

GST assessment, show cause notice & penalties provisions (Part 1)

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GST शास्त्र : Walk through assessment, show cause notice and penalties provisions (Part 1)

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Introduction :

Amidst the crisis of Coronavirus, it is difficult to predict the lifting up of lockdown and life immediately after lockdown. We all hope that sooner life will be back to normal and safer. However, what we can possibly predict is that the future of GST will be of assessments, show cause notices and consequential penalties. One must understand the scope, legal validity of notices issued under specific sections.

This article is an attempt to decode some of the important provisions in this regard. Wherever necessary, provisions of the act have been reproduced.

◆ DIN requirement :

DIN stands for Document Identification Number. **Circular no. 122/41/2019 dated 5th November, 2019** and **Circular no. 128/47/2019 dated 23rd December, 2019** specifies the requirement of DIN as follows :

√ The Board directed that w. e. f 24.12.2019, electronic generation and quoting of shall be done in respect of all communications sent to tax payers including e-mails.

√ The validity of DIN can be verified on CBIC website.

√ The circular has prescribed the standardise format of DIN.

√ However, there are certain exceptional situations, where communication can be done without DIN, as follows:-

1. Technical difficulties to generate DIN

2. When communication regarding investigation/ enquiry, verification etc. is required to be issued at short notice or in urgent situations and the authorized officer is outside the office in the discharge of his official duties.

However, exigencies mentioned above shall be regularised within 15 working days of its issuance by following procedure prescribed in circular.

√ The Board also directed that **any communication** which does not bear the electronically generated DIN, except above cases, **shall be treated as invalid and shall be deemed to have never been issued.**

√ Hence, it is pertinent to taxpayer and consultants to verify whether DIN has been quoted on communication or not and must check the validity of the same.



◆ Section 59 : Self-assessment of taxes

Every registered person shall **self-assess** the taxes payable under this Act and furnish a return for each tax period as specified under section 39.

Hence, tax payer must self-assess tax dues to government first. In case of deviations, there may be further assessment by tax officials.

◆ Section 61 : Scrutiny of returns

Section 61(1) :

- The proper officer may scrutinize the return and related particulars
- **furnished by the registered person**
- to **verify the correctness** of the return **and inform him of the discrepancies** noticed, if any, in such manner as may be prescribed and seek his explanation

Analysis :

- Proper officer to scrutinize **return and related particulars furnished by registered person.**
- If he finds any discrepancies, he shall inform in manner prescribed.
- Notices in relation to discrepancies found between GSTR-3B and E way bill, GSTR-3B and GSTR 2A issued under this section.
- In the author's view, as GSTR 2A has not been furnished by the registered person, the validity of notices issued in relation to such discrepancies shall be challenged.
- Also, notices cannot be issued beyond the scope of the provision which does not amount to discrepancy in return and other particulars furnished by the registered person.
- Notice seeking explanation to such discrepancy shall be issued in Form GST ASMT – 10 and explanation to such notice shall be furnished by registered person in FORM GST ASMT – 11.
- As per section 61(2), if explanation furnished by the registered person is found to be acceptable, registered person shall be informed in FORM GST ASMT – **10**.
- As per section 61(3), if no satisfactory explanation is furnished within time limit, or after accepting the discrepancies, registered person fails to take the corrective measures, proper officer may initiate action under section 65 (Audit by authorities) or section 66 (special audit) or section 67 (inspection, search, seizure and arrest) or may proceed to determine the tax and other dues under section 73 or section 74 (show cause notices). It is pertinent to note that no action except abovementioned sections can be initiated which is beyond the scope of the provision.

◆ **Section 62 : Assessment of non-filers of return**

Section 62(1) :

- **Notwithstanding anything to the contrary contained in section 73/ 74**
- Where a registered person fails to furnish return u/s 39 or 45
- Even after serving notice u/s 46 (Notice to return defaulters)
- Proper officer may proceed to assess liability to the best of his judgment taking into account all the relevant material available
- Time limit : Issue an order within period of 5 years from the date specified u/s 44 for furnishing annual return for FY to which tax not paid relates

Analysis :

- Before initiating an action u/s 62(1), notice u/s 46, in FORM GSTR 3A, must be served. Proper officer cannot invoke section 62 without issuance of such notice.
- Assessment u/s 62(1) can be done if registered person fails to furnish return u/s 39 i.e GSTR-3B/ GSTR 3 or return u/s 45 i.e final return.
- As per section 62(2), if registered person furnishes a **valid return** within 30 days of service an assessment order, the same shall be deemed to have been withdrawn but liability for payment of interest or late fees shall continue.
- Valid return, as defined under section 2(117), means a return furnished u/s 39(1) on which **self-assessed tax has been paid in full.**
- **Circular no. 129/48/2019 – GST dated 24th December, 2019** was issued to specify standard operating procedure in this regard.
- Section 62(1) starts with Non-obstante clause and hence it overrides section 73 and section 74. It means proper officer can initiate action under this section without issuing show cause notice.

♦ **Section 67 : Inspection, Search, Seizure and Arrest**

Section 67(1) : Inspection provision

- Where the proper officer, not below the rank of Joint Commissioner, has reasons to believe that—
- (a) a taxable person has **suppressed any transaction relating to supply of goods or services or both or the stock of goods in hand, or has claimed input tax credit in excess of his entitlement** under this Act or **has indulged in contravention of any of the provisions of this Act or the rules** made thereunder **to evade tax** under this Act; or
- (b) any person engaged in the business of transporting goods or an owner or operator of a warehouse or a godown or any other place is **keeping goods which have escaped payment of tax or has kept his accounts or goods** in such a manner as is **likely to cause evasion of tax** payable under this Act,
- he may authorise in writing any other officer of central tax to inspect any places of business of the taxable person or the persons engaged in the business of transporting goods or the owner or the operator of warehouse or godown or any other place.

Analysis :

– To initiate action under this section, proper officer must have above mentioned reasons [3 reasons of clause (a) and 2 reasons of clause (b)] to believe. It is pertinent to note that invoking this section for reasons other than mentioned in clause (a) and clause (b), the action will be beyond the scope of the section

– Tax officials shall substantiate *Mens rea* e culpable or guilty mind to evade tax.

– It is observed in many cases that section 67(1) has been invoked for non-filing of return.

In author's opinion, mere non filing of return cannot be a reason to believe that there is a suppression of any transaction to cause tax evasion.

There may be valid reasons for non-filing of returns such as liquidity problem and portal is not allowing to file payable return. Non filing due to such reasons does not amount to suppression of transaction relating to supply.

Further, separate provision to issue notice u/s 46 (notice to return defaulters) and then to proceed for assessment u/s 62 is available to the department.

– Also, it is a settled principal that issue involving differences in interpretation or if industry is following any standard practice with bona fide belief, it does not amount to suppression. Hence, in such scenarios, section 67(1) cannot be

Section 67(2) : Search and seizure provision

– Where the proper officer, not below the rank of Joint Commissioner, either pursuant to an inspection carried out under sub-section (1) or otherwise,

– has reasons to believe that any **goods liable to confiscation or any documents or books or things**, which in his opinion shall be useful for or relevant to any proceedings under this Act, **are secreted in any place**,

– he may authorise in writing any other officer of central tax to search and seize or may himself search and seize such goods, documents or books or things:

Analysis :

– It is important to reiterate that search and seizure can be done if proper officer has above mentioned reasons to believe.

– In case of **Mohit Minerals Pvt Ltd v/s Union of India**, Gujrat High Court has appreciated the clause that the proper officer must have reasons to believe as contemplated in section 67(2) of **CGST Act, 2017**.

– In the absence of such reasons to believe, entire search proceedings are without authority of law.

Other provisions :

Section	Provision
67(3)	Not relied upon documents, books or things must be returned within 30 days
67(4)	In case of search, officer shall have powers to seal or break open the door, break open any almirah, electronic device, box etc. However, in case of inspection such powers are not available and in many cases tax officials equates the powers of inspection with search and seizure provisions.
67(5)	Custodian of documents, from whose custody documents are seized, shall be entitled to make copies thereof or take extracts.
67(6)	Goods seized shall be released, on provisional basis, upon execution of a bond or furnishing a security.
67 (7)	Time limit – In case of seizure, if no notice is given within period of 6 months (further can be extended to 6 months) , goods shall be returned.

Also Read- [GST शास्त्र : Walk through assessment, show cause notice and penalties provisions \(Part 2\)](#)

(Above article was written on 7th April, 2020 & jointly authored by CA. Yogesh Ingale, CA. Tushar Ajmera and CMA. Anuj Chordiya. Views expressed are strictly personal. For any queries & feedback, reach us at yogesh.ingale@talentax.in. In part 2, few more provisions will be analysed.)

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