



TOPIC – “CHALLENGES TO FACE FLOODED LITIGATIONS IN GST BY PROFESSIONALS”
NAGPUR BRANCH OF WIRC OF ICAI,
SATURDAY, 19TH OCTOBER 2024

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GST- SCN FOR CANCELLATION & SUSPENSION OF REGISTRATION COMMON- SECTION 29(2)

29. Cancellation or suspension] of registration.

2) The proper officer may cancel the registration of a person from such date, including any retrospective date, as he may deem fit, where,—

(a) a registered person has contravened such provisions of the Act or the rules made thereunder as may be prescribed; or

(b) a person paying tax under section 10 has not furnished [the return for a financial year beyond three months from the due date of furnishing the said return]; or

(c) any registered person, other than a person specified in clause (b), has not furnished returns for [such continuous tax period as may be prescribed]; or

(d) any person who has taken voluntary registration under sub-section (3) of section 25 has not commenced business within six months from the date of registration; or

(e) registration has been obtained by means of fraud, wilful misstatement or suppression of facts:

Provided further that during pendency of the proceedings relating to cancellation of registration, the proper officer may suspend the registration for such period and in such manner as may be prescribed.

GST- SCN FOR CANCELLATION & SUSPENSION OF REGISTRATION COMMON- SECTION 29(2)

Section 29(2) does not specified who and how the violations to be determined, hence unworkable and arbitrary

Cancellation of registration with retrospective effect is unguided:

No time period and manner prescribed in Rule 21A(2) for suspension of Registration

GST- SCN FOR CANCELLATION & SUSPENSION OF REGISTRATION COMMON- RULE 21

21. Registration to be cancelled in certain cases.—The registration granted to a person is liable to be cancelled, if the said person,—

- (a) does not conduct any business from the declared place of business; or
- [(b) issues invoice or bill without supply of goods or services [or both] in violation of the provisions of the Act, or the rules made thereunder; or
- (c) violates the provisions of section 171 of the Act or the rules made thereunder;]
- [(d) violates the provision of rule 10A.]
- [(e) avails input tax credit in violation of the provisions of section 16 of the Act or the rules made thereunder; or
- (f) furnishes the details of outward supplies in **FORM GSTR-1** under section 37 for one or more tax periods which is in excess of the outward supplies declared by him in his valid return under section 39 for the said tax periods; or
- (g) violates the provision of rule 86B;]
- [(h) being a registered person required to file return under sub-section (1) of section 39 for each month or part thereof, has not furnished returns for a continuous period of six months;
- (i) being a registered person required to file return under proviso to sub-section (1) of section 39 for each quarter or part thereof, has not furnished returns for a continuous period of two tax periods.]

GST- SCN FOR CANCELLATION OF REGISTRATION COMMON- RULE 22

22. Cancellation of registration.—(1) Where the proper officer has **reasons to believe** that the registration of a person is liable to be cancelled under section 29, he shall issue a notice to such person in **FORM GST REG-17**, requiring him to show cause, within a period of seven working days from the date of the service of such notice, as to why his registration shall not be cancelled.

Rule 22 does not extend to Rule 21 but to Section 29 only

GST- SCN FOR CANCELLATION & SUSPENSION OF REGISTRATION COMMON- RULE 21A(2)

21A. Suspension of registration.—(1)

- (2) Where the proper officer has reasons to believe that the registration of a person is liable to be cancelled under section 29 or under rule 21, he may [* * *] suspend the registration of such person with effect from a date to be determined by him, pending the completion of the proceedings for cancellation of registration under rule 22.
- (3) A registered person, whose registration has been suspended under sub-rule (1) or sub-rule (2), or sub-rule (2A)] shall not make any taxable supply during the period of suspension .
- second proviso to section 29(2) and 21A(2) only can come into operation, once final determination of violation under section 29(2) is made. Whereas, Rule 21A(2) envisage, the officer can suspend the registration even before that, which is ultra vires to the Act.
- As per Rule 21A(3) a registered person whose registration has been suspended is debarred from making any supply
- **Suspension of registration is without granting any opportunity of hearing**

GST- SCN FOR CANCELLATION & SUSPENSION OF REGISTRATION COMMON- RULE 21A(2)

Rule 21A(2) and Rule 22 provide office can act on 'reason to believe', which is beyond the scope of Section 29(2)

SECTION 65- UNBRIDLE POWER OF AUDIT:

Section 65, unbridle power has been given to conduct audit by tax authorities, and surprisingly no reason is required for conducting such audit. It is well-known that unbridled power given to the officers without any checks and balances will lead to complaints of harassment and collapses, and it appears exactly that is happening under GST.

Section 2(13) “audit” means the examination of records, returns and other documents maintained or furnished by the registered person under this Act or the rules made thereunder or under any other law for the time being in force to verify the correctness of turnover declared, taxes paid, refund claimed and input tax credit availed, and to assess his compliance with the provisions of this Act or the rules made thereunder;

Verify – (i) turnover (ii) taxes paid (iii) refund claimed (iv) ITC availed (v) assess compliance under Act and Rules.

Audit under GST

Audit Manual 2023 has stated

Both Investigation and audit will go on together

7.1.4 Investigation/verification by some other wing/agencies are going on If the taxpayer is found existent and active and the records of the auditee are available although the investigation into certain activity of the taxpayer is being carried out by the other investigating agencies it suggested that the audit of such taxpayer should be carried out irrespective of the fact that another agency is also investigating the taxpayer. The audit wing should be expected to coordinate with the other investigating authority so as to be abreast of the aspect being examined by the said authority and its repercussions on the audit being carried out.

Two assessment for the same period not permissible

In **Avery India v UOI 2010 SCC OnLine Cal. 536 [para 37]; 2011(268) E.L.T 64 (Cal.) [para 37]**

it is held that– there cannot be double assessment for the same period.

In **Simplex Infrastructure Ltd. V Commissioner of Service Tax 2016 SCC OnLine Cal. 571[para 72]; 2016 (42) S.T.R. 634 (Cal.) [para 71]**

it is held that there cannot be double assessment for the same period.

In **National Building Construction Co. Ltd. v UOI 2019 (20) G.S.T.L. 515 (Del.)**

it is held that “**32.** At the same-time we would also observe that the stand of the respondents that Rule 5A(1) is for periodic checks and not for specific investigation or inquiry is wrong and unacceptable.”

Both Audit and investigation simultaneously not permissible

In National Building Construction Co. Ltd. v UOI 2019 (20) G.S.T.L. 515 (Del.)

it is held that “**32.** At the same-time we would also observe that the stand of the respondents that Rule 5A(1) is for periodic checks and not for specific investigation or inquiry is wrong and unacceptable.”

In R.P. Buildcon (P) Ltd. v. CGST & CX, 2022 SCC OnLine Cal 3108

The High Court held that “**7.** Therefore, we are of the view that since the audit proceedings under Section 65 of the Act has already commenced, it is but appropriate that the proceedings should be taken to the logical end. The proceedings initiated by the Anti Evasion and Range Office for the very same period shall not be proceeded with any further.”

Three levels of checks and safeguards – but not followed

In the GST law, to obviate the frivolous showcase notices, three levels of checks and safeguards have been placed *viz.*

First in Section 61 of the Central Goods and Services Act, 2017 (**‘CGST Act’**) read with Rule 99 of the Central Goods and Services Rules, 2017 (**‘CGST Rules’**);

Second in Section 65 of the CGST Act read with Rule 101 of the CGST Rules; and

Third in Section 73(5) of the CGST Act read with Rule 142 of the CGST Rules.

(5) The person chargeable with tax may, before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 and a penalty equivalent to fifteen per cent. of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

S. 129. DETENTION, SEIZURE AND RELEASE OF GOODS AND CONVEYANCES IN TRANSIT.

(1) Notwithstanding anything contained in this Act, where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the rules made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure, shall be released,—

(a) on payment of penalty equal to two hundred per cent of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such penalty;

(b) on payment of penalty equal to fifty per cent of the value of the goods or two hundred per cent of the tax payable on such goods, whichever is higher, and in case of exempted goods, on payment of an amount equal to five per cent of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such penalty;

(c) upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form and manner as may be prescribed:

Provided that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.

**FORM GST INS-02****ORDER OF SEIZURE**

[See rule 139 (2)]

Whereas an inspection under sub-section (1)/search under sub-section (2) of Section 67 was conducted by me on __/__/____ at __:__ AM/PM in the following premise(s):

<<Details of premises>>

which is/are a place/places of business/premises belonging to:

<<Name of Person>>

<<GSTIN, if registered>>

in the presence of following witness(es):

1. <<Name and address>>
2. <<Name and address>>

and on scrutiny of the books of accounts, registers, documents / papers and goods found during the inspection/search, I have reasons to believe that certain goods liable to confiscation and/or documents and/or books and/or things useful for or relevant to proceedings under this Act are secreted in place(s) mentioned above.

Therefore, in exercise of the powers conferred upon me under sub-section (2) of section 67, I hereby seize the following goods/ books/ documents and things:

A) Details of Goods seized:

Sr. No	Description of goods	Quantity or units	Make/mark or model	Remarks
1	2	3	4	5



RAJIV CHAWLA OF HINDUSTAN PAPER INDUSTRIES V DGGI, DZU, JUDGMENT DATED 17.02.2023 IN BAIL APPLICATION NO. NO. 313/2023, DELHI SESSION COURT

- ❑ “11.....it is matter of record as is reflected from the documents annexed with bail applications of accused/ applicants that the firm M/s Hindustan Papers Machinery Industries firstly received summons from Sr. Intelligence Officers of Gurgaon Zonal Unit of DGGI as is reflected from summons dated 02.11.2021 and summons dated 02.10.2022 in respect of alleged availing of ITC as one enquiry/ investigation was initiated. Similarly same firm i.e. M/s Hindustan Papers Machinery Industries. has again received summons from UP State GST on 03.06.2022, 13.06.2022, 04.07.2022, 27.07.2022 (copy of which are lying along with the application). It is thereafter DGGI DZU has also initiated the action with the same allegations of alleged evasion of tax by availing ITC on the basis of fake invoices. I find that such proceedings are apparently hit by provisions of Section 6(2)(b) of CGST Act.”
- ❑ “12.....It appears from the documents annexed with bail applications that Gurgaon Zonal unit of DGGI first initiated the action for alleged availing of ITC whereas the firm was registered under State of UP for the purpose of GST. Thereafter State GST unit started the action and thereafter present proceedings have been initiated by Delhi Zonal Unit of DGGI. I find that such action is against the spirit of CGST Act.”
- ❑ “14.....Moreover accused/applicant Rajiv Chawla has deposited sum of Rs. 50 lacs with Gurgaon Zonal Unit of DGGI where proceeding/ investigation is already pending. In such circumstances to my mind, when the said firm was registered under UP State GST, the present action taken by DGGI DZU is the misuse of provisions of the Act.”

“REASONS TO BELIEVE” BASED ON TANGIBLE MATERIALS

The Supreme Court in **Radha Krishan Industries v State of Himachal Pradesh 2021 SCC OnLine SC 334** in matter related to GST, for attachment of bank account under section 83 of the Act, taken note of the fact that “**52**...Section 83 of the HPGST Act uses the expression “opinion” as distinguished from “reasons to believe”. However for the reasons that we have indicated earlier we are clearly of the view that the formation of the opinion must be based on tangible material which indicates a live link to the necessity to order a provisional attachment to protect the interest of the government revenue.”

The Supreme Court in this case clearly expressed its views that “**51**.....the Commissioner must in the formation of the opinion act on the basis of tangible material on the basis of which the formation of opinion is based in regard to the existence of the statutory requirement...”

APPEAL UNDER SECTION 107

Against the order passed by the Adjudicating Authority. Is officer passed under State Act is Adjudicating Authority –

No. Supreme Court in Radha Krishan Industries v State of Himachal Pradesh & Ors 2021 SCC OnLine SC 334 held no Appeal lies – only writ petition. while considering the State GST Law, “62.. the expression ‘adjudicating authority’ does not include among other authorities, the Commissioner..... clearly the order passed by the Joint Commissioner as a delegate of the Commissioner was not subject to an appeal under Section 107(1) and the only remedy that was available was in the form of the invocation of the writ jurisdiction under Article 226 of the Constitution. The High Court was, therefore, clearly in error in declining to entertain the writ proceedings.”

SECTION 107(4)- DELAY BEYOND CONDONATION PERIOD OF ONE MONTH.

Delay in condonation **for one month**, if prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months – **Is section 5 of the limitation Act, applies, Calcutta High Court held yes, delay more than one month can be condone.** S.K. Chakraborty & Sons v UOI (2024) 15 Centax 172 (Cal.). However, Patna High Court in Vishal Kumar Gupta v UOI 2024 (89) G.S.T.L. 42 (Pat.) disagree with the dictum of the decision of the Division Bench of the Calcutta High Court, and held that when specific period condonation is provided, then there is exclusion of section 5 of the Limitation Act, 1963.

But, Assistant Commissioner (CT) LTU v. Glaxo Smith Kline Consumer Health Care Limited 2020 SCC OnLine SC 440 – Supreme Court says no.

Union of India v. Popular Construction Co. (2001) 8 SCC 470] – considered Section 34(3) of the Arbitration and Conciliation Act, 1996 held the expression in Section 34 “but not thereafter” would amount to express exclusion within the meaning of Section 29(2) of the Limitation Act.

SECTION 107 (11) – CAN APPELLANT AUTHORITY REMAND BACK THE MATTER

No power to remand back - confirming, modifying or annulling the decision or order appealed against but shall not refer the case back to the adjudicating authority that passed the said decision or order. Allahabad High Court has held that the Appellate Authority has no power of remand the matter to the Adjudicating Authority.

2024: AHC: 16550-DB Writ Tax No. 1417 of 2023 in M/s Krons Solutions India Pvt. Ltd. V UOI & Ors. – held that “7.... Any doubt in that regard has been clarified by the legislature itself by stating that the appeal authority shall not refer the matter back to the adjudicating authority” Tvl. Shivam Steels v Assistant Commissioner (ST)(FAC), in W. P.No.15335 of 2024 .

SECTION 107(11) - STRANGE POWER OF APPELLANT AUTHORITY FOR ISSUING SCN

Section 107(11) first proviso

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

This is contrary to the settled law, the Appellant cannot be put in worst of position then what was before filing an Appeal.

In *Servo Packaging Ltd. v. CESTAT, Chennai, 2016 (340) ELT 6 (Mad.)* it is held that “..the appellant cannot be put in a worse position, in their own appeal, and in such circumstances, the principle of “*no reformatio in peius*” would come into play, which means that a person should not be placed in a worse position, as a result of filing an appeal. It is a latin phrase, expressing the principle of procedure, according to which, using the remedy at law, should not aggravate the situation of the one who exercises it.”

In *Jaswal Neco Ltd. v. Commissioner of Customs, Vishakhapatnam, 2015 (322) E.L.T. 561 (S.C.)* it was held that the appellant cannot be worse off by reason of filing an appeal. To this limited extent, the appellant succeeds and the Tribunal’s order is set aside.

THANKS TO ALL

WISH FOR GOOD HEALTH