



महेन्द्र रंगा
MAHENDRA RANGA
मुख्य आयुक्त
CHIEF COMMISSIONER



भारत सरकार
वित्त मंत्रालय
मुख्य आयुक्त कार्यालय
सीजीएसटी एवं केन्द्रीय उत्पाद शुल्क
जयपुर
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
OFFICE OF THE CHIEF COMMISSIONER
CGST & CENTRAL EXCISE
Jaipur

10th February 2025

D.O. No. GCCO/TECH/MISC/440/2023

Dear *colleagues*

‘SAMVAAD’ : FEBRUARY 2025

Like previous years, we proudly celebrated India’s 76th Republic Day with immense patriotism and zeal on 26th January, 2025. The occasion stood as a powerful reminder of our constitutional values, a tribute to the sacrifices that brought about the freedoms and the responsibilities we should bear as citizens. The celebration was enriched with inspiring speeches, engaging activities and a profound sense of national pride. It is a time to recollect the values of the Republic, to renew our dedication to duty, unity & integrity and excellence in every endeavor.

2. CGST Alwar continued its tradition of celebrating national events with renowned personalities. The Republic Day celebrations featured Dr. Rajendra Singh, the "Waterman of India" and recipient of Ramon Magsaysay Award & Stockholm Water Prize. He emphasized on water conservation, sustainable agriculture and climate adaptation. Renowned neurologist Dr. Anjani Kumar Sharma shared insights on building a healthy society and a culture of preparedness for emergency. Ms. Bachendri Pal, Padma Bhushan awardee India’s first woman to summit Mount Everest, also extended her wishes. The event, themed "*Swachhata Hi Seva, Environment, and Health*", highlighted the importance of sustainability and well-being.

3. The Union Budget 2025-26, presented by Finance Minister Smt. Nirmala Sitharaman, introduces key amendments to GST laws. The proposed changes in the Finance Bill 2025 aim to enhance trade facilitation and streamline GST compliance. Key trade facilitation measures include enabling Input Service Distributors (ISD) to distribute ITC for inter-state supplies under RCM, removing time of supply provisions for vouchers, reducing pre-deposit amounts for appeals involving only penalties and clarifying the tax treatment of SEZ/FTWZ supplies to any person before export/ DTA sale. Compliance measures focus on clarifying the definition of ‘local authority,’ amending ITC eligibility for plant and machinery, mandating ITC reversal before credit notes adjustment, offering flexibility in ITC statements by removing the words ‘auto generated’ and introducing enabling provision for prescribing conditions & restrictions for return filing. Additionally, enabling provisions for implementing a

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Track and Trace mechanism, penalties for non-compliance and the introduction of Unique Identification Marking (UIM) for specified goods are included to strengthen monitoring and ensure greater regulatory control over GST compliance. The budget reflects the Prime Minister's Viksit Bharat vision, emphasizing 'Make in India,' export promotion and trade facilitation. All field formations are urged to examine the provisions of the Union Budget 2025-26 and their implications closely especially those relating to indirect taxes.

4. Every twelve years, the confluence of the sacred rivers hosts the Maha Kumbh, a Hindu pilgrimage and one of the biggest human gatherings on the planet. Managing this marvel entails painstaking planning and coordination which offers us invaluable lessons for the workplace. The event exemplifies effective communication, strategic preparation and adaptability, which are key elements for handling dynamic work situations. By embracing these principles, we can foster a cohesive and productive work environment, transforming our collective efforts into extraordinary achievements.

5. In January 2025, GST revenue collection soared to ₹2,316 crores, marking an impressive 16% rise compared to January 2024. This figure represents the second-highest collection for the fiscal year. Notably, the growth rate up to January 2025 stands at 10.2%, which not only surpasses the national average but also exceeds the growth rate from the same period last year. These figures indicate a promising economic trend and improved tax compliance.

6. The Central Intelligence Unit (CIU) has once again demonstrated its value by providing consistent inputs that have kept Commissionerates active. Acting on CIU intelligence, CGST Jaipur, Udaipur and Alwar uncovered several cases involving excessive or ineligible ITC claims and fraudulent firms. CGST Jaipur booked a case against Nagar Nigam, Jaipur for failing to reverse ITC attributable to exempted supplies as mandated under Section 17(2) of CGST Act, 2017. The taxpayer has since reversed the entire ITC amounting to ₹6.34 crores. Additionally, CGST, Jaipur identified four fraudulent registrants in Kishangarh viz. M/s Rameshwaram Stonex, M/s Radhika Marble And Granite, M/s Vaishnav Marble and M/s Rudraksh Stonex. These firms had claimed fake ITC of ₹1.56 crore while passing on fake ITC worth ₹0.66 crores. In Udaipur, M/s Lojit Infrastructure and M/s S S Earthmovers were found to have availed excess ITC, totaling of ₹3.35 crores. Furthermore, M/s Pannadha Security Services was found to have evaded GST of ₹2.40 crores by failing to file GSTR-3B returns, with ₹0.61 crores recovered so far. In Alwar, M/s Nishant Enterprises and M/s Kavya Trading were found to have claimed excess ITC, which they later reversed, totaling ₹1.64 crores. Additionally, CGST Alwar discovered a non-existent firm, M/s Buildmarque Developers Pvt. Ltd., which had availed fake ITC of ₹7.91 crores and passed on fake ITC of ₹4.31 Crores. These enforcement actions underscore the critical role of intelligence-driven operations in safeguarding the integrity of the tax system through vigilant oversight and decisive action.

7. Data Analytical Cells (DACs) were established across Commissionerates to leverage technology for enhancing tax compliance and enforcement. Based on data analysis from the BO and e-Way Bill Portals, CGST Jodhpur detected two instances of non-payment of tax by M/s Powergrid Bhadla-III Transmission Limited and M/s Powergrid Ramgarh-II Transmission Limited. These companies diverted goods to other group entities using the "Ship to Bill to" method without issuing invoices at the

time of supply, leading to non-payment of tax. Upon admitting their liability, both companies paid their full tax dues amounting to ₹25.68 crores. Similarly, CGST, Udaipur identified three cases of non-payment of tax after analyzing data using ADVAIT and BO portals. It was found that M/s Prathvi Construction, M/s Dhanlaxmi Electricals Pvt. Ltd. and M/s Shree Nidhi Enterprises had collectively failed to pay tax amounting to ₹6.73 crores. This highlights the effectiveness of tools like ADVAIT and MIS in BO in detecting tax discrepancies and strengthening enforcement actions.

8. A Special Drive for e-way bill checking was conducted by CGST, Jaipur in January 2025 to safeguard government revenue and take action against suppliers involved in the supply of goods without proper invoices. During the drive, five trucks carrying goods such as MS Scrap, Aluminum Scrap, Pan Masala, and Tobacco were found without valid e-way bills. As a result, a total GST amount, including penalties, of ₹2.20 crores was recovered.

9. DGGI, Jaipur has uncovered a case of GST evasion amounting to ₹2.90 crore by M/s Treehouse Hotel Club and Spa, a unit of Ashiana Housing Limited. The investigation revealed that the entity was engaged in evading GST by incorrectly applying a reduced tax rate of 5% instead of the applicable 18% on restaurant services, in violation of Notification No. 11/2017-CT(R) dated 28.06.2017, as amended. So far, an amount of ₹4.96 crores, including penalty and interest, has been recovered in the case.

10. I am pleased to share that Shri Shashank Priya, Member (GST), CBIC, virtually launched the "*Handbook of Trade & Industry (Rajasthan)*" on 06.01.2025. The handbook, compiled by officers of the Zone, is a comprehensive and meticulously curated resource designed to assist officers in understanding sector-specific modalities with ease. As a 'Knowledge Management' initiative, the handbook aims to keep officers well-informed and empowered, fostering excellence in their roles and enhancing decision-making in the field. To ensure its continued relevance, the curators will be required to regularly update the handbook, making it a valuable and up-to-date resource.

11. The Board has issued Instruction No. 01/2025-GST dated 13.01.2025, amending guidelines for arrest and bail in relation to offences punishable under the CGST Act, 2017. These instructions have been issued in light of judgment dated 16.12.2024 passed by Hon'ble High Court of Delhi in case of *Kshitij Ghildiyal Vs DGGSTI*, emphasizing the need to communicate arrest grounds in writing, aligning with observations made in prior Supreme Court judgments. The Board vide Notification No. 08/2025-CT dated 23.01.2025 has waived the late fee for delayed filing of the reconciliation statement in FORM GSTR-9C for the period upto FY 2022-23, which is in excess of the late fee payable upto the date of furnishing of return in FORM GSTR-9 for the said FY. However, to avail the benefit, FORM GSTR-9C has to be furnished on or before 31.03.2025. Further, the Board vide Circular No. 246/03/2025-GST dated 30.01.2025 has clarified that the complete annual return under section 44 consists of the return in FORM GSTR-9 along with reconciliation statement in FORM GSTR-9C (wherever applicable). All officers are advised to take note of these updates.

12. We observed Swachhta Pakhwara from 16.01.2025 to 31.01.2025, commencing with the Swachhta Pledge and followed by various activities in field formations across

the Zone. Our collective efforts towards cleanliness will significantly impact society. Let us continue to maintain a clean and healthy environment by embracing the principles of Swachhta in our daily lives. Together, we can achieve a cleaner, greener and more sustainable future.

13. When an earning member of the family passes away, the resulting grief is unimaginable. In such moments, it is crucial to stand by the family of our colleague. I am deeply encouraged by the fact that the officers of the Zone have come together to support the family of our late colleague, Shri Jai Singh Rathore, by providing them with financial assistance in this hour of immense sorrow.

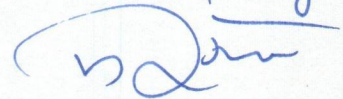
14. This month, four insightful articles are being published in **Gyan-Sangrah**. These articles not only enrich our functional knowledge but also contribute to effective stress management:

- (a) **GST Amnesty Scheme: Simplifying Compliance for Taxpayers:** By Shri Sabyasachi Dutta, Assistant Commissioner, CGST Division, Udaipur South;
- (b) **Following the principles of Natural Justice while adjudicating Show Cause Notices in GST:** By Shri Devi Dutt Sharma, Superintendent, CGST Division, Behror;
- (c) **Stress Management:** By Shri Arun Bhatnagar, Superintendent, CGST & CX, Udaipur; and,
- (d) **Dealing with the dearth of corroborative evidence and plenty of all possible arguments in the matter of fake ITC cases:** By Shri Rakesh Kumar Deriwal, Superintendent, CGST & CX, Jaipur.

We sincerely appreciate the officers for their contribution.

15. As we closed the chapter of January, we bid farewell to the illustrious careers of Shri Vinod Kumar Sharma, Superintendent and Shri Rajesh Kumawat, Head Hawaldar. Their superannuation marks the culmination of years of service and dedication. I conclude with the wish that this new phase of their lives brings abundant joy, prosperity and a deep sense of fulfilment.

Till next month,

Yours *Sincerely*


(Mahendra Ranga)
Chief Commissioner

To:- Team Jaipur Zone.

Copy for information to:-

- (i) OSD to the Chairman, CBIC, New Delhi.
- (ii) PS to the Member (GST & Zonal Incharge), CBIC, New Delhi.
- (iii) DG, DGGST, New Delhi
- (iv) Pr. ADG/ ADG, NACIN/ DGGI, Jaipur.

ज्ञान संग्रह

फरवरी, 2025

GYAN SANGRAH

FEBRUARY, 2025

GST Amnesty Scheme : Simplifying Compliance for Taxpayers

*By – Shri Sabyasachi Dutta
Assistant Commissioner,
CGST Division, Udaipur South*

The new GST Amnesty scheme

The introduction of GST in July 2017 marked a significant shift in India's indirect tax system. The initial implementation phase was characterized by a wave of notifications and sudden changes, challenging taxpayers and tax professionals across the country. Despite the rapid adaptation, errors and technical glitches were inevitable during this transition period. Recognizing these challenges, the 53rd GST Council Meeting proposed a conditional waiver of interest and/or penalty for the initial years of GST implementation (FY 2017-18 to FY 2019-20). This scheme, known as the Amnesty Scheme, aimed to provide relief to taxpayers affected by teething troubles and technical difficulties.

The new GST Amnesty scheme by Section 128A came into effect on November 1st 2024. The new scheme allows taxpayers who have received notices u/s 73 of the CGST Act, 2017 for FY 2017-18, 2018-19, and 2019-20 to apply for a waiver of interest and penalty. No refund will be made if interest and penalty have already been paid.

Taxpayers who have only been issued a notice under Section 73 but no final order has been passed, need to apply for the Amnesty Scheme using GST SPL01 Form. Form GST SPL02 applies to situations where an order has been passed by the authorities at the first level tax authorities or by the appellate authorities.

Who can apply for GST Amnesty Scheme 2024 under section 128A?

The Amnesty scheme under Section 128A grants waiver of interest and penalty liabilities relating to the period July 1, 2017 to March 31, 2020, in cases that do not involve fraud or wilful misstatement or suppression of facts.

The scheme covers notices or statements issued under Section 73 and the proceedings following thereafter till the order of the first appellate authority, against which no appeal has been filed before the appellate tribunal. It also covers situations where the proceedings that were initiated under Section 74 as involving fraud, wilful misstatement or suppression of facts, but were ordered to not be involving these ingredients subsequently pursuant to Section 75(2). For context, Section 75(2) provides that where any appellate authority, appellate tribunal, court concludes that a case, which was initiated under Section 74 as involving fraud, wilful misstatement or suppression, did not involve such elements, the liabilities in such a case will be determined by deeming it be proceedings under Section 73. Notably, the situations where any interest or penalty liabilities on account of late fee, redemption fine etc. are not covered under the scheme.

Who is Eligible for Waiver of Interest and/or Penalty?

Section 128A(1) outlines three categories of individuals eligible for the waiver scheme;

Those liable to pay tax based on:

- A Show Cause Notice under Section 73(1) or a statement under Section 73(3).
- An Adjudication Order under Section 73(9).
- An Order issued by the Appellate Authority or Revisionary Authority under Section 107(11) or Section 108(1).

Also, the first proviso to Section 128A(1) extends eligibility to cases where the original notice was issued under Section 74(1), but the proper officer has been directed under Section 75(2) to reassess the tax under Section 73(1).

Further Eligibility Conditions:

- A. The Notice or Order must relate to the period from 1st July 2017 to 31st March 2020.
- B. The individual must have paid the full tax amount stated in the notice, statement, or order before the notified date.

When Does the GST Amnesty Scheme Not Apply?

The waiver scheme shall not apply in the following cases:

- For any amount payable due to an erroneous refund, as specified under Section 128A(2).
- If there is a pending appeal or writ petition filed by the person, and the applicant has not withdrawn it, in accordance with Section 128A(3).

Benefits of GST Amnesty Scheme

The GST Amnesty Scheme offers several key benefits:

- It promotes compliance among defaulters by encouraging adherence to tax regulations, leading to a more stable and predictable revenue stream for the government.
- Provides financial relief to taxpayers burdened with late fees, allowing them to reinvest saved funds into their business for growth and operational improvements.
- Enables businesses with cancelled GST registrations due to non-filing to reregister, while also allowing taxpayers to clear pending returns without incurring steep interest charges.
- Significantly reduces penalties for taxpayers filing overdue GST returns, helping them address backlogs and meet regulatory requirements.
- Facilitates the updating of tax records without hefty penalties, easing the administrative burden on both tax authorities and taxpayers for smoother operations.

(This article is for academic purpose only and shall not be having any legal impact.)

Following the principles of natural justice while adjudicating show cause notices in GST

*By – Shri Devi Dutt Sharma, Superintendent,
CGST Division, Behror*

A. Adjudication of show cause notices in GST

1. As is well known, adjudication of show cause notices proposing demand of tax & interest and imposition of penalty in GST is a quasi-judicial function assigned to proper officers defined under the CGST Act, 2017. A quality adjudication order is that which describes the facts of the situation clearly, analyses the evidence critically, addresses the arguments of the noticee properly, outlines the contraventions and the offences precisely and gives a clear finding on the issues involved by judicious application of the provisions of law to the facts.

B. Principles of natural justice

2.1. While deciding Civil Appeal No. 4458-4459 of 2015 titled Dharampal Satyapal Limited Versus Dy. Commissioner of C. Ex., Gauhati vide judgment dated 14.05.2015, Hon'ble Supreme Court has explained the principles of natural justice as follows:-

“19. In Common Law, the concept and doctrine of natural justice, particularly which is made applicable in the decision making by judicial and quasi-judicial bodies, has assumed different connotation. It is developed with this fundamental in mind that those whose duty is to decide, must act judicially. They must deal with the question referred both without bias and they must be given to each of the parties to adequately present the case made. It is perceived that the practice of aforesaid attributes in mind only would lead to doing justice. Since these attributes are treated as natural or fundamental, it is known as ‘natural justice’. The principles of natural justice developed over a period of time and which is still in vogue and valid even today were: (i) rule against bias, i.e. *nemo iudex in causa sua*; and (ii) opportunity of being heard to the concerned party, i.e. *audi alteram partem*. These are known as principles of natural justice. To these principles a third principle is added, which is of recent origin. It is duty to give reasons in support of decision, namely, passing of a ‘reasoned order’.”

2.2. Importance of procedural fairness has been highlighted in the said judgment in the following words:-

“24. XXXXX It, thus, cannot be denied that principles of natural justice are grounded in procedural fairness which ensures taking of correct decision and procedural fairness is fundamentally an instrumental good, in the sense that procedure should be designed to ensure accurate or appropriate outcomes. In fact, procedural fairness is valuable in both instrumental and non-instrumental terms.”

C. Provisions of the CGST Act, 2017

3. Provisions concerning determination of tax not paid, short paid or erroneously refunded or input tax credit wrongly availed or utilized as contained in Chapter- XV titled “Demands and Recovery” of the CGST Act, 2017 require that **the proper officer shall serve notice on the person chargeable with tax, requiring him to show cause as to why he should not pay the amount specified in the notice alongwith interest payable thereon and penalty leviable** under the provisions of the Act or rules made thereunder.

4. General provisions relating to determination of tax not paid etc. as contained in section 75 of the CGST Act, 2017 include the following:-

(4) **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.

(5) The proper officer shall, if sufficient cause is shown by the person chargeable with tax, **grant time to the said person and adjourn the hearing for reasons to be recorded in writing:**

Provided that no such adjournment shall be granted for more than three times to a person during the proceedings.

(6) The proper officer, in his order, **shall set out the relevant facts and the basis of his decision.**

(7) The amount of tax, interest and penalty **demanded 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.

D. Right to notice applied to GST adjudication

5. Right to notice is the fundamental principle of natural justice and in GST matters it may include communication of notice, the right to present case and evidence, right to rebut adverse evidence, cross examination and legal representation.

5.1. Communication of the show cause notice is the most important aspect of adjudication and, therefore, the show cause notice proposing demand of tax etc. should be communicated to the noticee within the outer limitation of time prescribed by law.

5.2. Service of show cause notice may sometimes pose difficulties especially in cases where the GST registration of the noticee has already been cancelled and the noticee is not found available on the registered principal place of business.

5.3. Though in the case of cancellation of registration on request of the taxable person, the request for cancellation includes submission of address for future communication but in cases of suo-moto cancellation such address may not be

available. In such cases the permanent residential address of the noticee may be ascertained from the documents submitted with application for registration.

6.1. While interpreting the provisions of section 169 of the CGST Act, 2017 concerning service of notice in certain circumstances, Hon'ble Madras High Court has held vide recent Order dated 06.01.2025 in the case of Sahulhameed Versus Commercial Tax Officer that:-

“**22.** In such view of the matter, I am inclined to hold that **Section 169 mandates a notice in person or by registered post or to the registered e-mail ID alternatively** and on a failure or impracticability of adopting any of the aforesaid modes, then the State can, in addition, make a publication of such notices/ summons/ orders in the portal/ newspaper through the concerned officials.”

6.2. In the said case, the petitioners had argued as follows:-

“**2.** It is the contentions of the learned counsels for the petitioners that the respondents in each of the cases had uploaded only the notices/ orders in the web portal and not by any other modes as prescribed under Section 169 of the Act.

3. It is their case that most of the petitioners are not well aware about the portal of the Department and due unawareness of the information technology, they had relied upon the practitioners for filing their returns in the portal of the Department. It is also their case that the practitioners have uploaded their phone numbers and e-mail IDs for receipt of alerts and that in most of the cases, the practitioners have not informed the assesses either the updation in the portal or the receipt of the e-mails which have kept the assesses in dark.”

7. Thus, it is important to note that the show cause notice should be delivered directly or sent through registered/ speed post with acknowledgement due to the place of business or residence or through the e-mail address provided and the remaining alternates may be exercised consequent upon failure of the earlier efforts.

E. Formulation of the issues involved

8. Opportunity of defence is made available to the noticee only if the subjects and issues involved in the case are communicated to him alongwith the grounds in support of the allegations. Thus, the grounds for the allegations must be adequate and sufficient material and information relied upon should also be provided to the noticee.

9. Thus, a show cause notice should contain the facts of the case, the allegations leveled against the noticee, narration of the legal provisions, narration of contravention of the provisions of law, the offence committed by the noticee and the action proposed to be taken in terms of demand of tax and interest and/ or imposition of penalty.

10. The provisions of law which define taxability or valuation or eligibility to ITC or exemption etc. should be clearly spelt out in the show cause notice whereas the legal

provisions contravened by the noticee should be narrated separately. It is important to note that contravention can be alleged of only those provisions which require the taxable person to do something or prohibit him from doing something and, therefore, not every provision of law applicable to the issue can be said to have been contravened by the noticee.

F. Proposals in the show cause notice

11. After outlining the contraventions it is essential to describe the offences committed by the noticee. "Offences and Penalties" under the CGST Act, 2017 are described in detail in Chapter XIX and each one of the offence alleged to have been committed by the noticee should be clearly spelt out in the show cause notice. In order to be precise and to the point, complete reproduction of section 122 can be avoided and only those clauses which describe the nature of offence allegedly committed by the noticee can be reproduced and then described as to how the offence of the nature alleged has been committed by the noticee.

12. While mentioning each one of the offences committed, the proposal to demand tax or impose penalty should also be spelt out specifically. If more than one offences are alleged to have been committed and separate demand or penalty is proposed it is advisable that the proposal in respect of each one of the offences is spelt out separately. A combined proposal, especially to impose penalty, for all the offences should be avoided in order to communicate the intent clearly.

G. Right to defence and Fair Hearing

13. The right of the noticee to rebut adverse evidence presupposes that the noticee has been informed about the evidence against him. The summary of the contents of the adverse material should also be made available to the noticee. Thus, all the relied upon documents including statement of witnesses should be made available to the noticee. It is important to note that whatever material forms the basis of the allegations and has been described or referred to in the show cause notice should be made a relied upon document and provided to the noticee alongwith the show cause notice. If the allegation is based on any report received from other formations and such report refers to any statement or panchnama all these documents need to be made relied upon documents and provided to the noticee.

14. The noticee has the right to submit a defence submission and represent his case through a legal representative. Therefore, request for grant of additional time to submit the written representation and represent the case through legal representative should be considered within the limitation of time available combined with opportunity of hearing available to the noticee. The CGST Act, 2017 has provided for grant of an opportunity of hearing to the noticee including three adjournments. Thus, request for grant of time should be allowed upto the limitation of three adjournments without exception.

15. It is important to note that the letters communicating a date of personal hearing are also required to be delivered the same way a show cause notice is delivered and opportunity of personal hearing and subsequent adjournments are distinct from each other and, therefore, communication of three different dates through a single letter

does not serve the purpose in so far as opportunity of hearing is concerned. The GST law has provided ample time of three months or six months or 12 months for obtaining defence submissions and conducting personal hearing and, therefore, adequate time is given to complete the entire process.

16. Legal representation and cross-examination are also part of the opportunity of hearing and, by implication, defence and, therefore, any request in this regard needs to be acknowledged and decided suitably to ensure that the noticee gets a fair opportunity to defend himself.

H. A reasoned and speaking order

17. The CGST Act, 2017 provides in section 75 that the proper officer, in his order, **shall set out the relevant facts and the basis of his decision**. It has further been provided that the amount of tax, interest and penalty **demand 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.

18. There are two aspects of these provisions. One is that the amount specified in the show cause notice is the highest amount of tax, interest or penalty which can be finally demanded or imposed. Another aspect, which is more important, is that no demand shall be confirmed on the grounds other than the grounds specified in the notice. Thus, the allegations in the show cause notice need to be drafted carefully and the grounds based on which demand is proposed should be clearly spelt out without any exception such as secondary or lesser important.

I. Speaking Order- Contents

19.1. The CGST Act provides that the proper officer, in his order, **shall set out the relevant facts and the basis of his decision**. This stipulation is similar to what the Hon'ble Supreme Court has described as the third **principle of recent origin that prescribes that it is the duty of the authority to give reasons in support of decision, namely, passing of a 'reasoned order'**.

19.2. A reasoned order requires outlining the allegations, consideration of the defence, analysis of the evidence and examination of applicability of the legal provisions. Thus, ideally an adjudication order would be a speaking order if it proceeds in the following manner:-

- (A) Outlining the facts of the case, the allegation against the noticee and the proposals in the show cause notice;
- (B) Defence submissions of the noticee in the written representation and the arguments made during the course of personal hearing;
- (C) Formulation of the questions for determination with reference to the alleged offences and defence arguments;
- (D) Analysis and assessment of evidence with reference to the legal provisions;
- (E) Findings with reasons with respect to each one of the allegations of offence; and
- (F) Conclusion/ Decision separately for each of the proposals.

20. In order to ensure brevity, repetition of the reproduction of legal provisions already reproduced in the “Brief Facts” portion can be avoided in the “Analysis and Assessment of evidence” portion. Further, lengthy submissions made by the noticee can be summarized without losing their essence of fact and argument. The defence submissions can be addressed after categorizing the same into (i) submissions on procedural aspects including natural justice, (ii) submissions on merits and (iii) submissions on the proposal to impose penalty.

J. Speaking order- other aspects

21. An important aspect of a speaking order is that the case laws referred by the noticee should be examined. Applicability or otherwise of the ratio decidendi of the referred case law should be clearly discussed and a simple statement to the effect that the same is not applicable to the facts of the instant case should be accompanied by explanation and reasoning.

22. Applicability of extended period of time and imposition of equivalent penalty requires the presence of offence of the specified nature and the aspects of fraud, willful misstatement or suppression of facts to evade tax. Therefore, separate finding as regards commission of an offence of the nature specified and the presence of the reasons of fraud etc. should be given in the order. Further, quantification and confirmation of demand should be done after giving the findings as regards the offences committed and the presence of reasons justifying imposition of equivalent penalty.

K. Conclusion

23. Service of the adjudication order is also equally important from the principles of natural justice point of view. Section 169 of the CGST Act, 2017 equally applies to orders as well. Further, distinction between service to authorized representative and authorized signatory should be kept in mind and in case of service through e-office it should be ensured that e-mail has been delivered without any technical glitch. A speaking order is the one which speaks for itself and finally to the noticee and therefore, its communication to the noticee within the outer limitation of time is necessary to fully comply with the principles of natural justice.

(The write-up is simply intended to share the personal experience of the writer with the colleagues and the views expressed therein may not necessarily represent the stand taken by him on the provisions of law in his official capacity.)

तनाव प्रबंधन - Stress Management

द्वारा – श्री अरुण भटनागर, अधीक्षक
सीजीएसटी आयुक्तालय, उदयपुर

स्वस्थ शरीर की चाहत किसे नहीं होती चाहे वह स्त्री हो या पुरुष। वह स्वस्थ, सुंदर व आकर्षक दिखे ऐसा सभी चाहते हैं। प्राचीन काल में भारत के लोगों का सादा जीवन, उच्च विचार, मोटा खाओ, मोटा पहनो की बात सबके हृदय में बसी हुई है, जिसके कारण जीवन शैली एवं स्वास्थ्य दोनों स्वतः प्राप्त हो जाते हैं, परन्तु आधुनिक जीवन शैली के कारण स्वास्थ्य की कल्पना दुर्भर हो गयी है। उत्तम जीवन जीने के लिए सम्पूर्ण स्वास्थ्य प्राप्त करना अति आवश्यक है। स्वास्थ्य के अभाव में शारीरिक, मानसिक एवं आध्यात्मिक विकास की कल्पना भी नहीं की जा सकती। वैसे तो स्वास्थ्य की अनेकानेक परिभाषायें हैं, परन्तु विश्व स्वास्थ्य संगठन ने स्वास्थ्य को इस प्रकार परिभाषित किया है – “स्वास्थ्य पूर्णरूपेण शारीरिक, मानसिक, सामाजिक एवं आध्यात्मिक स्वास्थ्य की स्थिति है। वह मात्र रोगों अथवा अपंगता की स्थिति नहीं है।” (Health is a state of complete physical, mental, social and spiritual well being and not merely absence of disease or infirmity).

सरल शब्दों में “स्व में स्थित होना ही स्वास्थ्य है”। जिसको भी शारीरिक कष्ट हैं वो अपनी पीडाओं में उलझा रहता है, जिसे मानसिक कष्ट है वह अपने अनेको विचारों में ही खोया रहता है, जो दुराचारी या व्यभिचारी है वो कभी भी अपने में रह ही नहीं सकता है। जिसकी आध्यात्मिक उन्नति नहीं हुई है उसका शांत होना असंभव है। ऐसे लोग बाह्य संवेदनाओं में ही लिप्त रहते हैं। जो स्व में स्थित होगा वही बीमारियों से मुक्त तथा प्रसन्न रहता है।

वर्तमान जीवन की ज्वलंत समस्या है मानसिक तनाव। तनाव को सामान्यतया मानसिक तनाव कहते हैं लेकिन तनाव का सिर्फ मानसिक पहलु ही नहीं है, इसका शारीरिक पहलु भी है। इसके द्वारा अनेको रोगों की उत्पत्ति होने लगती है। यह समस्या आज सामान्य सी होती जा रही है। वस्तुतः शरीर और मन अलग अलग नहीं हैं। स्ट्रेस (तनाव) सबको होता है – कोई व्यक्ति स्ट्रेस से अछुता नहीं रह सकता। ज्ञानी व्यक्ति स्ट्रेस को ज्ञानपूर्वक भुगतता है जबकी ज्ञान न होने पर व्यक्ति इसे रो-रो कर भुगतता है। तनाव संबंधी व्याधियों का मुख्य कारण किसी भी व्यक्ति की तीव्र इच्छा और अनिच्छा है जिसका परिणाम शोकाकुल भावनात्मक आवेश, दीर्घकालीन और अनियंत्रित तनाव की भावना, जैसे क्रोध, तीव्र इच्छा, इर्ष्या, डर इत्यादि व्यक्ति की जीवन शैली को प्रभावित करते हैं। पतंजलि योग सूत्र में पांच प्रकार की जन्मजात मानसिक व्याधियां (क्लेश), जो अनियंत्रित भावनात्मक प्रतिक्रियाओं (परेशानियों) का कारण मानी गयी हैं, इस प्रकार उल्लेखित हैं :-

“अविद्यास्मितारागद्वेषाभिनिवेशाः पञ्च क्लेशः”

१. अपने मूलभूत स्वभाव की उपेक्षा (अविद्या)
२. तीव्र इच्छा (राग)
३. तीव्र अनिच्छा (द्वेष)
४. अत्यधिक अहंकार (अस्मिता)
५. डर (अभिनिवेश)

उपर्युक्त पांच क्लेश सभी परेशानियों के कारण हैं। रोग की उत्पत्ति में, इच्छा और अनिच्छा की भूमिका महत्वपूर्ण होती है। ये हमारी क्रियाओं पर शासन करने लगते हैं, ज्यादातर गलत दिशा में। सही बात के विपरीत जाने से व्याकुलता और आवेश बढ़ता है। इस असंतुलन के बढ़ने से मानसिक व्याधी उत्पन्न होती है। इन्हीं आवेशों के कारण नाडी में प्राण का बहाव घटक रूप से अस्य या चंचल होने लगता है, अर्थात् प्राण का बहाव गलत दिशा में बिना किसी लय और एकरूपता के होने लगता है। ऐसी स्थिति में स्थिरता और दृढ़ता बनाए रखने में सक्षम नहीं हो पाती, बल्कि वह अस्थिर हो जाती है। नाडी में प्राण की अस्थिरता और बाधा के कारण भोजन ठीक से पच नहीं पाता। इससे गलत पाचन, अपच हो जाता है व अनुचित तरीके से पचने वाला भोजन शरीर में होता है, तो इस प्रकार की क्रियाएँ होती हैं, जिसके परिणामस्वरूप मनोदेहिक बीमारियाँ होती हैं। प्राथमिक कारण (बुरे विचार) ही रोगों की उत्पत्ति करते हैं, अगर इन कारणों को समूल नष्ट कर दिया जाये तो सभी रोग नष्ट हो जायेंगे। महर्षि वशिष्ठ के अनुसार यदि वास्तविक सत्वगुण से मन का शुद्धीकरण हो तो प्राणवायु पुरे शरीर में स्वतंत्र रूप में प्रवाहित होती है, भोजन का पाचन सुचारू रूप से होता है, जिसके परिणामस्वरूप शरीर में कोई व्याधि उत्पन्न नहीं होती।

स्ट्रेस सभी को होता है। स्ट्रेस को दो रूपों में वर्गीकृत कर सकते हैं – एक 'यु-स्ट्रेस' और दूसरा 'डी-स्ट्रेस'। जो स्ट्रेस कार्यो एवं उपलब्धियों को उन्नत करने में मदद करता है, वह पॉजिटिव होता है। जैसे इम्तहान आया, आपने पढ़ाई में ध्यान लगाया, एक टाइम-टेबल बनाया, इम्तहान में पास होने या अच्छे नंबर लाने के हिसाब से तैयारी शुरू की, तो यह स्ट्रेस का पॉजिटिव (सकारात्मक) रूप है। अब एक दूसरा व्यक्ति है जिसको इम्तहान है या नहीं है, का कोई फर्क नहीं पड़ता, उसके लिए स्ट्रेस परफॉर्मेंस इम्प्रूवमेंट का काम नहीं करेगा। तीसरी प्रकार का व्यक्ति है जो परफॉर्मेंस कैसे इम्प्रूव करेगा या हम पास होंगे, जॉब करेंगे कि नहीं करेंगे, अब वह सिर्फ इसी चिंता में जी रहा है। पढ़ाई उससे हो नहीं पा रही, जब पढ़ने बैठता है तो दिमाग में यह विचार आता है कि फ़ैल तो नहीं हो जाऊंगा, सलेक्शन होगा कि नहीं, नहीं होगा तो क्या होगा, लोग क्या कहेंगे। अब वह दिन रात इसी चिंता में घुला जा रहा है। यह नेगेटिव इफ़ेक्ट है। वह डी-स्ट्रेस में चला जाता है।

यु-स्ट्रेस हमेशा पॉजिटिव इफ़ेक्ट देगा, परफॉर्मेंस को इम्प्रूव करेगा परन्तु डी-स्ट्रेस हमेशा नुकसान करेगा व नेगेटिव इफ़ेक्ट करेगा। स्ट्रेस एक गैप है - जो आप चाहते हैं और जीवन में आपको जो प्राप्त हो रहा, इन दोनों के बीच का अंतर – यही डी-स्ट्रेस पैदा करता है। हमारी इच्छाएँ पूरी होती चली जाएँ तो डी-स्ट्रेस कभी होगा ही नहीं, परन्तु ऐसा कभी होता नहीं है। जो गैप होता है वही डी-स्ट्रेस पैदा करता है और यह जितना बढ़ता चला जाता है, उतना ज्यादा डी-स्ट्रेस में आदमी पड़ने लगता है, उसकी चिंताएँ बढ़ने लगती हैं। वह उतना ही ज्यादा बिमारी की और अग्रसर होने लगता है। यह गैप मिटेगा तो डी-स्ट्रेस खत्म होता चला जाएगा। हमें इस गैप को कम करने की कला सीखना आवश्यक है। इस गैप को इन्सान दो तरह से व्यक्त करता है – एक तो वह रिएक्शन (प्रतिक्रिया) करता है या फिर रेस्पोंड (अनुक्रिया) करता है। अगर उसके सामने कोई भी चैलेंज (समस्या) आया (आती) है तो वो उसके विरोध में खड़ा हो जाता है – ऐसी स्थिति में डी-स्ट्रेस होता है। जो ज्ञानी होता है वह रेस्पोंड (अनुक्रिया) करता है, वह स्थिति को समझता है और उससे कैसे बाहर निकलना है – क्या करना है – कैसे इससे निपटना है, पर अपनी अनुक्रिया करता है। वह डी-स्ट्रेस से बाहर निकलने की कला सीख जाता है, वह डी-स्ट्रेस में नहीं जाता है। जैसे इन्सान के जीवन में ऐसी अवस्था आती है जब उसे पता चलता है की उसे कोई बीमारी हो गयी है (अधिक ब्लड प्रेशर, डायबिटीज या कैंसर इत्यादि), तो पहली बार तो वो डीनायल मोड में चला जाता है और सोचता है कि उसे ऐसा नहीं हो सकता है, वह सोचता है की यह रिपोर्ट गलत है – वह दोबारा / तिबारा टेस्ट करवाता है। जब दोबारा या तिबारा, अलग अलग लैब से टेस्ट करने पर भी बीमारी कन्फर्म हो जाती है तो इन्सान क्रोध की अवस्था में आ जाता है कि मुझे क्यों हो गया? भगवान से शिकायत करता

है कि क्या वह ही मिला था? इस तरह अपराध बोध के कारण उसे डिप्रेसन होने लगता है। जब डॉक्टर बता देता है कि आपको जीवन भर दवाई खानी है व इस बीमारी के साथ ही जीना है तब एक्सेप्टेंस मोड आता है व इन्सान बीमारी के साथ-साथ जीना सीखने का प्रयास करता है। डिनायल से एक्सेप्टेंस तक जाने में जितना कम समय लगेगा, उतना जल्दी वह डी-स्ट्रेस से बाहर आ जाएगा। जो व्यक्ति रेस्पोंड करेगा वह उतनी ही जल्दी स्ट्रेस से बाहर आयेगा और उसका स्वास्थ्य ठीक रहेगा।

आपके सामने जब कोई अनचाही अवस्था आ जाती है – जैसे अचानक सांप आ गया तो या तो आप उसे मार देंगे या आपको लगेगा कि आप सक्षम नहीं हैं, डर लग रहा है तो आप वहाँ से भाग खड़े होंगे। लेकिन दोनों ही अवस्था में आपको अत्यधिक तात्कालिक ऊर्जा की आवश्यकता होगी। ये हृदय की गति को बढ़ाएगा एवं ब्लड प्रेशर बढ़ेगा। यह तो फिजिकल अवस्था में आया परिवर्तन है लेकिन मानसिक अवस्था में क्या होता है? हमारे शरीर में Autonomic nervous system हमारे कण्ट्रोल में नहीं होता है और यह शरीर के अंदरूनी अंगों (लीवर, हृदय, गुर्दे आदि) का सञ्चालन करता रहता है। Autonomic nervous system दो प्रकार के होते हैं – Parasympathetic (मन एवं हृदय गति को कण्ट्रोल करता है) एवं Sympathetic (उत्तेजना पैदा करता है)। स्ट्रेस के दौरान Sympathetic एक्टिविटी बढ़ जाती है – इसमें आपका ब्लड प्रेशर, हार्ट-बीट एवं रक्त में शुगर की मात्रा बढ़ जाती है एवं यह सभी चीजें आपको उत्तेजना में ले आती है। जब कोई व्यक्ति ऑफिस में है, बॉस से प्रताड़ित है, सम्बन्ध अच्छे नहीं है, बहुत ज्यादा काम का बोझ लादा जा रहा है या उसको तंग किया जा रहा है, बॉस से ज्यादा कुछ कह नहीं सकता – ऐसी परिस्थिति में उसका द्वन्द बाहर नहीं आता। उसकी लड़ाई मन के अन्दर चलती है – वह मन में अन्दर अपने बॉस को कोसता है, गाली देता है, यह सभी क्रियाएं करता है लेकिन वेदना की अवस्था बनी रहती है तो लगातार ब्लड शुगर की मात्रा बढ़ेगी, हृदय गति बढ़ेगी, ब्लड प्रेशर बढ़ेगा, नींद नहीं आयेगी। यह सारे डी-स्ट्रेस हारमोंस उस पर परिलिखित होने लगेंगे और जितने समय तक वह गैप में रहेगा, डी-स्ट्रेस में रहेगा, उतना ही ज्यादा उसका स्वास्थ्य खराब होगा। इससे उसमें Anxiety, depression, अनिद्रा, चिडचिडापन होने लगता है एवं कार्य क्षमता में खराबी हो जाती है। अगर हम यह कला सीख जाएँ कि जो हमें मिल रहा, ठीक है – तो हमें तनाव नहीं होगा। इसके लिए व्यक्ति को अपने द्रष्टिकोण में, अपने attitude में परिवर्तन लाने की आवश्यकता होती है। केवल बाह्य कारक ही तनाव का कारण नहीं बनते, व्यक्ति की आंतरिक सोच और विचार इसमें महत्वपूर्ण भूमिका निभाते हैं। कई बार व्यक्ति का दुश्मन उसका स्वयं का मन होता है। किसी को नकारात्मक सोचने और बोलने की आदत है तो वह तनाव का मुख्य कारण बन जाता है। शंकाशील या निराशावादी लोग सभी प्रकार की स्थितियों और परिस्थितियों का विश्लेषण करने में सक्षम होते हैं परन्तु संभव अवसरों और समाधान का बदतर पूर्वानुमान लगाते हैं। हर कोई तनाव से निपटने का अलग स्तर रखता है – कुछ तनाव के उच्च स्तर को संभाल सकते हैं, जबकि अन्य ऐसा नहीं कर सकते।

योग का अभ्यास विश्रांति को बढ़ावा देकर तनाव कम करने में मदद करता है। योगाभ्यास द्वारा शरीर, मन और श्वास लाभान्वित होते हैं, जो सामान्यतया तनाव के शिकार होते हैं। योग प्राणायाम एवं ध्यान से शरीर, मन और आत्मा को नयी ऊर्जा मिलती है, मन को शान्ति मिलती है, तनाव से राहत मिलती है, अनिद्रा कम होती है, थकान और सिरदर्द कम होते हैं एवं उदासी से राहत दिलाने में मदद मिलती है। पश्चात्ताप का भाव न रखें, वर्तमान में जीने की कला सीखें एवं तनाव से मुक्ति पायें।

Dealing with the dearth of corroborative evidence and plenty of possible arguments in the matter of fake ITC cases

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A. The phenomenon

1. Facilitating the availability of fake ITC without actual supply of goods by creating multiple business entities involving in circular transactions by using real credentials of existing individuals at business places which may often be in existence is in itself a big business which became operational right from the times GST was rolled out. But the phenomenon is not new to indirect taxation. The idea had been in action in full swing during the Central Excise era as well. Many of the masterminds religiously continued with the business as is indicated from the trend of cases being booked which involve hundreds of crores of rupees of fake ITC.

B. Booking of the case

2.1. With availability of adequate data analytical tools with the superior intelligence, the investigation agencies have booked many cases of supply of fake ITC bills without actual supply of goods where the masterminds have also been apprehended and the entire chain of suppliers and recipients have been identified with quantification of the volume of ITC involved.

2.2. In most of the cases, a mastermind registers fake proprietorship firms and opens bank accounts in the names of separate individuals who sometimes share their credentials for a fix monthly amount promised by the mastermind. The bank accounts opened by the masterminds for such business entities, show the details of money circulation wherein consideration is first received from the recipients of supply through banking channels and then the amount received is either circulated or withdrawn in cash for utilization in paying back the consideration after deducting the commission charged for making goods-less invoices available for availment of fake ITC.

3. But not all cases of fake ITC are booked with such precision. In many cases the supplier is found to be not existing at the declared place of business or the proprietor of the business entity is found to be not traceable. A logical conclusion is, thus, drawn and fairly enough to the effect that the supplier is not in existence and, therefore, no supply of goods could have been effected by him. Accordingly, it is proposed that ITC of the tax involved in invoices raised by him is liable to be denied to the recipient of goods-less invoices.

4. There are other cases as well, diametrically different from the cases involving non-existent suppliers, where the supplier is in existence and doing business. But, the recipient of supply from such existing supplier, according to the statements tendered by the recipient himself, is simply in the business of obtaining goods-less invoices and passing on fake ITC. The only inference that can be drawn is that either

no outward supply of goods was effected by such supplier or goods were diverted in open market without valid invoices and goods-less invoices were issued to facilitate availment of fake ITC. Consequently, the supplier appears to be liable to penal action for the offence as described in section 122(1) (i) and / or (ii) of the CGST Act, 2017.

C. The parties involved

5. The ultimate objective, though not sole, of transactions in goods-less invoices is to make available fraudulent ITC to such taxable person who has to make genuine taxable supply of goods and required to pay tax. Thus, the entire chain of transactions and, the adjudication proceedings for determination of demand of ITC or tax as well, essentially involves existing suppliers and existing recipients as well who may be situated at the point of origin or the tail end of the entire gamut of fake ITC transactions.

6. Determination of the liability of the intermediaries, especially those caught by the agencies, who received fake ITC and pass on the same, may not be so much of a tough task as the statements tendered by them are corroborated to a great extent by the trail of banking transactions unearthed. The absence of sufficient business place or transactions with any transporter coupled with the evidence of operation of multiple businesses in the name of others are some leading factors which help prove the case against them to a great extent. However, the case with existing suppliers or buyers may be somewhat different.

D. Finding the evidence and assessment thereof

7. Investigation of fake ITC cases involves addressing multiple issues. An angle of investigation important for the case against fake intermediary may not be of much help for the cases against the existing supplier or the existing recipient. Conversely investigation from the point of view of an existing supplier or buyer may involve efforts not commensurate with the output obtained from the point of view of the case against the masterminds especially when multiple suppliers and recipients happen to be involved in each such case.

8. Another aspect of the matter is ITC received by existing taxable persons from suppliers who on physical verification are found to be not existing. The difficulty is compounded by the fact that such supplier has already closed business a long back adding to the woes when cancellation has happened on request of the taxable person (non-existing supplier) himself.

9. Thus, the problem of proof arises in such cases where allegation is to the effect that (i) an existing taxable person has received ITC from non-existing suppliers; and (ii) an existing supplier has passed on ITC through goods-less invoices to fraudulent recipients, existing or otherwise.

10. Besides operational constraints and different angle of priorities, adequacy of the evidence collected from the fraudulent operators may sometimes lead to a situation where not much independent evidence becomes available with respect to such existing taxable persons (both suppliers and recipients). That leads to the

situation where such a noticee comes up with multiple arguments suggesting what the investigation was required to do in order to prove the alleged wrongdoing on his part. This is because of the fact that due to non-cooperation on his part or otherwise, the investigation could not collect each and every piece of evidence.

E. The arguments

11.1. There have been a number of cases where the suppliers have been found to be non-existent at the declared principal place of business during physical verification by investigating agencies. The proprietor of the business entity may also be found to be not traceable. The logical conclusion drawn is that the ITC has been passed on without underlying supply of goods.

11.2. The recipient of ITC in such a case comes up with an entire volley of arguments on the following, alternate, lines:-

- (A) He has received the invoice issued by the supplier covering the goods;
- (B) The supplier has sent the goods through transport agency and GR Note is available in original besides copy of driving licence of the driver;
- (C) Weighment slips generated at the place of origin of supply and termination thereof are available with him;
- (D) Bank statement shows payment of consideration to the supplier;
- (E) Supplier's premises were verified when registration had already been surrendered way back; and
- (F) No investigation was conducted at the end of the recipient of invoices.

12. In cases where an existing supplier is alleged to have issued goods-less invoices the arguments may be the other way round including the submission that there is no evidence of his having diverted the goods to somewhere else; or that statement of recipient has not been corroborated by any documentary evidence; or that there is no evidence of flow back of the consideration received through banking channels.

F. Collection of evidence

13. Collection of corroborative evidence in cases of fraudulent activities carried out with ultimate planning and that too, in the distant past, is easier said than done. Identification of and enquiry from all the transporters, booking agents, drivers, persons in-charge of the affairs etc. involves significant human effort. Following the entire trail of the transaction of the past is also cumbersome and time consuming with uncertainty of outcome.

14.1. Another point worth noting is that verification, at a current point of time, of the existence of a taxable person (say supplier) in the distant past involves its own intricacies. Existence or otherwise of a business entity at a given place for a given period of time is not dependent upon continuation or closure of business rather it is a matter of fact only. Any inquiry into existence of a business entity is made at a given point of time whereas a person making transactions with such entity might have interacted with him for a given period of time while the business may exist for longer

period of time which in itself is infinite. In so far as department is concerned, any inquiry as regards existence of a given taxable person is made at a particular point of time when an intelligence to that effect is received. But a recipient who has been in business with a supplier can have ample evidence as regards continuous existence of such supplier for a particular period of time.

14.2. Thus, the distinction between period of time and point of time can outweigh the arguments of a recipient if the fact of non-existence of the supplier ascertained at later stage can be corroborated for example, alternatively, by inquiry from the owner of premises or inquiry at the permanent residential address of the proprietor or inquiry from the neighboring business entities or detailed analysis of business premises so as to ascertain if any business set up ever existed or through electricity bills of the business premises for the concerned period or through the documents submitted to bank or from the address for future communication furnished while applying for cancellation. A small piece of such corroborative evidence logically shifts the onus to the taxable person to prove the genuineness of the transactions.

15. A complete chain of documents starting from the supplier's invoice to GR Note, Weighment Slips of origin, Bank Statement, Freight Ledger, Party Ledger and Weighment Slip at termination point are submitted to prove that goods had actually been received. In a unique case the recipient may also produce unloading slips prepared by a manpower supply agency who was awarded contract for unloading of goods, alongwith tax invoices issued by the agency for the supply of manpower services.

16. When allegation is that goods-less invoices only have travelled, one has to keep in mind as to what constitutes evidence. Evidence is the piece of information, normally in documentary form or capable of being so presented, that comes into existence with the timeline along which an activity or for that matter, a transaction happens. Thus, distinction between what can be created and what comes into existence is important in such cases. And, accordingly, the taxable person is expected to corroborate these documents with something more in the form of evidence, say, of travel through toll booths or of the travel timeline of the driver concerned which is evidence that comes in existence along the timeline of the transaction if it has actually happened.

17. Banking transactions form an evidence of cash withdrawal of the consideration received through banking channels against supply of goods-less invoices which is subsequently returned to the recipient. However, in case of existing supplier this may not happen always. Rather it may so happen that the consideration received from recipient of goods-less invoices is not withdrawn from bank and the consideration received in cash from recipient of invoice-less supply is utilized for paying back to the recipient of goods-less invoices. Thus, alternate evidence of diversion of goods, or non-possession of goods in the first place may prove to be effective evidence of supply of goods-less invoices by existing supplier.

G. Mathematical precision and a prudent man's estimate

18. In such situations where the basic evidence indicating non-existence of the supplier/ buyer has been brought on record it is not necessary that every precise detail of the fraudulent activity is collected to prove the allegation. Observation of Hon'ble Supreme Court in judgment dated 03.04.1974 in Civil Appeal No. 1142 of 1973 titled Collector of Customs, Madras and Others v/s D. Bhoormal reported at 1983 (13) ELT 1546 (SC) is relevant to reproduce as follows:-

“30. XXXXX

But in appreciating its scope and the nature of the onus cast by it, we must pay due regard to other kindred principles, no less fundamental, of universal application. **One of them is that the prosecution or the Department is not required to prove its case with mathematical precision to a demonstrable degree; for, in all human affairs absolute certainty is a myth**, and as Prof. Brett felicitously puts it-"all exactness is a fake". El Dorado of absolute Proof being unattainable, the law, accepts for it, probability as a working substitute in this work-a-day world. The law does not require the prosecution to prove the impossible. All that it requires is the establishment of such a degree of probability that a prudent man may, on its basis, believe in the existence of the fact in issue. **Thus legal proof is not necessarily perfect proof often it is nothing more than a prudent man's estimate as to the probabilities of the case.”**

H. Conclusion

19. In carefully crafted fraudulent activities the concerned parties try their best to create every possible piece of evidence and not leave any trace of the fraudulent activity. Thus, investigation needs to be directed to every possible angle aimed at enquiring from the persons involved in the entire chain of business starting from the coming into existence of the business to the transaction timeline. A small piece of evidence collected from someone may be of great help to corroborate the case of the department.

20. Thus, it can be concluded that if the allegation of non-existence of a supplier is corroborated by any of evidences which strike at the very root of the existence of the business place or the proprietor himself or the address itself, the onus will shift to the recipient to prove the transactions along the time line and the existence of the supplier throughout the period of time of their interaction.

(The write-up is simply intended to share the personal experience of the writer with the colleagues and the views expressed therein may not necessarily represent the stand taken by him on the provisions of law in his official capacity.)