



Insights of and Intricacies involved in Indirect Tax Litigation

CA Tarun Sharma

10th December 2022

Coverage



IDT structure & Overview of IDT Litigation



GST – Legislation & Litigation: An area to focus



Relevant GST provisions: Recapitulation in the light of Circulars / Instructions



GST – Pre & Post Litigation: Support to the client

PROCEDURAL SUPPORT

Illustration –

- Registration
- Book keeping
- Statement / Returns filing – GSTR 1, GSTR 3B, GSTR 9, GSTR 4, ITC 04
- ITC Reconciliation
- GSTR 9C Reconciliation
- Support during Department's Audit
- Reply of department's routine queries

LITIGATION SUPPORT

Illustration –

- Support during Investigation / Search
- Analysis of SCN / Impugned Order – Way forward
- Drafting & filing of Reply / Appeal
- Appearance before the Adjudicating Authority / Appellate Authority / Tribunal

Major laws – Pre & post 01.07.2017

- Central Excise
- Service Tax
- Sales Tax / VAT
- Entry Tax
- Entertainment Tax

Till 30.06.2017

- GST

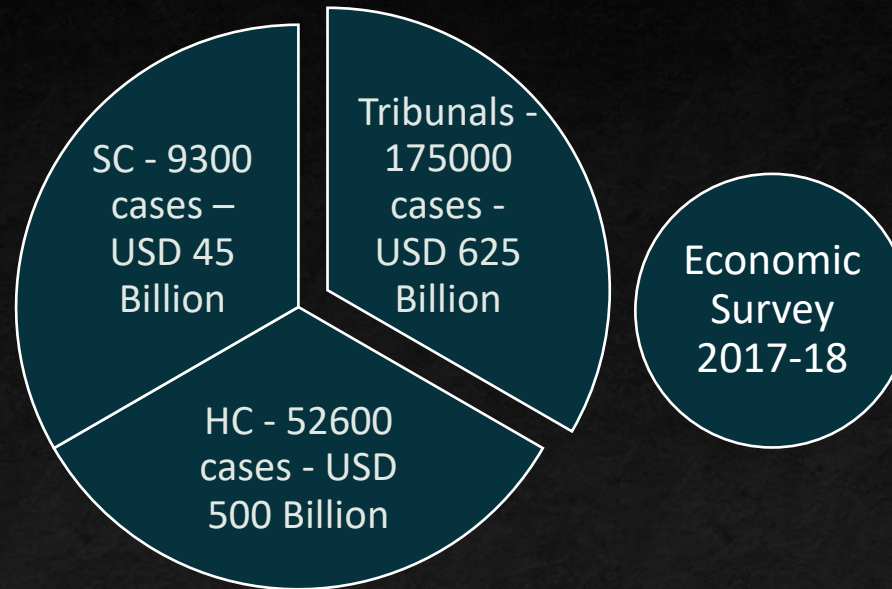
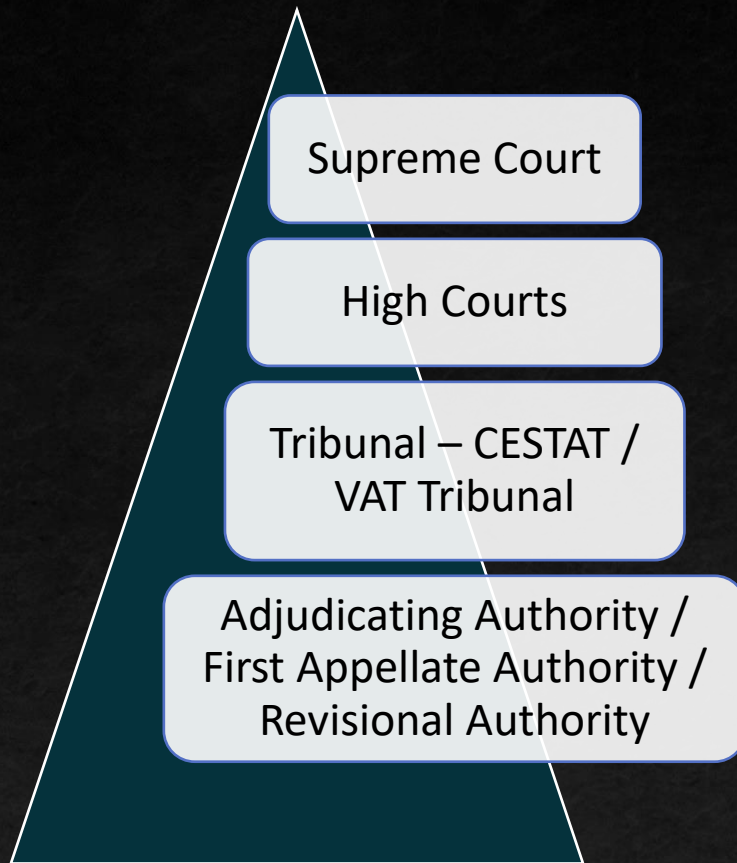
W.e.f. 01.07.2017

- Customs + FTP

Continuing since inception

IDT
structure

Tax Litigation – Pending status



Major Reason: Perverse / irregular orders

Overview of Tax Litigation

Tax Litigation – Pending status

Even though the success rate of the tax department at all three levels of appeal — Appellate Tribunals, High Courts, and the Supreme Court is **under 30 per cent** for both direct and indirect tax litigation, it remains “undeterred” and “persists in pursuing litigation at every level of the judicial hierarchy - [Economic Survey: 2017-18](#)

Close to Rs 9.46 lakh crore is held up in tax litigation. — [Economic Survey: 2019-20](#)

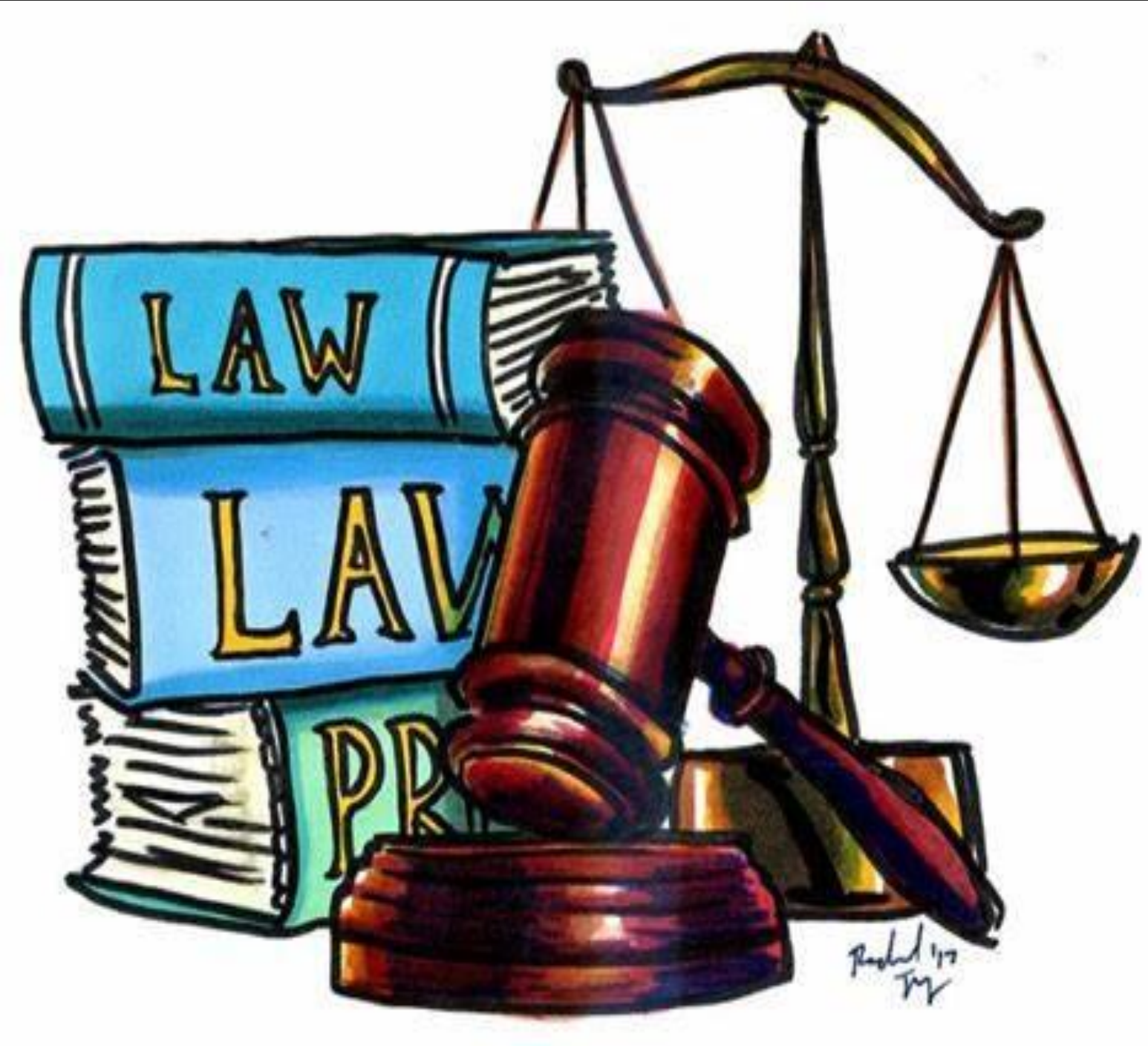
More than Rs 3.75 lakh crore is blocked in litigations in service tax and excise. — [Mrs. Nirmala Sitharaman - Budget Speech 2019-20](#).

More than 40,000 appeals of CE & ST and around 18,000 appeals of Customs are pending at CESTAT — [Chief Commissioner \(AR\), CESTAT \(Preface of ‘E-Compendium of CESTAT case laws – Pro Revenue’ issued in April 2021\)](#)

[Last three years pro-revenue CESTAT cases](#)

- *Central Excise & Service Tax – **64** Judgements*
- *Customs – **122** Judgements*

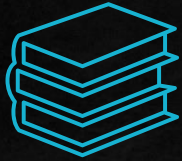
Overview of Tax Litigation



GST – Legislation & Litigation

AN AREA TO FOCUS

GST – Facts & Figures



CGST Act, IGST Act, SGST Act, CGST Rules, IGST Rules, Compensation Cess Act & Rules



451 – CGST Notifications & 155 CGST Rate Notifications



588 GST Circulars / Instructions / Press release by CBIC



2099 GST Trade Circulars / Orders by CST-State



8061 judgements / Orders (reported - TMI)

Prime area of litigation

ITC, Exemption, Refund, Valuation, Classification, Place of Supply, Procedural issues viz. Registration, E-way bill

GST – Legislation & Litigation

Registration – Active Taxpayers

(Source: GSTIN - A Statistical Report on Completion of 5 years of GST)

Active Taxpayers as on 30th June, 2022: Summary



Normal Taxpayers	Composition Taxpayers	Input Service Distributor	Tax Collector at source	Tax Deductor at source	Others
1,19,74,464	15,86,906	7,076	16,461	2,41,072	3,707

Total	Migrated from Pre-GST
1,38,29,686	47,09,386

GST – Key Statistics Overview

Active GST taxpayer as on 31st August 2022 (Source: GST Portal)

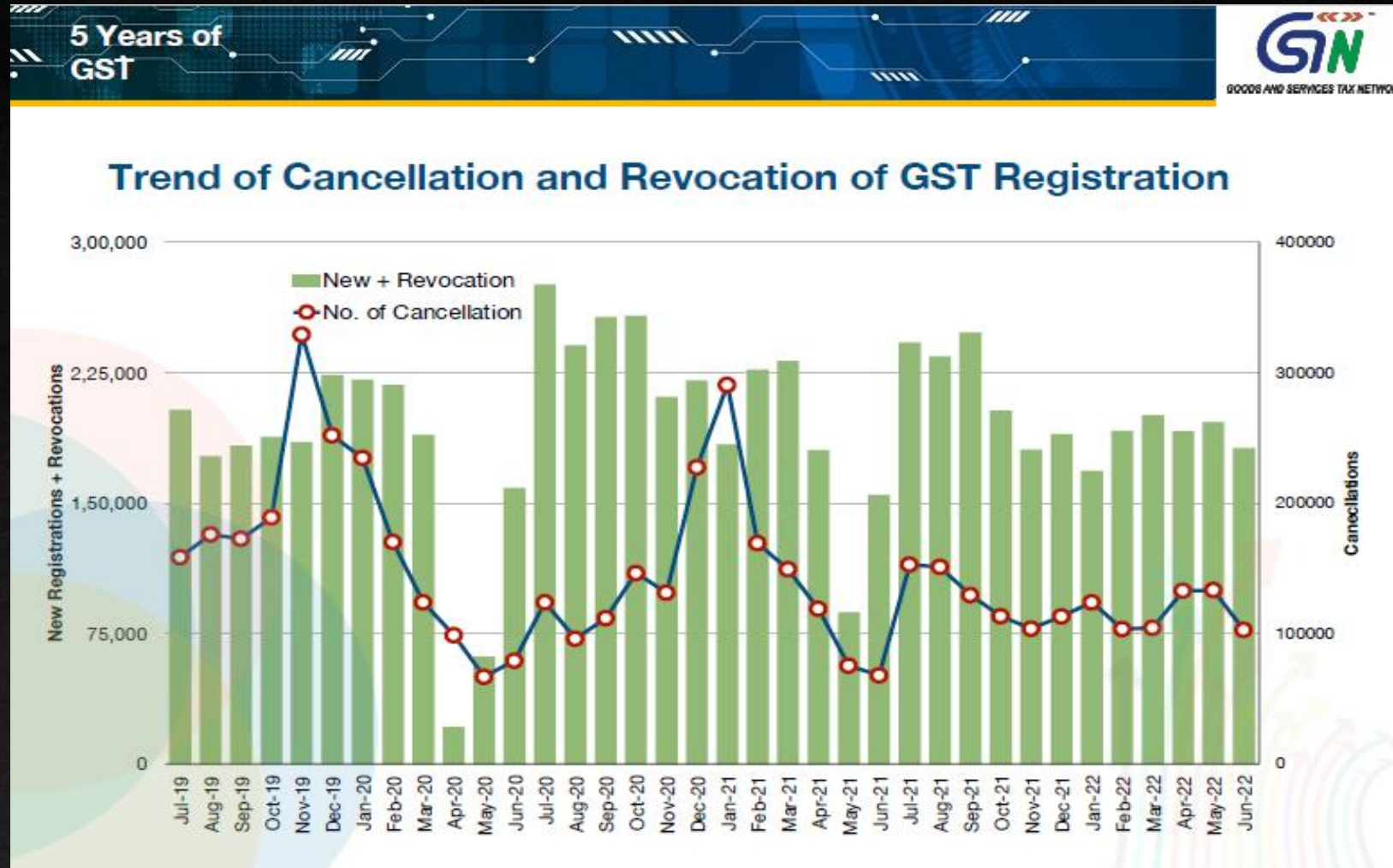
Pan India = 1,39,18,036 **Haryana** = 5,05,916 **Punjab** = 3,87,441

Uttarakhand = 1,95,006 **Himachal Pradesh** = 1,19,154 **Chandigarh** = 30,630

10 States having active GST taxpayers exceeding 5 lacs as on 31st August 2022

Registration – Cancelled & Revoked

(Source: GSTIN - A Statistical Report on Completion of 5 years of GST)



GST – Key Statistics Overview

Registration – Approval / Rejection

(Source: GSTIN Annual Report 2020-21)

S.No.	Activity report in the Registration Module during the week	09-08-2021 to 15-08-2021		
		Centre	State	Total
1a	Active Taxpayers at the end of last day of the week reported	50,05,087	78,04,477	1,28,09,564**
1b	Active Taxpayers at the end of last day of the previous week	49,92,396	78,00,538	1,27,92,934
2	New Application for registration received	41,688	46,798	88,486
2a	Out of 2, Registration Application received with Aadhaar -Yes	35,816	40,388	76,204
2b	Out of 2, Registration Application with Aadhaar - No	5,872	6,410	12,282
3	Approved/Rejected/SCN issued -- AADHAAR YES			
3a	Deemed Approved	131	3,065	3,196
3b	Approved by Officer	22,755	19,601	42,356
3c	SCN issued	19,285	22,863	42,148
3d	Rejection order issued	10,107	13,174	23,281
4	Approved/Rejected/SCN issued -- AADHAAR NO			
4a	Deemed Approved	102	657	759
4b	Approved by Officer	2,320	2,120	4,440
4c	SCN issued	4,150	4,616	8,766
4d	Rejection order issued	2,976	3,454	6,430

*Note: This report is based on activity during the week.

** This includes only Normal and Composition Taxpayers

GST – Key Statistics Overview

Return – Cumulative

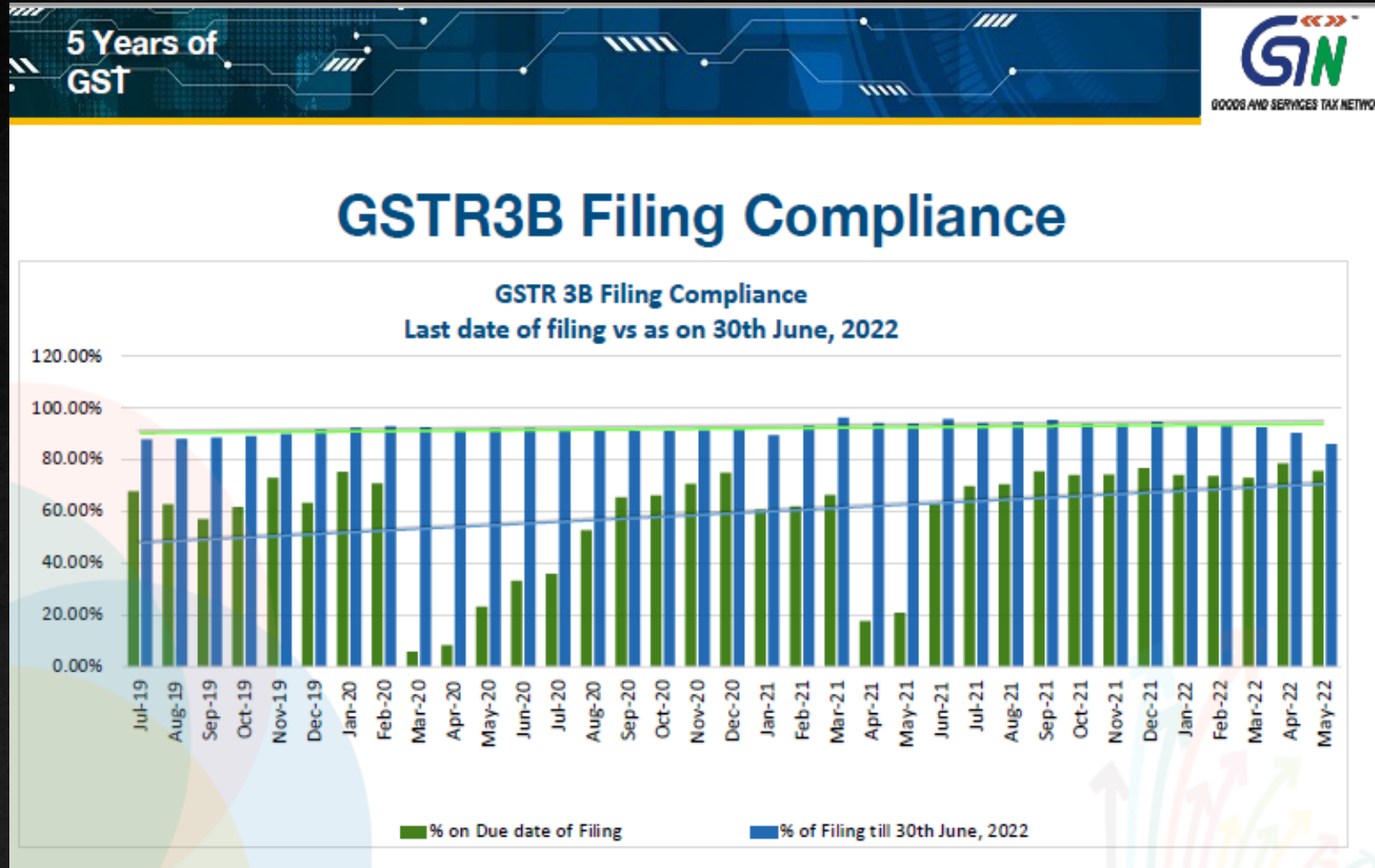
(Source: GSTIN - A Statistical Report on Completion of 5 years of GST)



GST – Key Statistics Overview

Return – R3B Filing Compliance

(Source: GSTIN - A Statistical Report on Completion of 5 years of GST)




GST – Key Statistics Overview

Revenue – Sector wise

(Source: GSTIN - A Statistical Report on Completion of 5 years of GST)

5 Years of
GST



 GOODS AND SERVICES TAX NETWORK

Contribution to GST Revenue* from Different Constitutions of Business

CONSTITUTION OF BUSINESS	No. of Tax Payers who has entry in cash ledger against R3B/R4	% age of Tax Payers	COLLECTION	%AGE OF COLLECTION
Public Limited Company	79,753	0.55%	15,05,669	34.83%
Private Limited Company	8,84,214	6.09%	12,07,787	27.94%
Proprietorship	1,16,43,950	80.20%	5,73,837	13.28%
Public Sector Undertaking	3,010	0.02%	4,16,695	9.64%
Partnership	15,28,616	10.53%	3,15,200	7.29%
Others	31,974	0.22%	96,804	2.24%
Society/ Club/ Trust/ AOP	1,31,708	0.91%	59,626	1.38%
Limited Liability Partnership	1,08,408	0.75%	50,888	1.18%
Government Department	8,103	0.06%	42,607	0.99%
Statutory Body	1,069	0.01%	16,463	0.38%
Foreign Company	1,870	0.01%	16,217	0.38%
Hindu Undivided Family	89,178	0.61%	10,931	0.25%
Local Authority	7,224	0.05%	9,191	0.21%
Unlimited Company	109	0.00%	444	0.01%
Foreign Limited Liability Partnership	128	0.00%	88	0.00%
Any other body notified by committee	88	0.00%	12	0.00%
Grand Total	1,45,19,402	100.00%	43,22,460	100.00%

**Note


- Status as on 30th June 2022; Return period accounted up to March 2022
- Figures doesn't include IGST on imports

GST – Key Statistics Overview

Revenue & Return - Migrated Taxpayer

(Source: GSTIN - A Statistical Report on Completion of 5 years of GST)

5 Years of
GST



GOODS AND SERVICES TAX NETWORK

Composition Taxpayers: Returns and Payment Trends*

Return Period	No. of Returns Filed	No. of GSTINs Making Payment	Nil Filers	Tax Paid in Cr.	Avg. Tax per GSTIN/ quarter
Jul to Sep-17	10,24,279	8,57,330	1,68,701	390.54	4,555.26
Oct to Dec-17	15,40,352	13,55,379	1,86,823	667.50	4,924.82
Jan to Mar-18	16,01,890	13,68,137	2,34,225	782.58	5,720.07
Apr to Jun-18	15,85,020	13,12,410	2,72,735	716.47	5,459.20
Jul to Sep-18	15,52,620	12,83,000	2,69,710	668.77	5,212.54
Oct to Dec-18	15,21,748	12,80,757	2,41,065	717.78	5,604.34
Jan to Mar-19	14,81,197	12,46,227	2,35,031	756.34	6,069.04
Apr to Jun-19	14,47,556	10,62,715	3,84,877	702.82	6,613.39
Jul to Sep-19	14,11,606	10,19,110	3,92,519	648.04	6,358.83
Oct to Dec-19	13,95,054	10,24,659	3,70,407	715.41	6,981.90
Jan to Mar-20	13,74,309	9,86,541	3,87,773	696.00	7,055.00
Apr to Jun-20	13,68,715	8,08,739	5,59,979	365.42	4,518.44
Jul to Sep-20	13,60,856	9,11,485	4,49,367	545.79	5,987.88
Oct to Dec-20	13,33,854	9,30,102	4,03,736	680.39	7,315.22
Jan to Mar-21	13,07,184	9,00,865	4,06,287	715.82	7,945.86
Apr to Jun-22	12,52,749	6,41,191	6,11,426	389.35	6,072.30
Jul to Sep-22	12,12,688	6,78,006	5,34,473	489.11	7,214.01
Oct to Dec-22	11,60,184	6,99,036	4,60,774	566.32	8,101.45
Jan to Mar-22	10,69,395	7,16,312	3,52,303	609.70	8,511.71

* The number of taxpayers above are of those who filed returns


* Average tax payment in cash is based on non-nil returns

GST – Key Statistics Overview

Refund – RFD 01 Status

(Source: GSTIN Annual Report 2020-21)

4 Years of GST



GOODS AND SERVICES TAX NETWORK

Online Refund Status: As on 30th June, 2021

#	STATUS	COUNT	AMOUNT (IN CR.)	EXPLANATION	
1	Total application received since 26/09/2019 (in RFD-01)	7,06,659	2,09,928.30		
2	Total applications withdrawn	3,200	791.70		
3	Filed, but yet to be acknowledged (RFD0-01)	21,219	7,416.12		
4	Out of (1-2-3) above, cases where deficiency memo issued (RFD-03)	1,78,006	48,892.64		
4	Cases which are at various stages of processing (1-2-3-4)	5,04,234	1,52,827.84	Percentage of 5,04,234 ↓	Percentage of 152827.84 ↓
5	Out of 4 above, cases which have been acknowledged but no further processing has started	16,878	4,291.05	3.35%	2.81%
6	Out of 4 above, cases where Provisional Order has been issued (RFD-04)	2,569	1,962.92	0.51%	1.28%
7	Out of 4 above, (RFD-06) issued	4,74,661	1,38,628.30	94.14%	90.71%
8	Out of 4 above, cases where SCN has been issued which have not been replied (RED-08)	5,658	1,832.85	1.12%	1.20%
9	Out of 4 above, cases where SCN has been replied and case under process (RFD-09)	4,481	2,705.68	0.89%	1.77%
10	Number of Payment Order Issued in RFD-05	4,70,238	1,23,798.38	Percentage of 4,70,238 ↓	Percentage of 1,123,798.38 ↓
11	Out of (2) above, Disbursed by PFMS	4,46,100	1,17,796.99	94.87%	95.15%

****Note**


- The figures shown are for the period post 26th Sep, 2019 after online refund was launched

GST – Key Statistics Overview

Refund – RFD 01 Status

(Source: Based on GSTIN - A Statistical Report on Completion of 5 years of GST)

5 Years of GST



GOODS AND SERVICES TAX NETWORK

Online Refund Status: As on 30th June, 2022

#	STATUS	COUNT	AMOUNT (IN CR.)	EXPLANATION	
1	Total application received since 26/09/2019 (in RFD-01)	11,31,314	3,58,011		
2	Total applications withdrawn	18,412	5,841.62		
3	Filed, but yet to be acknowledged (RFD0-01)	21,278	6,990		
4	Out of (1-2-3) above, cases where deficiency memo issued (RFD-03)	2,56,382	70,409.77		
4	Cases which are at various stages of processing (1-2-3-4)	8,35,242	2,74,769.95	Percentage of 8,35,242 ↓	Percentage of 2,74,769.95 ↓
5	Out of 4 above, cases which have been acknowledged but no further processing has started	19,085	5,087.49	2.28%	1.85%
6	Out of 4 above, cases where Provisional Order has been issued (RFD-04)	1,521	1,184.88	0.18%	0.43%
7	Out of 4 above, (RFD-06) issued	8,04,589	258366.24	96.33%	94.03%
8	Out of 4 above, cases where SCN has been issued which have not been replied (RED-08)	4,930	1,367.81	0.59%	0.50%
9	Out of 4 above, cases where SCN has been replied and case under process (RFD-09)	5,019	2,735.11	0.60%	1.00%
10	Number of Payment Order Issued in RFD-05	7,87,804	2,31,349.08	Percentage of 787,804 ↓	Percentage of 231,349.08 ↓
11	Out of (10) above, Disbursed by PFMS	7,67,072	2,25,832.60	97.37%	97.62%

The figures shown are for the period post 26th Sep, 2019 after online refund was launched

* The figures shown are for the period post 26th Sep, 2019 after online refund was launched

GST – Key Statistics Overview

Refund – RFD 01 Status

During 26.09.2021 to 16.08.2021

RFD-01 (Refund Application) (All the figures are mutually exclusive)	Description of Form	16-Aug-2021
Total No. of Applications Filed & Amount Claimed till date	No. of Refund Application (RFD-01 Filed) till date	7,59,939
	Amount Claimed (Rs. in Cr.) till date	2,26,167.90
Current Status - RFD-03 (Deficiency Memo Issued; Tax payer is to file fresh application)	No. of RFD-03 Issued	1,88,117
	Amount Claimed (Rs. in Cr.) against which RFD-03 issued	52,292.56
Current Status - RFD-06 (Final Order Passed)	Final Order Passed (RFD-06) (Refund sanctioned)	
	No. of Final Refund Order Passed (RFD-06)	3,76,403
	Amount Sanctioned (Rs. in Cr.)	95,087.08
	Final Order Passed (RFD-06) (Refund Partially Sanctioned)	
	No. of Final Refund Order Passed (RFD-06)	91,509
	Amount Sanctioned (Rs. in Cr.)	39,261.42
	Final Order Passed (RFD-06) (Rejected)	
	No. of Final Refund Order Passed (RFD-06)	52,818
	Amount Rejected (Rs. in Cr.)	18,356.81
	Final Order Passed (RFD-06) (Transferred to CWF)	
	No. of Final Refund Order Passed (RFD-06)	271
	Amount Transferred to CWF (Rs. in Cr.)	27.60
Current Status - Payment Order (RFD-05) issued	No. of RFD-05 Issued	5,15,066
	Amount of RFD-05 (Rs. in Cr.)	1,35,954.90

(Source: GSTIN Annual Report 2020-21)

GST – Key Statistics Overview

Refund – IGST paid on exports

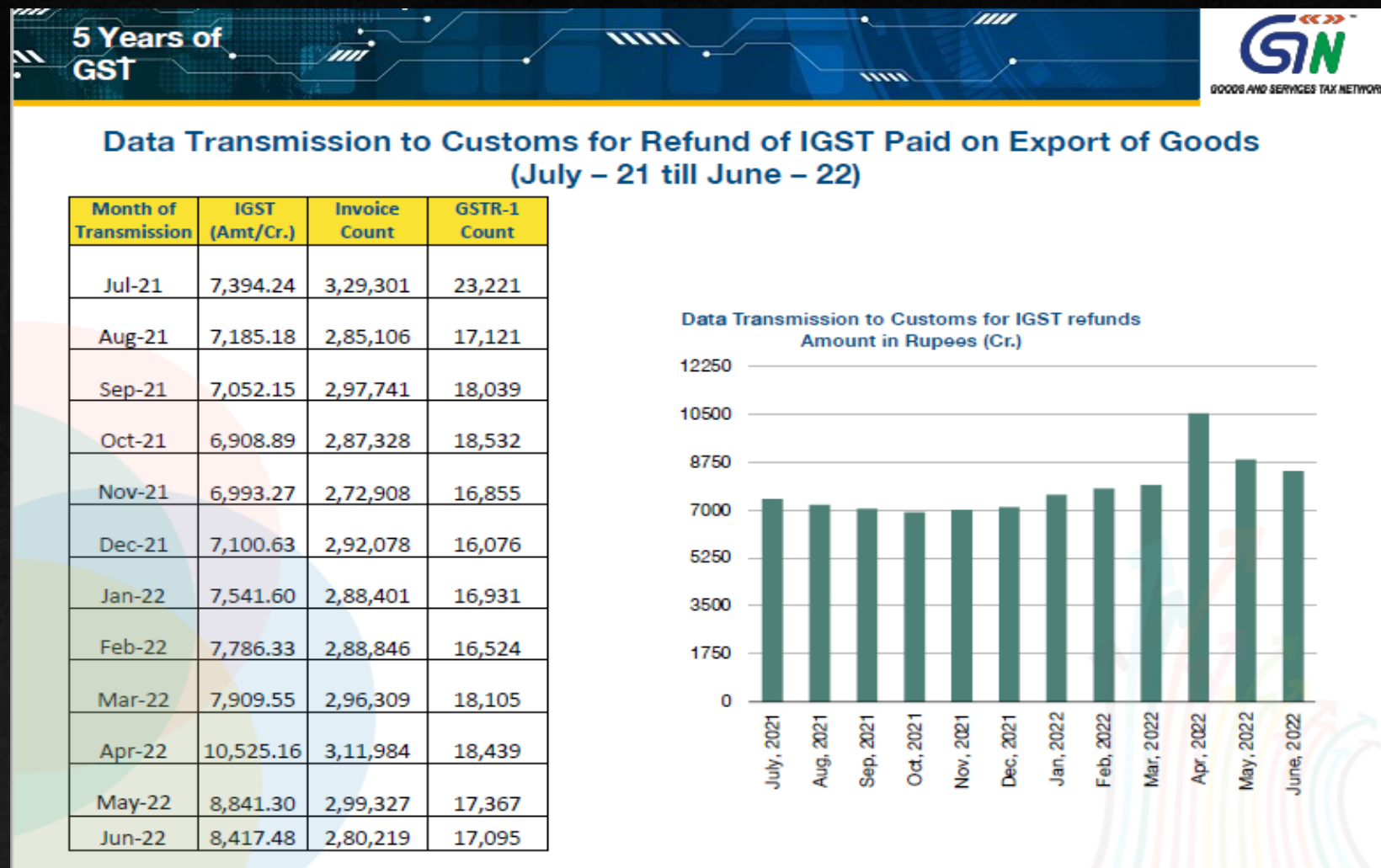
(Source: GSTIN Annual Report 2020-21)



GST – Key Statistics Overview

Refund – IGST paid on exports

(Source: Based on GSTIN - A Statistical Report on Completion of 5 years of GST)



GST – Key Statistics Overview



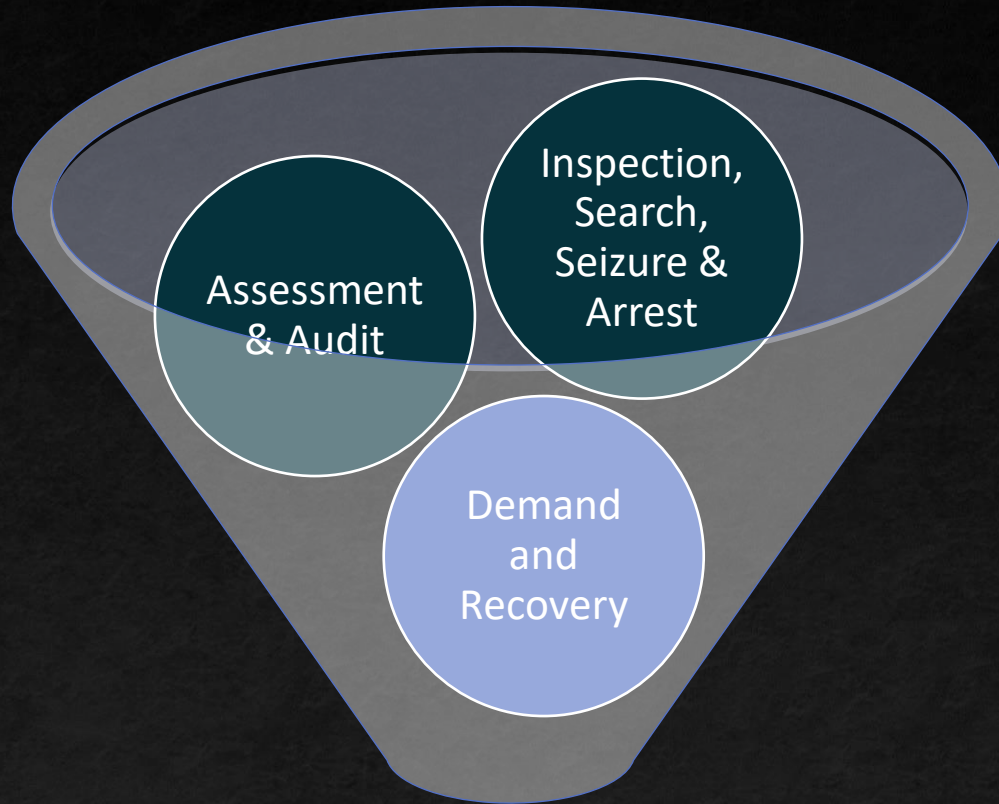
GST

Goods & Services Tax

Relevant GST Provisions

RECAPITULATION

Authority under the Law



Avoidable burden on Assessee

GST Provisions

Assessment & Audit

ASSESSMENT

- Self Assessment (S. 59) ➤ Self-assess the tax payable and furnish a return u/s 39
- Provisional Assessment (S. 60) ➤ Applicable where taxable person is unable to determine value of supply or applicable rate of tax.
- Scrutiny of Returns (S. 61 r/w R. 99) ➤ Proper officer will scrutinize return. (Notice- ASMT10)
➤ No action if explanation is acceptable.
➤ If no satisfactory explanation, initiation of action u/s 65 / 66 / 67 / 73 / 74.

SOP - Scrutiny of returns for FYs 2017-18 and 2018-19 [CBIC Circular: 2/2022-GST (Instruction) dated 22.3.2022]

Interim measure - Till the time a Scrutiny Module for online scrutiny of returns is made available on CBIC-GST application

GST Provisions

Assessment & Audit

ASSESSMENT

- | | |
|---|---|
| <ul style="list-style-type: none">• Assessment of non-filers of returns (S. 62) | <ul style="list-style-type: none">➤ Apply on non filers of return u/s 39 & 45.➤ S. 62 overrides S. 73 / 74.➤ BJA - Based on all available material.➤ Assessment order - Within 5 years from the due date of GSTR-9 of relevant FY. |
| <ul style="list-style-type: none">• Assessment of unregistered persons (S. 63) | <ul style="list-style-type: none">➤ Apply where a taxable person fails to obtain registration even liable to do so or whose registration has been cancelled u/s 29(2) but who was liable to pay tax.➤ S. 63 overrides S. 73 / 74.➤ BJA - Based on all available material.➤ Assessment order - Within 5 years from the due date of GSTR-9 of relevant FY. |

GST Provisions

Assessment & Audit

AUDIT

- Audit by tax authorities (S. 65 r/w R.101)
 - Routine audit of registered person by the Commissioner / authorized officer.
 - Audit at RTP's place or in officer's office.
 - Inform findings and reasons thereof to RTP within 30 thirty days of conclusion of audit.
 - Action u/s. 73 / 74 , if detection of tax not paid / short paid / erroneously refunded / ITC wrongly availed or utilized.
- Special Audit (S. 66 r/w R.102)
 - Apply where officer opines that value has not been correctly declared or the credit availed is not within the normal limits.
 - Action u/s. 73 / 74 , if detection of tax not paid / short paid / erroneously refunded / ITC wrongly availed or utilized.

GST Provisions

Inspection, Search, Seizure & Arrest

- Power of inspection, search and seizure (S.67)
 - **Inspection** of the places of business of taxable person, transporter, owner / operator of warehouse or godown or any other place, if the proper officer (not below JC) has reasons to believe that –
 - transaction w.r.t. supply has been suppressed
 - ITC claimed in excess of entitlement
 - Contravened provisions to evade tax.
 - Transporter, warehouse owner / operator Kept goods escaping payment of tax

Search of any place & **seizure** of goods, etc., can be ordered if officer (not below JC) has reasons to believe that goods liable to confiscation / relevant documents are secreted at the place.

Copies of seized documents may be allowed if it will not prejudicially affect the investigation.

CBIC's Instructions dated 25.5.2022

CBIC's Circular dated 02.02.2021 - Search — Procedures to be followed

GST Provisions

Inspection, Search, Seizure & Arrest

- Inspection of goods in movement (**S.68 r/w R.138**)
 - Person incharge of a conveyance carrying consignment of value > specified amount is to carry Invoice/BOS/DC/BOE & E-way bill (except in a few cases).
 - Proper officer may intercept at any place such conveyance and inspect documents.
-

GST Provisions

Inspection, Search, Seizure & Arrest

- Power to arrest (S.69) If Commissioner has reasons to believe that a person has committed any specified offence punishable u/c (i) or (ii) of S.132(1), he may authorize the officer to arrest such person.

Specified offence

- supplies without issue of any invoice [S. 132(1)(a)]
- issues invoice or bill without supply leading to wrongful availment or utilization of ITC / tax refund [S. 132(1)(b)]
- avails ITC using invoice / bill referred to in clause (b) or fraudulently avails ITC without invoice or bill [S. 132(1)(c)]
- collects amount as tax but fails to pay to Government beyond a period of 3 months from due date. [S. 132(1)(d)]

Punishment under clause (i) and (ii) of Section 132(1)

- Clause (i) - Imprisonment upto 5 years with fine if tax evaded, etc. exceeds 5 Cr
- Clause (ii) - Imprisonment upto 3 years with fine if tax evaded, etc. exceeds 2 crore but upto 5 crore

Arrest and Bail: Offences punishable under CGST Act — Guidelines
Circular: 2/2022-23 (GST-Investigation) (Instruction) dt. 17.08. 2022

GST Provisions

Inspection, Search, Seizure & Arrest

- Access to business premises (S.71) Any officer authorized by the proper officer (not below the rank of JC) shall have access to any place of business of a registered person –
 - to inspect books of account, documents, computers, computer programs, computer software whether installed in a computer or otherwise and such other things as he may require and which may be available at such place,
 - for the purposes of carrying out any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.

Every person in charge of place is duty bound to provide requisite records.

GST Provisions

Demand & Recovery

- | | |
|-------------------------------|--|
| • SCN and Adjudication (S.73) | ➤ Determination of tax not paid / short paid / erroneously refunded / ITC wrongly availed or utilized for any reason <u>other than</u> fraud or any wilful-misstatement or suppression of facts / F.W.S. |
| • SCN and Adjudication (S.73) | ➤ Determination of tax not paid / short paid / erroneously refunded / ITC wrongly availed or utilized for the reason of fraud or any wilful-misstatement or suppression of facts / F.W.S. |
| • Recovery of tax (S. 79) | ➤ Multiple modes for recovery of any amount payable by a person to the Government under any of the provisions of this Act or the rules made thereunder which is not paid. |

GST Provisions

Appeal and Revision

- Appeals to Appellate Authority (S.107)
 - **Appeal by assessee** – File within 3 months (+ 1 month if delay due to sufficient cause) from the date of communication of impugned order.
 - **Appeal by department** – File within 6 months (+ 1 month) from the date of communication
 - **Pre-deposit** – 100% of admitted tax, interest, penalty, etc. and 10% of remaining disputed tax amount. (Recovery proceedings for the balance amount stayed)
 - **Hearing** – Mandatory to follow **PNJ** (No adjournment > 3 times to a party)
 - **New ground of appeal** – Appellant shall be allowed to add any ground of appeal not specified in the grounds of appeal, if omission of that ground was not wilful or unreasonable.
-

GST Provisions

Appeal and Revision

- Appeals to Appellate Authority (S.107)
 - **No remand back** – AA can confirm / modify / annul the impugned decision / order but cannot remand back.
 - **Reasoned order** – Order shall state the points for determination, decision thereon & reasons for such decision.
 - **Binding effect** – Order shall be final & binding subject to S. 108 / 113 / 117 / 118.
-

GST Provisions

Appeal and Revision

- Powers of Revisional Authority (S.108)
 - **Power** - Revisional Authority (RA) may revise the orders passed by his subordinate officers.
 - **Stay** - RA may stay the operation of any decision / order passed by his subordinate officer if he is of view that the order is is prejudicial to the interest of the revenue and is illegal or improper or has not considered material facts.
 - **Nature of order** - After hearing and making further inquiry, RA may pass order, as he thinks just and proper, including enhancing or modifying or annulling the said decision or order.
 - **Limitation** - Non-appealable orders cannot be revised.
-

GST Provisions

Appeal and Revision

- Powers of Revisional Authority (S.108)
 - Power of revision cannot be exercised in certain cases –
 - order has been subject to an appeal
 - 6 months (from the date of communication of order) has not yet expired or more than 3 years have expired after the passing of the decision or order sought to be revised. (3 years limitation is excludible in certain cases)
 - Order has already been taken for revision at an earlier stage.
 - Order sought to be revised is a revisional order in the first place.
 - RA may pass order on any point which has not been raised and decided in an appeal before AA/Tribunal/HC/SC, before 1 year from the date of order in such appeal or before 3 years from the date of initial order, whichever is later.
-

GST Provisions

Appeal and Revision

- Appeals to Appellate Tribunal (S. 109, 112 & 113)
 - **Tribunal** - Final fact-finding authority.
 - **Appeal** - Aggrieved assessee can appeal against the Order of AA / RA (3 m + 3 m). Department may also appeal (6 m)
 - **Cross objections** by respondent (45 d + 45 d)
 - **Jurisdiction** - Appeal before the National Bench/Regional Benches (if PoS is one of the issue)
 - **Jurisdiction** - Appeal before the State Bench/Area Benches (issues other than the place of supply)
 - **Order** - Confirming, modifying or annulling the decision or order appealed against or may remand back the case to AA / RA / original adjudicating authority.
 - **Pre-deposit** – 100% of admitted tax, interest, penalty, etc. and **additional 20%** of remaining disputed tax amount. (Recovery proceedings for the balance amount stayed)
-

GST Provisions

Appeal and Revision

-
- Appeal to High Court (S.117)
 - Appeal by the aggrieved party against the order passed by the State Bench or Area Bench of the Tribunal.
 - HC may admit appeal if it is satisfied that the case involves a substantial question of laws.
 - HC formulates the SQL, and appeal is heard only on those question(s).
 - HC may determine any issue which has not / wrongly been determined by the Tribunal, by reason of a decision on such questions of law.
-
- Appeal to Supreme Court (S.118)
 - Appeal against the judgment of HC.
 - Direct appeal against the orders passed by the National/Regional Bench of the Tribunal.
-

GST Provisions

Appeal and Revision

- **Non-appealable decisions and orders (S.121)**
 - Order of Commissioner or other authority empowered to direct transfer of proceedings from one officer to another officer.
 - Order pertaining to seizure or retention of books of account, register and other documents.
 - Order sanctioning prosecution under the Act.
 - Order passed u/s 80 (payment of tax in instalments).
-

GST Provisions

Pre-Litigation Notices, etc.

- | | |
|---|--|
| • Notice to return defaulters (S.46 r/w R.68) | ➤ Notice in Form GSTR-3A who fails to furnish return u/s 39 / 44 / 45. |
| • Scrutiny of Return (S.61) | ➤ Proper officer may scrutinize & seek explanation. Action may be initiated u/s 65 / 66 / 67 / 73 / 74, if not complied. |
| • Notice for Audit by the tax authorities (S.65) | ➤ 15 working days advance notice. Audit may be at RTP's place of business or officer's office. |
| • Special Audit by CA appointed by the tax authorities (S.66) | ➤ Direction issued in writing by the Commissioner to RTP to get his records examined & audited by the nominated CA. |
| • Summons (S.70) | ➤ Notice to appear for tendering information / documents in respect of any enquiry. |

GST Provisions

Litigation Notices

-
- SCN proposing to demand tax for any reason other than F.W.S. (S.73)
 - Tax not paid / short paid / erroneously refunded / ITC wrongly availed or utilized.
 - SCN within **33 months** and adjudication within **3 years** from GSTR-9 due date of relevant FY.
 - No SCN on suo-moto payment of tax + interest.
-
- SCN proposing to demand tax for reason the of F.W.S. (S.74)
 - Tax not paid / short paid / erroneously refunded / ITC wrongly availed or utilized.
 - SCN within **54 months** and adjudication within **5 years** from GSTR-9 due date of relevant FY.
 - No SCN on suo-moto payment of tax + interest + penalty @ 50% of tax.
-
- SCN for the demand of tax collected but not deposited (S.76)
 - No time limit for issuance of SCN.
 - Adjudication within one year.
 - Crediting of surplus in C.W.F. or refund to person borne the tax.
-

GST Provisions

Litigation Notices

- Validity of composition levy (Rule 6)
 - SCN in Form GST CMP-05 to reply within 15 days, where RTP is not eligible to pay tax u/s 10 or has contravened the provisions of the Act .
- Verification of the application and approval (Rule 9)
 - Notice in Form GST REG-03 seeking clarification / information / documents within 7 days w.r.t registration application.
- Amendment of registration (Rule 19)
 - SCN in Form GST REG-03 seeking reply within 7 days as to why the application for amendment shall not be rejected.
- Cancellation of registration (Rule 22)
 - SCN in Form GST REG-17 to reply within 7 days as to why his registration shall not be cancelled.
- Revocation of cancellation of registration (Rule 23)
 - SCN in Form GST REG-23 to reply within 7 days as to why his application for revocation shall not be cancelled.

GST Provisions

A stack of four books is shown. The top book is white with a red spine and the word 'Points' in red serif font. The second book is white with a blue spine and the word 'To' in red serif font. The third book is white with a blue spine and the word 'Ponder' in red serif font. A silver pen rests diagonally across the books. The background is white.

Points

To

Ponder

GST - Pre & Post Litigation

**SUPPORT TO THE
CLIENTS**



To do list

- 1 Analysis of Notice / SCN / Order
- 2 Briefing and discussion on the way forward
- 3 Collate required data / information
- 4 Verify & validate collated data/information
- 5 In-depth research for legal precedence
- 6 Drafting of Reply / Appeal
- 7 Filing Reply / Appeal within the stipulated time period
- 8 Appearance before Authority / Tribunal

Support – Investigation / Audit / Enquiry, etc.

- ☐ Whether authority complies with Instructions / SOP ?
- ☐ Always provide available requisite data & records.
- ☐ Through research on law & judicial interpretation
- ☐ Statement – Explain correct facts and legally backed reasons for non-payment, etc.
- ☐ Copies of data seized during investigation
- ☐ Applicability of S. 74(5) and implications ?





Drafting support – Things to remember

- SCN is the backbone of any litigation matter.
- SCN can't be vague or predetermined or issued on presumptive basis.
- Can Authority go beyond the SCN? Legal sanctity of any such order? **[S. 75(7)]**
- Extremely careful while drafting reply to SCN.
- Besides merits, rebut all allegations.
- Seek extension of time to file reply, if required.
- File appeal within the statutory time period.
- Appellant Authority does not have power to condone delay beyond the permissible period.



Drafting Tips – Reply to SCN / Appeal

FACTS	ALLEGATIONS	SUBMISSIONS	PRAYER
<ol style="list-style-type: none">1. Regarding business operations and compliance being followed.2. Regarding enquiry / investigation conducted and all written communications3. Enclose all supporting documents.	<ol style="list-style-type: none">1. Pointwise summary of all allegations / findings.2. Give reference no. of relevant paras of SCN / Impugned order.3. Paper book containing relevant docs viz. SCN & RUDs, Impugned order, etc.	<ol style="list-style-type: none">1. Grounds - Merits & alternative arguments, if any.2. Reliance on relevant provisions, case laws, etc.3. S. 74 not applicable.4. Cum tax benefit.5. No interest & penalty.6. Rebuttals.	<ol style="list-style-type: none">1. To drop the demand proposed in SCN / set aside the demand confirmed vide the Impugned order and allow the appeal with consequential relief.2. Grant of personal hearing.



Representational support

- Appearance by Authorised Representative / AR (S.116)
 - ✓ AR – CA holding COP and not debarred from practice;
 - ✓ AR can appear except when the assessee is legally required to appear personally for examination on oath or affirmation.
- For adjournment, file letter citing reason with a request to grant another opportunity of PH.
- During PH, file synopsis of the case and compilation of relied upon provisions of law, judgments, etc.
- Be specific to the facts of case and issue involved.
- Always place reliance on the binding circulars, latest judgements, especially issued by the jurisdictional Tribunal / High Court.





Thank You !

👤 CA Tarun Sharma

✉ Tarun K Sharma & Associates,
Chartered Accountants, SCO 32-33-34,
4th Floor, M4-4, Sector 17C, Chandigarh

✉ tarun.sharma@tsa-taxhelp.com

📞 9871313536