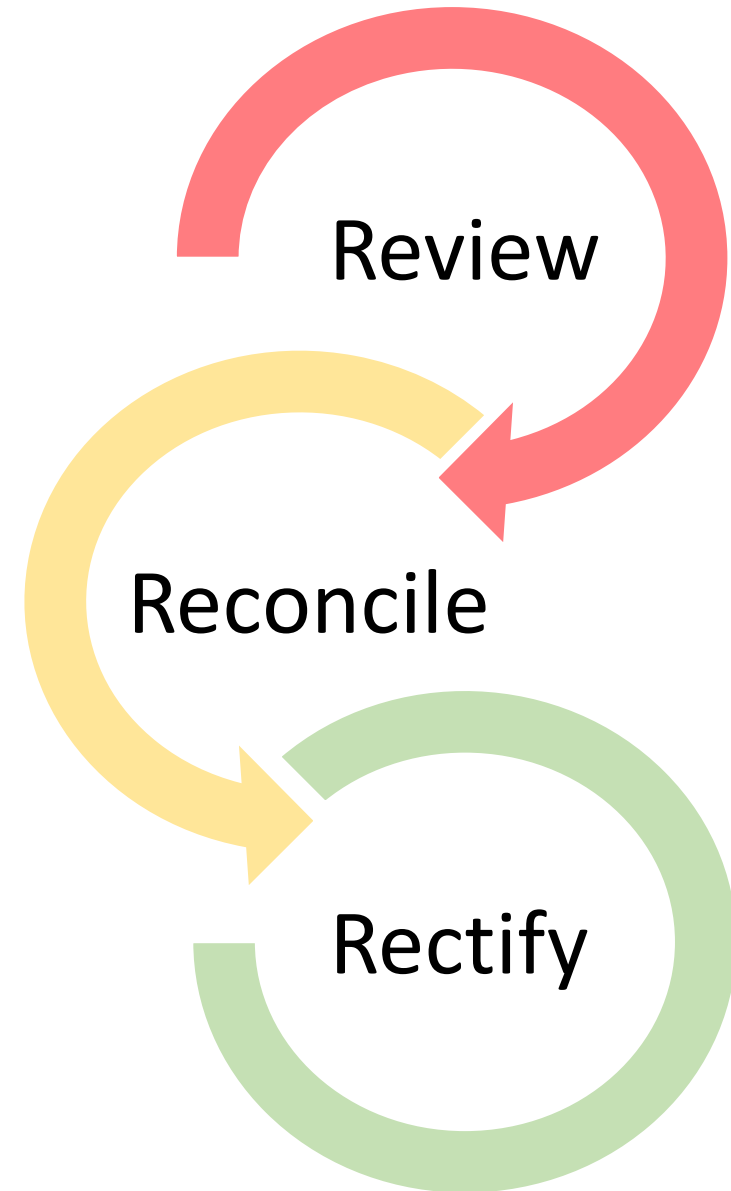


GST

#YearEndGST



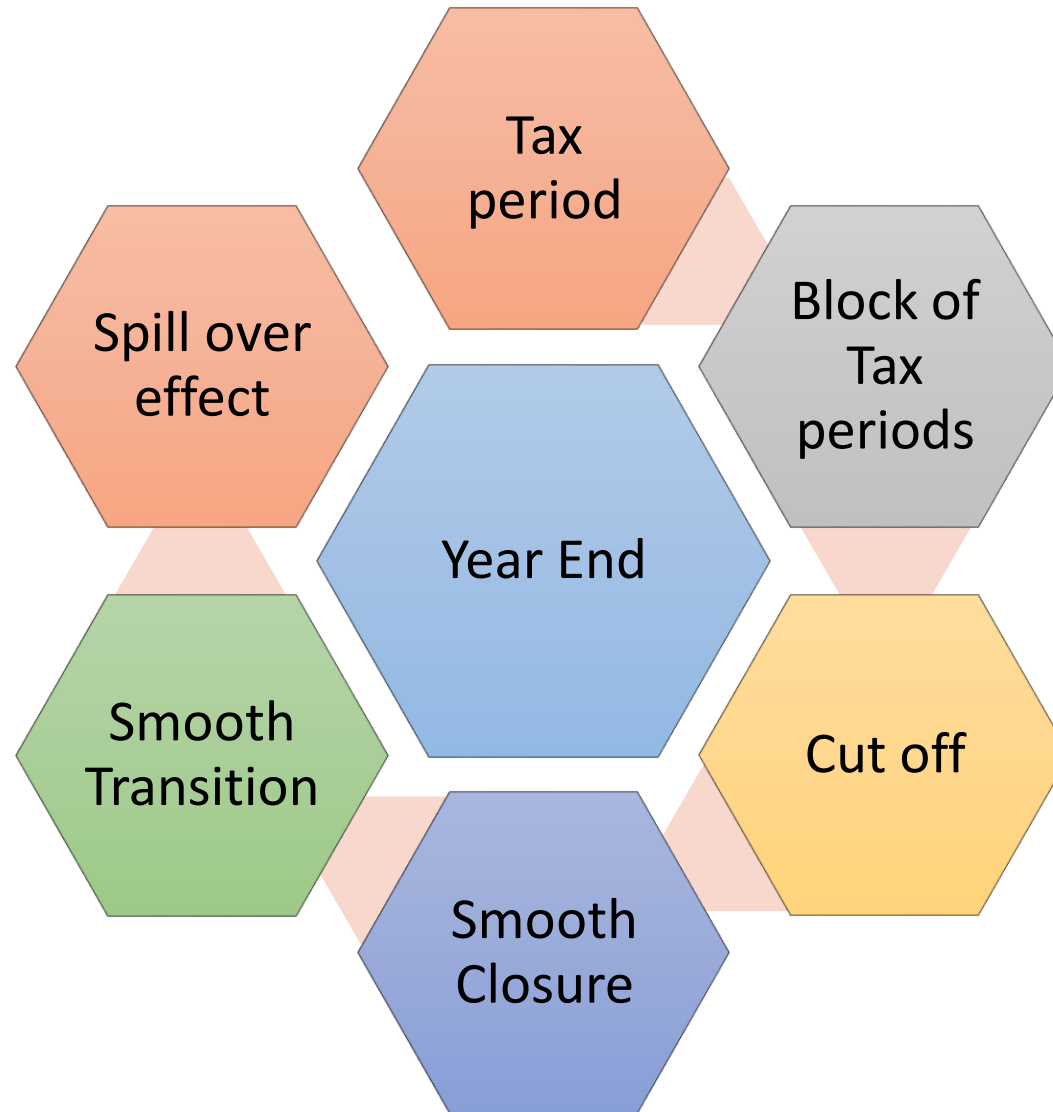
- Importance of #YearEndGST

- Approach to #YearEndGST
 - Outward supplies
 - Inward supplies
 - RCM
 - Rectification

- Closure of 2022-23

- Preparing for 2023-24

- Questions & Answers



Review

- Books of Accounts
- GSTR-3B
- GSTR-1
- GSTR-2B
- E – Way bill records
- E-Invoice records

Reconcile

- Outward supplies
- Input tax credit
- RCM Liability

Rectify

- GSTR-3B
- GSTR-1
- DRC-03
- GSTR-9 & 9C
- Combination of above
- Communication to department

Documentation : Observations, rectifications, Spill overs, closing & opening balances, Closing & opening notes

Outward supplies

Books of Accounts

- Turnover & Other incomes
- Sale of FA & Sec 18(6) of CGST
- Credits in expense ledgers
- Credit balances of debtors/advances received
- **Cost + markup (Exports)**
- Movement of Goods/Capital goods/other assets between various GSTIN
- Cross charge



GSTR-1

- Invoices (B2B, Export)
- Debit & credit notes
- Advances received & utilized
- Amendments
- HSN summary
- Rate-wise extract

GSTR-3B

E waybill & E Invoices

Inward supplies

Books of Accounts

- Eligible input
- Ineligible Input
- Revisiting of eligibility on account of re-classification of expenses/assets
- Assets written off
- Closing stock (books vs Physical)
- Goods in transit
- Creditors written off

GSTR-2B

- Input invoices
- B2B Amended invoices
- Debit & Credit notes
- TDS & TCS
- Imports
- **Imports SEZ**

GSTR-3B

Recommendation: Invoice wise reconciliation, eligible/ineligible, RCM input <= RCM paid

Reverse Charge Mechanism (RCM)

Books of Accounts

- Expenses
- Newly introduced RCM (Residential premises rent, GTA)
- Year-end liabilities & provisions
- Form 15CA/15CB
- Form 27Q [Sec 195 (income tax) payments]

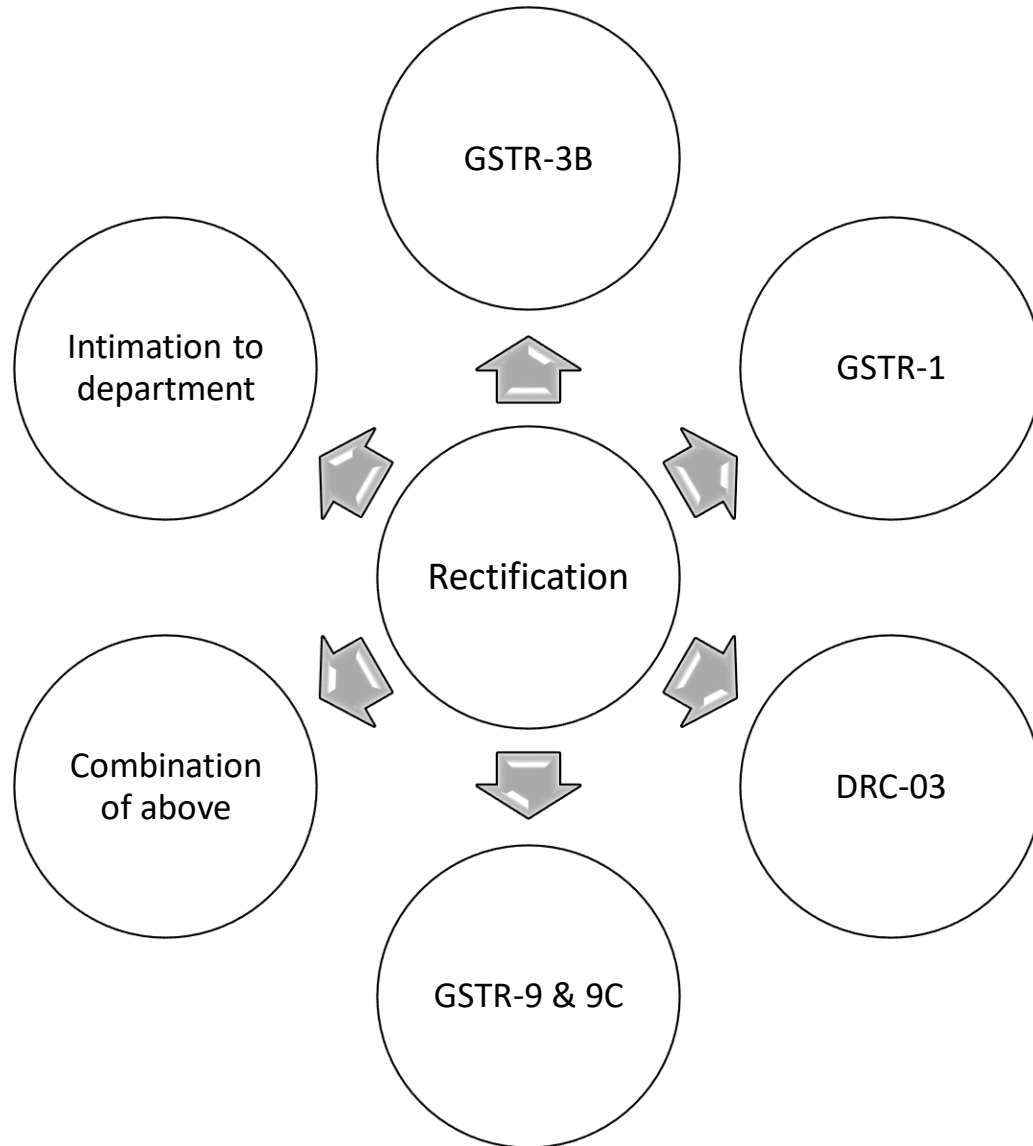


GSTR-2B

- RCM liability as per 2B



GSTR-3B



The Art Of Rectification

- Closing Balance reconciliations
 - Cash ledgers
 - Credit ledgers
 - Liability registers
 - TDS & TCS receivables
- Deferred ITC ledgers
 - Deferred CGST
 - Deferred SGST
 - Deferred IGST
- ITC reflected in 2B but not in books (from April to July 2022)
- Recalculation under rule 42
- Reconsideration of rule 43

- Non-realisation of export proceeds
- Follow up with suppliers & get invoices uploaded latest by 11th/13th April to avoid spill over
- ITC reversal (Rule 37)
- RCM 80:20 (planning & calculation)
- Refund of FY 2022-23
- Self invoicing & Payment vouchers
- Revisit (Eligibility & Ineligibility)

- Last opportunity (LUT for FY 2022-23)
- Documentation
 - Observations
 - Spill overs
 - Closing & opening notes for future use

- Calculation of ATO/AATO for FY 2023-24 (latest PFY)
- Revisiting applicability of various provisions w.e.f 01st April, 2023
 - E Invoicing
 - QR Code for B2C
 - Eligibility for QRMP
 - Eligibility for Composition scheme
 - Filing frequency of ITC-04 (Annually/half yearly)
 - Requirement of 4/6 digits HSN
- Rule 86B (Revisiting the exceptions)
- LUT for FY 2023-24
- Opting in or out of QRMP & Composition scheme
- Option to pay tax under FCM by GTA (Goods Transport agency), submission of documents



Thank you

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HNA & Co LLP
(Formerly Hiregange & Associates)
Chartered Accountants

GST - Recent & Imp. case laws

CA. Venkat Prasad. P, LLB



Introduction

- Principle of '**Judicial discipline**' require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not "acceptable" to the department - in itself an objectionable phrase - and is the subject-matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent Court. If this healthy rule is not followed, the result will only be undue harassment to assesseees and chaos in administration of tax laws - **UOI Vs Kamlakshi Finance Corporation Ltd 1991 (55) E.L.T 433 (S.C)**
- Principle of '**Stare decisis**' states that before reviewing or revising its earlier decision, the Court must satisfy itself whether it is necessary to do so in the interest of public good or for any other compelling reason and the Court must endeavor to maintain **consistency, certainty and continuity in** the interpretation of the law in the country - 7 judge constitution bench of Hon'ble SC in case of **Keshav Mills Co. Ltd. Vs. C.I.T. AIR 1965 SC 1636; -**
- Facts of decision relied upon have to be shown to fit factual situation of a given case. Without such discussion, reliance could not be placed on a decision. Circumstantial flexibility, one additional or different fact may make world of difference between conclusions in two cases. **C.C.E., Calcutta vs. Alnoori Tobacco Products 2004 (170) ELT 135 (S.C.)**

Introduction

Initial Caveats

- Last 2 years cases were taken.
- Omission of any case laws is purely unintentional and try to discuss if memory permits
- To give more content & time constrains - Coverage of facts, issues involved is limited. If any specific case to be elaborated, much privileged to do.
- Application & adoption of case laws purely depends the text & context of facts, legal provisions. Hence, due care may be taken while relying on cited case law
- Future developments of the case laws (reversed or upheld or changes in legal provisions) is also to be considered
- AAR & AAAR's are not considered

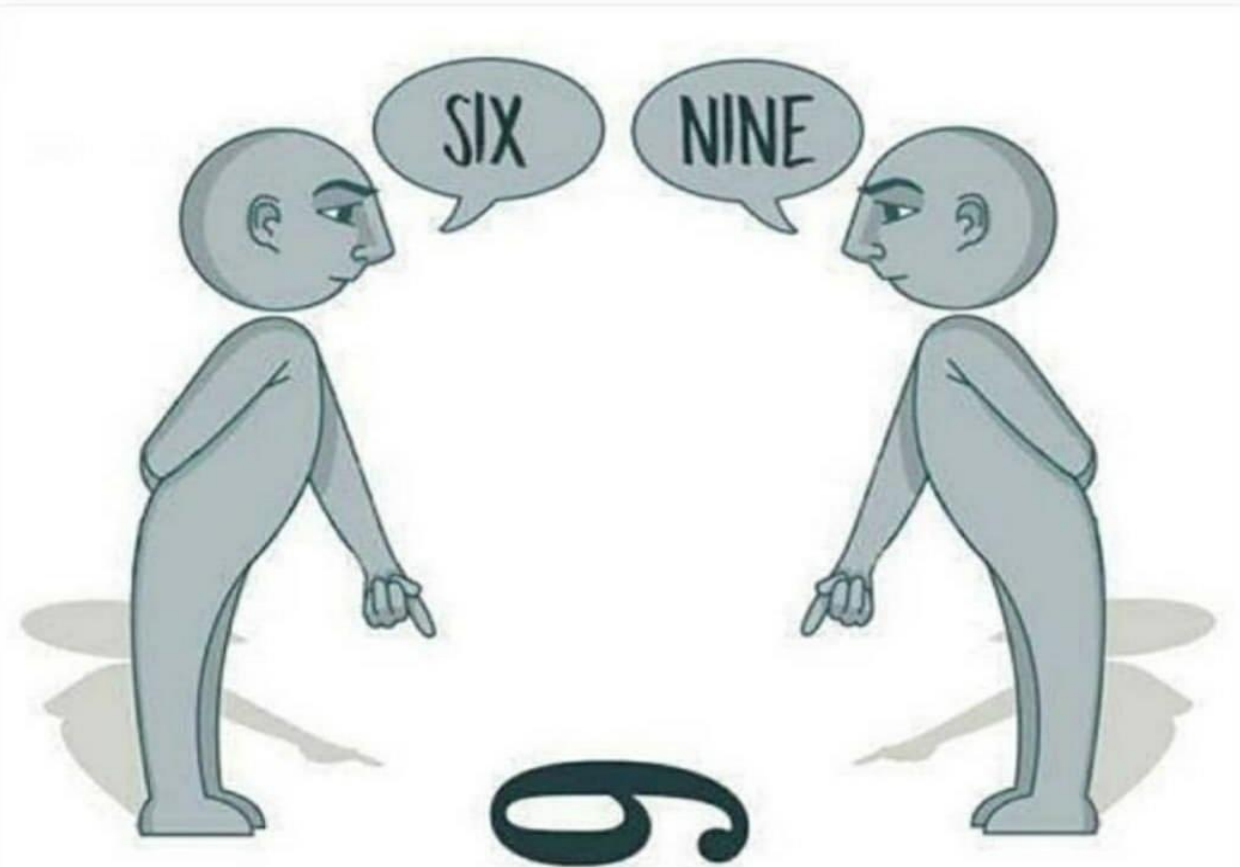
Reasons for Disputes

Department Perspective

- Aggressive tax collection behaviour
- Lack of Training and skills of tax officers
- Lack of accountability and judicial indiscipline
- Lack of supervision and guidance
- Fear of Audit, Vigilance machinery and CBI

Taxpayers perspective

- Complicated law
- Cumbersome procedures
- Compliance requirements
- Ignorance
- Deliberate evasion
- Competition by tax evaders



Just because you are right, does not mean, I am wrong. You just haven't seen life from my side.

SC on GST

- **"The Parliament had intended the GST to be a citizen-friendly tax structure. The purpose of the Act is lost by the manner in which tax law is enforced"** observed by SC while hearing the case of Radha Krishan Industries vs. State of Himachal Pradesh 2021 (48) GSTL 113 (S.C.) (source: <https://www.livelaw.in/top-stories/supreme-court-gst-parliament-citizen-friendly-purpose-lost-by-enforcement-government-172211>)
- **"It is very easy to reach the moon...we would take a chance...but to understand your policies and intricacies of this tax...Oh God, with folded hands, we say that it is beyond our capacity to understand"**. The comment of Gujarat HC during an online hearing (source: <https://www.youtube.com/watch?v=p0jvjkFXKmY>)



SC decisions

- The rationale of Hon'ble SC decision in case of **Radha Krishan Industries v. State Of Himachal Pradesh & Ors 2021 (48) G. S. T. L. 113 (SC)** & Gujarat HC in case of Valerius Industries v. Union of India — [2019 \(30\) G.S.T.L. 15 \(Guj.\)](#).
 - ✓ It is very drastic and far reaching power
 - ✓ It must be exercised with extreme care and caution. Not to harass the tax payers or cause detrimental effect on business
 - ✓ It shall be exercised as last resort/Measure and not as means of regular recovery.
 - ✓ It shall be done based on some credible materials & supervening factor and not casual evidence.
 - ✓ The Joint Commissioner while ordering a provisional attachment under section 83 was acting as a delegate of the Commissioner in pursuance of the delegation effected under Section 5(3) and an appeal against the order of provisional attachment was not available under Section 107 (1);
 - ✓ The writ petition before the High Court under Article 226 of the Constitution challenging the order of provisional attachment was maintainable;

- ✓ The expression “necessary so to do for protecting the government revenue” implicates that the interests of the government revenue cannot be protected without ordering a provisional attachment;
- ✓ The person whose property is attached is entitled to dual procedural safeguards :
 - An entitlement to submit objections on the ground that the property was or is not liable to attachment; and
 - An opportunity of being heard;
- ✓ The Commissioner is duty bound to deal with the objections to the attachment by passing a reasoned order which must be communicated to the taxable person whose property is attached;
- ✓ If appeal is filed against the order u/s. 73/74(9), the provisional attachment shall cease
- ✓ No second time attachment without change in facts & circumstances

UOI Vs Mohith Minerals 2022-TIOL-49-SC-GST-LB



UOI Vs Mohith Minerals 2022-TIOL-49-SC-GST-LB

- In the case of a CIF contract, the freight invoice is issued by the foreign shipping line to the foreign exporter, without the involvement of the importer.
- The recommendations of the GST Council made by virtue of the power Article 279A (4) are not binding on the Parliament or State legislations.
- The levy imposed on the 'service' aspect of the transaction is in violation of the principle of 'composite supply' enshrined under Section 2(30) read with Section 8 of the CGST Act. Since the Indian importer is liable to pay IGST on the 'composite supply', comprising of supply of goods and supply of services of transportation, insurance, etc. in a CIF contract, a separate levy on the Indian importer for the 'supply of services' by the shipping line would be in violation of Section 8 of the CGST Act.

Issues in SC Decision:

- 'Recipient' definition of 2(93)(a) has been overlooked as in this case there is a *consideration*.
- Deeming a recipient can have far reaching impact. CIF contract ensures that persons privy to contract w.r.t ocean freight is between exporter and foreign supplier only. Indian importer being deemed recipient is questionable.
- Extra-terrestrial – Transaction nexus with India settles that the transaction is not extra-terrestrial. Where ultimate beneficiary of the transaction is in India, such transactions may have to be re-looked at.

All India Haj Umrah Tour Organizer Association Vs UOI 2022-TIOL-58-SC-ST-LB

- HGOs render services to Haj pilgrims by purchasing flight tickets, arranging and making payments for accommodation in Saudi Arabia, arranging and making available food during their stay in Saudi Arabia, arranging and making payments for transportation in Saudi Arabia and providing foreign exchange in the form of Saudi Riyals - In this case, the recipients of service from HGOs are Indian residents and accordingly, their place of residence in India will be the place of provision of service
- Exemption is not applicable as the HGOs are not the specified organizations - If the intention and object was to provide exemption to services provided by HGOs in respect of religious pilgrimage, the notification would have specifically provided so
- HGOs offer a comprehensive package of services relating to Haj pilgrimage. It is not the case of the HGOs that they charge separately for different services forming a part of the comprehensive package - Only a part of the package cannot be picked up for invoking exemption - For the purposes of levy of service tax, the service rendered cannot be dissected
- Haj Committee is a statutory committee which is entrusted with various functions for the welfare of Haj pilgrims - Moreover, the profit motive is completely absent in the case of the Haj Committee which are absent in HGO's or PTO (private tour operators) - No discrimination in granting exemption to Haj committee and not extending to HGO's or PTO

UOI Vs. VKC Footsteps India Pvt. Ltd. 2021-TIOL-237-SC-GST

- Gujarat HC held refund of GST on input service in inverted rate structure is allowed and Madras HC held it is not allowed. The matter went to Supreme Court.
- SC affirmed Madras HC view and held that provision restricts refund for inputs only and it would be unconstitutional to expand refund provisions beyond what legislature had provided.
- Parliament empowered to decide whether refund should be allowed
- Challenge to Rule 89(5) on the ground that it is ultra vires of Section 54(3)(ii) lacks substance.
- Further, the absence of word 'as may be prescribed does not preclude rule-making authority from making rules to carry out the provisions of the Act.



HC decisions

- Horse race is game of skill and Totalizer liable for GST only on Commission earned on bets not the total face value of Bets. Fiduciary capacity of person receiving money cannot be held to be consideration. Rule 31A(3) to tax 100% of the face value of the bet is ultra vires to the CGST Act. **Bangalore Turf Club Ltd Vs State of Karnataka 2021 (51) G.S.T.L. 228 (Kar.)**.
- Similar views in case of Gurdeep Singh Sachar v. Union of India — [2019 \(30\) G.S.T.L. 441](#) (Bom.); Ravindra Singh Chaudhary vs. UOI 2020 (42) G.S.T.L. 195 (Raj.) Not every money receipt/inflow cannot be consideration and in turn value of taxable supply. Receipt of grants and incurring on behalf of Govt/Organizations while retaining some % as admin/service charges etc., can use this rationale to say GST is only retention amounts or specific charges not on total amount received.
- Assessment of ITC eligibility or short payment or non payment of GST shall not be done in registration revocation proceedings. In guise of considering application for revocation, Authorities cannot embark upon process of assessment - To state that registration will not be revived since petitioner has incorrectly availed of ITC would be putting the cart before horse. **Ramakrishnan Mahalingam v. STO 2021 (50) G.S.T.L. 369 (Mad.)**

Bundl Technologies Private Limited TS-546-HC(KAR)-2021-GST

- ‘Swiggy’ runs the business of food delivery through delivery partners and in peak season, engages the third party (Greenfinch in the present case) to honour the deliveries who charged the consideration & GST thereon which was availed as ITC by Swiggy.
- The DGGI, Hyd Zone investigation revealed that ‘Greenfinch’ is non-existent and summoned the presence of directors & forced to pay back the ITC availed under threat of arrest (in Nov & Dec 2019). While making the payment, the DGGI had objected to use the word ‘under protest’ in Form DRC-03 (letter was filed through email by the petitioner).
- Sought refund of aforesaid payments since the DGGI did not conclude the investigation even after 2 yrs & no notices were issued. The refund sought to be rejected stating it is premature and also payments are made under self-ascertainment u/s. 74(5)

HC held

- Mere payment of tax cannot be construed to be payment towards self-ascertainment as contemplated under Section 74 (5) of CGST Act. Refund available as it amount collected is without the authority of law.
- **It must be noted that filing of return and payment of substantial taxes by the petitioner would clearly warrant for treating such tax payers with certain element of dignity**
- Court also orders for installation of CCTV & recording of interrogation

Material Recycling Association of India vs UOI 2020 (40) G.S.T.L. 289 (Guj.)

- Section 13 (8) (b) of the IGST Act prescribing place of supply of intermediary is constitutional.
- Section 13(8)(b) of IGST Act, 2017 says Place of Supply for intermediary is where the Intermediary is located.
- Services of Intermediary, like Commission Agent, Broker, Steamer agents e.t.c when provided to foreign principal will not be treated as export of services under GST Law.
- Government of India should consider intermediary's representation in favor of them.

Split judgment rendered on the Constitutional validity of levying GST on Cross border. Intermediary services - Difference in opinion, matter to be placed before CJI **Dharmendra M Jani Vs UOI & others [2021-TIOL-1297-HC-MUM-GST] and [2021-TIOL-1326-HC-MUM-GST]**

Scope of an "intermediary" includes the facilitation of provision of services and not the provision of the main service on its own account. The clauses of the agreement is important [Genpact India Pvt. Ltd. V. UOI [2022-VIL-751-P&H HC]

Munjaal Manishbhai Bhatt Vs UOI 2022-TIOL-663-HC-AHM-GST

- Actual value of land can be claimed as a deduction where ever it is available. When the actual value of land is ascertainable - the deeming fiction of 1/3rd value towards land is clearly contrary to the provisions and scheme of the CGST Act
- Rule 30 of CGST Rules, 2017 provides for cost +10% valuation.
- Where department doubts the correctness of land value, the cost of construction can be ascertained by resorting to valuation rules 30 or 31
- Price agreed for land sale in the agreements is sufficient to avail the actual value deduction in place of deemed 1/3rd
- There cannot be a sale in respect of construction undertaken prior to agreement with the buyer and the factum of supply would be initiated only once the agreement is entered into between the supplier and recipient for consideration.

Shirdiri Sainath Industries vs. DCST 2020-TIOL-2052-HC-AP-GST

Background:

- AP govt (Civil supplies) gives Paddy to the Rice millers who in turn **shall give 67% rice yield irrespective of the actual yield.** The actual average rice yield is b/w. 61-62%
- The milling charges (CMR) are fixed at Rs.15 per quintal paddy. Bye products namely Broken rice, husk & bran arises during milling process which is allowed to be retained by the millers
- GST has been paid on milling activity (treating as 'supply of service). The broken rice & husk are exempted, and 'Bran' is liable @5%

Issue involved:

- Whether 'bye products' retained constitutes additional consideration (non-monetary) for milling activity done to Govt? Whether CMR is 'sole consideration'?

Hon'ble HC held

- Clause of the agreement do not indicate that 'bye products' is an additional consideration'
- It is a compensation for bearing yield loss of 6-7% while supplying standard yield of 67% rice to Govt and not a consideration for 'CMR'

CBIC Circular No. 153/09/2021-GST, dated 17-6-2021 clarified that milling activity being pure service is exempted from GST

- Mismatched/unmatched ITC shall not be denied if final payment by the supplier to the Government is proved and benefit of Circular No. 183 shall apply for FY 2019-20 also. Wipro Limited India Versus the Assistant Commissioner of Central Tax and Ors.,
- ITC cannot be denied if all the purchases and transactions are found to be supported by valid documents, genuine and the same are made before the cancellation of registration of the supplier. [LGW Industries And Others v. UOI 2021 VIL 868 CAL]
- ITC is not deniable on the normal Loss u/s 17(5) – **[ARS Steels and Alloys International Private Limited 2021 TIOL (1393) – Mad]**
- Credit ledger cannot be blocked in lieu of recovering the dues from the supplier - M/s Nipun A Bhagat, Proprietor of Steel Kraft Industries vs State of Gujarat 2021-TIOL-147-HC-AHM-GST
- Closing balance of EC, SHEC & KKC as on 30.06.2017 is eligible Transitional credit under GST Bombay HC in **Godrej & Boyce Mfg. Co. Ltd. v. Union of India and Ors 2021-TIOL-2112-HC-MUM-GST**
- ITC on Construction expenses of commercial complex meant for lease is eligible and the restriction u/s. 17(5) of CGST Act, 2017 was read down - Orissa HC in case of **Safari Retreats Private Limited v. Chief Commissioner — 2019 (25) G.S.T.L. 341 (Ori.)** and pending before Hon'ble SC.

- SEZ units can also claim GST refund **Platinum Holdings (P.) Ltd. v. AC 2022 (58) G.S.T.L. 3 (Mad.) & Britannia Industries Limited Vs UOI 2020 (42) G.S.T.L. 3 (Guj.)**
- Rule 97 A which permits manual refund filing prevails over Master Circular No. 125/44/ 2019 GST dated 18.09.2019 according to which refund claims have to be filed online. [Laxmi Organic Industries Ltd v. UOI 2021 TIOL 2248 HC MUM GST]
- Time limit for applying refund under section 54 does not apply when the collected amount is unconstitutional and not considered to be a tax – [Comsol Energy Pvt. Ltd 2021(55) GSTL 390 (Guj)]
- Refund cannot be denied merely on the ground that investigation is pending - u/s 54(10) of CGST Act – [Evertime Overseas Pvt. Ltd v. UOI 2021 (55) GSTL 257 (Bom)]

- In 'P.V. Ramana Reddy v. Union of India' - 2019 (25) G.S.T.L. 185 (Telangana) Hon'ble Telangana HC held
 - Arrest can be made before completion of the assessment
 - Pre-trial arrest can be challenged before HC
 - Compounding is not possible if not applied;
- Further, the petitioners filed a special leave petition before the Supreme Court against the judgment of Telangana High Court. The Supreme Court dismissing the plea, said that it is not inclined to interfere [2019 (26) G.S.T.L. J175 (S.C.)].
- HC of Karnataka & Bombay has taken different view and the matter is pending before 3 member bench of Hon'ble SC now on the above issues
- Various HC's have granted/denied bail or coercive measures based on specifics of its case

- Incorrect location of purchaser- UP instead of AP in GSTR-1 – rectifiable – entitled to avail ITC – **Pentacle Plant Machinerics Pvt. Ltd. 2021 (52) GSTL – 129 – Mad**
- Tax evasion cannot be presumed merely on account of expiry of e-Way bill. **(Telangana HC) - Satyam Shivam Paper Pvt Ltd , (2021-TIOL-1338-HC-TELANGANA-ST) & upheld by Hon'ble SC**
- Vehicle cannot be seized or penalty cant be imposed u/s. 129 for mere laspe of not adding the delivery location in registration certificate. No penalty when there is no intention to evade tax u/s. 129 - **Smart Roofing Pvt Ltd Vs STO 2022-TIOL-444-HC-MAD-GST & Algae labs pvt. Ltd. V. STO 2022-TIOL-503-HC-MAD-GST**
- The assessee can be summoned only as a last resort and as far as practicable, details can be obtained from an assessee by way of an ordinary letter. The summons cannot be issued to coerce and pressurize the assessee. – [FSM Education Pvt. Ltd v. UOI 2022-TIOL-61-HC-MUM-GST]
- Authorities should ensure that the taxpayer is left in a position where he can continue with his business because it is only if the dealer continues with the business that he would be in a position to generate revenue and pay the taxes. Bringing the business of a dealer to a halt does not in any manner serve the interest of the revenue. – **[Steel Rolling Mill v. Assistant Commissioner of State Tax, 2019 (20) G.S.T.L. 732 (Guj), Siddarth Mandavia vs Union of India 2021 (044) GSTL 0347 (Bom)]**

➤ Refund of Service tax under RCM or CVD/SAD paid after GST is refundable – Doctrine of necessity is applied - **Ganges International Pvt Ltd Vs The A.C.G & C.E. 2022-TIOL-325-HC-MAD-GST; Flexi Caps and Polymers Pvt Ltd Vs Commissioner 2021 (9) TMI 917-CESTAT New Delhi; Terex India Pvt Ltd v. Commissioner 2021-TIOL-696-CESTAT-MAD**

➤ Leasing of building to use as 'Hostel' is exempted from GST under Sl. No. 13 of Ntn No. 12//2017 - **Taghar Vasudeva Ambrish Vs AAAR 2022-TIOL-242-HC-KAR-GST**

➤ Upto 7,500 exempted means only excess to be paid (**Madras High Court**) **GREENWOOD OWNERS ASSOCIATION vs. UOI [2021-TIOL-1505-HC-MAD-GST] – This was stayed by Division Bench**

➤ Revenue authorities can neither issue any advices regarding payment of tax nor coerce the taxpayer to pay tax without determining the liability u/s. 73/74. Recovery in the stage of investigation/summons proceedings is wholly arbitrary and without jurisdiction.- **Deem Distributors Private Limited v. UOI 2022 (56) GSTL 286 (Telangana)**

➤ Best judgment Method adopted by Department in case of non-filers of GSTR-3B returns in multiplying monthly amount by 3 and imposing 100% penalty, was arbitrary and contrary to GST Act - **Golden Mesh Industries vs. Assistant Commissioner of State Tax 2022 (57) GSTL 108 (Telangana)**

- Hearing opportunity is mandatorily to be granted before passing adverse adjudication order even if it is not sought - **Bharat Mint & Allied Chemicals v. C.C.T 2022 (59) G.S.T.L. 394 (All.)**
- GST registration cancelled - revocation after 90 days - HC exercised jurisdiction under article 226 of COI and directed dept to open & revive the registration. Legitimate Trade and Commerce by every supplier should be allowed to be carried on subject to payment of tax and statutory compliance. GST enactments cannot be interpreted so as to deny the right to carry on Trade and Commerce to a citizen and subjects. The constitutional guarantee is unconditional and unequivocal and must be enforced regardless of the defect in the scheme of the GST enactments. The right to carry on trade or profession also cannot be curtailed. Only reasonable restriction can be imposed. To deny such rights would militate against their rights under Article 14, read with Article 19 (1)(g) and Article 21 of the Constitution of India **Jeyalakshmi Store v. CCT 2022 (7) TMI 1275 - MADRAS HIGH COURT & Suguna Cutpiece Vs Appellate Deputy Commissioner & others 2022 (2) TMI 933 - MADRAS HIGH COURT**
- SC directed UOI/GST Council to issue advisory/instructions/recommendations to the States regarding implementation of the system of electronic (digital) generation of a DIN in the indirect tax administration **Pradeep Goyal Vs UOI 2022-TIOL-66-SC-GST**

- Assessee was permitted to file returns for period prior to cancellation of registration together with tax defaulted along with interest for such belated payment as intention of Act is to facilitate business to be carried out so as to enable smooth payment of taxes. Refusing to decide challenge against order of cancellation of registration on ground of limitation would ultimately impact recovery of taxes and work against interest of revenue. **Durga Raman Patnaik vs. Addl. Commr. of Gst (Appeals), Bhubaneswar 2022 (67) G.S.T.L. 19 (Ori.)**
- Statutory period of 30 days under Section 73(8) of CGST/MGST Act, 2017 from date of SCN to make payment of tax and interest period for payment of tax & interest after SCN for Demand/recovery notice can't reduced less than 30 days could not be arbitrarily reduced to 7 days by assessing officer. **Sheetal Dilip Jain v. State Of Maharashtra 2022 (67) G.S.T.L. 11 (Bom.)**
- Reversal of input tax credit at midnight during search and seizure operation could not be said as voluntary payment; Department was to be directed to refund ITC reversed. **Shree Ganesh Molasses Trading Co. v. Superintendent (2023) 4 Centax 37 (Guj.) & VALLABH TEXTILES v. SIO (2022) 1 Centax 241 (Del.)**

- Mere deposit of amount in the electronic cash ledger without adjustment of same towards tax liability declared in GSTR-3B is not a valid discharge of tax liability. **RSB Transmission India Limited V. UOI [2022-VIL-745-JHR HC]**
- SCN cannot be issued under Section 73 of the CGST Act, 2017 for denying the Cenvat Credit availed under pre-GST regime. It was held that the admissibility of CENVAT Credit was not one lying within the jurisdiction of CGST Authorities and the assumption of jurisdiction by the Respondents to ascertain admissibility of CENVAT Credit by invoking CGST Act is bad in law. **Usha Martin Limited Vs. Additional Commissioner, Central GST & Excise (2022 – VIL – 779 -JHR HC).**
- The Circular No. 178/10/2022-GST dated 03.08.2022 clarifying the taxability of notice period recovery applies retrospectively and refund is admissible for GST already paid. **Manappuram Finance Ltd. Vs. Assistant Commissioner Central GST & Excise (2022 (12) TMI 411 -KL-HC).**

- GST demand on mining lease/royalty/Seinorage etc., is stayed by Hon'ble SC in case of M/s. Lakhwinder Singh v. UOI & Others), Writ Petition (Civil) No.1076 of 2021 noting that the matter is pending before 9 judge bench of Hon'ble SC in Mineral Area Development Authority & Ors. Steel Authority of India & Ors., (2011) 4 SCC 450. Following SC order, various HC's are also granting Stay on the GST demands made on the Roaylty, Seinorage etc., till the disposal of matter by 9 judge bench of SC.
- Cash/money can be seized u/s. 67(2) of CGST Act, 2017 **Kanishka Matta v. UOI 2020 (42) G.S.T.L. 52 (M.P.)**
- Portal/technical glitches in the network shall not go beyond the law to deny the eligible benefit. **Hindustan Unilever Limited v. UOI 2021 (49) G.S.T.L. 292 (Mad.) BODAL CHEMICALS LTD Vs UoI 2022-TIOL-303-HC-AHM-GST**
- Portal developed by the Government cannot go contrary to the Law. **Deendayal Port Trust vs UOI 2020 (35) G.S.T.L. 188 (Guj.)**
- **Jian International vs CCGST 2020 (39) G.S.T.L. 385 (Del.)** GST Officer cannot issue the deficiency memo in refund application after 15 days.

Few from Pre-GST laws which are relevant to GST:

- Department is not entitled to recover or appropriate any amount in excess of NCLT order under IBC (resolution plan) and the department shall refund the excess appropriation or adjustment to Corporate debtor. **GGI Infrastructure Pvt. Ltd. vs. Commr. of CGST & Central Excise 2021 (51) GSTL 187 (Bom.) Jagat Janani Services v. UOI 2021 (54) G.S.T.L. 283 (Ori.)**
- Recovery of ST from Director by using the GST provisions is not permissible **Sanjiv Kumar Mittal v. Deputy Commissioner (TRC), CGST, Delhi South 2021 (44) G.S.T.L. 14 (Del.)**
- Affiliation and allied activities like inspection etc., done by the Universities are to be treated as imparting education by the Educational institution. **Madurai Kamaraj University Vs Joint Commissioner 2021-TIOL-1812-HC-MAD-ST**
- Discounts received from manufacturer are not towards any services. **T.V. Sundram iyengar & sons Pvt. Ltd. v. Commissioner 2021 (55) G.S.T.L. 144 (Mad.)**
- Amount recovered as 'Notice pay' for pre-termination of employment agreement is not liable for service tax **GE T & D India Limited v. Deputy Commissioner — 2020 (35) G.S.T.L. 89 (Mad.)**

Few more from Pre-GST laws which are relevant under GST

- Secondment of employees by overseas entity amounts to manpower supply and assessee being service recipient for such service liable for ST under RCM **CCE Vs Northern Operating Systems 2022 (61) G.S.T.L. 129 (S.C.)**
- In absence in clauses in agreement relating to nature of process of work to be carried out, quality of work, nature of facilities, infrastructure to be deployed, delivery schedule, specification of work and consequences of breach of contractual obligation, essential for said agreement to be termed a job-work agreement - It was pure and simple agreement for contract labour notwithstanding that it contained provisions for payment on basis of production which was just an attempt to camouflage it as a contract for job work to avail exemption **Adiraj Manpower Services Pvt. Ltd v. CCE 2022 (58) G.S.T.L. 137 (S.C.)**
- Post 101st Constitutional amendment Act, 2016, the states lacks constitutional power to extend/amend the time limit of assessment or re-assessment of VAT laws - **Reliance Industries Ltd Vs State of Gujarat 2020-TIOL-837-HC-AHM-VAT; Sri Sri Engineering works & others v. DC, Begumpet 2022 (7) TMI 420 - TELANGANA HIGH COURT**

Few from Pre-GST laws which are relevant to GST:

- In absence of any cogent material like furnishing the name and address of the selling dealer, details of the vehicle which has delivered the goods, payment of freight charges, acknowledgement of taking delivery of goods, tax invoices and payment particulars etc. and the actual physical movement of the goods by producing the cogent materials, the Assessing Officer was absolutely justified in denying the ITC. **State Of Karnataka Vs Ecom Gill Coffee Trading Pvt Ltd 2023-TIOL-18-SC-VAT**
- Exempted Services also eligible for refund of Input Taxes, if services are exported. **Sutherland Global Services Pvt. Ltd Vs CCE 2021 (47) G.S.T.L. 454 (Mad.)** Clarified by Circular No. 125/44/2019-GST, dated 18-11-2019
- Holding & Subsidiary Company are not merely establishments of a distinct person in accordance with Item (b) of explanation 3 of clause (44) of Section 65B of the Finance Act. They are separate legal entities. Refund is eligible to subsidiary company. **Linde Engineering India Private Ltd VS UOI 2022 (57) G.S.T.L. 358 (Guj.). Clarified by circular No. Circular No. 161/17/2021-GST, dated 20-9-2021**
- Government entities – not business entities – no penalty - no extended period. – UOI v. National Remote Sensing Agency 2021 (50) GSTL 465 – Telangana HC (Service Tax)

Who questions much,
shall learn much,
and retain much.
Francis Bacon

THANK YOU!

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REPLY
to
GST SCN

CA Satish Saraf | Partner – Saraf Satish & Co., CA's | Director – H S Tax Advisory (P) Ltd.

Agenda

What & how – reply to Show Cause Notice (SCN)

Notice of Show Cause relating to TAX...

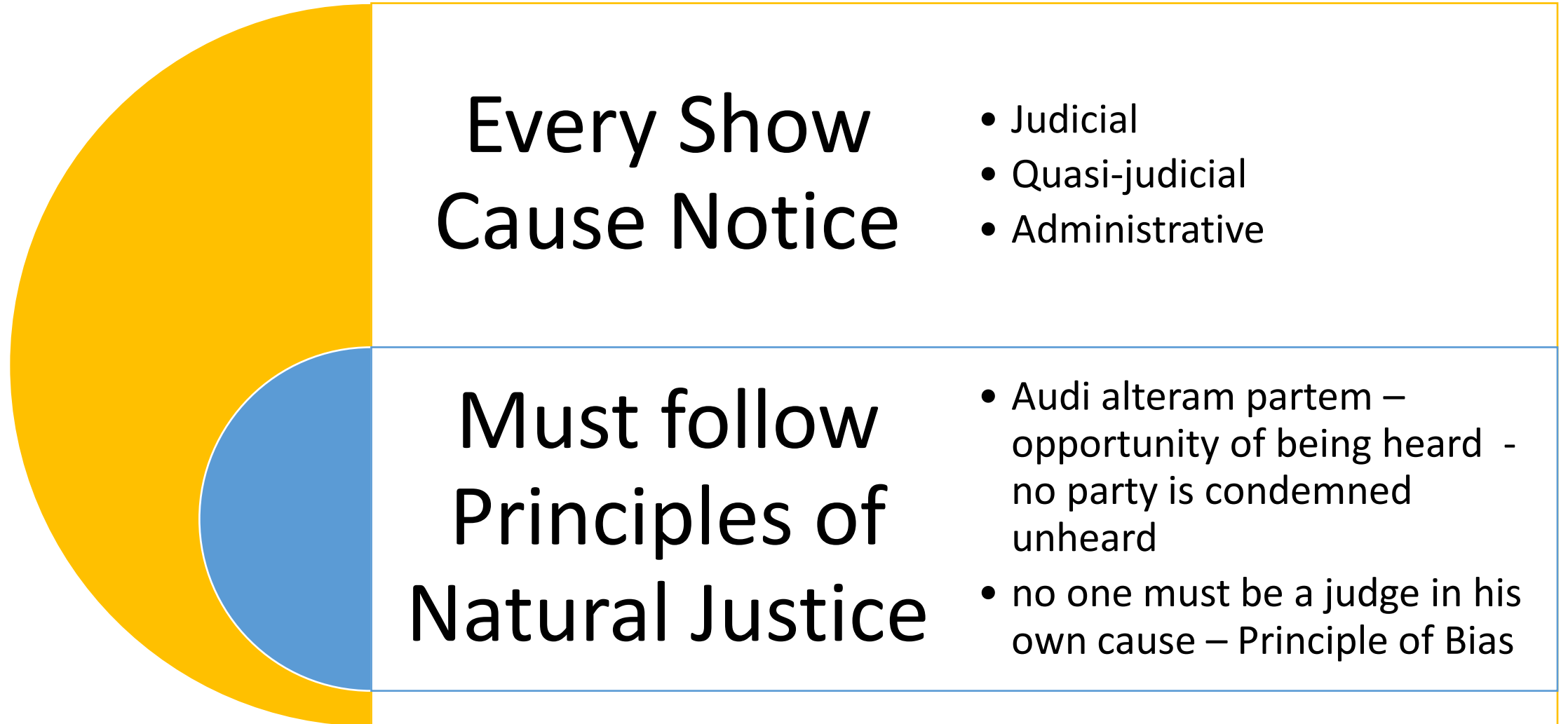
I talk about - reply to Show Cause Notices

- Illustrative
- Not conclusive
- Not exhaustive
- No pre-defined method
- Past experience
- Judicial trends



Few important aspects of Show Cause Notice

Principles of Natural Justice



Conditions for issue of SCN

Principles of Natural Justice must be followed

SCN must be issued only when the facts are ascertained and supported by Law.

Show Cause Notice must be in writing & specifying the date of issue.

Show Cause Notice must be **Justified, reasoned and specific.**

Violations of the provisions of law must be clearly mentioned in the SCN.

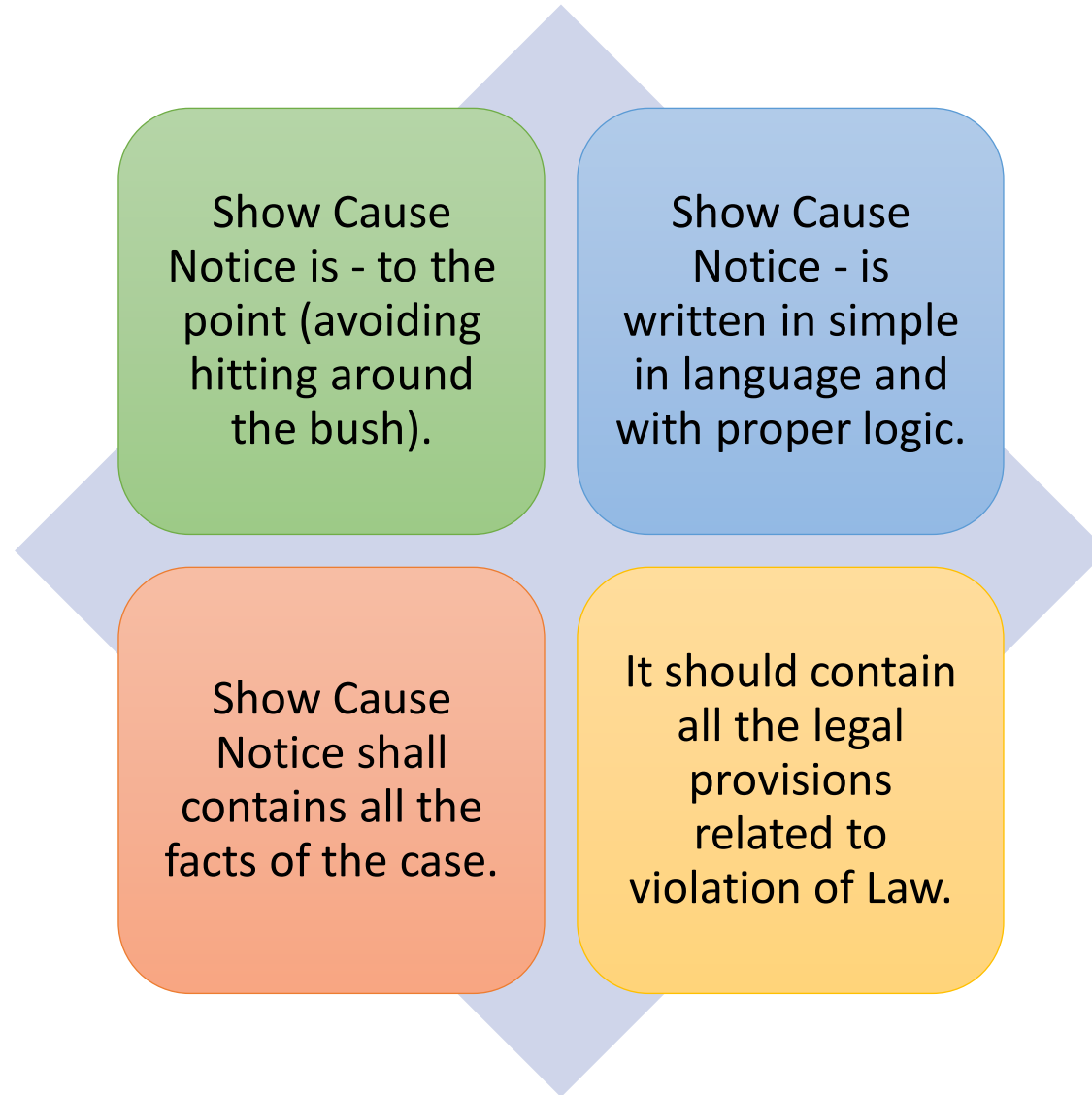
In Show Cause Notice charges must be clear and not be vague or contradictory.

Misstatement of facts must be expressed as "wilful" and contraventions of the provisions of the Law must be expressed as "with intent to evade tax".

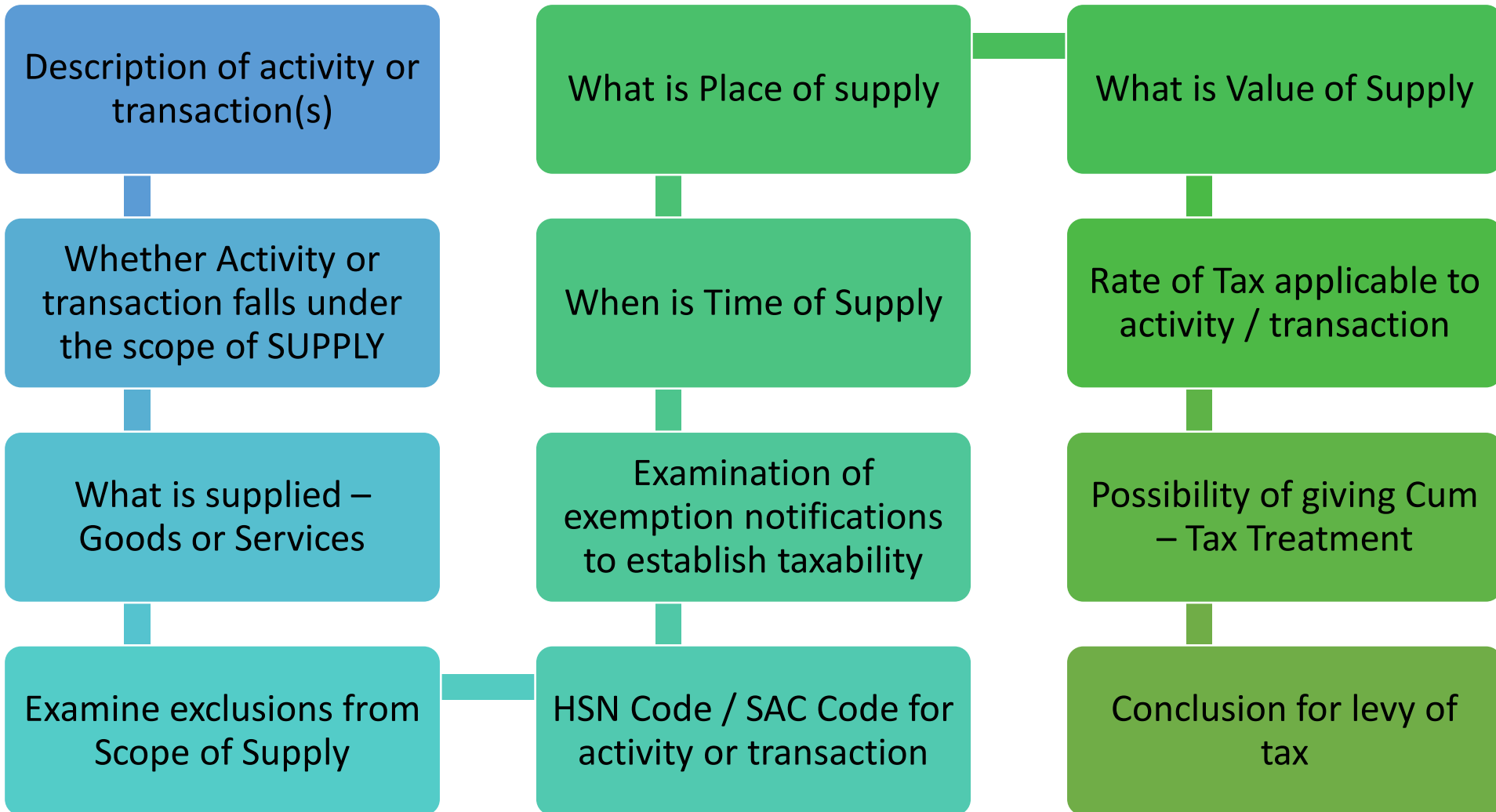
Specify the details of Adjudicating Authority

Time to be given as per Law to / for submit / filing reply.

Features of Show Cause Notice



Establishing Outward Supply by Department





Few Provisions of CGST Act, 2017

Issue of Notice - Tax, Interest, Penalty & other

Section	Section Tiles
46	Notice to return defaulters
52	Collection of tax at Source
62	Assessment of non fillers of returns
73	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for any reason other than fraud or any willful-misstatement or suppression of facts.-
74	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any willful- misstatement or suppression of facts.-
76	Tax collected but not paid to Government
79	Recovery of taxes
80	Payment of tax and other amounts in installments

Service of Notice in certain circumstances – Sec. 169

Any decision, order, summons, notice or other communication Shall be served by any one of the following methods	Giving or tendering directly / courier	To the addresses / taxable person / his manager / AR / Advocate / GSTRP / Employee / adult member of family residing with taxable person
	Registered post / courier / speed post with Ack. Due	To the addresses / his AR - at his last known place of business or residence
	E-mail address provided at the time of registration – as amended	
	Making available at common portal (GSTN)	
	Publication in News Paper having circulation in relevant area	
	None of the above is possible – Affixing it in some conspicuous place	

Assessment Proceedings etc., not to be invalid on certain grounds

Sec. 160(2) of CGST Act, 2017

The service of any notice, order or communication shall not be called in question, if the notice, order or communication, as the case may be, has already been acted upon by the person to whom it is issued or where such service has not been called in question at or in the earlier proceedings commenced, continued or finalized pursuant to such notice, order or communication.

Burden of proof

Sec. 155 of CGST Act, 2017

Where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claim shall lie on such person.

Relevancy of statements under certain circumstances

Section 136 of CGST Act, 2017

A statement made and signed by a person on appearance in response to any summons issued under section 70 during the course of any inquiry or proceedings under this Act shall be relevant, **for the purpose of proving, in any prosecution for an offence under this Act**, the truth of the facts which it contains

(a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable; or

(b) when the person who made the statement is examined as a witness in the case before the court and the court is of the opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interest of justice.



Understanding & Preparation of Reply

Before spending time in understanding & preparation of reply to SCN

Have a glance of the SCN and note the issues & tax involved

Explain & discuss with the client regarding process involved

Take pre-consent, preferably in writing for Professional Fee

- Estimate your time – for studying the FACTS & Preparation of reply
- Quote fee in writing – separate fee - reply to SCN & PH
- Define – at what stage how much is payable
- Do not start SPENDING time unless at least 50% of agreed fee is received

Take engagement letter or mandate etc. from client.

Noting the content of SCN

To whom the SCN is issued – Name, address & GSTIN.

Issuing authority of SCN

Date of issue & date of receipt of SCN

Document Identification Number (DIN) / State Ref. No. – Check with portal

Section under which the SCN is issued & other sections invoked in SCN

Who authorized the issue of SCN

Period covered in SCN

Source for issue of SCN

Averments / allegations / disputed points in SCN

Reasons for averments / allegations – each point

SC / HC / Tribunal / AAAR / AAR etc. – relied upon

Copies of relied upon documents (RUD)

Adjudicating Authority – to whom reply to be submitted / filed

Total amount of Tax, Interest, Penalty & other sums involved in SCN

Time allowed to file reply to SCN

Signing Authority

Note the compliance of Legal aspects in issue of SCN

List out the SC / HC / Tribunal orders – favourable & against

- *Department followed – try to distinguish the facts*
- *In support of the issue – try to match the facts*

Frame entire process – preferably a flow chart

Preparing reply to SCN

Use appropriate Form & method

Address to Adjudicating Authority

Provide reference to

- SCN Number, DIN, Date of Issue, Date of receipt, to whom it is issued

Provide brief about the client & his business

Provide acknowledgement to SCN

Provide briefly, averments / allegations / disputed points

Discuss PARA wise details which are disputed

Preparing reply to SCN

Submissions before the Adjudicating Authority

- Legal & Factual – methodology to be adopted

Provide summary of submissions

Prayer

- Seek dropping of SCN
- Seek Personal hearing
- Reserve the right to amend/alter reply and also to furnish addl. submissions

Annexure – list of attachments to reply to SCN

Obtain acknowledgement for reply to SCN

Make notes and prepare written submission for PH

THANK YOU

for your patient listening

CA Satish Saraf | Partner – Saraf Satish & Co., CA's | Director – H S Tax Advisory (P) Ltd.