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The GST & Indirect Taxes Committee of ICAI

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Topic: Drafting Replies in SCN Proceedings

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Omission to Issue DRC 01A- Relevant Provisions

SECTION 74(5) OF THE CGST ACT, 2017

(5) The person chargeable with tax may, before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 and a penalty equivalent to fifteen per cent. of such tax ON THE BASIS OF HIS OWN ASCERTAINMENT OF SUCH TAX or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

Rule 142(1A) of the CGST Rules, 2017

*142. (1A) The proper officer **MAY**, before service of notice to the person chargeable with tax, interest and penalty, under sub-section (1) of Section 73 or sub-section (1) of Section 74, as the case may be, communicate the details of any tax, interest and penalty as ascertained by the said officer, in Part A of FORM GST DRC-01A.* ***(FROM 15TH OCTOBER 2020)***

Omission to Issue DRC 01A - Whether Mandatory or Directory

Date	Event
10.01.2024	The **DGGI, Bengaluru Zonal Unit** initiated **investigation** under Sections **67 and 70** of the CGST Act, 2017 into M/s **Zenith Components Pvt. Ltd.**, a manufacturer of automotive precision components, for suspected short-payment of GST on tooling charges and import of design services.
15.03.2024	**Summons issued** to the company's Finance Head under Section 70 for production of records and appearance.
05.04.2024	Statement recorded; preliminary computation of alleged tax evasion of ₹2.78 crore prepared by the Investigating Officer.
18.09.2024	DGGI completed its **investigation**, prepared a **draft quantification sheet**, and internally approved the proposal for issuance of SCN under **Section 74(1)** by its **Additional Director (Proper Officer)**.
20.02.2025	Approval obtained from **Principal Additional Director General, DGGI**, for issuance of the SCN.
05.03.2025	**Show Cause Notice (SCN)** issued under **Section 74(1)** of the CGST Act by the **DGGI (Proper Officer)** demanding ₹2.78 crore with interest and equivalent penalty. No **Form GST DRC-01A** was issued prior to the SCN.
15.03.2025	The assessee objected to the SCN, contending that non-issuance of DRC-01A deprived them of the benefit of voluntary payment under **Section 74(5) and right lost to settle the penalty at 15%**
05.04.2025	The petitioner filed **Writ Petition No. 2347/2025** before the **Karnataka High Court** challenging the SCN on three grounds: (i) DRC-01A not issued, (ii) lack of jurisdiction, and (iii) violation of natural justice.

Mandatory or Directory – RULE OF LAW BEHIND IT

Procedural Provisions - Whether Mandatory or Directory

- *"Where Issuing Notice under a particular Statute becomes Pre-Condition for initiating any Proceedings, in absence of such issuance the proceedings will be without jurisdiction and an order passed thereof would be a nullity."*

Dattaram S Vichare Vs Thukaram S Vichare (1999) 6 SCC 764

- **When the legislature prescribes the Form or Manner in which a duty is to be performed or power exercised, it seldom lays down what will be legal consequence of failure to observe the prescriptions.**
- **Courts formulate their own criteria for determining whether a procedural provision to be regarded as mandatory or Directory.**

Mandatory or Directory – RULE OF LAW BEHIND IT

THUMB RULE TO DECIDE THE NATURE:

- ***Whole Scope and Purpose of Enactment*** must be considered.
- Importance of Disobedience of the ***provision to be assessed and relation of that provision to general objective sought to be achieved by act must also be looked into.***

Effect of Procedural Provision - Mandatory	Effect of Procedural Provision - Discretionary
Disobedience is treated is void or voidable of what has been done	Disobedience is treated as mere procedural irregularity not affecting the validity of what has been done
Vide the Rule 142(1A) inserted from 09-10-2019: Issuance of DRC 01A was mandatory till 14-10-2020	Issuance of DRC 01A appears to be discretionary from 15-10-2020 ("shall" was amended to may")

✓Trivial nature of Departure ✓ No Substantial Pre-Judice suffered for whose benefit the requirements were introduced

✓ Serious Public Inconvience cause holding it mandatory; ✓Courts for any declines to interfere with the decision impugned

R Vs Secretary For Social Services ex-parte association of Mertropolan Authorities 1986 ALL ER 164 QBD

Mandatory or Directory – GST DECISIONS FOR AND AGAINST

Decisions saying it is Mandatory	Decisions saying it is Discretionary
DS Chewing Products LLP Vs State of UP [2025] 171 taxmann.com 190 (Allahabad) ❑ Interim Stay against OIA ❑ Court upheld exercise of Extraordinary Jurisdiction under A.226 as NO TRIBUNAL PRESENT ❑ *PRE AMENDMENT DRC 01A MANDATORY OR NOT.*	Dawn Express Courier Del Private Limited vs UOI & Others 2025-VIL-902-DEL - after Amendment Discretionary
Gulati Enterprises VS CBIC [2023] 147 taxmann.com 184 (Delhi) Skyline Automation Industries Vs State of U.P. [2023] 146 taxmann.com 159 (Allahabad) – *PRE AMENDED 142(1A) Mandatory*	Vishaka Exports vs Assistant Commissioner (ST) (FAC) [2023] 147 taxmann.com 579 (Madras) – Not Stauttorily imperative due to amendment
Tanishka International v. State of U.P [2023] 148 taxmann.com 345 (Allahabad) - Failure to Issue DRC 01A is an incurable defect when the R.142(1A) stands *UNAMENDED*	Nanhey Mal Munna Lal Vs Surya Prakash Kesarwani and Jayant Banerji, jj [2023] 149 taxmann.com 360 (Allahabad) – Although Discretionary observed in Court, Court still directed to give an opportunity (PONJ) considering the object sought to be achieved *(To reduce litigation and benefit that a taxpayer can avail in terms of penalty)*

WHEN WITHOLDING OBJECTION TO DRC 01A IS BENEFICIAL

WITHOLDING OBJECTIONS BECOMES BENEFICIAL – A Strategic Call

- *SCN if issued, is barred under 73 but not under 74, Pre-SCN issued under 73*
- *When Pre-SCN issued under Conjured Thought of an Officer - does not propose a demand but issued to seek evidence/ additional material (Suspicion However grave cannot substitute evidences)*
- *Ingredients of Section 74 is missing which is jurisdictional pre-condition but same has not been pressed.*
- *PRE-SCN has certain fatal defects as to the Jurisdictional Challenges, non quantification of demand etc.*

Failure to Consider Reply to DRC 01A will it vitiate SCN

"NOTHING RANKLES MORE IN THE HUMAN HEART THAN BROODING SENSE OF INJUSTICE"

------- Mr. Justice Bernnam

When Reply to DRC 01A is rejected without reasons or not considered in issuing SCN:

1. Given the fact that DRC 01A issuance is not-mandatory from 15-10-2020, still once an option is exercised and reply is filed in response to the same, for reasonable and just commencement of proceedings under 73(1), it's implications are to be evaluated.

2. In the case of *Appario Retail (P.) Ltd Vs Deputy Commissioner of Commercial Taxes (Audit) [2024] 159 taxmann.com 509 (Karnataka)*, the above view was upheld.

3. *FSM Education (P.) Ltd. Vs Union of India [2025] 171 taxmann.com 235 (Bombay)* it was held that without consideration of reply to DRC 01A, the Authorities could not have proceeded for issuing SCN.

SCN "along with" Summary SCN

- After Pre-Notice Consultation and especially when taxpayer has rejected the opportunity to furnish reply, the lawful recourse for raising demand is **'set in motion'** by issuing SCN.
- Such SCN should be accompanied by Summary of SCN in Form GST DRC 01.
- *(1) The proper officer shall serve,* ***ALONG WITH THE****:*

(a) *notice issued under section 52 or section 73 or section 74 or section 74A or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130, a summary thereof electronically in* ***FORM GST DRC-01,***

- ***It is sine qua non to make the due process lawful proper and complete.***
- ***Let us ponder on the situation when it is not accompanied with DRC 01 and issued subsequent to notice whether it is a curable defect***

SCN "along with" Summary SCN

M/s SIDHI VINAYAK ENTERPRISES Vs THE STATE OF JHARKHAND 2023-VIL-86-JHR

Rule 142(1)(a) of the JGST Rules, 2017 provides that the summary of show cause notice in Form DRC-01 should be issued "along with" the show cause notice - ***The word "along with" clearly indicates that in a given case show cause notice as well as summary thereof both have to be issued - As per Rule 142(1)(a) of the Rules, the summary of show cause notice has to be issued electronically to keep track of the proceeding initiated against the registered persona whereas a show cause notice need not necessarily be issued electronically - Summary of Show Cause Notice in Form DRC-01 is not a substitute of show cause notice - the foundation of the proceeding suffers from material irregularity and hence not sustainable being contrary to Section 74(1) of the JGST Ac, thus, the subsequent proceedings and impugned orders cannot sanctify the same***

SCN "along with" Summary SCN

Issue No.2

Can the Summary of SCN replace a Speaking Notice?

***PROLAY DEY SARKAR Vs THE STATE OF ASSAM AND 2 ORS.* 2025-VIL-1113-GAU**

The **Summary of Show Cause Notice in Form GST DRC-01 is not a substitute for the proper and prior Show Cause Notice** required to be issued under Section 73(1) of the AGST Act, 2017. The issuance of a Summary of Show Cause Notice and an Attachment to Determination of Tax cannot be considered a valid SCN as per the statutory requirements. The issuance of the summaries in various forms does not dispense with this requirement.

Can Demand under DRC 01 be enhanced from DRC 01A ?

EXPO GAS CONTAINERS LTD. Vs THE COMMISSIONER OF STATE TAX, DIRECTOR OF COMMERCIAL TAXES & ORS. **2025-VIL-801-CAL**

Petitioner case that unexplained enhancement effectively denied them the statutory opportunity under Section 73(5) of the CGST Act, 2017 to pay the initially ascertained tax and conclude the matter before formal proceedings were initiated. Whether a show-cause notice issued in Form DRC-01 can be sustained if the demand contained therein is substantially and inexplicably higher than the amount specified in the preceding pre-notice intimation in Form DRC-01A. **While the issuance of a pre-notice intimation in Form DRC-01A under Rule 142(1A) of the CGST Rules is not mandatory, once an authority exercises its discretion to issue such an intimation, it cannot arbitrarily deviate from it. The authorities ought not to have taken the petitioner by surprise by enhancing the claim several folds for the first time in the formal SCN without providing any explanation for the variation**. This action deprived the petitioner of a valuable legal right under Section 73(5) of the Act to respond to the amount initially ascertained in DRC-01A

Defect Vs Discrepancies in Notice

Defect Vs Discrepancy in SCN:

A **defect** strikes at the jurisdiction or the mandatory procedure of law, rendering the notice void ab initio. A **discrepancy**, by contrast, is a minor clerical or factual irregularity which does not prejudice the noticee and can be rectified without restarting the process. The former invalidates; the latter only invites correction.

A notice becomes legally defective

- ✓ When it omits quantification of the demand,
- ✓ Emanates from an Officer lacking jurisdiction or case of excessive jurisdiction
- ✓ No Pecuniary Jurisdiction for the Proper Officer to assume power
- ✓ Issued beyond the limitation prescribed.
- ✓ Improper Service of Notice

Defect Vs Discrepancy in SCN:

A **discrepancy**, by contrast, is a minor clerical or factual irregularity which does not prejudice the noticee and can be rectified without restarting the process. The former invalidates; the latter only invites correction.

A discrepancy is an irregularity of form, not of substance.

- Typographical mistakes,
- Minor mismatches between annexures and the main body,
- An erroneous tariff heading where the description is clear,
- Incorrect quoting of Sections are all discrepancies.

These can be corrected without nullifying the proceedings provided the assessee's right of defence is not impaired.

Issues for Deliberation

- **During the course of Inspection, the Proper Officer raised discrepancy regarding the difference in outward E Way bills vs Outward Supplies, Inward E Way Bill Vs Inward Supplies. However, while issuing SCN, demand was not quantified and written in SCN as yet to be quantified**

1. Section 74 of the CGST Act employs the terminology **"requiring him to show cause as to why he should not pay the amount specified in the notice"**
2. "The intimation of the exact amount demanded is an indispensable requirement under Section 28 of Customs Act, 1962 and failure to do so will permeate the SCN with a fatal weakness." Poddar Global Pvt Ltd Vs JCC 2017 350 ELT 498 Mad
3. Quantification is crucial for numerous reasons including a situation where taxpayer in substance may accept the charges levelled but may dispute the proper officer's calculation of duty due.

Wrong Quoting of Sections in SCN

Whether Incorrect Quoting of Sections in SCN Vitiate the Proceedings in entirety?

N B Sanjana Vs Elphinstine Spinning and Weaving Mills Co. Ltd 1978 ELT J399 SC

Fact that noticee referred to particular rule which may not be applicable would not make the notice Invalid.

Similar view Expressed in:
JK Steel Vs UOI 1978 2 ELT J355 SC
CCE Vs Pradyuymma Steels Ltd 1996 82 ELT 441 SC

Mere Reproduction of language of Law would it be sufficient to invoke action under Section 74

- **Question of jurisdiction hinges on how the revenue proves through factual avertments that there exists a "suppression to evade taxes"**
- **A mere mechanical reproduction of language of the provision in the SCN would neither suffice nor confer jurisdiction on the proper officer to issue notice beyond the normal period of limitation (NASIR AHMED V, ACG, EVACUEE PROPERTY AIR 1980 SC 1157)**
- **The department must substantiate its invocation of the extended period through factual avertments (Universal containers Pvt Ltd Vs CCE 2000 117 ELT 58 TRIBUNAL)**

Preliminary Objection on Technicalities of SCN

CGPI

The reply should commence with the phrase *"Without prejudice to the merits"*. Each objection must identify the

- **Specific legal lapse,**
- **Quote the governing provision,**
- **Cite a judicial precedent if any in support,**
- **Explain how the lapse prejudices the noticee, and**
- **Conclude with a prayer that the notice be dropped for want of validity. Precision and restraint lend credibility**

A preliminary objection is the taxpayer's first line of defence. It challenges the maintainability of the notice on jurisdictional or procedural grounds before the merits are entered upon. The object is to compel the authority to satisfy itself that the process is lawful before venturing into quantification or liability.

Preliminary objections generally arise on following axes – (1) lack of jurisdiction or authority of the officer; (2) procedural violation such as non-service of DRC-01 or absence of relied-upon documents; (3) bar of limitation under Sections 73(10) and 74(10); and (4) substantive vagueness where the notice is fatal to its validity 5 Notice Based on Assumptions and Presumptions 6. Notice barred by Limitation

Preliminary Objection on Technicalities of SCN

MODEL OBJECTION:

"Without prejudice to our rights to contest the matter on merits, it is respectfully submitted that the impugned show-cause notice suffers from jurisdictional and procedural infirmities going to the root of its maintainability. The following preliminary objections are therefore raised for kind consideration." This language protects both procedural and substantive rights.

Allegation and Evidence

Every valid demand must be built upon a proven fact. An allegation is a charge; evidence is its backbone. In the absence of corroborative proof, an allegation remains conjecture. A show-cause notice founded on suspicion or assumption cannot survive judicial scrutiny because law requires proof, not presumption.

Oudh Sugar Mills Ltd. v. Union of India **(1978 2 ELT J172)**

"Findings based on assumptions and presumptions without any tangible evidence are vitiated. There must be some material evidence on record to support such finding. Mere suspicion, however strong, cannot take the place of evidence." **This single paragraph remains the bedrock of evidentiary discipline in tax adjudication.**

Challenge Revenue's Burden & Section 155

Shifting the Evidentiary Debate

REVENUE'S BURDEN — SCOPE & LIMITS

- Revenue must establish: (i) taxable event occurred, (ii) assessee is liable, (iii) amount quantified correctly — ALL THREE independently
- Section 155 CGST Act: Burden of proof on taxpayer ONLY in specified circumstances — 'in any proceedings under this Act' for claims of input tax credit
- S.155 does NOT shift burden for output tax allegations — Revenue must prove short payment / suppression / fraud
- Critical: S.155 has limited scope — it does not reverse the fundamental principle that the department must establish its case

HOW TO CHALLENGE S.155 RELIANCE

- Identify if Revenue's SCN is for ITC or output tax
- For output tax: S.155 inapplicable — demand burden on Revenue
- For ITC: Assessee bears initial evidential burden — then Revenue must disprove
- Once assessee produces prima facie evidence: burden shifts back
- Mere GSTR-2A absence ≠ Revenue discharged burden (post-Filco Trade)

DRAFTING THE BURDEN CHALLENGE

- Para 1: Set out what Revenue must prove (with statutory basis)
- Para 2: Identify what evidence Revenue has actually produced
- Para 3: Demonstrate gap between required and actual evidence
- Para 4: Argue: absence of evidence = burden not discharged
- Para 5: Relief sought: drop demand / grant ITC

APEX PRINCIPLE: National Insurance Co. — Revenue cannot discharge burden by pointing to absence of proof from assessee. Primary burden always on him who asserts.

Purpose & Extent of Rebuttal Evidence

Evidence Strategy in Reply

WHAT IS REBUTTAL EVIDENCE?

- Rebuttal evidence: evidence furnished by assessee to disprove allegations / evidence in SCN — distinct from 'self-serving documents'
- Standard: Preponderance of probabilities — not 'beyond reasonable doubt' (criminal standard) — applied to GST proceedings
- Relevance: Must directly address the allegation — tangential documents add bulk, not strength. Quality over quantity.

PRIMARY REBUTTAL

- Tax invoices, contracts, delivery challans
- Bank statements showing payment by supplier
- E-way bills + lorry receipts + MRN
- Stock records: inward / outward registers

SECONDARY CORROBORATION

- Expert valuation reports (Rule 28 disputes)
- CA Certificate on ITC reconciliation
- Affidavits of directors / relevant persons
- Confirmation from suppliers

LEGAL PRECEDENTS

- Bind adjudicating authority on legal propositions
- Binding: SC / HC of same state / CESTAT CB
- Persuasive: other HCs / CESTAT benches
- Always cite full citation + headnote

EXTENT PRINCIPLE: Submit all evidence with the reply — new evidence at appeal stage may be admitted but creates adverse impression. Adjudicating authority must consider all evidence furnished — refusal to consider = natural justice violation (ground for appeal).

Omission to File Reply on Merits

When a noticee confines its reply only to preliminary objections and states that it does not wish to enter into the merits, it risks the allegation being treated as admitted. Silence in the face of a charge is often read as acceptance. The law does not presume denial; it presumes acquiescence unless rebutted.

In *Dharampal Satyapal Ltd.* (2015 8 SCC 519), the Supreme Court held that failure to rebut allegations justifies adverse inference. *Brindavan Beverages* confirmed that uncontroverted allegations may be treated as undisputed. *Toyo Engineering India Ltd.* (2006 201 ELT 513 SC) observed that absence of rebuttal evidence permits the presumption that departmental material is correct.

"Without prejudice to the above preliminary objections, the following submissions are made on merits to avoid any adverse inference."

Purpose & Extent of Rebuttal Evidence

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Legal Maxims Applicable to Reply Drafting

Latin Principles in GST Litigation

Audi alteram partem

"Hear the other side"

Foundation of natural justice — SCN without proper opportunity = void. Personal hearing under S.75(4) is a right, not a privilege.

Nemo judex in causa sua

"No man shall be judge in his own cause"

Adjudicating officer who investigated = biased adjudicator. Raise transfer petition / bias challenge if same officer adjudicates.

Onus probandi

"Burden of proof"

He who asserts must prove. Revenue asserting suppression / fraud bears full burden — does not shift by mere SCN issuance.

Expressio unius est exclusio alterius

"Expression of one is exclusion of others"

Where S.17(5) lists specific blocked credits, unlisted items are not blocked — strict construction of exemption/restriction lists.

In pari delicto

"In equal fault"

Revenue cannot benefit from its own procedural wrong — failure to issue DRC-1A / hold hearing: department cannot rely on its own default.

Lex non cogit ad impossibilia

"The law does not compel impossibility"

ITC denial for supplier's default — assessee cannot be compelled to do the impossible. Filco Trade principle.

Res judicata

"A matter already judged"

Prior OIO on same facts / period — subsequent SCN on same grounds barred. Issue estoppel applies in quasi-judicial proceedings.

Ut res magis valeat quam pereat

"That the thing may rather have effect than be destroyed"

Applied in Revenue's favour — Courts read SCN charitably to give it effect. Counter: clear vagueness cannot be cured by charity.

Use of Technology & AI Tools in Reply Drafting

The Modern Litigator's Toolkit

AI augments — never replaces — the professional's judgment, domain expertise, and accountability.

Legal Research

- Indian Kanoon (indiankanoon.org) — Free HC/SC/Tribunal search
- SCC Online / Manupatra / Taxmann — Comprehensive databases
- AI-powered: Westlaw Edge, LexisNexis+AI — Semantic case search
- CaseMine — 'Cases citing X' reverse search tool

Drafting Assistance

- Claude (Anthropic) / ChatGPT — Structure, arguments, legal language
- Harvey AI — Legal-specific LLM (enterprise tier)
- Co-pilot in MS Word — In-document drafting assistance
- Use: First draft generation, argument stress-testing, consistency check

Data Analysis

- Excel / Power BI — GSTR-1 vs GSTR-3B reconciliation
- Python scripts — Large-scale ITC matching analysis
- Tally / Zoho — Auto-reconciliation with GSTN data
- AI: Anomaly detection in transaction data for pre-reply audit

Document Management

- NotebookLM (Google) — Summarise large SCN documents
- Adobe Acrobat AI — Contract / document analysis
- Relativity / Everlaw — Large document set review
- Zapier / n8n — Automate deadline tracking & notifications

⚠ **Caution: AI tools may hallucinate citations. ALWAYS verify every case law reference independently before filing.**

Thank You

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