



## NAVIGATING THE RIDE ON GST NOTICES

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Let me first start with a very basic and essential question “**What is a Show Cause Notice and why is it important under the GST law?**” to entice you readers!

A show cause notice 'SCN' is one of the most basic yet indispensable part of proceeding within the realm of taxation. SCN, as it indicates, is a formal notice issued by the tax authorities under the Goods and Services Tax (GST) in India to a taxpayer, requiring them to explain or justify a particular action or inaction that is in violation of the GST laws. The issuance of an SCN by the tax authorities marks the inception of a legal action and holds substantial importance in the overall taxation process. Further, it is one of the most important stages for the taxpayers which gives them an opportunity to submit their defense as to why they should not proceed against the alleged violation.

**How is such notice communicated to the taxpayers?** There are various modes of communications by the department under GST [u/s 169(2) of CGST Act, 2017]:

- by giving or tendering it directly or by a messenger including a courier;
- by registered post or speed post or courier with acknowledgement due;
- by sending through the e-mail address provided at the time of registration or as amended from time to time;
- *by making it available on the common portal;*
- by publication in a newspaper where the taxable person resides;
- If none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence;
- If such mode is not practicable for any reason established and satisfied by the officer, then by affixing a copy on the notice board of the office of the concerned officer or authority who or which passed such decision or order or issued such summons or notice.

The first and foremost step in accepting SCN is examining the '**validity of service**'. One must examine whether the service of notice is a (i) valid notice (ii) under the correct section and rule (iii) by the Proper Officer. Further, following are the few important aspects to **identify its validity**:

- The allegations in the SCN need to be specific and cannot be vague which would amount to the noticee not being given proper opportunity to meet the allegations in the SCN. If the person is not provided with a reasonable opportunity of making his objection against the SCN, then the said SCN does not fulfil the ingredients of a proper SCN and amounts to violation of principles of natural justice. [*NKAS Services Pvt. Ltd. v. State of Jharkhand [2022 (58) G.S.T.L. 257]*].
- The SCN issued to a taxpayer shall not be based on assumptions and presumptions [**Oudh Sugar Mills Ltd. vs. UOI-1978 (2) ELT (J172) (SC)**]

- Monetary Limit for issuance of show cause notices & orders u/s 73 & 74 of CGST Act (for centre)

Designation of Officer	CGST	IGST	CGST & IGST
Superintendent	Up to Rs. 10 lakhs	Up to Rs. 20 lakhs	Up to Rs. 20 lakhs
Deputy or Assistant Commissioner	Above Rs. 10 lakhs up to Rs. 1 crore	Above Rs. 20 lakhs up to Rs. 2 crores	Above Rs. 20 lakhs up to Rs. 2 crores
Additional or Joint Commissioner	Above Rs. 1 Crore	Above Rs. 2 Crore	Above Rs. 2 Crore

In **Pahawa Chemicals (P) Ltd. vs. CCE – 2005 (181) ELT 339 (SC)**- it was held that SCN issued by an officer in excess of monetary limit was not acceptable.

- Time Limit to issue Show Cause Notice under CGST Act, 2017

Particulars	Type	Time limit
Section 73	Bonafide/Genuine Cases	Within 2 year & 9 months of services from due date annual return filing.
Section 74	Malafied/ Fraud Cases	Within 4 years & 6 months from the due date of annual GST Return

*\*Kindly note that presently the above dates have been extended from FY 2017-18 to FY 2019-20 for Bonafide Cases.*

Financial Year	Bonafide Cases	Malafide Cases
2017-18	September 30, 2023	August 5, 2024
2018-19	December 31, 2023	June 30, 2025
2019-20	March 31, 2024	September 30, 2025

- It is important for the taxpayer to check whether the officer issuing the said notice has valid jurisdiction to do so. In **Modern Industrial Enterprises v. CCE (2006) 193 ELT 513 (Cestat, Delhi)**-it was held that show cause notice is not valid in absence of proper jurisdiction.
- As per Rule 142(1)(a) of the CGST Rules, 2017, the proper officer is required to serve along with the notice, a summary thereof electronically in form GST DRC-01.
- As per rule 26 of the CGST Rules, 2017, all applications, including reply, if any, to the notices, appeals or any other document required to be submitted under the provisions of these rules shall be so submitted electronically with DSC or through e-signature. In **Marg ERP Ltd. vs. Commissioner (2023) 7 Centax 174 (Del)** it was held that, an unsigned notice/order cannot be considered as an order and hence cannot be sustained.

### Now let's discuss, "How to effectively respond to SCN?"

- As discussed above, examining the validity of a notice is the first step if it is not, the same can be challenged on the grounds of validity in the above-mentioned cases without going into the merits of the case.
- Replying to the SCN in a timely manner is to be ensured by the taxpayer, as it might lead to challenges regarding the subsequent order. Hence, one must ensure to reply within the stipulated time or, when necessary, request an adjournment to uphold procedural fairness. Additionally, maintaining a tracker aids in monitoring the status. However, the reply to the SCN and additional submissions, if any, can be submitted at the time of the hearing as well.
- Maintaining a structured flow in responding to SCN can enhance the clarity and effectiveness of the reply. The suggested flow can be initially laying out the facts pertaining to issues, followed by the submission of supporting documents along with analysis and clarification based on evidence, followed by corrective measures taken (if any), and ending with a concluding paragraph. This structured approach can help the recipient easily follow and understand the provided information while reinforcing the credibility and strength of the response.
- All pertinent information, including statements, contracts, agreements, and supporting documentation, can be submitted along with the reply.
- The SCN reply is a very important stage to lodge legal rights such as the right to cross examination, retraction of statements, and the right to seek relied as well as non-relied upon documents. It should also be noted that the order cannot traverse beyond the allegations in the SCN.
- In GST, notices primarily concern discrepancies in amounts. Tabulated explanations outperform paragraphs in clarifying these differences, leading to a clearer understanding of the data.
- Ensure that the amounts mentioned in the notice matches with the returns filed & books of accounts. Sometimes the value mentioned in the notice does not match with books or cases are found where reports obtained from GST Portal reflects incorrect amounts wherein grievances can be filed.
- Citing the latest decisions of higher judicial forums/case laws would be beneficial, as the principles of judicial precedents holds significant weightage during subsequent litigations.
- Ensure proper acknowledgement has been obtained after having filed the reply to notice.
- It would be advisable to opt for personal hearing as the immediate response helps in providing immediate clarifications, reducing ambiguity, ensuring all the sides are heard and understood thoroughly.

With this, I would like to conclude by saying that "compliance is not the end; it's rather an ongoing journey". Over the past five years, the laws and regulations governing GST have undergone significant transformations, with continuous development occurring on a daily basis. The number of GST departmental audits has increased and so have the show cause notices. Well understanding the significance of notice validity and formulating an effective response aid in safeguarding one's rights and interests during the adjudication process. Hence, it is imperative to engage in a careful, systematic, and informed manner when replying to a Show Cause Notice, as it greatly influences the outcome and resolution of the GST-related matters at hand.

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