GSTART Workshop

organized by

The GST & Indirect Taxes Committee of ICAI

hosted by

The Vasai Branch of WIRC of ICAI.

Topic: Understanding of SCN and Approach towards it

Deliberation by: –

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The TAXYOGI™

Levels of Existence Vs GST Issues

Physical – Portal Related

Intellectual – Interpretation Challenges

Spiritual – Constitutional Validity

Session Coverage

- SCN u/s 73,74,74A &76
- Understanding SCN
- Approaches to Handling SCN
- Burden of Proof
- Case Studies

1. Understanding SCN u/s 73,74,74A & 76

SCN as the Foundation of GST Litigation

- Entire adjudication stands or falls on the SCN.
- SCN is not a mere procedural formality.
- It defines:
  - jurisdiction,
  - allegations,
  - period,
  - evidence,
  - legal provisions,
  - burden of proof,
  - scope of adjudication.

SCN as the Foundation of GST Litigation

Judicial Principle

- Order cannot travel beyond SCN.
- No confirmation on grounds absent in notice.
- Adjudication beyond SCN violates natural justice.
- A weak SCN cannot be cured by a strong adjudication order

Statutory Architecture of Demand Proceedings

SECTION 73 – DEMANDS IN NON-FRAUD CASES

- Section 73 applies where:
    - tax has not been paid,
    - short paid,
    - erroneously refunded, or
    - ITC has been wrongly availed or utilized,
- for reasons other than:
    - fraud,
    - wilful misstatement, or
    - suppression of facts to evade tax.

Statutory Architecture of Demand Proceedings

SECTION 73 – DEMANDS IN NON-FRAUD CASES

The provision recognizes that tax disputes may arise due to:

- interpretational differences,
- accounting errors,
- clerical mistakes,
- reconciliation mismatches,
- classification disputes,
- valuation disagreements.

Thus, Section 73 is intended to address cases lacking mens rea.

Statutory Architecture of Demand Proceedings

SECTION 73 – DEMANDS IN NON-FRAUD CASES

Step 1 – Detection

Cases may arise from:
audit,
scrutiny,
investigation,
analytics,
GSTR mismatch,
e-way bill comparison,
intelligence inputs.

Step 2 – Pre-notice Intimation (DRC-01A)

Step 3 – Issuance of SCN under Section 73(1)

Step 4 – Adjudication

Step 5 – Order under Section 73(9)

Limitation under Section 73

Time for -at least 3 months prior to limitation for order.

Time for adjudication - Order must generally be issued within 3 years from due date of annual return for relevant FY.

Statutory Architecture of Demand Proceedings

SECTION 73 – DEMANDS IN NON-FRAUD CASES

Key Defence Themes

Bona fide conduct - Taxpayer demonstrates:disclosure in returns,transparent accounting,regular audit trail.

Interpretation issue - Where issue is debatable: invocation of Section 74 becomes unsustainable.

Revenue neutrality - Particularly relevant where: ITC available to recipient, no intent to evade.

Statutory Architecture of Demand Proceedings

SEC 73 – Levy of Penalty and Closure of proceedings and levy of penalty

Before issuance of show cause notice on own ascertainment or tax ascertained by proper officer. - To be intimated in GST DRC-03 Payment of tax made along with interest - SCN not to be issued for tax, interest and penalty.	No penalty. **Acknowledgement under GST DRC-04.**
Within 30 days after the issuance of the show cause notice - Payment of tax made along with interest. - To be intimated in GST DRC-03. No penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded. Closure of proceedings for main person implies closure of proceedings for all CO-NOTICEES on whom penalty is imposed. Closure of proceedings not to operate for section 132. (offences)	No penalty. Order under GST DRC-05.
After 30 days of issuance of show cause notice or after the issuance of order	10% of tax or Rs.10,000 whichever is higher

Statutory Architecture of Demand Proceedings

SEC 73 – Penalty Waiver Not Applicable for Self-Assessed Tax

If Self-assessed tax or amount collected as tax is not paid within 30 days from due date then **penalty would be payable** not with standing the fact that payment of tax and interest was paid before SCN or within 30 days of SCN. (section 73 (11)).
Self-assessed Tax defined under Section 75 – Same concept can be adopted for section 73 / 74. **"self-assessed tax"** shall include the tax payable in respect of details of outward supplies furnished under section 37, but not included in the return furnished under section 39.

Statutory Architecture of Demand Proceedings

SECTION 74 – FRAUD / SUPPRESSION CASES

Revenue must establish:

(i) Tax shortfall exists AND

(ii) Presence of culpable conduct

Namely:

fraud,

wilful misstatement,

suppression with intent to evade tax.

Statutory Architecture of Demand Proceedings

SECTION 74 – FRAUD / SUPPRESSION CASES

Meaning of Fraud

Fraud implies:

- deliberate deception,
- conscious concealment,
- intentional tax evasion.

Important principle

Fraud cannot be inferred merely because:

- tax demand exists,
- interpretation differs,
- records contain errors.

Wilful Misstatement

The term "wilful" denotes:

- intentional false statement,
- deliberate withholding,
- conscious misrepresentation.

Mere incorrect declaration ≠ wilful misstatement.

Statutory Architecture of Demand Proceedings

SECTION 74 – FRAUD / SUPPRESSION CASES

Suppression of Facts

Suppression requires:

- deliberate non-disclosure,
- concealment of material facts,
- intent to evade tax.

Every omission is not suppression.

If facts are:

- disclosed in books,
- reflected in returns,
- available to department,
- then allegation of suppression weakens substantially.

Most critical ingredient under Section 74

Department must prove:

- mens rea,
- deliberate evasion,
- conscious design.

Mere non-payment is insufficient.

Statutory Architecture of Demand Proceedings

SECTION 74 – FRAUD / SUPPRESSION CASES

Common Defects in Section 74 Notices

- **Mere reproduction of statutory language** - SCN copies wording of section without facts.
- **No evidence of intent**
- **Interpretational disputes treated as fraud**
- **Reliance only on analytics**

Burden of Proof under Section 74

Revenue must establish:

- tax shortfall,
- deliberate conduct,
- intention to evade.

Statutory Architecture of Demand Proceedings

SECTION 74 – Closure of proceedings

Payment of tax, interest and penalty amount -Before issuance of show cause notice on own ascertainment or by officer. SCN not to be issued on payment made for such amount.	15% of the tax amount
Payment of tax, interest and penalty amount. - Within 30 days after the issuance of show cause notice. All Proceedings related to the issue of the said notice is deemed to be closed. **Closure of proceedings for main person implies closure of proceedings for all CO-NOTICEES on whom penalty is imposed under section 122 and 125.** **Closure of proceedings not to operate for section 132. (offences).**	25% of the tax amount
Payment of tax, interest and penalty amount. - Within 30 days from the issuance of order. **(closure of proceedings as above.)**	50% of the tax amount
In any other case.	100% of the tax.

Statutory Architecture of Demand Proceedings

SECTION 74A – UNIFIED DEMAND REGIME

Sec No	Provision u/s 74A	Provision u/s 73/ 74
Heading	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for **any reason** pertaining to Financial Year 2024-25 onwards.	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than/ by reason of fraud or any willful-misstatement or suppression of facts.
Sub sec 1	Issuance of Common Show Cause Notice (SCN) for All Case	Mutatis Mutandis
	Issue: - In a single notice both issues could be raised. How will the minimum penalty be decided?	
Proviso	No SCN where the disputed amount in a financial year is less than one thousand rupees.	No such minimum limit
Sub sec 2	**Time limit for issuance of SCN** – within **42 months** from due date of Annual Return or 42 months from the date of erroneous refund.	SCN to be issued at least 3/6 months prior to issuance of Demand Order.

Statutory Architecture of Demand Proceedings

SECTION 74A – UNIFIED DEMAND REGIME

Sec No	Provision u/s 74A	Provision u/s 73/ 74
Sub sec 3	Issuance of 'Statement' for subsequent period where issue involved pertains to same grounds on which SCN has been served for prior period.	Mutatis Mutandis
Sub sec 4	Service of statement shall be deemed to be service of SCN	Mutatis Mutandis
Sub sec 5 Penalty	(i) Non Fraud Cases : - 10% of tax dues or INR 10,000, whichever is higher	Mutatis Mutandis u/s Section 73(9)
	(ii) Fraud Cases : - 100% of tax dues	Mutatis Mutandis u/s Section 74(1)

Statutory Architecture of Demand Proceedings

SECTION 74A – UNIFIED DEMAND REGIME

Sec No	Provision u/s 74A	Provision u/s 73/ 74
Sub sec 7	Time limit for issuance of demand order – Within 12 months from the date of issuance of SCN.	73(10)/74(10) Time limit of 3/5 years to issue demand order from the due date of filing of Annual Return.
Proviso Effective T/L 42+12+6 = 60 Months(5 years)	Extension of Time limit to pass order - Commissioner, or an authorised officer but not below the rank of Joint Commissioner may for reasons to be recorded in writing, before the expiry of the specified period, extend the said period further by a maximum of six months.	No such provision
Sub sec 8 Non Fraud Cases : -	(i) Option of voluntary payment Before SCN – Pay tax & interest - **No Penalty**	Mutatis Mutandis u/s Section 73(5) & (6)
	(ii) Option of voluntary payment After SCN – Pay tax & interest **within 60 days** of SCN - **No Penalty**	Mutatis Mutandis u/s Section 73(8) if payment made **within 30 days**

Statutory Architecture of Demand Proceedings

SECTION 74A – UNIFIED DEMAND REGIME

Sec No	Provision u/s 74A	Provision u/s 73/ 74
Sub sec 9 Fraud Cases : -	(i) Option of voluntary payment Before SCN – Pay tax & interest - **Penalty 15% of Tax**	Mutatis Mutandis u/s Section 74(5) & (6)
	(ii) Option of voluntary payment After SCN – Pay tax & interest **within 60 days** of SCN - **Penalty 25% of Tax**	Mutatis Mutandis u/s Section 74(8) if payment made **within 30 days**
	(iii) Payment After Demand Order – Pay tax, interest **within 60 days** of the Demand Order - **Penalty 50% of Tax**	Mutatis Mutandis u/s Section 74(11) if payment made **within 30 days**
Sub sec 10	**SCN will be issued where the amount is short paid under section 74A(8)(i) and 74A(9)(i)**	**Mutatis Mutandis u/s Section 73(7)/74(7)**
Sub sec 11	Notwithstanding the concession in Penalty u/s 74A(8)(i) or (ii), Penalty is payable as per sec 74A(5)(i) where tax is payable as per self-assessment or Tax collected is not paid within 30 days from the due date of payment of such tax	Mutatis Mutandis u/s Section 73(11)
Sub sec 12	Applicability of this section 74A - Applicable for determination of tax pertaining to FY 2024-25.	Corresponding amendment in sub sec 12 of sec 73/74 - ***pertaining to the period upto Financial Year 2023-24***

Statutory Architecture of Demand Proceedings

SECTION 74A – UNIFIED DEMAND REGIME

Sec No	Provision u/s 74A	Provision u/s 73/ 74
Explanation 1	(i) Meaning of ‘all proceedings in respect of the said notice’ shall not include proceedings u/s 132.	Mutatis Mutandis
	(ii) Proceedings against all persons liable to pay penalty u/s 122 and 125 shall be deemed to be concluded, where notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded.	Mutatis Mutandis
Explanation 2	“suppression” shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer.	Same as under sec 74

Statutory Architecture of Demand Proceedings

Section 76 - Tax collected but not paid

Section 76 of the CGST Act is a special recovery provision dealing with situations where:

- a person collects any amount as representing tax
- but fails to deposit the same with the Government.

Revenue need not establish: suppression, fraud, wilful misstatement, Leviability, Computation correctness

2. Understanding SCN

Anatomy of a GST SCN

Essential Ingredients of a Valid SCN

- Jurisdictional authority.
- Legal provision invoked.
- Factual allegations.
- Quantification methodology.
- Evidence relied upon.
- Annexures/documents.
- Basis of computation.
- Opportunity of hearing.

SCN must disclose:

- clear allegations,
- material particulars,
- legal basis,
- evidentiary support.

SCN Litigation Pointers

- SCN cannot be based on borrowed satisfaction.
- Investigation reports alone are insufficient.
- Third-party statements require corroboration.

3.

Approach to Handling SCN

Rights of a Tax Payer

Inherent

Natural Justice

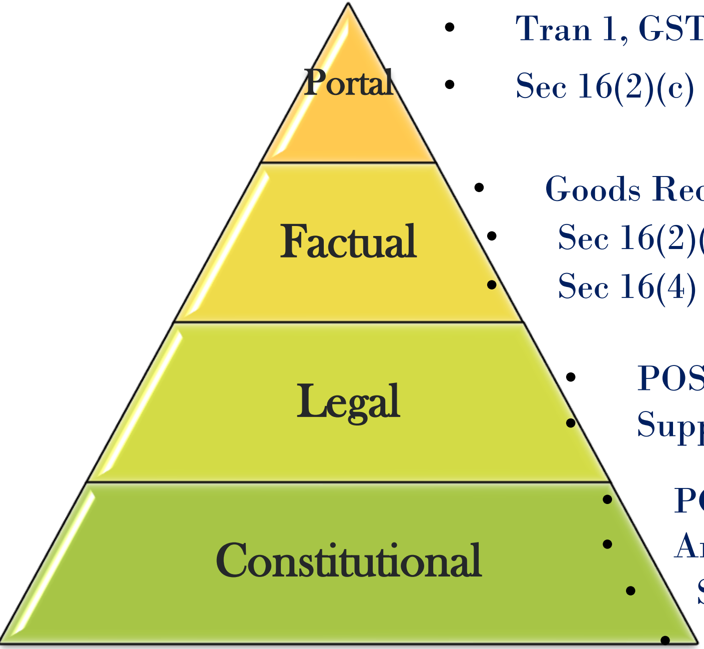
WRIT

Constitutional

Appeal

Statutory

AEM the Issue under Lis



- Tran 1, GSTR 1, ITC 04 – Uploading errors/Portal Challenges,……….
- Sec 16(2)(c) – B2B as B2C, Wrong GSTIN, Non reflection due to Portal Glitch

- Goods Received, Reconciliations (Revenue, Expenses),………
- Sec 16(2)(c) – Supplier Genuine, Certificate from supplier
- Sec 16(4) – Paid in future month 3B (Reconciliation)

- POS 13(3) Vs 13(2), Suppression - 73 Vs 74, ………
- Supplier Vs Recipient, 16(2) Vs 16(4), Take Vs Avail

- PONJ, Nemo Judex In Causa Sua
- Article 14, 19, 21 Challenge
- Sec 16(2)(c) – Doctrine of Impossibility
- Sec 16(4) – Ultravires

GROUNDS OF DEFENCE

Jurisdiction

- Proper Officer (Territorial, Monetary) - Commissioner of Customs v. Sayed Ali 2011 (265) E.L.T. 17 (S.C.)
- More than One Proper Officer
- 73 Vs 74
- Nemo Judex Causa Sua
- Challenging Law

Merits

- Burden of proof - Balaji Exim vs. Commissioner, CGST and ORS. 2023-VIL-181-DEL
- Mismatch 2A Vs 3B
- Supplier Not paid Tax
- DRC 01A – Mandatory?

Due Process

- Section under which allegation made
- SCN Vague - Commissioner of C. Ex., Bangalore vs. Brindavan Beverages (P) Ltd. 2007 (213) ELT 487 (S.C.)
- RUD - Sanghi Textiles Processors v. UOI 1993 (65) ELT 357 (SC)
- PH, PH before submission, Order on date of PH
- Time Limit – Sec 168 A
- Cross Examination - D.Y. Beathel Enterprises v. State Tax Officer (2021) 127 Taxman. Com 80 (Madras)
- Order Beyond SCN - Fortis Hospital Ltd. vs. Commissioner of Customs, Import 2015 (318) ELT 551 (S.C.)
- Speaking Order - Travancore Rayons Ltd. vs. Union of India 1978 (2) ELT 378 (S.C.)

Testing Quality of Evidence Relied Upon

Types of evidence commonly used by department

- GSTR analytics.
- E-way bill mismatch.
- Statements.
- Third-party data.
- Intelligence reports.
- Banking trail.
- Transport documents.
- GSTN auto-generated comparisons.

Challenging Evidences

Admissibility:-

- Was evidence supplied?
- Is it relied upon document?

Credibility:-

- Is evidence corroborated?
- Is statement retracted?
- Was cross-examination allowed?

Relevance:-

- Does material actually establish tax liability?

4.
Burden of Proof

Self Assessment Vs Burden of Proof

2(11)-Definition of Assessment

(11) "assessment" means determination of tax liability under this Act and includes **self-assessment**, re-assessment, provisional assessment, summary assessment and best judgment assessment;

Section 59. Self-assessment. -

Every registered person shall self-assess the taxes payable under this Act and furnish a return for each tax period as specified under section 39.

Section 155. Burden of proof.-

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.

BURDEN TO PROVE-SECTION 104 OF Bharatiya Sakshya Adhiniyam (BSA) 2023

Section 104.

Burden of proof.—Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist, and when a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

WHAT IS BURDEN TO PROVE- M/s Compuage Infocom Limited Versus The Assistant Commissioner, Rajasthan, Anti-Evasion-I

The burden to prove that a specific product falls within a particular tariff is always on the revenue, more so when the revenue is trying to classify products in the residual entry as against the specific entry. In the instant case, the revenue has utterly failed to adduce any evidence, technical or otherwise, to substantiate its claim that CAT-5 or CAT-6 cable are not covered in Part-A of Schedule IV to the RVAT Act which specifically deals with IT Products.

5.

Case Studies

Case Study 1.

Facts of the Case

- Surya Businees Private Limited, registered under CGST/AGST Act, 2017 (GSTIN: 18AADCS6480J1ZX), had its returns for the period 2017-18 (July 2017 to March 2018) selected for audit under Section 65 of the AGST Act, 2017.
- A notice dated 27-09-2022 was issued requiring production of books of accounts.
- After audit, observations under Rule 101(4) of AGST Rules, 2017 were issued vide communication dated 29-05-2023, raising issues of short payment of tax, suppression of turnover and un-reconciled turnover.
- The petitioner replied on 07-06-2023 clarifying all observations. The audit report under Section 65(6) was thereafter issued. All objections on short payment of tax and suppression of turnover were dropped based on the petitioner's clarifications.
- Only interest of Rs. 1,34,580/- on account of late payment of tax was confirmed.
- The petitioner paid the said interest and intimated the authorities vide communication dated 19-06-2023, seeking closure of the matter.
- Despite this, the respondent No. 2 after approximately three months issued a fresh Show Cause Notice dated 28-09-2023 in Form GST DRC-01 under Section 73(1) of the CGST/AGST Act, 2017 for the same period 2017-18, alleging short payment of GST of Rs. 64,25,694/- and wrongful availment of ITC of Rs. 1,68,052/- under Section 17(5).

Case Study 1.

Hon’ble Court’s Observations

- "The **comprehensive audit** for the period having been carried out and **no discrepancy having been found, therein**, **issuance of show-cause notice** under Section 73 of the Act of 2017, **without the situation envisaged under Sub-Section (7) of Section 65** arising in the matter, in the considered view of this Court **renders the impugned show-cause liable to be interfered with.“**

- "In the present case this Court having found both the issues involved in the impugned show-cause notice to have been duly considered during the process of audit assessment carried out under the provision of Section 65 of the Act of 2017, the circumstances as envisaged under Sub-Section (7) of Section 65 of the Act of 2017, not arising in the matter, the show-cause notice dated 28-09-2023, was not permissible to be so issued to the petitioner, herein.“

- The Show Cause Notice dated 28-09-2023 issued under Section 73 of the CGST/AGST Act, 2017 was quashed and set aside. The Writ Petition was allowed in favour of the petitioner.

Surya Businees Private Limited vs. State of Assam & Ors.

Case Study 2.

Facts of the Case

- Sumukha Ventures, a partnership firm based in Bengaluru, was subjected to proceedings initiated by both the audit authority and the enforcement authority under GST.
- The Deputy Commissioner of Commercial Taxes (Audit)-3.7 issued a Show Cause Notice dated 30.09.2025 (Form GST DRC-01, Reference No. ZD290925221988K).
- Thereafter, an Order-in-Original (Annexure-B) was passed by the same officer who had conducted the audit proceedings.

Case Study 2.

Hon'ble Court's Observations

- "It is submitted that such action is impermissible and being in violation of principles of natural justice, insofar as the **authority while conducting audit has expressed its opinion and findings** are recorded at one stage. It is submitted that once again **if the same officer were to conduct the assessment proceedings**, the authority would be guided by the findings made in the audit report."

- The Order-in-Original (Annexure-B) was set aside and the matter was remitted to Respondent No. 2 (Deputy Commissioner) to **first decide the question of jurisdiction** — specifically **whether the same officer who conducted the audit can also pass the adjudication order** — before proceeding on merits.

Sumukha Ventures vs. Joint Commissioner of Commercial Taxes & Ors

Case Study 3.

Facts of the Case

- We M/s Shri Sadguru are registered under GST and is engaged in providing Construction services of Residential Complexes and Works Contract Services. It is under QRMP scheme.
- They entered into Joint Development Agreement (hereinafter referred to as 'JDA') on October 28, 2021 with the landowners.
- The completion certificate of the project was received on April 08,2024 however the area sharing between the tax payers and land owners was still be decided.
- The final JDA was registered on November 8, 2024 and completed portion was handed over to the landowners. The tax payer, deposited the liability on self-assessment basis on 29th January 2025 through its 3rd Quarter Return in form GSTR-3B of the quarter October-2024 to December 2024
- In the mean while the investigation authorities on August 27, 2024 based on the intelligence of non-reversal of ITC as per Rule 42/43 of CGST Rules, 2017 had commenced investigation proceedings against the tax payer.
- On 11th September 2025 DRC 01A (SCN RUD 09) was issued alleging that the Noticee has failed to pay GST arising on construction services, GST under RCM on development rights and failed to reverse ITC towards exempted supplies. Reply was duly filed.
- On 22/09/2025 SCN & Demand Notice is issued.

Other Cases

- 4. SCN based on data of return without ASMT-10 ?

VADIVEL PYROTECH (P.) LTD. 2023 (68) G.S.T.L. 120 (Mad.).

It is thus clear that any proceeding in GST DRC-01A / 1 culminating in an Order in GST DRC-07, **if pursuant to Scrutiny under Section 61 of the TNGST Act ought to be preceded by issuance of Form ASMT 10.**

In the present case, though ASMT 10 was issued on 22-12-2021 pointing out certain discrepancies, the GST DRC-01 dated 15-02-2022 and the impugned order in GST DRC-07 dated 09-05-2022 are made on the basis of **issues that are completely different from what was set out in Form ASMT 10** dated 22-12-2021.

As this Court is of the view that **ASMT 10 is mandatory before proceeding to issue GST DRC-01,** failure to issue the same in respect of the discrepancies forming the subject matter in GST DRC-01 dated 15-02-2022 culminating in GST DRC-07 dated 09-05-2022 would vitiate the entire proceedings. It is trite law that when the Act prescribes the method and manner for performing an act, such act shall be performed in compliance with the said method and manner and no other manner.

- 5. SCN issued without considering Reply to Audit observations?

Other Cases

- Validity of show cause notice if no discrepancy observed during audit and ADT-02 is issued?
- SCN issued without considering the reply to Audit Observations?
- ***Rule 101(4) :-***Proper officer shall finalise the findings of the audit after due consideration of the reply furnished."
- -**VARDHAMAN GOLD. 2024 (81) G.S.T.L. 375 (A.P.) – SCN set aside without considering the reply.**
- SCN issued after 2 years of Audit whether sustainable?

Other Cases

- 6. Whether SCN only demanding Interest is mandatory?
- Section 75 (12) Notwithstanding anything contained in section 73 or section 74, where any amount of self-assessed tax in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 79.
- C.B.I. & C. Letter F. No. CBEC- 20/16/07/2020-GST, dated 10-2-2020
- **MAHADEO CONSTUCTION CO 2020 (36) G.S.T.L. 343 (Jhar.) – SCN to be issued.**
- **LC INFRA PROJECTS PVT. LTD. 2021 (44) G.S.T.L. 60 (Kar.)** - Show Cause Notice required to be issued to assessee under Section 73 (1) of Central Goods and Services Tax Act, 2017 for recovery of interest payable under Section 50(1) ibid - Principles of natural justice to be complied with before making a demand for interest……

गौरवशाली था भूत,
भविष्य भी महान है
आप केवल इतना कीजिये
सम्भालिये जो वर्त्तमान है

गुरुर्ब्रह्मा गुरुर्विष्णु:
गुरुर्देवो महेश्वर:।
गुरु:साक्षात् परं ब्रह्म
तस्मै श्री गुरवेनम:।।

Thank You

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