

Circular No. 258/04/2026-GST

F. No. CBIC-20001/2/2026-GST
Government of India
Ministry of Finance
(Department of Revenue)
Central Board of Indirect Taxes & Customs
GST Policy Wing

Room No. 16039, Kartavya Bhawan-01

New Delhi, Dated: 26.10.2026

To,

The Principal Chief Commissioners/ Chief Commissioners (All)

The Principal Director General/ Director General (All)

Madam/Sir,

Subject: Clarification on issues related to demand, adjudication and appeal proceedings under the CGST Act, 2017 - Reg.

Adjudication and appeals under the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “the CGST Act,” or “the Act”), constitutes an integral part of the tax administration framework, providing a quasi-judicial mechanism to ensure due process, protection of the rights of taxpayers, and reasoned decision-making in matters relating to tax liability, input tax credit, refunds, registration, penalties and other issues.

1.2. Representations have been received highlighting the need for adjudication and appeal orders to comprehensively examine the submissions and evidence placed on record by the taxpayer, the relevant statutory provisions and judicial pronouncements. Further, instances have also come to notice where orders passed by Adjudicating and Appellate Authority are vague, non-speaking, or fail to consider the submissions of the noticee or appellant, as the case may be, resulting in avoidable litigation and remand or reversal of such orders in further appeal proceedings. Various judicial pronouncements have emphasised that a quasi-judicial authorities are required to independently apply their mind to the issues arising for determination, record clear and specific findings on each material issue, and pass a reasoned order in conformity with the principles of natural justice. A well-reasoned adjudication order

not only strengthens the quality and consistency of decision-making but also facilitates effective implementation of the decision, reduces avoidable litigation and instils confidence in the adjudication and appeal process.

1.3. Accordingly, with a view to providing a uniform reference framework for officers engaged in quasi-judicial proceedings and to ensure consistency, transparency and uniformity in the implementation of provisions of law across field formations, the Board, in exercise of its powers conferred by section 168(1) of the CGST Act, hereby issues the guidelines as detailed hereunder.

2. **Pre-Show Cause Notice Intimation:** Rule 142(1A) of the Central Goods and Services Tax Rules, 2017 (hereinafter referred as “the CGST Rules”) provides that taxpayers may be intimated of the tax assessed as payable under sections 73, 74, or 74A of the CGST Act, through Part A of FORM GST DRC-01A (pre-SCN intimation), prior to issuance of a formal Show Cause Notice (hereinafter referred to as “SCN” or “notice”). Such intimation, wherever feasible, may be issued to the taxpayer, as it offers them vital opportunity to clarify their position prior to formal proceedings, thereby promoting voluntary compliance and reducing the necessity of issuing show cause notice.

Show Cause Notice

3. Under the CGST Act, a notice is issued whenever the department contemplates any action prejudicial to the assessee, such as determination of tax liability, rejection of refund claim, recovery of erroneous refund, rejection of registration application or similar proceedings. The notice specifies the alleged violations of the relevant provisions and requires the noticee to show cause why such action should not be taken thereunder. In this manner, the SCN affords an opportunity to the noticee to present their case.

3.1. The notice initiates legal proceeding against the noticee, serving as the foundational document for resolving disputes related to tax liabilities or for initiating punitive measures. It sets the framework for adjudication and demands meticulous drafting as a statutory requirement grounded in the principles of natural justice, specifically the *audi alteram partem* rule, which ensures that no one is condemned without being heard. The notice grants an opportunity to the noticee, to submit oral or written submissions to the Adjudicating Authority in response to the charges specified.

3.2. Further, rules 100 and 142 of the CGST Rules require issuance of a summary along with the notice or statement, electronically in **FORM GST DRC-01 and FORM GST DRC-02**, respectively. Thus, the said summaries along with the notice or statement, as the case may be, shall be issued in FORM GST DRC-01 and FORM GST DRC-02 electronically on the common portal in terms of the aforesaid CGST Rules, so as to ensure due compliance with the statutory provisions.

4. **Structure and drafting of SCN:** To ensure clarity, structure, and completeness, a well-drafted SCN should ideally comprise the following parts, though it may vary from case to case:

4.1. **Brief profile and introduction of the case:** The SCN should clearly identify the essential particulars of the person to whom it is issued, including the name of the taxpayer/noticee, GSTIN or Temporary ID, trade or business name (if different), current GST registration status, registered principal place of business, jurisdictional details (range, division, commissionerate), and the relevant tax period(s) covered by the proposed demand or contravention. In cases involving multiple noticees, the particulars of each must be stated separately. This section should also briefly outline the background for initiation of the proceedings such as through assessment, audit, return scrutiny, or enforcement, along with the nature of the verification, investigation, or audit concerned. This requirement is supported by various judicial pronouncements, including the Hon'ble Telangana High Court judgment in *M/s Nice Enterprises v. Deputy Commissioner ST [(2024) 21 Centax 554 (Telangana)]*, wherein it was held that an SCN merely reproducing statutory provisions without specifying the grounds or sufficient factual particulars violates natural justice, and that the notice must furnish adequate grounds and elementary details to enable the assessee to understand the case and file an effective reply.

4.2. **Factual background and examination of documents and evidences:** In this part of SCN, the acts of omission and commission by the noticee, leading to the proceedings, should be precisely outlined in an objective manner. As evidences form the foundation of the SCN, they should be examined and discussed objectively to identify and highlight discrepancies, omissions, or irregularities that substantiate the alleged contraventions. The SCN may also discuss corroborative evidence where relevant, using neutral expressions such as "*it appears that*" to maintain fairness and objectivity, avoiding terms such as "determined" or categorical conclusions that suggest a pre-judged outcome as the notice seeks an explanation from the noticee, and is not a final determination or verdict.

4.3. **Discussion and legal framework:** The SCN should clearly specify the legal provisions allegedly contravened, along with a clear explanation linking each omission or commission by the noticee to the violation. Care should be taken to invoke pertinent provisions, avoiding the simultaneous inclusion of unrelated sections unless each independently applies. In cases involving multiple noticees, the SCN should clearly delineate the role and involvement of each individual, so that charges are fact-based, supported by evidence and individually attributable, thereby upholding principles of natural justice and ensuring a fair and credible adjudication process.

4.4. **Statement of charges:** SCN should contain a concise summary of the allegations against the noticees and clearly state the grounds on which they are required to explain why action, as per statutory provisions, should not be initiated against them. The importance of ensuring that the SCN itself contains all requisite particulars and grounds is reinforced by the settled legal position in this regard. In this context, reference is invited to the judgement of Hon'ble Supreme Court in G.R Infra Project Ltd. Vs State of Madhya Pradesh (2026) 45 Centax 331 (S.C) dated 19.08.2026, wherein, it was held that the requirements necessary to sustain the validity of an alleged notice or order must be contained therein and any deficiency in the SCN, including non-application of mind or failure to meet the requisite requirements, cannot subsequently be cured or remedied.

4.5. **Quantification of Demand:** Where the SCN proposes demand, the same should be quantified and the basis for the said demand may also be clearly specified. In case of notices which span across multiple financial years, efforts should be made to demarcate the demand financial year wise. Further, where the determination of interest depends upon the discharge of demand by the noticee i.e. actual date of payment of tax, a suitable phrase like “*why interest as applicable should not be demanded*” may be mentioned in the notice for demanding the interest component on the tax demanded.

4.6. The concluding paragraph of an SCN should clearly specify the Adjudicating Authority, submission deadline for the reply, and consequences of non-compliance. This paragraph ensures clarity on procedural expectations and underscores the consequences of non-compliance, helping to conclude the SCN effectively.

5. **Justification for invoking tax demand on grounds of fraud, wilful misstatement, or suppression of facts:** Section 74(1) or section 74A(5)(ii) of the CGST Act provides for determination of tax liability where there is **fraud or wilful misstatement or suppression of facts** committed by the taxpayer to evade tax. Further, Explanation 2 to section 74A defines “suppression” as non-declaration of facts or information required to be furnished in a return, statement, report or any other document, or failure to furnish information specifically called for in writing by the proper officer.

5.1. The notice should specifically disclose the basis for invoking the provisions relating to tax demand on grounds of fraud, wilful-misstatement, or suppression of facts. In this context, reference may be made to the judgment of the Hon’ble Supreme Court in G.R Infra Project Ltd. Vs State of Madhya Pradesh (2026) 45 Centax 331 (S.C) dated 19.08.2026, wherein the Hon’ble Court underscored that the notice itself must set out the specific allegations, material facts and circumstances forming the basis for such invocation, and that a mere mechanical reproduction of the expressions ‘fraud’, ‘wilful-misstatement’ or ‘suppression of facts’, without disclosing the material that led the proper officer to draw such inference, would not suffice. The relevant part of the judgement is as follows:

“....10. A bare reading of the notice would indicate that but for a bland statement of 'fraud or concealment of facts' nothing is stated as to how fraud was inferred or concealment of facts were detected. In fact, the 'or' employed indicates that even the assessing officer was not sure that the assessment was proceeded by reason of fraud or on the ground of concealment of facts. What is required for the extended time to be applied are the allegations, which lead to the inference of a fraud or the concealment as attempted by the assessee resulting in suppression of facts, should emanate from the notice itself. It cannot be a mechanical use of the words 'fraud, willful misstatement or suppression of facts' without listing out the aspects which persuades the assessing officer to conclude that there has been employed either of these surreptitious devices by the assessee....”

5.2. The phrase “fraud or wilful misstatement or suppression of facts” inherently includes the element of intent to evade tax. Therefore, suppression or misstatement must be deliberate and aimed at avoiding or reducing tax liability, mere omission to furnish correct information does not amount to suppression unless it is intentional. When the facts are known to both

parties, an omission by one party does not constitute suppression. An incorrect statement is not automatically a wilful misstatement, the latter requires a conscious making of a false statement with knowledge of its inaccuracy. Hon'ble High Court of Andhra Pradesh in the case of *Sriba Nirman Company vs Commissioner (Appeals)*(2025) 29 Centax 206(A.P.) had an occasion to consider the expression “suppression”, “wilful-misstatement” and held that an incorrect statement, unless knowingly false, does not constitute wilful-misstatement or suppression and this view is also affirmed by the Hon'ble Apex court. The relevant extract from the judgement is reproduced below for ease of reference:

“....22. Non-payment of tax, would attract penalties, under Section 74 (1), in three circumstances. The first two circumstances are fraud and wilful misstatement. Both these require an intention to evade tax by unfair or illegal means. The third circumstance is suppression of fact, which is also defined, in Explanation-2, as non-declaration of relevant information. In view of the collocation of the terms, before this term, and in view of the requirement, under the two earlier terms of mens rea, the term —suppression of facts” would have to be read as wilful or deliberate suppression of fact, for evading tax. The term —evade” puts this issue beyond controversy, as this term means that the suppression must be for the purpose of evasion, which clearly requires intention and mens rea.....”

5.3. In view of the above, it is noted that section 74(1) or section 74A(5)(ii) of the CGST Act cannot be invoked merely on the ground of non-payment of GST without specific evidence of fraud or wilful-misstatement or suppression of facts with intent to evade tax. These provisions are also not intended to be applied in scrutiny cases solely because a discrepancy has been noticed, as such proceedings are meant to examine the records and ascertain the nature of the issue, not to automatically presume fraud. Accordingly, these provisions may be invoked only where the investigation discloses material evidence of such conduct, which must also be clearly set out in the SCN.

5.4. Thus, the power to invoke fraud, wilful-misstatement, or suppression of facts for demand is conditional, hinging on proof of intent to evade tax, which is required to be clearly established in the SCN along with evidence.

5.5. Further, issuing a second SCN, after the first on the same facts and grounds for the subsequent period, invoking fraud, wilful-misstatement, or suppression of facts is generally not legally valid unless new and independent grounds exist, such as unreported clearances. To prevent legal complications, subsequent statements should typically be issued under sections 73 or 74A(5)(i) of the CGST Act after the first notice under section 74 or 74A(5)(ii) of the CGST Act.

6. **SCNs covering demands under sections 73 and 74 of the CGST Act:** Section 73 covers tax evasion determinations in cases other than fraud, wilful-misstatement, or suppression, whereas section 74 applies to cases involving these elements. Where a notice proposes demands under both, it must clearly state the reasons, factual and legal basis for bifurcating non-fraudulent from fraudulent demand, with separate quantification under each category to eliminate ambiguity. The introduction of section 74A of the CGST Act, applicable from the financial year 2024–25 onwards, consolidates the notice-issuance timeline into a single 42-month period from the due date of the annual return, eliminating the distinction in time limits between fraud and non-fraud cases. For notices relating to financial year 2024–25 onwards, where one set of facts in the SCN pertains to tax evasion with intent to evade tax and another set does not involve such allegations, the SCN should separately delineate the quantification and grounds for invocation of charges, ensuring transparency and clarity to the noticee.

7. **No parallel initiation of proceedings:** Section 6 of the CGST Act provides that where a proper officer under the SGST Act or the UTGST Act has already initiated proceedings in respect of a particular subject matter, no proceedings shall be initiated by a proper officer under the CGST Act in respect of the same subject matter. Similar provisions are contained in the respective SGST Acts, thereby precluding parallel proceedings by two different jurisdictional authorities on the same matter. This position has also been affirmed by the Hon'ble Supreme Court in the case of *M/s Armour Security (India) Ltd. v. Commissioner, CGST, Delhi East Commissionerate*, (2025) 33 Centax 222(S.C), wherein guidelines have been laid down in para 97 of the judgement, which may be adhered to. Thus, coordination between CGST and SGST authorities is important to prevent multiplicity and ensure procedural economy.

8. **Timely issuance of SCNs:** Sections 73(10) read with section 73(2), section 74(10) read with section 74(2), and section 74A(7) read with section 74A(2) of the CGST Act specify timelines for issuing notices. As far as practicable, the proper officer should issue notices well

in advance before the due date and avoid last-minute issuance. This will ensure adequate time for the noticee to reply and would allow for completion of adjudication within the statutory timelines.

9. **Service of notices:** Service of the SCN must be effected through the methods prescribed under section 169 of the CGST Act, which provides that any decision, order, summons, notice, or other communication under the Act or its rules shall be served by any one of several specified modes, including direct delivery to the addressee or his authorized representative, service by speed post or courier with acknowledgment due, electronic communication via the registered email address, making it available on the common portal etc. Further, the summary of the demand notices must also be uploaded on the common portal in FORM GST DRC-01 as required under Rule 142 of the CGST Rules.

10. **Adherence to the Principles of Natural Justice:** The principles of natural justice underpin fair adjudication across taxation laws, including GST, ensuring that quasi-judicial actions are conducted in a fair, transparent, and unbiased manner. These principles incorporate the rule of “audi alteram partem”, (“hear the other side”), which mandates that no person should be adversely affected without being given a reasonable opportunity of being heard. This principle is implicitly embedded in the CGST Act, and consistently reinforced by judicial pronouncements, wherein orders passed without proper hearing have been set aside as being violative of these principles. In *Maneka Gandhi v. Union of India (1978) 1 SCC 248*, the Hon’ble Supreme Court elevated natural justice to a constitutional mandate by holding that fairness in administrative action is implicit in Article 21.

10.1. **Conduct of Personal Hearings (PH):** Section 75(4) of the CGST Act provides that an opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person. PH provides the noticee an opportunity to present their case, clarify factual and legal positions, and respond to the evidence relied upon in the SCN. Adjudicating Authorities are encouraged to follow the below mentioned guidelines during personal hearings to uphold principles of natural justice:

- (i) Section 75(5) of the CGST Act provides that no adjournment shall be granted for more than three times to a person during the proceedings. Accordingly, Adjudicating Authorities may grant maximum four personal hearing opportunities before any order requests. The request for adjournment should be considered judiciously, with reasons

recorded in writing for declining the same. No further adjournment may be granted after the statutory limit.

- (ii) Requests for appearances by authorized representatives under section 116 of the CGST Act should be duly considered.
- (iii) The option of virtual hearing may be provided to the taxpayer, enabling accessible and fair hearing across locations. This may be encouraged by the tax administrations.
- (iv) Proper and detailed records of each hearing, including the time and date, particulars of the attendees should be maintained and duly incorporated in the Adjudication order.
- (v) After conducting personal hearings, the adjudication order should be communicated promptly, preferably within one month.
- (vi) If during the course of adjudication proceedings, the adjudicating authority is transferred, then fresh hearing is required to be given by the succeeding adjudicating authority. However, where personal hearing has already been conducted, the outgoing adjudicating authority should, as far as practicable, endeavour to pass the order before relinquishing charge.
- (vii) Authority letter/Vakalatnama wherever applicable should be submitted at the time of hearing and the same should be kept with the case records.

11. **Adjudication Order:** Rules 100 and 142 of the CGST Rules provide for issuance of an adjudication order along with the summary to be uploaded electronically in FORM GST DRC-07 on the portal. In view of the statutory requirement, due care must be taken to ensure that the summary is issued along with the order and uploaded electronically on the portal in FORM GST DRC-07.

11.1. **Drafting of the Adjudication Order:** The process of adjudication necessitates the issuance of a "**speaking order**", that is, an order which clearly articulates its rationale and is expected to withstand scrutiny on grounds of legality, fairness, and reasonableness at higher appellate forums. Various judicial pronouncements have categorically emphasized the need for all adjudicating authorities to issue well-drafted, structured, and reasoned orders, as such orders form the foundation of fairness, transparency, and judicial credibility in the tax administration.

Judgement of the Apex Court in the case of ***Joint Commissioner of Income Tax, Surat vs Saheli Leasing & Industries Ltd., 2010 (253) E.L.T. 705 (S.C.)*** is reproduced below for ready reference:

“.....7. These guidelines are only illustrative in nature, not exhaustive and can further be elaborated looking to the need and requirement of a given case :-

*(a) It should always be kept in mind that nothing should be written in the judgment/order, which may not be germane to the facts of the case; It should have a co-relation with the applicable law and facts. The **ratio decidendi** should be clearly spelt out from the judgment/order.*

(b) After preparing the draft, it is necessary to go through the same to find out, if anything, essential to be mentioned, has escaped discussion.

*(c) The ultimate finished judgment/order should have **sustained chronology**, regard being had to the concept that it has readable, continued interest and one does not feel like parting or leaving it in the midway. To elaborate, it should have flow and perfect sequence of events, which would continue to generate interest in the reader.*

*(d) Appropriate care should be taken not to load it with all legal knowledge on the subject as **citation of too many judgments creates more confusion rather than clarity. The foremost requirement is that leading judgments should be mentioned and the evolution that has taken place ever since the same were pronounced and thereafter, latest judgment, in which all previous judgments have been considered, should be mentioned. While writing judgment, psychology of the reader has also to be borne in mind, for the perception on that score is imperative.***

(e) Language should not be rhetoric and should not reflect a contrived effort on the part of the author.”

(f) After arguments are concluded, an endeavour should be made to pronounce the judgment at the earliest and in any case not beyond a period of three months. Keeping it pending for long time, sends a wrong signal to the litigants and the society....”

11.2. The introductory part of adjudication order should include details of the issuing authority, relevant statutory provisions, taxpayer's appellate rights, designated appellate forum, and pre-deposit conditions for appeals. It should begin with a concise summary of facts covering taxpayer details, SCN particulars, tax period(s) involved, proposed demand, interest, penalty, source and grounds of proceedings, along with all multiple noticees listed separately for clarity and context.

11.3. The discussion of issues to be decided should clearly set out and elaborate upon all the issues that require determination, specifying the questions of law and fact that need to be decided.

11.4. **Examination of evidences vis-à-vis allegations:** The Adjudicating Authority should undertake a careful and reasoned examination of evidences with reference to the allegation(s) in the SCN. Mere reference to documents or reproduction of their contents is not sufficient, the authority should endeavour to analyse them critically, highlighting their relevance and reliability. Wherever the documents do not support the allegation or are inconclusive, the Adjudicating Authority may record the same in its finding with reasons.

11.5. **Consideration of submission/ defence and additional evidences submitted by the taxpayer:** Each adjudication order should independently examine the submissions made by the taxpayer through FORM GST DRC-06 or during personal hearing(s). The order should clearly record findings on the relevance, credibility, and evidentiary value of the materials submitted, specifying whether they have been accepted, partially accepted, or rejected along with reasons for each conclusion. Care should be taken to avoid generic expressions such as *“reply has been considered”*.

11.6. **Upholding procedural fairness and due process:** Section 75(7) of the CGST Act provides that the amount of tax, interest and penalty determined in the order shall not be in excess of the amount specified in the notice and no demand shall be confirmed on the grounds other than the grounds specified in the notice. Therefore, the Adjudicating Authorities should limit their findings to the allegations and grounds mentioned in the SCN. Any new issue identified may be pursued through a separate SCN.

11.7. **Discussion of case laws cited by department as well as taxpayer:** While referring to judgments of higher judicial forums, accuracy of citations and their relevance to the case should be ensured, and the relevant extracts thereof may be reproduced. The authenticity of the source as well as the current legal status of these judgments should be verified to ensure that these have not been overruled by a higher judicial forum. Preference may be given to the decisions of the Hon’ble Supreme Court and jurisdictional High Courts, for balanced, defensible outcomes. Further, judgments cited by the noticee should be duly considered and discussed. In

case the said judgement is not found to be applicable to the matter under consideration, reasons for the same must be recorded in the order.

11.7.1. Wherever, Artificial Intelligence (AI) or other technological tools are utilized to enhance the efficiency and effectiveness in adjudication proceedings, such use must be accompanied by appropriate human oversight as AI tools are not always reliable due to concerns regarding their accuracy, transparency, and the unknown nature of underlying information. The information obtained through AI tools should be independently verified for accuracy before reliance or incorporation into the adjudication order, as the ultimate responsibility for the correctness of the order lies with the issuing authority irrespective of the technological tools used by the officer.

11.8. **Discussions and findings:** This section should contain detailed analysis of each issue identified in the preceding section. The Adjudicating Authority should objectively evaluate the facts, evidences, and legal provisions relevant to each issue and record clear findings thereon. While arriving at conclusion, the Adjudicating Authority should correlate the findings with the allegations made in the SCN, the defense submissions of the noticee, the applicable statutory provisions, circulars, and judicial precedents. The findings should culminate in a logical determination of whether the charges are established or not, issue by issue, forming the foundation for the final order.

11.9. **Quantification of tax amount, interest and penalty:** The Adjudicating Authority should ensure that the tax demanded is re-calculated based on findings for each issue in the SCN and must not exceed the original amount proposed, as stipulated under section 75(7) of the CGST Act. The final order should contain a clear, accurate, and issue-wise quantification of the tax, interest applicability and penalty. It should not be left open-ended or estimated.

11.9.1. Interest on tax that has been short paid or not paid continues to accrue until the date of actual tax payment. The amount of interest as on the date of the adjudication order, wherever possible, may be quantified in the order, with a clear mention that interest shall be payable up to the date of actual payment. It is pertinent to note that section 75(9) of the CGST Act provides that interest on short-paid or unpaid tax is payable regardless of whether it is specifically mentioned in the order.

11.9.2. As far as possible, quantification should be presented financial year-wise and issue-wise, distinctly under CGST, SGST, IGST and UTGST. To improve clarity, all computations may be shown in a tabular format, indicating the period involved, issue or head of demand, tax amount determined, corresponding interest, penalty imposed, and any pre-deposits or payments made.

11.9.3. Whenever any part of the demand is dropped, either fully or partially, the order should specify both the original amount demanded and the amount confirmed after adjudication. If the taxpayer has already deposited any amount towards tax, interest, or penalty before the issuance of the order, such payments should be appropriated or adjusted clearly, and the balance payable or refundable should be clearly mentioned in the order.

11.10. **Penalty justification for each taxpayer:** The Adjudicating Authority should record clear and reasoned findings before imposing any penalty, it should not be levied mechanically but after establishing the nature of the default and the applicable legal provision. Adherence to the general discipline related to the penalty as provided under section 126 of the CGST Act should be ensured during the adjudication proceedings.

11.11. **Conclusion:** Adjudication order should conclude with a clear, concise, and reasoned closing paragraph summarizing the outcome of the proceedings. The quantum of tax, interest, and penalty confirmed or dropped, as the case may be, should be clearly specified, along with a clear reference to the specific legal provisions invoked while confirming or waiving such liabilities.

12. **Timely and planned issuance of adjudication orders:** The issuance of adjudication orders close to deadlines should be avoided as it may lead to hurried adjudication, compromising quality. Monthly disposal targets may be set which may be monitored by senior officers in review meetings, to improve the quality and timeliness of the adjudication. Further, the summary of the order must also be uploaded on the common portal in FORM GST DRC-07 as required under rule 142(5) of the CGST Rules.

13. **Determination of tax demand on grounds of fraud, wilful-misstatement, or suppression of facts:** The Adjudicating Authority should thoroughly assess whether the invocation of the extended period is legally tenable and factually supported, especially when

contested by the noticee. If such examination reveals that the SCN lacks clear evidence of fraud, wilful-misstatement, or suppression of facts with the intent to evade tax, or if there is no valid reasoning to justify the extended period's invocation, the Authority should record clear findings to that effect. In such cases, the demand should be confined to that prescribed under section 73 or 74A(5)(i) of the CGST Act. **The order should clearly articulate the reasons for rejecting or not accepting the submissions pertaining to the invocation of grounds of fraud, wilful-misstatement, or suppression of facts.**

14. **Scope of rectification under the CGST Act:** Section 161 of the CGST Act empowers the issuing authority to rectify errors apparent on the face of the record in any decision, order, notice, certificate, or document, either suo motu or upon such error being brought to its notice by an officer under CGST/SGST/UTGST Acts or by the affected person; an application for rectification may be filed within a period of three months from the date of issue of decision or order or notice or certificate or any other document, as the case may be and the rectification order should be passed within six months from the date of issue of the decision or order or notice or certificate or any other document, provided that the said period of six months shall not apply in such cases where the rectification is purely in the nature of correction of a clerical or arithmetical error, arising from any accidental slip or omission.

14.1. The scope of competence under section 161 extends to authorizing the issuing authority that has passed the impugned document to undertake rectification in that document or order. The authorization under section 161, which contains the non-obstante clause “*notwithstanding anything contained in any other provisions of the Act,*” explicitly authorizes the issuing authority who passed or issued the impugned document, order, notice, or certificate to undertake rectification of errors apparent on the face of the record. This non-obstante phrase indicates that this power to rectify overrides other provisions within the Act and does not extend the rectification authority to senior officers who have powers under section 5(2) of the CGST Act, to exercise the powers of subordinate officers. Thus, the rectification must be made strictly by the issuing authority itself.

14.2. Further, section 161 provides for rectification of errors that are apparent on the face of the record in such decision or order or any other document. The scope of the phrase “apparent on the face of the record” has been dealt by the Hon’ble Supreme Court in several judgments, including *Arun Dev Upadhyaya v. Integrated Sales Service Ltd. (2023) 8 SCC 11*, wherein it

is held that an error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions, can hardly be said to be an error apparent on the face of the record. Applying this principle, an error which requires detailed verification, analysis of underlying transactions or which is capable of argument or debate cannot be considered error apparent on the face of the record under section 161.

14.2.1. To attract the jurisdiction to rectify an order under section 161, it is not sufficient if there is merely a mistake in the order sought to be rectified. The mistake to be rectified must be one that is apparent from the record, that is, it must be *ex facie* and incapable of argument or debate. Thus, the power to rectify an order under section 161 is limited. It does not extend to correcting errors of law or re-appreciating factual findings as if sitting in appeal over the earlier decision, and such alleged error does not qualify as a patent or error apparent on the face of the record. Instead, these fall within the purview of appellate mechanism, which enables correction of decisional mistakes.

14.2.2. It may also be seen that after issuing an adjudication order, the adjudicating authority cannot reopen or reconsider the merits of the case, except to the extent specifically permitted under section 161 of the Act. The limited power of rectification under section 161 is confined to errors apparent on the face of the record, and cannot be used as a substitute for appeal or review processes.

14.2.3. Any request for rectification of error under section 161 should be disposed of expeditiously through FORM GST DRC-08. Further, all orders passed under section 161 for rectification should be communicated to the jurisdictional reviewing authority.

15. **First Appeal Proceedings:** Section 107 of the CGST Act provides that any person aggrieved by any decision or order passed under CGST Act or the SGST Act or the UTGST Act by an adjudicating authority may appeal to the Appellate Authority in prescribed manner. Further, rule 113 of the CGST Rules provide for the summary of the appellate order, to be uploaded electronically in FORM **GST APL-04** on the portal. It is accordingly emphasized that the said summary should be issued along with the appellate order and uploaded electronically on the portal in FORM GST APL-04.

15.1. Upon receipt of an appeal, the First Appellate Authority is required to undertake a preliminary scrutiny in accordance with rule 108 of the CGST Rules to ascertain its maintainability and procedural completeness, including verification of the particulars of the appellant, the impugned order, limitation, prescribed form, payment of the requisite pre-deposit, grounds of appeal, supporting documents and jurisdiction. However, issues relating to the merits of the dispute should ordinarily be considered and decided during the adjudication of the appeal and should not be rejected summarily at the stage of registration of the appeal.

15.2. Under Section 107(1), an appeal by an aggrieved person is required to be filed within three months from the date on which the decision or order is communicated to him while under section 107(4), the Appellate Authority may, where satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the prescribed period, allow the appeal to be presented within a further period of one month. In this context, it is clarified that the question of limitation of the appeal ought to be examined as a separate preliminary issue, wherein it should be ascertained whether the appeal has been preferred within the prescribed statutory period, and where there is a delay in filing, whether such delay is eligible for condonation under the CGST Act. An appeal filed beyond the statutory period of limitation, wherein the delay is not condonable under the Act, ought not to be adjudicated on merits, even in cases where a prima facie case is discernible. Further, the reasons for acceptance or rejection of the appeal on the ground of limitation should be duly recorded in the order.

15.3. Rule 109C of the CGST Rules provides for withdrawal of an appeal by the appellant upon filing an application in FORM GST APL-01/03W. Where the final acknowledgement in FORM GST APL-02 has been issued, the withdrawal of such appeal is subject to the approval of the Appellate Authority, with the said application being required to be decided within seven days of its filing

15.4. In respect of personal hearings, the date of every hearing, including subsequent dates fixed pursuant to adjournment sought by the appellant, as far as possible, should be communicated to the appellant through the GST Portal and the record of proceedings of every hearing may be maintained electronically on the BO Portal by uploading the recorded proceedings as an attachments. Additionally, the appellate order should duly record the date of hearing, appearance of the appellant or authorised representative, submissions made, documents furnished, directions issued. Thus, the details of hearing proceedings should constitute a substantive part of the appellate order and should not merely be available as an

internal record, as this would reflect accordance of opportunity of hearing to the appellant and enable proper appreciation of facts, submissions and evidence considered while deciding the appeal.

15.5. Section 107(10) empowers the Appellate Authority to permit an additional ground of appeal where the omission was neither wilful nor unreasonable. Such discretion should be exercised judiciously, distinguishing between an additional legal ground arising from the existing demand and a new factual issue requiring fresh investigation. The latter should not ordinarily be entertained at the appellate stage without statutory authority and due opportunity to the affected parties. Reasons for allowing or rejecting the additional ground should also be recorded in the appellate order.

15.6. Under Rule 112, additional evidence is admissible only in the circumstances specified therein, which, *inter alia*, include refusal by the adjudicating authority to admit admissible evidence, sufficient cause for non-production, or failure to provide adequate opportunity to the appellant to adduce evidence. The Appellate Authority is required to record specific reasons for admitting or rejecting such evidence. In case of rejection of additional evidence, personal hearing should be provided to the appellant to ensure adherence with the principles of natural justice. However, before admitting the said evidence, the Appellate Authority should provide reasonable opportunity to the adjudicating authority, or the officer authorised by the said authority, to examine and, where applicable, provide evidence to rebut the said additional evidence, if any. However, it is emphasized that appellate proceedings should not, as a matter of ordinary practice, be converted into a fresh investigation merely to remedy deficiencies in the original adjudication.

15.7. In terms of section 107(13) of the CGST Act, it is provided that, as far as possible, every appeal should be heard and decided within a period of one year from the date of filing, excluding the period during which the proceedings remain stayed by a Court or Tribunal. To this end, status of disposal of appeals ought to be monitored through a structured mechanism by senior officers to ensure their timely disposal.

15.8. In cases involving cross-appeals by the taxpayer and the Department against the same impugned order, the Appellate Authority should process such appeals simultaneously and dispose of such appeals by a common, composite order, to ensure consistency and avoid conflicting findings. Further, in terms of rule 113 of the CGST Rules, the summary of the

appellate order under section 107(11) should be issued in FORM GST APL-04, clearly indicating the final amount of demand confirmed.

16. In addition to the guidelines stipulated in paragraph 15 above, the guidelines at sl. nos. 10, 11 and 13 in respect of adjudication proceeding shall apply, *mutatis mutandis*, to the Appellate Authorities in respect of appeal proceedings.

17. These guidelines serve an illustrative purpose and are non-exhaustive. They must not be cited by proper officers in show cause notices, final or appellate orders.

18. Difficulty, if any, in the implementation of this circular may be brought to the notice of the Board.

Yours faithfully,

(Gaurav Singh)
Commissioner (GST)