

SHOW CAUSE NOTICE – VOCATE, INTERROGATE AND ADJUDICATE

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Introduction:

Why is there a need of a Show Cause Notice?

Even God did not pass a sentence upon Adam, before he was called upon to make his defence. "Adam" says God, "where art thou? Hast thou not eaten of the tree whereof I commanded thee that thou shouldest not eat"

Article 14 of the **Indian Constitution** provides for **equality** before law and equal protection of law. It guarantee a right of hearing to the person adversely affected by an administrative powers. Supreme Court in the case of **Delhi Transport Corporation versus DTC Mazdoor Union** held

"the audi alteram partem rule, in essence, enforce the equality clause in Article 14 and it is applicable not only to quasi-judicial bodies but also to administrative order adversely affecting the party in question unless the rule has been excluded by the Act in question"

The rule of natural justice does not supplant the law of the land but only supplement it. In the absence of express provisions in any statute dispensing with the observance of the principle of natural justice, such principles will have to be observed in all judicial, quasi-judicial and administrative proceedings which involve civil consequences to the parties. [A.K.Kraipak Vs. Union of India (AIR 1970 SC 150) & Maneka Gandhi (AIR 1978 SC 597). Therefore, the purpose of following the principles of natural justice is the prevention of miscarriage of justice.

What is a Show Cause Notice? Giving of a valid notice to the proper or concerned person of the facts of the matter and nature of action proposed to be taken is a *sine qua non* of a fair hearing. In order to adhere to the principles of natural justice (as discussed above) it is a notice issued to the person asking him to show cause as to why the action proposed therein should not be taken against him.

Through this article an endeavor is made to enrich the readers about the basics of a 'Show Cause Notice' (hereinafter referred to as 'SCN') under the Indirect Tax structure, in particular, under the GST Law.

There are many scenarios under which the taxman can issue a notice to the person, such scenarios being:-

Sl. No	Section under GST Law
1	Section 37 – Notice to return defaulters
2	Section 62 – Assessment of non-filers of returns
3	Section 65 – Audit by tax authorities
4	Section 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 mis-statement or suppression of facts.
5	Section 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 mis-statement or suppression of facts
6	Section 76 – Tax collected but not paid to Government

-Section 73 and Section 74, as stated above, deal with the process of adjudication which eventually begins with the issuance of a 'Show Cause Notice' (SCN).

In this context, it will be useful to know and make a comparison between section 73 and section 74, which is stated below:-

Sl. No	Basis of Distinction	Section 73	Section 74
Time Limit			
1	Service of SCN	Within 2 years and 9 months from the due date of filing of annual return For the FY 2017-18, the due date for filing Annual Return is 30.06.2019. The SCN can be issued upto 30.03.2022.	Within 4 years and 6 months from the due date of filing of annual return For the FY 2017-18, the due date for filing Annual Return is 30.06.2019. The SCN can be issued upto 30.12.2023.
2	Issue of Order	3 years from the due date of filing of annual return	5 years from the due date of filing of annual return
Penalty			
3	Tax along with interest paid voluntarily before SCN	No Penalty	15% of the tax amount
4	Tax along with interest paid within 30 days from the issue of SCN	No Penalty	25% of the tax amount
5	Tax along with interest paid within 30 days from the issue of Order	10% of the tax amount or Rs. 10,000/-, whichever is higher	50% of the tax amount

Basic structure of a SCN:

1. Introduction of the case
2. Legal framework
3. Statement of Facts and evidences relied upon -
4. Discussion on limitation
5. Quantification of liability payable
6. Proposed action
7. Adjudicating authority

Judicial Pronouncements

Particulars	Reference case laws	Principle laid down
On Service of order	Jyoti Enterprise Vs. CCEX [2015 (12) TMI 804 – All. HC]	If the order is on a member of the family, it is duly served on.
On Scope of order	Himalaya Constructions Private Limited Vs. UOI [2015 (12) TMI 1055 P&H HC]	Order cannot be passed without considering overall material on record, including reply to SCN. In absence thereof, there is a violation of principles of natural justice.
	CCEX Vs. Grasim Industries limited [2015 (12) TMI 272 – Tri. Chennai]	Authorities are expected to record the material fact properly and that the same with evidence on record so that the decisions flow in accordance with the law. Failure to do so tantamount to result in mockery or miscarriage of justice.
On notice to indicate evidence being relied upon	Hi-Tron Electronics Vs. Commissioner	Even in a case where the party has waived the right to receive a SCN, the duty of disclosing the documents - on the basis of

		which order was to be passed should have been disclosed to the party and the order passed without such disclosures was liable to be set aside.
On charges framed	Petrofiles Co-operative Ltd. Vs. Collector [1992 (59) ELT144]	The notice must be with reference to the charges on which the proceedings are to be held. The person against whom proceedings are held cannot be punished for a charge different from the one for which notice had been given.

During the journey in GST era, the taxmen have started knocking doors of the taxpayers by way of -issuing notices, either being dispatched through post or sent my emails or may be by a simple text message.

The taxpayers are in receipt of notices -relating to subjects, *inter alia*, stated below:-

- ✓ Transitional Credit;
- ✓ Non-filing of returns;
- ✓ Cancellation of registration;
- ✓ Mis-match between ITC claimed in FORM GSTR 3B vis a vis auto populated in FORM GSTR- 2A;
- ✓ Mis-match between output tax liability shown in FORM GSTR-3B vis a vis FORM GSTR-1.

Suggested action points on receipt of a SCN:

- 1. Read the SCN carefully:** Generally taxpayers, upon receipt of a SCN, are found to read only the operative portion of the SCN wherein they only concentrate in the tax amount demanded, interest levied or penalty, if any, imposed thereon. Few basic questions that are required to be answered, upon receipt of a SCN are :
 - a) Has the charging section being attracted upon the allegations framed?
 - b) Is the allegation made is a settled principle of law?
 - c) Are there any contradictory statements made in the SCN?
 - d) Whether the statutory provisions quoted, are applicable in this case?
- 2. Quantification of Demand:** Even though demand has been quantified in the SCN, which has been stated for recovery from the taxpayer, the amount may be recomputed to eradicate the possibility of computation error. Even a figure of extra zero, inadvertently mentioned in the amount sought to be recovered, will make a huge difference. This may even save the taxpayer from being prosecuted.
- 3. Limitation period:** As we know there has to be a certainty in the initiation of any proceedings and this is where the law of limitation plays a vital role. Therefore the period of limitation is to be cross checked again.
- 4. Judicial Pronouncements:** There are many instances wherein the taxman proposes to initiate certain action based on certain judicial pronouncements and firmly stating in the SCN that the particular case squarely applies to the case in hand. It may be advisable to carefully study the cited case law(s) to ensure that the principles laid down in the cited case laws can squarely be applied in the case for which the SCN has been issued. In case it is found to be non-applicable, the same may help the taxpayer in response to his defense.
- 5. Jurisdiction of the Adjudicating Authority :** The jurisdiction of the taxpayer shall determine who shall be his adjudicating authority also there is a monetary limit set by the Board for each class of adjudicating authority based on which they are to exercise their jurisdiction. If the taxpayer notices any such discrepancy, he can challenge the jurisdiction but only in the 'HIGH COURT' of that State through a writ petition.

Conclusion:

When the taxpayer is in receipt of a SCN, may need to first think of the appropriate route for remedy. There are two routes available with him:

- The Regular route i.e the route as laid down in the Statute, and
- Challenge the same in the respective jurisdictional High Court.

The taxpayer, under the following circumstances, may challenge the SCN in the High Court:

- I. SCN issued is without jurisdiction
- II. SCN issued is in violation of principles of natural justice
- III. Where the remedy is not efficacious
- IV. Unconstitutional

To conclude, It is also to be kept in mind when the final order is passed by the 'Adjudicating Authority', the tax payer should check two things. Firstly, that the demand confirmed in the Order **does not exceed** the demand that was proposed to be levied by the SCN and secondly, the grounds taken in confirming the order **are not different** from the allegations as laid down in the SCN.

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