



The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)

Visakhapatnam Branch of SIRC

FEBRUARY - 2024

Vishesh

e-Newsletter

Profession

Passion

Perservance

Chairman

CA. PRASANTH KUMAR P

Secretary

CA. SRIDHAR ANDHAVARAPU

Editor

CA. G. VASUDEVAMURTY





Chairman Writes ...



Dear Esteemed members

Change is inevitable, Change will give new hopes and beliefs to all of us ,as the season changes for the continuity of the life cycle of human being, like wise the MC will change every year to give best services to the members.

With great support of all the members, I could be able to conduct so many CPE programs and National Conference so on and so forth. I would like to give you glimpse of my efforts and programs conducted during my tenure in the branch.

The journey of mine with the branch is started in the year 2013 when I first met with the then branch chairman CA.PVSP Kumar Garu, and I introduced to the committee members with the regional conference “UDYATI”, my first Chairman in my First term in the committee in the year 2019-20 is CA Chalapathy garu, and I served as an editor for the branch newsletter. After that I took the position as Treasurer under the leadership of CA Bharati devi garu, next I took a charge as a Secretary under the Chairmanship of CA Muralikrishna garu then after in the year 2022-23 in my second term in the committee I became a Vice Chairman under my Immediate past chairman CA Vasudevamurthy garu and with all your blessing I took charge as a Chairman for the Vibrant branch **Visakhapatnam branch** in the year 2023-24 with the wonderful team 1.Branch has conducted 156 CPE hours successfully including one GST Certification Course, 3 times campus interview programs and 2 times campus orientation programs for the newly qualified young Chartered Accountants and got very good response with 93 registrations in the month of January 2024.

CA. Anirban Pal as Vice Chairman, CA A.Sridhar as a Secretary ,CA Lokesh as a Treasurer, CA Swaroop as a SICASA Chairman and CA Vasudevamurthy garu as an editor for the newsletter.



In the Year 2023-24

Branch had conducted 2 days national program with title “ Shresta “ .. The ultimate learnig. We invited he then hon’ble President CA Aniket Sunil Talti ji, the then SIRC Chairman “ CA Pannaraj ji” , PDC Chairman CA Prasanna Kumar Garu,Stalwart speakers across the India and with more than 330 members as participants in the month of August 2023 and it got a very good response from the members not only from our branch but also from other branches.

With this spirit, Branch had conducted One day conference in the month of December 2023 with the title “Vishista...a Series of Udayati - “ a Visesh Vignan stating the specialised skills required to became a specialist in the profession. To this conference the then Hon’ble Vice President CA Ranjit kumar Agarwal ji, PDC Chairman CA Prasanna Kumar Garu, stalwart speakers and this time also members attendance is more than 300 even during their statutory due dates.

Other than above two mega conferences in the year 2023-2024 branch had conducted 2 Statutory Bank Branch audit seminars & Workshops in the month of March,GST Certificate Course & 46th Branch Formation Day Celebrations and in the month of April we felicitated 2 past branch chairman,

In the month of may, a IT and CA Cricket League conducted at Gitam College grounds after a period of 10 years and our branch got this cup and convey



thanks to CA. Vytla Srinivas garu, CA Ram Naidu and CA Chalapathi Garu for great support.

In the month of June, Branch celebrated 75th year CA DAY celebrations at highest level on the call from the ICAI New Delhi and branch had showcased its celebrations by conducted different outdoor and indoor games and evening event was celebrated at DR YVS Murthy Auditorium where many members participated with their family and enjoyed a lot. As a part of CA Celebrations a **10 ft CA Day banner** is arranged at CMR central with support of Past Chairman CA.Gorti Subbarao garu. Branch conveys thanks to him sir.

For First time Members got opportunity to play in the **YSR Rajasekhar Reddy International ground "A"** with a help of a Past chairman and response was so nice and it was the so nice experience to the many young members.

In the month of May branch had conducted a unique kind of program with a title "**TAX Clinic**" at the branch premises and invited chief commissioner " Mr. Mohapatra".

In The Month of August, Branch Invited **the Great Grand son of Freedom Fighter from Manyam : Sri Alluri Sitarama Raju** and got a great opportunity to facilitate him and a vibrant wave of freedom is spread to nook and corner of the Branch . It is a great experience to me and all our fraternity members.

In the month of October a series of Four workshops on Excel and how to use the advanced tools in regular functions at Audit office is conducted and a separate workshop for students are also conducted with the great support from the young members CA.Aruna Priya and CA.Abdul Kuddus from Vizianagaram, Branch conveys a special thanks to both of them for their commitment.

In the month of November branch conducted **seminar at Spiritual place at Vizianagaram at Sri Ramanarayanam**, it's a great experience to all the members for joining this seminar and visiting the Asta Lakshmi temple with the great support from M/S Balaji

& Associates and Ramji garu.

Apart from these above Unique Programs branch also conducted seminar on MSME, Accounting Standards, Standards on Auditing, Direct Taxes issues in Appeal & Assessment Procedures & Reassessment Procedures, Trust & Societies, Rera Amendments, on GST Amendments, Peer review, Valuation, replying notices under GST notices , for the sake of members conducted a investor awareness program.

For the betterment of member's Health, Branch conducted Yoga Session on international Yoga Day, a workshop on precautions to be taken on Cancer in women members on International Women day with the support from past chair parson CA Lalitha Sundari madam branch conveys thanks to her. A workshop on first aid steps to be taken on the times of heart pain or Cardiac attack,CPR (Cardiopulmonary Resuscitation), Importance of Organ Donation, Blood Donation Program, free health checks up like Thyroid Test, EGC and BP & Sugar so on and so forth.

I am so happy to share with you that in my tenor the initiation was taken for allotment of land to for construction of own branch premises and a letter stating the above was also forwarded to president's office.

When comes to salutation part

My first thanks to my parents for what I am today and this is because of their blessings only, Secondly My Gurus who stand before me as inspirational persons, My Best half CA Sravanthi who stand behind me along my period in the entire 5 yrs of journey in the commitment because she took the additional responsibility at the office also along home with a small baby who is small baby.

The completion of my tenor successfully is team work for which there are member apart from my MC members.

I convey my heartfelt thanks and gratitude to our central council member & Ex officio for supporting branch in my tenor and guiding us to conduct the National Conference, bringing the President and Vice



President in the same tenor with lots of efforts. We always feel him a fatherly person and as our family member. I personally convey thanks for his greater support in getting things done at central level. When I assume chairmanship I requested him only one thing that we require a permanent establishment for our branch but somehow we are able to start the process also in this regard. Thank you very much sir.

CA VSN murthy garu who came as a chief guest and CA Unnikrishnan Menon (My Article Guru) from Bangalore came for my installation program and with their blessings I could complete my term successfully. Thanking you sir,

CA.Y.Murthy garu & CA.Ambika Prasad garu, who signed my nomination papers in the two terms and given a year long support to me. Thank You both of you sir.

CA Veeraganta Chandra Sekhar garu & CA MV Sharma Garu who given good support to come into the committee and to act as a balanced member in the committee in the entire term. Sir Thank you very much for your great support.

CA. NNS Prakash garu, CA Raman Rao Garu & CA Ramchandra Rao garu, CA B.Simhachalam garu, CA.Niranjan garu, CA BV Rao garu Thank you very much to both of you sir for giving a moral support.

CA. Murali Krishna garu, I called him as my chairman bcz I worked under him as a secretary, Sir thank you very much for support for keeping the promises you made and supported me in my tenor.

CA PVSP Kumar Garu who given me a good support in the National Conference by acting as MOS and also for guiding us in different scenarios.

CA VM Rao Garu from Srikakulam, CA Srinivas from Srikakulam, CA Ramji Garu from VZM, CA Durga Prasad garu & CA Nageswara Rao from VZM and KS Sharma garu from AKP are all extended their support in conducting out door seminars and in sponsorships.

CA Surya Prakash, is my friend & my batch met in PG & in my CA classes & my jaan jigiri, and given great support in the form of sponsorships, gathering the

members, Supporting the in the National conferences as members in the travelling committee.

CA Avinash from Gajuwaka who supported us with his full efforts even in odd timings also. Whenever we planned to conduct a program he used come up with his innovative ideas, in the 2Days national program all the guest and speaker are sent super complementary msgs for the providing hospitality . even given a memorable video clips for their journey to Visakhapatnam Branch.

Women Members who supported me CA Kanaka Mahalakshmi garu, CA Lalitha Sundari garu, CA Bharati devi garu, CA Anusha, CA Shushan, CA Smruthi, CA Sasikala garu, CA. CA Pavani, CA. Swetha, CA Karuna. Thank you very much for all of your services to the branch.

I also convey my thanks to Mr. Jyouthi Swaroop and Entire Admin team for their great support.

Finally Conveying best wishes to new committee and requesting all to Continue the support to new MC Team as supported.

Finally one thing which I want to share with you all is, when I stepped in to the branch I am single member, now I am happy to say that I am a known member to the big family i.e., my Visakhapatnam branch as a whole...I am proud to say that it is my biggest achievement.

Thank you one and all for your great Support ..

CA. Prasanth Kumar P

Chairman



MEMBERS DIARY FOR THE MONTH OF JANUARY 2024

Date & Day	Venue & Time	CPE Hours	Name of the Programme & Speaker
14.02.2024 Wednesday	CPE Seminar 5.00 pm to 8.00 pm	3 Hrs	Project Finance & Preparation of CMA Data CA. Murali Krishna Boyina, Visakhapatnam
19.02.2024 Monday	CPE Seminar 5.30 pm to 8.30 pm	3 Hrs	Introduction of New Torch Bearers for the Year 2024-25 Chief Guest CA. V.V. Ram Mohan, FCA, Visakhapatnam Guest of Honour CA. Prasanna Kumar D, FCA Central Council Member, ICAI & Seminar on "Recent NFRA Orders and Audit Environment" CA. V.S.N. Murty, FCA, Visakhapatnam Followed by Dinner
24.02.2024 Saturday	CPE Seminar 10.00 am to 5.30 pm	6 Hrs	TDS and TCS Provisions - A 360° Perspective CA. Harit Dhariwal, Ahmedabad CA. Nemichand Sirvi, Hyderabad

Know Your Branch

Branch : Visakhapatnam Branch of SIRC of ICAI
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 E-mail : visakhapatnam@icai.org
 Website : <http://visakhapatnam.icai.org>

Inviting Article

Visakhapatnam branch of SIRC OF ICAI request members contribute Articles every month to be published in the Visakhapatnam branch e-Newsletter. The article should reach to the branch by 1st of every month, this may kindly be sent to visakhapatnam@icai.org



VISAKHAPATNAM BRANCH OF SIRC OF ICAI
ONE TIME ANNUAL PAYMENT DELEGATE FEE (2023-24)

Registration Form

To
 The secretary,
 Visakhapatnam Branch of SIRC of ICAI,
 ICAI Bhawan,
 VISAKHAPATNAM -530 003

Dear Sir,

I/We have enclosed Cheque No..... of Bank dated
 for Rs/- in favour of **VISAKHAPATNAM BRANCH OF SIRC OF ICAI,**
VISAKHAPATNAM towards my/our **ONE TIME ANNUAL DELEGATE FEE PAYMENT** for CPE Seminars at Visakhapatnam
 Branch for the period from 01.04.2023 to 31.03.2024.

Details of the Member/Members

S.No	Name of the Member	Date of Enrolment	M. No	Mobile No.	E-mail ID

Thanking You,

Yours Truly,

Signature



GST No. :

One Time Annual Fee Structure for 2023-24 :
 Rs. 3,600.00 (Plus GST) for New Members enrolled after 01.04.2021
 Rs. 5,400.00 (Plus GST) for Members enrolled before 01.04.2021

Members desirous of making online payment are requested to do the same to the following account :

ACCOUNT NAME : VISAKHAPATNAM BRANCH OF SIRC OF ICAI
ACCOUNT NO : 024510011011521
BANK NAME : Union Bank of India
BRANCH NAME : PITHAPURAM COLONY
IFSC CODE : UBIN0802450

Please forward the UTR No. , Name and Membership No. to the following **mail ID : icaivskpbranch@gmail.com**



Sec.43B(h) of Income Tax Act,1961 - Payment to MSME

- CA.KORUMUJU SWETHA



• A new clause (h) has been added to Section 43B to provide that any sum payable to a micro or small enterprise beyond the time limit specified in Section 15 of the MSMED Act 2006 shall be allowed as a deduction on a payment basis.

• **Sec.43B(h) reproduced as follows:**

- (h) any sum payable by the assessee to a micro or small enterprise beyond the time limit specified in section 15 of the Micro, Small and Medium Enterprises Development Act, 2006 (27 of 2006),
- shall be allowed (irrespective of the previous year in which the liability to pay such sum was incurred by the assessee according to the method of accounting regularly employed by him) only in computing the income referred to in section 28 of that previous year in which such sum is actually paid by him :
- **Provided** that nothing contained in this section *[[except the provisions of clause(h)]]* shall apply in relation to any sum which is actually paid by the assessee on or before the due date applicable in his case for furnishing the return of income under sub-section (1) of section 139 in respect of the previous year in which the liability to pay such sum was incurred as aforesaid and the evidence of such payment is furnished by the assessee along with such return.



Certain deductions to be allowed only on payment basis



Section 43B of the Act provides for certain deductions to be allowed only on actual payment basis. Further proviso of this section allows deduction on accrual basis, if the amount is paid by the due date of filing of Return of Income. Now as per Finance Act 2023 amendment has been made in Sec 43B, in order to promote timely payment to Micro, Small and Medium enterprises, it is proposed to include payment made to such enterprises within the ambit of Sec 43B. Accordingly, it is proposed to insert a new clause (h) in section 43B, to provide that any sum payable by assessee to a Micro, Small and Medium Enterprises beyond the time limit specified in Sec 15 of MSME Act 2006 shall be allowed as deduction on actual payment basis. It can be allowed on accrual basis only if the payment is made with in the time stipulated in Sec15 of the MSME Act. Section 15 of MSME Act mandates payment to MSME with the time as per the written agreement, which can not be more than 45 days. If there is no such agreement, then section mandates that the payment shall be made with in 15 days. The proposed amendment to section 43B of the Act will allow the payment as deduction only on payment basis. It can be allowed on accrual basis only if the payment is made with in the time stipulated in Sec15 of MSME Act 2006. This amendment will take effect from 01st April 2024 and will accordingly apply to AY 2024-25 and subsequent AY.



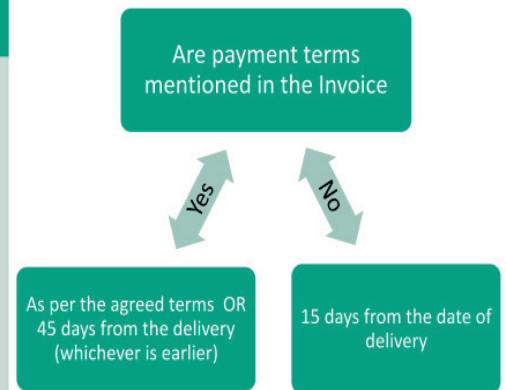
Meaning and Deadline Specified in Section 15 of the Micro, Small, and Medium Enterprises Act

Meaning of Enterprise as Per MSME Development Act, 2006:

A business concern or an industrial undertaking or any other establishment through any name it called termed an enterprise, is involved in the manufacture or production of goods, related to any industry established in the First Schedule to the Industries (Development and Regulation) Act, 1951 or has the operation in providing or the rendering of any service or services.

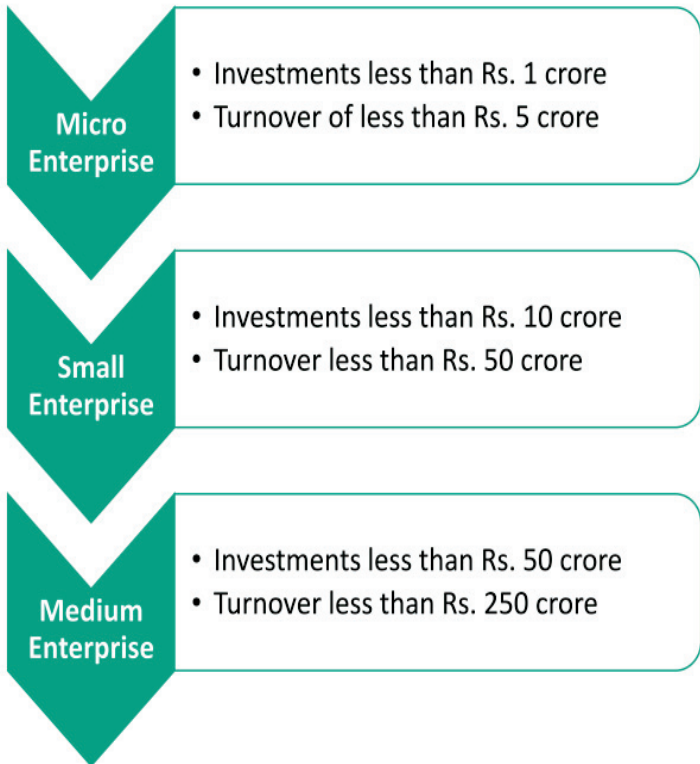
Section 15 of the MSME Development Act, 2006 defines that

- “Where any supplier supplies any goods or renders any services to any buyer, the buyer shall make payment therefor on or before the date agreed upon between him and the supplier in writing or, where there is no agreement on this behalf, before the appointed day*:
- Provided that in no case the period agreed upon between the supplier and the buyer in writing shall not exceed forty-five days from the day of acceptance or the day of deemed acceptance”
- It is understood from the aforementioned discussion, as agreed between the buyer and supplier the payment shall get made by the buyer, but it could not be more than 45 days from the acceptance date or the day of the deemed acceptance i.e from the acceptance day of the goods or service.
- *‘Appointed day’ means the day following immediately after the expiry of the period of fifteen days from the day of acceptance or the day of deemed acceptance of any goods or any services by a buyer from a supplier



The enterprise category as Micro, Small & Medium as described in the Micro, Small and Medium Enterprises Development Act, 2006 is made for your reference:

From the respective supplier, it is suggested to the business entities to take the annual declaration that shows they are counted under micro or small enterprises registered beneath the Micro, Small and Medium Enterprises Development Act, 2006 which shall ensure due compliance and ease the purchaser to find out the enterprise. It is recommended to Micro and small enterprises specify a note on the invoice given through them which shows that they are enrolled under the micro or small enterprise under the MSME Development Act, 2006, for easing the purchaser towards the need for compliance.





Sec 43B(h) says that any payment which is outstanding to MSME beyond the agreed credit period or 45 days shall be allowed as deduction in Income Tax only on payment basis.

This means, if there is any balance outstanding beyond specified period for any MSME as on March 31, 2024, it would not be allowed as deduction in AY 24-25.

Though, the deduction would be allowed in the year of payment, the tax benefit would stand deferred.

Businesses should ensure the following to avoid any disallowances before March 31, 2024.

1. Identify all the MSME vendors.
2. Check the outstanding balances, specially the overdue or disputed invoices.
3. Do a reconciliation with the vendor to identify any missing invoices.
4. Try to clear the payment of invoices which are overdue by March 31, 2024.

It should also be noted that period mentioned in MSME Act is agreed credit period or 45 days whichever is lower. So maximum credit period is 45 days for MSME payment.

A careful cash flow planning would ensure that tax benefits are not deferred.

Steps to follow:

1. We must check whether the payment is made within the due date.
2. If the payment is made within the due date, then the expense is allowed in the same PY.
3. If the payment is not made within the due date, then we must check the year in which the payment is done.
4. If the payment is done in the same PY in which it is due, then the expense is allowed in the same PY.
5. If the payment is not done in the same PY in which it is due, then the expense is allowed in the PY in which it is paid.

Note:

1. Section Applicable to both Supplier of Goods and Services.
2. Not Applicable to payments for acquiring Capital Goods.
3. Interest Paid under MSMED Act,2006 is not allowed under Sec 37 of Income Tax Act,1961.

After the proposed amendment in Sec. 43B of the Income tax Act regarding Payment to Micro and Small enterprises, if invoice of Micro/small enterprise dated 01.04.23 is paid on 31.03.24, expenditure would be allowed in FY 23-24 itself whereas invoice dt. 01.03.24 is paid on 30.04.24, it will be disallowed for FY 23-24 and allowed only in next year.

So in one case 2 months delay is not acceptable whereas in other case 12 months delay is acceptable. Indeed an Interesting illustration! To my reading, it seems to be only when the specified time limit for payment to MSME has lapsed, section 43B is triggered. For example, if it's paid before 14.04.24 (assuming a time limit of 45 days), it should be allowed in FY 2023-24 and doesn't get postponed to next year.

Further, Traders are not eligible for Benefit of Newly Introduced Sec. 43B(h) - which means that even if payment is made to a Trader beyond time limit of 43B(h) (i.e. 15/45 days/End of FY), the outstanding amount shall not get added to Income.

Reasons :-

* Retailers and Wholesale Trade were allowed to register on Udyam Portal via below mentioned Memorandum which specifically says that benefits to such Trader MSME are restricted to PRIORITY SECTOR LENDING ONLY.

* Trader is not included in definition of 'Enterprise' defined u/s 2(e) of MSMED Act,2006 itself, let alone 'Micro Enterprise' u/s 2(h)' & 'Small Enterprise' u/s 2(m). To be categorized as Micro or Small an entity needs to be an Enterprise first as per Sec 2(e) i.e. either Manufacturer or Service Provider.

* MSEFC (Micro & Small Enterprise Facilitation Council) was approached by Traders to get benefit of provisions related to delayed Payment as per MSMED Act,2006 as available to MSEs, It was clarified by Office Memorandum dated 01.09.2021 that such benefit cannot be provided to Traders as benefits to them are restricted upto Priority Sector Lending Only



BURDEN OF PROOF IN GST ASSESSMENTS AND PROCEDURES

..... Beyond Logic and Law

CA. Malladi Muralidhar, FCA, AICWA, DISA, AIII, LLB

Even though the terms, '**Burden of Proof**' and '**Onus of Proof**' are being used interchangeably, still, those have definite meanings. The Bombay High Court in the case of **Phoenix Mill Ltd. Vs. Union of India, 2004 (168) ELT 310** has lucidly explained the difference between the two in the following words,
 'There is essential distinction between burden of proof and onus of proof. The burden of proof lies upon the person who has to prove a fact and it never shifts. However, the onus of proof shifts. Onus means a duty of adducing evidence.'

A. INTRODUCTION:

Though the term 'Burden of Proof' has a confusion in application while carrying on assessments, different case laws defined them with clarity to avoid disputes. The 'Burden of Proof' and 'Onus of Proof' are being used interchangeably, still, those have definite meanings. This was dealt in detail in the Bombay High Court in the case of Phoenix Mill Ltd. Vs. Union of India, 2004 (168) ELT 310. There is essential distinction between burden of proof and onus of proof. The burden of proof lies upon the person who has to prove a fact and it never shifts, but the onus of proof shifts.

1st hand information and more detailed study can be appreciated from my recent endeavor in writing a GST book styled as "**Secrets of Handling Show cause notices and Assessments beyond basics**", which shall be made available in next 3 weeks.

B. ASSESSMENT & PROCEDURES:

There are variations in the approach of assessing officers in GST being a mixed a bag of Sales Tax/VAT and Service tax cum central excise officers while carrying out the assessments. Like Notices u/s 142(1) of Income tax act, The Form ASMT-10 is used in GST to call for information to reconcile differences arising out of GST returns filings of GSTR-1 & GSTR-3B.

What is GST ASMT-10 and how to Deal with it:

As per Section 61 read with Rule 99 & 100 and Rule 142, a GST Officer is required to check the GST returns



based on certain risk parameters. This assessment seeks to ensure the correctness of the return. In case the assessment indicates a high risk of default or any indication of fraud, a scrutiny notice in the form of GST ASMT-10 is issued. However, there is no personal hearing in this assessment. GST ASMT-10 is merely a notice where discrepancies are found and intimated to the taxpayers.

The Proper Officer may quantify the amount of tax, interest or any other amount payable by the taxpayer in the ASMT-10 itself.

In essence, Form GST ASMT-10 is the notice issued under Section 61 of the CGST Act, 2017, read with Rule 99 for intimating discrepancies in the GST returns filed by the taxpayer and seeking an explanation for same. The tax officer can send the notice to the taxpayer via SMS or Email.

Statutory Time Period:

The taxpayer is required to file a reply via GST ASMT-11 within 30 days of its issuance. He may request for extension of not more than 15 days.

Detail /Content of a sample notice in ASMT-10:

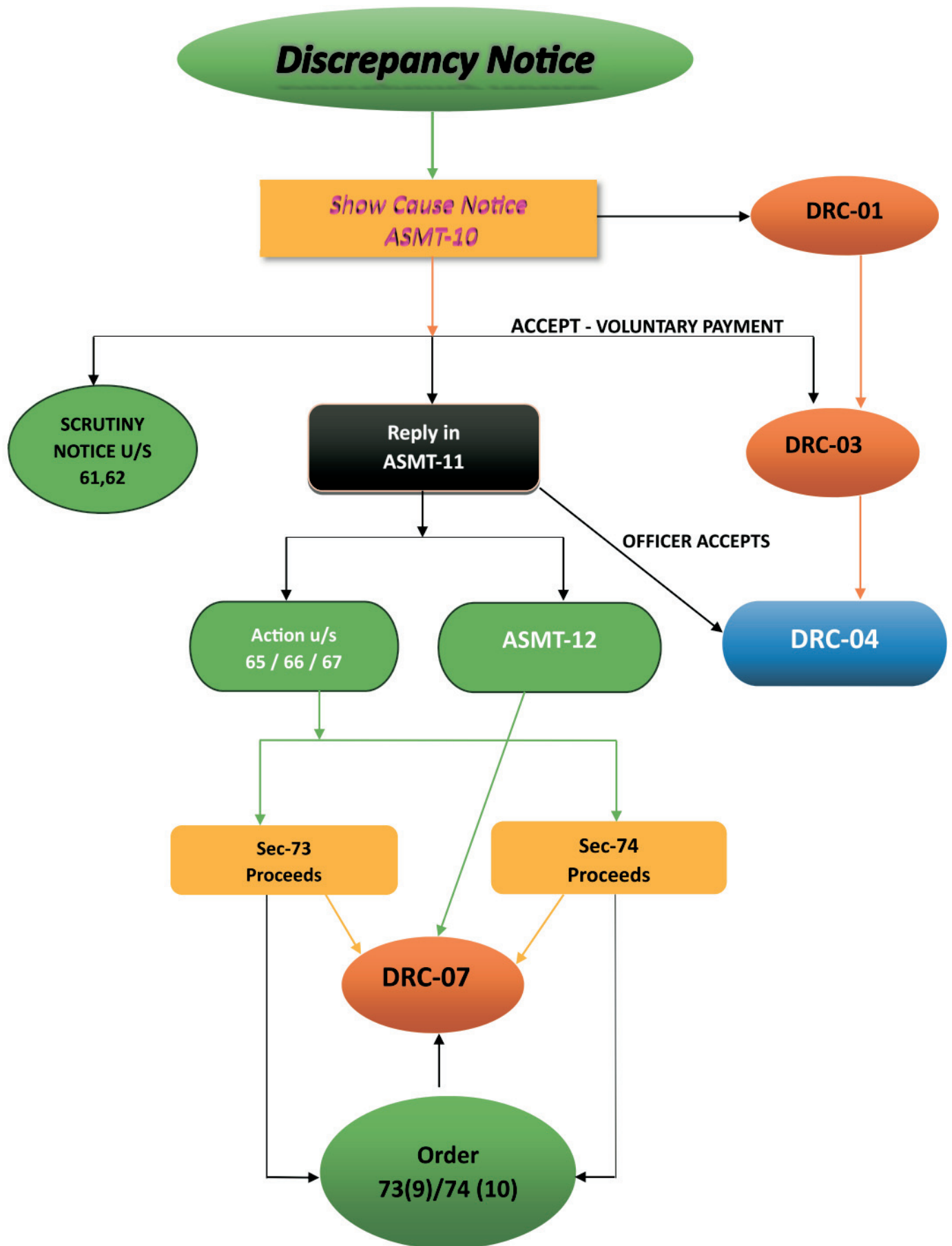
- ü GSTIN, Name, Address of the Business
- ü Tax period
- ü Details of discrepancies observed – Turnover or ITC or erroneous Refund
- ü Details of the Tax officer issuing notice like name, signature and designation
- ü Time within which the reply to be given
- ü Din No. & date of Notice
- ü Documents required to be submitted
- ü Date of Personal hearing, if any
- ü Section under which notice is issued

Most common discrepancies found in ASMT-10 Notice:

- ***Difference in Outward supply i.e. Turnover / Sales & Services reported in GSTR-1 and GSTR-3B or vs GSTR-9***
- ***Difference in Tax Liability reported in GSTR-1 and GSTR-3B due to rates of Tax or vs GSTR-9***
- ***Difference in ITC claimed in GSTR-3B and GSTR-2B/GSTR-2A***
- ***Difference in Tax Liability as per E-Way Bill and GSTR-3B***
- ***High deviation in Tax deposited during two or more periods***
- ***Mistake in classification and change in rates of Tax***
- ***Difference in HSN Codes and Variation rates as per Notifications/ Circulars etc***

ASMT-11: REPLY TO NOTICE - How to view & reply Scrutiny Notice on Portal

Click and go to GST Portal >> Services >> User Services >> View Additional Notices and Orders>>Click on 'Notice' to add a Reply





Ø **Options available to tax payer:**

- i. Tax payer can agree with the demand and pay through DRC-03 or
- ii. The taxpayer may disagree with the discrepancies noted and replies & furnishes his workings and explanation in ASMT-11.

[Note: After submitting a reply, if the Proper Officer is satisfied with the response, he'll drop the proceeding by issuing an order under GST ASMT-12, intimating the same to the taxpayer.]

Ø **Options given to Officer:**

- i. The proper officer accepts DRC-03 and issues DRC-04 as acknowledgement thereof, Or
- ii. When the reply is not found satisfactory by the proper officer, he may take appropriate action under Section 65, 66, or 67 and proceed to take action under section 73 or 74.

C. BURDEN OF PROOF - SEC 155 in GST:

'Burden' legally means responsibility, onus, obligation etc. Hence, 'burden of proving' means a responsibility, an obligation to prove a fact.

This concept is very pertinent in the context of claiming input tax credits and Other aspects like Turnover etc under the GST regime, are described below:

I. INPUT TAX CREDIT:

Sec 155 : Where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claim shall lie on such person.

The term burden of proof used in Section 155, in the circumstances narrated above, is required to be interpreted to mean onus of proof. It would shift to the departmental officials if no data or improper or insufficient data is available.

No doubt the ITC is the form of concession. Therefore, the law prescribing the grant of ITC subject to the compliance of the conditions is always upheld by the Supreme Court. Thus, the constitutional validity of the law granting ITC qua inter-State sale conditional on the production of C Form has been upheld by the Court in *TVS Motors vs. State of Tamil Nadu, 2018 (18) GSTL 769*. It be noted that the condition prescribed therein of filing of C form was capable of performance and the legal burden could be cast on the claimant dealer. Therefore, it's validity was upheld. But even conditions for concessions are governed by Part III of the Constitution and hence cannot be arbitrary or unreasonable, or violative of any constitutional or fundamental right.

This means that businesses or individuals claiming such credits must have

- ü **Adequate documentation and evidence to support their claim**
- ü **Tax Invoices**
- ü **Original documents**
- ü **Supporting documents**
- ü **Reconciliation with IT returns**

In order to prove the claim, he has to prove certain other set of facts from which this legal right necessarily arises; he must demonstrate the evidentiary facts from which this right follow immediately or by inference i.e. factum probands. Following are the set of facts which a registered person must prove:-

- a. *The first and foremost thing a person has to prove is that he has a genuine transaction with his supplier, resulting the supply of goods or services or both. It should not be a sham, bogus or fake transaction*



- b. *The said supply of goods or services or both are used or intended to be used in the course or furtherance of business.*
- c. The first and foremost thing a person has to prove is that he has a genuine transaction with his supplier, resulting the supply of goods or services or both. It should not be a sham, bogus or fake transaction II. The said supply of goods or services or both are used or intended to be used in the course or furtherance of business. III. The goods or services or both must be used by “him” only in the course or furtherance of “his own business”
- d. He has received the goods or services or both.
- e. He has paid the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier
- f. He has not taken input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier.
- g. He has not taken ITC on the statutorily excluded goods or services or both u/s 17(5). Some of them are as follows

Analysis of few case laws:

1. *State of Karnataka vs M/s ECOM GILL COFFEE TRADING PRIVATE LIMITED –*

[Supreme Court CIVIL APPEAL NOS.216-217 OF 2023, dated 13-Mar-23]

Held :

concerned purchasing dealers failed to prove the genuineness of the transactions and failed to discharge the burden of proof as per section 70 of the KVAT Act, 2003.

Claim of ITC is squarely upon the assessee and such a burden of proof cannot get shifted on the revenue.

2. *Sanchita Kundu vs The Assistant Commissioner of State Tax, Bureau of Investigation, South Bengal W.P.A. 7231 of 2022 and W.P.A. 7232 of 2022 dated 05.05.2022 (Calcutta High Court)*

Facts of the case :

The Input Tax Credit (ITC) was denied of the Petitioner on purchase of the goods in question from the suppliers and asking the petitioners to pay the penalty and interest under the relevant provisions of GST Act, on the ground that the registration of the suppliers in question has already been cancelled with retrospective effect covering the transaction period in question.

Held:

The Petitioners - due diligence - verified the genuineness and identity of the suppliers - the names of those suppliers as registered taxable person were available at the Government portal showing their registrations as valid and existing at the time of transactions - petitioners - limitation - ascertaining the validity and genuineness of the suppliers - done whatever possible - were already available with the Government record.

3. *Sanchita Kundu vs The Assistant Commissioner of State Tax, Bureau of Investigation, South Bengal [W.P.A. 7231 of 2022 and W.P.A. 7232 of 2022 dated 05.05.2022]*

ITC was denied by the department. Petitioners has submitted that all the purchasers in question



invoices-wise were available on the GST portal in form GSTR-2A which are matters of record.

Held:

It was held in Calcutta High Court, ITC when available in GSTR-2A cannot be denied.

Gargo Traders vs Joint Commissioner of Commercial Taxes Calcutta High Court [WPA No.1009 of 2022 dtd 12-Jun-2023

- At time of transaction, supplier's name as registered taxable person was already available on Government record and petitioner paid amount on purchased articles as well as tax on same through bank and not in cash.
- It was not a case of Department that there was a collusion between petitioner and supplier with regard to transaction.
- Without proper verification, it cannot be said that there was any failure on petitioner's part in compliance of any obligation required under statute before entering into transactions in question.

III. TUNROVER:

The said SCN was issued without examining the activity of the assessee and without examining the reason for difference in the turnover reported in income tax return and ST-3 return. Hence, such SCN issued on presumption is not sustainable.

Held:

CESTAT, Mumbai Bench has held that the authorities cannot issue a show cause notice (SCN) without proper investigation, and accordingly, set aside the impugned SCN. Notice issued based on presumptions without complying with fundamentals of prosecution is unsustainable.

IV. EXEMPTION:

Onus of proof of fulfilment of conditions subject to which the exemption is granted under the Notification is always on the assessee or the claimant who claims the benefit under that Notification. See Collector of Customs Vs. Presto industries, 2001 (128) ELT 321 SC.

V. CLASSIFICATION:

The burden of proving the correct entry or sub entry which would squarely cover the particular commodity is always on the Revenue. See *H. P. L. Chemicals Ltd. vs. Commissioner of Central Excise, Chandigarh, 2006 (197) ELT 324, SC.*

D. CONCLUSION

The object of every proceeding including GST Assessments u/s 61, 62, 63, 64, 65, 66, 67, and 73/74, 129/130 etc rws sec 75, or Penalty proceedings or for that sake GST Rules vide 99/100 or 142, is the enforcement of some right or liability which invariably depends upon certain facts. Every fact in this world is preceded and followed by a train of other fact which are connected in the one manner or another with the fact in question. It is this sequence or co-existence of facts that makes it possible to reason from **known to unknown**.

Remember If a person has failed to discharge the burden of proof imposed on him, a strong and adverse presumption will be raised against the person.

Three **primary standards of proof** exist in common law. From lowest to highest degree of certainty required, they are:

- (1) preponderance of the evidence,
- (2) clear and convincing evidence, and
- (3) beyond a reasonable doubt.

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Seminar on One Day Training Programme - PEER Reviewers held on 9th January, 2024







Seminar on Popularisation of CA Connect Portal & Recent Decisions of Ethical Standards Board held on 21st January, 2024





Republic Day Celebrations held on 26th January, 2024







59th Campus Placement Orientation Programme held on 28th January, 2024







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