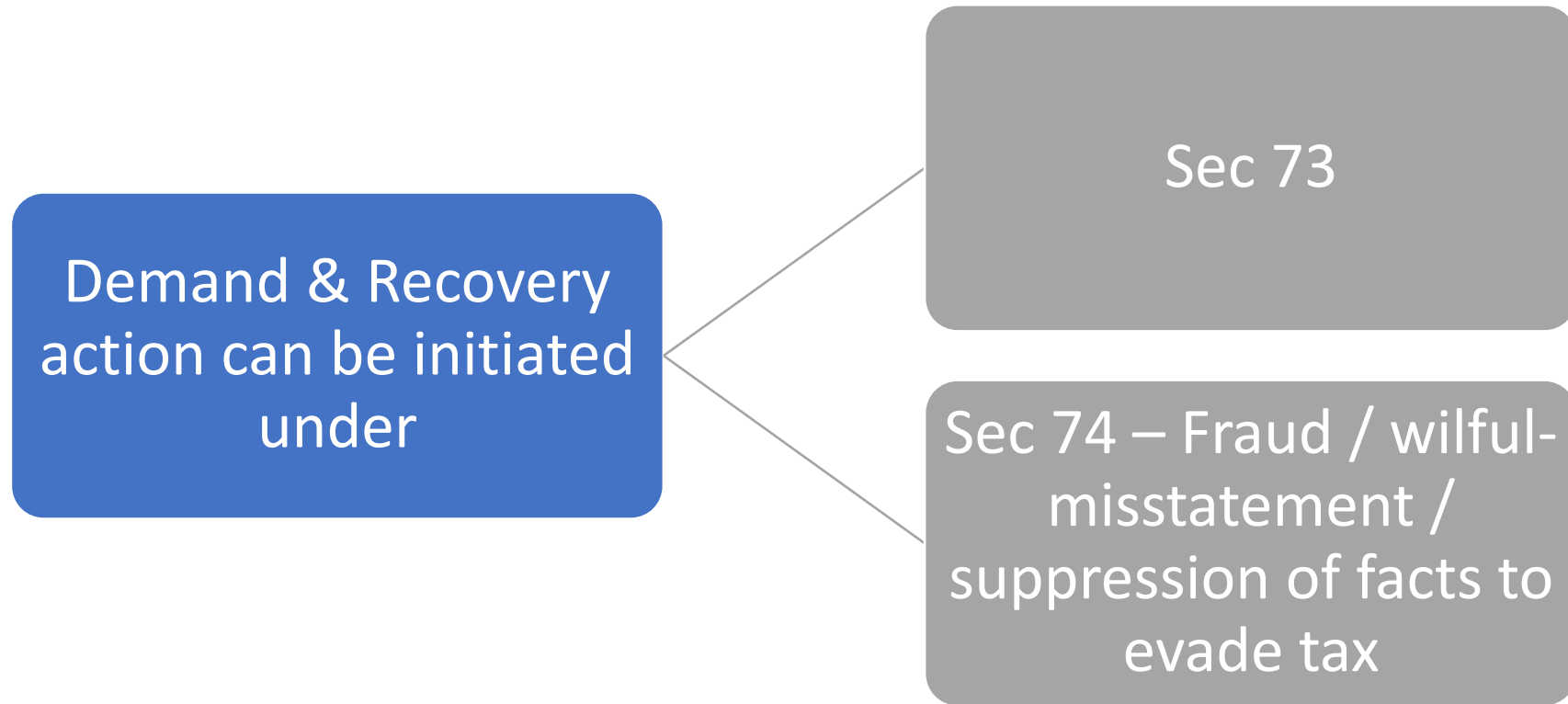
- ❖ **AMBIKA CREATION Vs COMMISSIONER, GOVT. OF GUJARAT [R/SPECIAL CIVIL APPLICATION NO. 17564 of 2021 – Gujrat HC ]**
- **Held:** Gujarat HC order for the removal of ITC Blocked after one year and also order that
- **We make it clear that next time if we come across such a case, then the concerned authority would be held personally liable** for the loss which the assessee might have suffered during the interregnum period.



## **Show Cause Notice - SCN**

**is the first stage of litigation under any fiscal laws**

# DEMAND AND RECOVERY - SEC 73 Vs 74



## DEMAND AND RECOVERY – SEC 73

- **Notice can be issued under section 73 in case of – Any Tax**
  - ✓ Has not been paid or short paid or
  - ✓ Erroneously refunded, or
  - ✓ where ITC has been wrongly availed or utilised
  - ✓ **For any reason, other than** - the reason of fraud / wilful-misstatement / suppression of facts to evade tax
  
- **Time limit to issue NOTICE** - The proper officer shall issue the order **within 33 month** from the due date for furnishing of annual return for the financial year or from the date of erroneous refund
  
- **Time limit to issue ORDER** - The proper officer shall issue the order **within 3 years** from the due date for furnishing of annual return for the financial year or within three years from the date of erroneous refund

## DEMAND AND RECOVERY – SEC 74

- **Notice can be issued under section 74 in case of – Any Tax**
  - ✓ Has not been paid or short paid or
  - ✓ Erroneously refunded, or
  - ✓ Where ITC has been wrongly availed or utilised
  - ✓ **By any reason of - of Fraud / Wilful-misstatement / Suppression of Facts** to evade tax
- **Time limit to issue NOTICE** - The proper officer shall issue the order **within 54 month** from the due date for furnishing of annual return for the financial year or from the date of erroneous refund
- **Time limit to issue ORDER** - The proper officer shall issue the order **within 5 years** from the due date for furnishing of annual return for the financial year or from the date of erroneous refund
- **Meaning of Suppression** – It means,
  - ✓ Non-declaration of facts / information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or
  - ✓ Failure to furnish any information on being asked for, in writing, by the proper officer

# DEMAND AND RECOVERY – SEC 74

| Particulars   | If proceedings under Sec 73,<br>penalty will be equal to --% of Tax           | If proceedings under Sec 74,<br>penalty will be equal to --% of Tax         |
|---|---|---|
| Voluntary payment of Tax + Interest + Penalty, before service of Notice   | * Nil<br>(upon payment of T + I, officer will not issue notice)               | 15%<br>(upon payment of T+I+P, officer will not issue notice)               |
| Payment of Tax + Interest + Penalty, within 30 days of issue of Notice  | * Nil<br>(upon payment of T + I, all proceeding shall be deemed to be closed) | 25%<br>(upon payment of T+I+P, all proceeding shall be deemed to be closed) |
| Payment of Tax + Interest + Penalty, within 30 days of Communication of Order<br><br>( under Sec 73, 10% penalty is there, if amount is not paid within 30 days after Show Cause Notice ) | 10% or Rs 10,000 whichever is higher  | 50%   |
| Payment of Tax + Interest + Penalty, after above mentioned period   | 10% or Rs 10,000 whichever is higher  | 100%  |

\* **Note** - penalty at 10% shall be payable where any amount of self-assessed tax or any amount collected as tax, has not been paid within a period of 30 days from the due date of payment of such tax. Refer Circular No. 76/50/2018-GST dated 31<sup>st</sup> Dec 2018 issued in this regards.



## GENERAL PROVISIONS – SEC 75

- **Opportunity of Being Heard** - An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax/penalty, or where any adverse decision is contemplated against such person
- **Adjournment of Hearing** - The proper officer shall, if sufficient cause is shown by the person chargeable with tax, grant time to the said person and adjourn the hearing for reasons to be recorded in writing. Provided that **no such adjournment shall be granted for more than three times** to a person during the proceedings
- **Speaking Order** – Order should set out the facts and the basis of decision taken by officer.
- **Order should not overtake Notice** - The amount of tax, interest and penalty demanded in the order shall not be in excess of the amount specified in the notice and no demand shall be confirmed on the grounds other than the grounds specified in the notice
- **Deemed Completion of Proceeding on completion of time limit** - The adjudication proceedings shall be deemed to be concluded, if the order is not issued within 3 years as provided for in Sec 73(10) or within 5 years as provided for in Sec 74(10).

## GENERAL PROVISIONS – SEC 75

- **No Double Penalty** - 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.
- **It is mandatory that the proper officer shall issue a speaking order and shall set out all relevant facts and basis of his decision in the Order issued u/s 73(9) / 74(9).**
- **The proper officer cannot determine an amount of tax, interest and penalty in excess of the amount specified in the SCN and also the grounds shall not go beyond what is mentioned in the SCN.**

## GENERAL PROVISIONS – DEMAND AND RECOVERY – RULE 142

- **SCN to be sent along with Summary**– Officer is required to issue SCN under Sec 73/74 along with summary thereof in **Form DRC 01**, specifying therein the details of the amount payable.
- **Intimation before SCN / Pre consultation:** The proper officer may, before service of notice to the person chargeable with tax, interest and penalty, under Sec 73(1) / 74(1), as the case may be, communicate the details of any tax, interest and penalty as ascertained by the said officer, in **Part A of FORM GST DRC-01A**.

[Where the person has made partial payment of the amount communicated to him as per DRC 01A or desires to file any submissions against the proposed liability, he may make such submission in **Part B of FORM GST DRC-01A**.]

[Note - Issuance of intimation in Form DRC 01A has been made optional through the Rule amendment Notification No. 79/2020 of Central Tax dated 15-10-2020 ]

- **Intimation of Voluntary Payment or Payment on receipt of DRC 01A:** Taxpayer shall inform the proper officer of such payment in **FORM GST DRC-03** and the proper officer shall issue an acknowledgement, accepting the payment made by the said person in **FORM GST DRC-04**.

# APPEAL PROVISION – SEC 107

## ▪ TIME LIMIT FOR TAXPAYER:

- Any person aggrieved by any decision or order passed by an adjudicating authority may appeal to such Appellate Authority
- **within Three months** from the date on which the said decision or order is communicated to such person.

## ▪ TIME LIMIT FOR DEPARTMENT:

- 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,
- 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.

## APPEAL PROVISION – SEC 107

- **DELAY CONDONATION:**
  - 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.**
  
- **TAX DEPOSIT OF ADMITTED LIABILITY AND PRE DEPOSIT:** No appeal shall be filed, unless 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 10% 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.
  
- **DEEMED STAY FROM RECOVERY ON PAYMENT OF TAX ADMITTED AND PRE-DEPOSIT:** Where the appellant has paid the TAX ADMITTED AMOUNT AND PRE DEPOSIT, the **recovery proceedings for the balance amount shall be deemed to be stayed.**

## APPEAL PROVISION – SEC 107

- **Opportunity of Being Heard** - Appellate Authority shall give an opportunity to the appellant of being heard
- **Adjournment of Hearing** - Appellate Authority shall, if sufficient cause is shown, grant time to time to parties and adjourn the hearing for reasons to be recorded in writing. Provided that **no such adjournment shall be granted for more than three times** to a party during the proceedings
- **Additional Grounds of Appeal** - 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.
- **Speaking Order** – 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**.
- **Time limit of determination to authority** - 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.

## APPEAL PROVISION – Rule 108

- **Form of Appeal** - An appeal to the Appellate Authority shall be filed in **FORM GST APL-01**
- **Certified Copy of Order –**
  - A certified copy of the decision or order appealed against shall be submitted **within 7 days** of filing the appeal and
  - **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
  - Where the certified copy of the decision or order is **submitted within 7 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.**

# E WAY BILL – PROCEEDING CAN NOT ISSUED U/S 129 FOR SPECIFIED MINOR DISCREPANCIES [ Circular No. 64/38/2018-GST dated 14<sup>th</sup> Sep 2018 ]

- **No penalty u/s 129 in specified cases** – In case a consignment of goods is accompanied with an invoice or any other specified document and also an e-way bill, proceedings under section 129 of the CGST Act may not be initiated, inter alia, in the following situations:
  - a) **Spelling mistakes in the name of the consignor or the consignee** but the GSTIN, wherever applicable, is correct;
  - b) **Error in the pin-code** but the address of the consignor and the consignee mentioned is correct, subject to the condition that the error in the PIN code should not have the effect of increasing the validity period of the e-way bill;
  - c) **Error in the address of the consignee** to the extent that the locality and other details of the consignee are correct;
  - d) **Error in one or two digits of the document number** mentioned in the e-way bill;



# E WAY BILL – PROCEEDING CAN NOT ISSUED U/S 129 FOR SPECIFIED MINOR DISCREPANCIES [ Circular No. 64/38/2018-GST dated 14<sup>th</sup> Sep 2018 ]

- **No penalty u/s 129 in specified cases** – In case a consignment of goods is accompanied with an invoice or any other specified document and also an e-way bill, proceedings under section 129 of the CGST Act may not be initiated, inter alia, in the following situations:
  - e) **Error in 4 or 6 digit level of HSN** where the first 2 digits of HSN are correct and the rate of tax mentioned is correct;
  - f) **Error in one or two digits/characters of the vehicle number**
- **Penalty of Rs 1000** : In case of the above situations, penalty to the tune of Rs. 500/- each under section 125 of the CGST Act and the respective State GST Act should be imposed (Rs.1000/- under the IGST Act) in FORM GST DRC-07 for every consignment



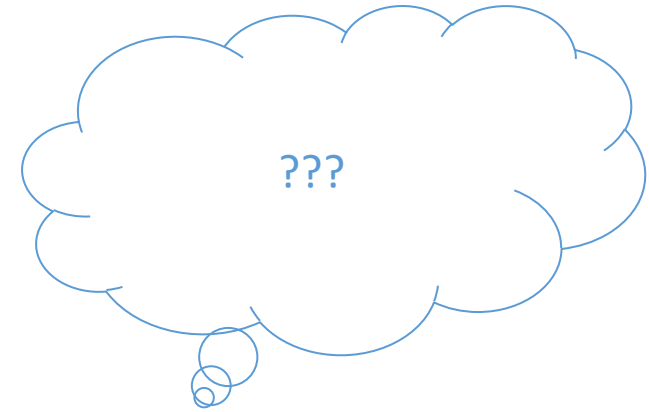
# ITC MISMATCH #

# POINTERS FOR ITC MISMATCH SUBMISSION

- **GSTR 2 / GSTR 3 NOT IMPLEMENTED:** No mechanism and infrastructure provided for dealing with ITC mismatch cases by Government, as per provided in Sec 38(2) – [GSTR 2] and Sec 39(1) - [GSTR 3] of CGST Act 2017.
- **ITC on Self Assessment basis as per Sec 41:** Due to which Tax payer is left with option to avail ITC on Self-Assessment Basis as per Sec 41
- **Subsequent Amendment in Sec 16(2), Sec 37, Sec 38, Sec 39 and Sec 41 of CGST Act 2017** suggest, there was no enough authority under act to government to disallow ITC, if not paid by supplier and reflected in GSTR 2A
- **Press Release dated 4th May 2018 :**
- **Press Release dated 18th Oct 2018**

# POINTERS FOR ITC MISMATCH SUBMISSION

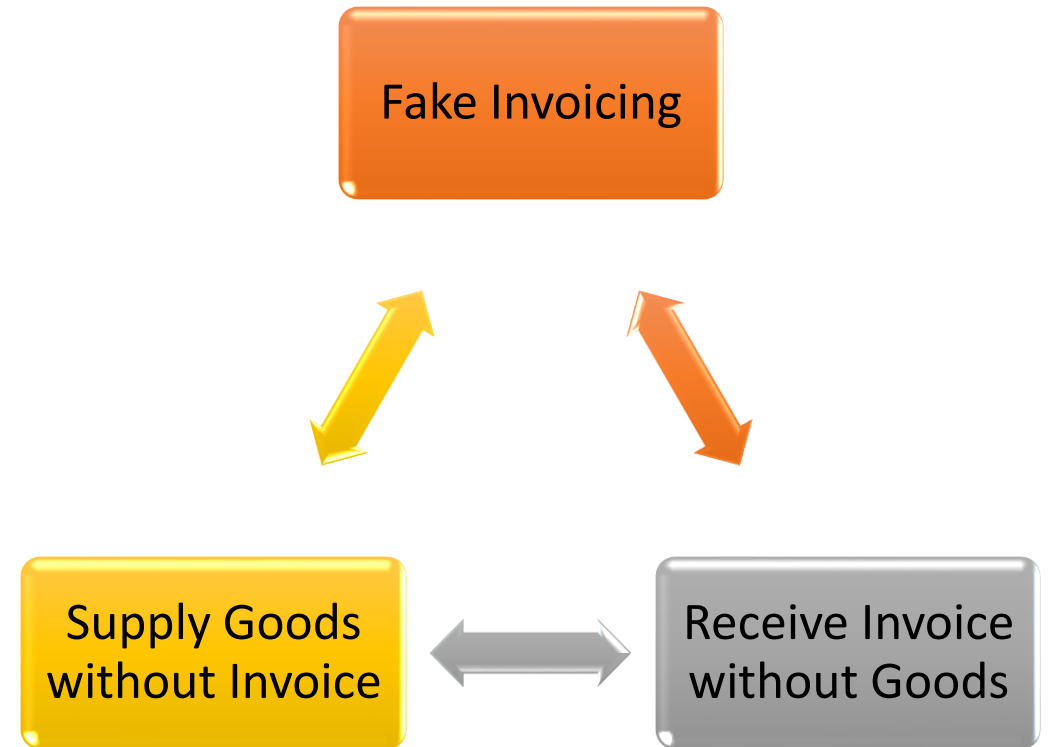
- RULE 36(4) WAS MADE EFFECTIVE FROM 9TH OCT 2019:
- Form GSTR 2A was not there in 2017-18
- INPUT TAX CREDIT IS AN INDEFEASIBLE AND VESTED RIGHT
- JUDICIAL PRONOUNCEMENT



# FAKE INVOICING

# FAKE INVOICING

- Modus Operandi
- Scenario
- Sec 122
- Can Honest Tax Payer held liable for Fraud by Supplier?
- What documents to be kept by genuine taxpayer?





# COMMON MISTAKE CAUSING OUTFLOW TO TAXPAYER

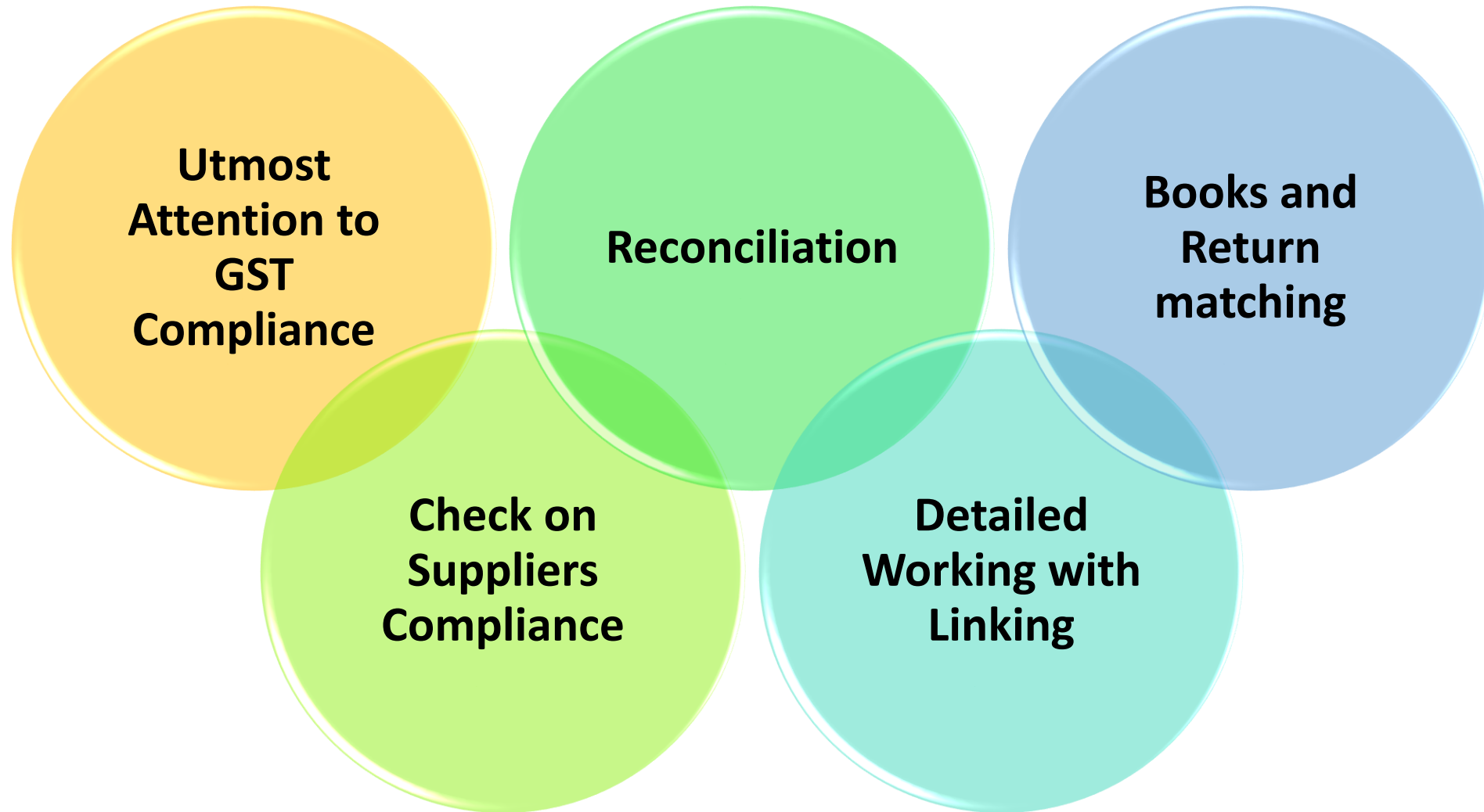
## COMMON MISTAKE/ERROR OBSERVED

- ✓ Difference in turnover as per GSTR 1 - GSTR 3B - Books
- ✓ GST not paid on sale of assets, motor vehicle, other income as applicable etc
- ✓ Wrong HSN & Tax rate used for output activity ( due to pressure from customer )
- ✓ ITC as per books is not matching with GSTR 3B / Electronic Ledger.
- ✓ Tax is correctly paid as per “Place of Supply”
- ✓ RCM Self Invoice is not prepared
- ✓ E Way bill value matching with Invoice
- ✓ RCM on import of services, Government Fees, Security Services, Renting of Motor Vehicle is not paid



## COMMON MISTAKE/ERROR OBSERVED

- ✓ Payment not made to Supplier within 180 Days and ITC reversal impact
- ✓ System for Supplier ITC Follow up is not there. No supplier compliance status is checked on its appointment.
- ✓ ITC on works contract ( some of such ITC is allowed – machine foundation, movable expenses etc)
- ✓ ITC is taken on the basis of Scan copy of invoice, or it is mentioned that It is computer generated invoice.
- ✓ ITC reversal on exempted supply.
- ✓ ISD Registration is not there, in case of multi GSTIN business
- ✓ E Invoice is not prepared / late prepared
- ✓ Job Work Return ITC 04 is not filed



*“Every Big Change is HARD at first,*

*MESSY in the Middle and*

*GORGEIOUS at the End”*

*– Robin Sharma*



**CONTACT US**

✂ **GST UPDATES, E BOOK, ARTICLES** ✂

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**Thank You.**

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