

MBSIRC CPE MEETING on 03.02.2024



**Discussion on Finance
Budget**

Decoding GST Notices

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Agenda

Latest Amendments and
Case Laws

Demand and Recovery

Decoding SCNs



Interim Budget 2024

Interim Budget 2024

- **GST Average monthly gross collections increased from ₹ 0.9 lakh crore in FY-18 to ₹ 1.5 lakh crore in FY-23**
- **No. of GST taxpayers increased from 66 lakhs at its introduction to 1.4 crore in 2022, with a larger number of smaller businesses entering the regime**
- ***No changes in indirect taxes***
- **Mandatory ISD through amendment to CGST Act**

Section 20 of the CGST Act substituted

- ***ISD means an office of the supplier of goods or services which receives tax invoices towards receipt of input services including invoices where GST is payable under RCM for and behalf of distinct persons***
- ***ISD is liable to distribute ITC in respect of such invoices in the manner provided in Section 20***
- ***Office of the supplier will have to register as ISD and distribute ITC in the manner prescribed***

Interim Budget 2024

- *Registered persons engaged in manufacturing Pan Masala and Specified Tobacco products are required to follow Special Procedure given under Section 148 of CGST Act, 2017*

New Section 122A of the CGST Act

- *Penalty of Rs. 1 Lac per machine for failure to register the machines under the special procedure*
- *Seizure and confiscation of unregistered machines.*

Latest Amendments

Appeal Amnesty Scheme

- GSTN has issued an Advisory for the procedures and provisions:
- **Amnesty scheme for belated appeals has been notified vide [Notification No. 53/2023-CT dated 02.11.2023](#)** based on recommendations of 52nd GST Council's meeting held on 07.10.2023.
- Taxpayers can now file appeal in FORM GST APL-01 on the GST portal on or before January 31, 2024, for the **order passed by proper officer on or before March 31, 2023.**
- Taxpayers should **make payments** for entertaining the appeal by the Appellate officer as per the provisions of Notification No. 53/2023.
- The GST Portal allows taxpayers to choose the mode of payment (electronic Credit/Cash ledger), and it's the responsibility of the taxpayer to select the appropriate ledgers and make the correct payments.
- Payment should be made against the demand order using the '**Payment towards demand**' facility available on the GST portal. The navigation step for making this payment is provided: Login >> Services >> Ledgers >> Payment towards Demand.
- The Amnesty Scheme is in operation till **31st January, 2024** any.

Aadhar based Authentication for Gujarat and Puducherry

- This functionality has been developed by GSTN. It was launched in Puducherry on 30th August, 2023 and in Gujarat on 7th November, 2023.
- It provides for document verification and appointment booking process. After the submission of the application in Form GST REG-01, the applicant will receive either of the following links in the e-mail,
 - A Link for OTP-based Aadhaar Authentication OR
 - A link for booking an appointment with a message to visit a GST Suvidha Kendra (GSK) along with the details of the GSK and jurisdiction, for Biometric-based Aadhaar Authentication and document verification (the intimation e-mail)

2 Factor Authentication for E-way Bill System

- GST E-Way Bill System has issued an update which mandates 2-factor authentication for Taxpayers with **AATO Rs 20 Crore and above from Nov 20, 2023.**
- Users are requested to register for 2FA and also create sub-users so that EWB activities are managed without any problem.
- There are 3 different ways of receiving the OTP. One may enter any of the OTP and login to system. The various modes of generating OTP are - **SMS, On 'Sandes' app and Using 'NIC-GST-Shield' app.**

Amendment in Rent a Cab Service

- **Notification No. 12/2023 - Central Tax (Rate) dated 19th October 2023**
- **Rent a cab service from non-body corporates to body corporates is under reverse charge. For others under forward charge, they have an option to charge 5% or 12%.**
- For operators who charge 5% GST (when cost of fuel was included in the price) and take back-to-back service from sub-contractors who charge 12% GST, it used to create an artificial inverted duty structure for the same service. Now this anomaly has been rectified by limiting the ITC to 5% only. This has been illustrated as follows –
- 'A' engages 'B' for transport from New Delhi to Jaipur in a motor cab for Rs. 1000. 'B', for supplying the said service, hires a motor cab with operator from 'C' for Rs. 800. 'C' charges 'B' central tax at the rate of 6% (Rs. 48). If 'B' charges 'A' central tax at the rate of 2.5%, he shall be entitled to take input tax credit on the input service in the same line of business supplied by 'C' only to the extent of Rs. 20 (2.5% of Rs. 800) and not Rs. 48.";
- Heading 9964 - (Passenger transport services)
- Heading 9966 - (Rental services of transport vehicles with operators)

Amendment in Government Authority

- **Notification No. 13/2023 - Central Tax (Rate) dated 19th October 2023**
- **The following services provided to "Government Authority" shall be exempt –**
 - (a) water supply;
 - (b) public health;
 - (c) sanitation conservancy;
 - (d) solid waste management; and
 - (e) slum improvement and upgradation.

[(zf) "Governmental Authority" means an authority or a board or any other body, -

- (i) set up by an Act of Parliament or a State Legislature; or (ii) established by any Government,
- with 90per cent. or more participation by way of equity or control, **to carry out any function entrusted to a Municipality under article 243 W of the Constitution or to a Panchayat under article 243 G of the Constitution.**

(zfa) "Government Entity" means an authority or a board or any other body **including a society, trust, corporation,**

- (i) set up by an Act of Parliament or State Legislature; or (ii) established by any Government,
- with 90per cent. or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority.

RCM on Omni BUS

- **Notification No. 16/2023 - Central Tax (Rate) amends Not. No.17/2017-Central Tax (Rate) w.r.t. Reverse Charge on 'services supplied through an e-commerce operator' (effective date today i.e. 20th October 2023) -**
- **With effect from 1 January 2022, liability to pay GST on bus transportation services supplied through Electronic Commerce Operators (ECOs) has been placed on the ECO under section 9(5) of CGST Act, 2017.**
- This trade facilitation measure was taken on the representation of industry association that most of the "bus operators" supplying service through ECO owned one or two buses and were not in a position to take registration and meet GST compliances.
- To arrive at a balance between the need of small operators for ease of doing business and the need of large organized players to take ITC, GST Council had recommended that **bus operators organised as companies may be excluded from the purview of section 9(5) of CGST Act, 2017.** This would enable them to pay GST on their supplies using their ITC. The same has been implemented.

GST ON PERSONAL GUARANTEE AND CORPORATE GUARANTEE UNDER GST FROM OCTOBER 2023

- **Sub Rule 2 is inserted in Rule 28 of CGST Rules, 2017 for valuation of services of issuance of corporate guarantee for levy of GST**

FROM 01.07.2017 UNTIL 25.10.2023	W.E.F. 26.10.2023
<p>Open market value or value of supplies of like kind and quality of services (rule 28 of CGST Rules,2017) except</p> <p><i>Where full ITC is available to the recipient, 'any value (even zero value)' declared in the invoice can be deemed to be the open market value of the supply in such cases, in terms of the second proviso to Rule 28(1).</i></p> <p>(So, the benefit of <u>zero value is not available</u> where guarantee has been issued for the entities dealing in exempt supply.)</p>	<p>-1% of amount of such guarantee</p> <p>OR</p> <p>- actual consideration</p> <p>Whichever is higher</p> <p>(As per newly inserted sub rule 2 of rule 28 to CGST rules 2017)</p>

Circular No. 204/16/2023-GST dated 27th October 2023 clarifies on issues pertaining to taxability of personal guarantee and corporate guarantee in GST

GST on Online Gaming, Casinos, Horse Racing w.e.f. October 1, 2023

- Amendments in the CGST Act through the CGST (Amendment) Act, 2023 – Section 2 (80A), (102A), (105), (117A), Section 24, Schedule-III of CGST Act vide **Notification No. 48/2023-Central Tax, dated September 29, 2023.**
- The CBIC vide **Notification No. 49/2023 – Central Tax dated September 29, 2023,** seeks to notify supply of online money gaming, supply of online gaming other than online money gaming and supply of actionable claims in casinos under Section 15(5) of CGST Act i.e. to provide valuation rules for supply of online money gaming, supply of online gaming (excluding online money gaming) and supply of actionable claims in casinos.
- **Notification No. 50/2023 – Central Tax dated September 29, 2023 and Notification No. 51/2023 – Central Tax dated September 29, 2023,**
- **Notification No. 11/2023-Central Tax (Rate) dated September 29, 2023** to amend the Notification No. 1/2017-Central Tax (Rate), dated the 28th June, 2017
- **Notification No. 03/2023-Integrated Tax dated September 29, 2023 and Notification No. 04/2023-Integrated Tax dated September 29, 2023,** seeks to notify the supply of online money gaming as the supply of goods on import upon which, IGST shall be levied and collected under sub-section (1) of Section 5 of the Integrated Goods and Services Tax Act, 2017 ("the IGST Act").

Changes Effective from 1st Oct 2023

- **GST chargeable on OIDAR services by foreign firms to individuals & Govt irrespective of any usage w.e.f. October 1, 2023**
- **Composition levy extended to suppliers of goods under the ecommerce model:**
 - The ECO is prohibited from allowing any inter-state supply of goods through its platform by the said person.
 - The ECO shall allow the supply of goods through it by the said person only if an enrolment number has been allotted on the common portal to the said person;
 - The ECO must collect tax at source under subsection (1) of Section 52 of the CGST Act for the supplies of goods made by the said person through its platform.
 - The ECO is required to electronically submit the details of supplies of goods made by the said person through its platform in the statement in FORM GSTR-8.

Changes Effective from 1st Oct 2023

- **Clarificatory amendment concerning payment to supplier within 180 days**
 - The amendment changes the previous provision, where the ITC was treated as an addition to the output tax liability, to a new requirement for either payment or reversal of the ITC.
 - Consequently, the liability of interest on such reversal shall be determined in accordance with Section 50(3) instead of 50(1) of the CGST Act, only when such wrongly availed credit is utilised by the registered person.
- **Section 17(3) of the CGST Act: Supply of warehoused goods before filing BOE for home consumption is includible in value of exempt supply for reversal of common ITC u/s 17(2) and (3) r.w. Rule 42/43**
- **Section 17(5)(fa) of the CGST Act: ITC blocked on CSR activities**
 - ITC on goods/services received by taxable person, that are used or intended to be used for activities associated with fulfilling Corporate Social Responsibility (“CSR”) obligations. This is applicable prospectively.

Changes Effective from 1st Oct 2023

- **Retrospective overriding effect of Section 23(2) on Sections 22 and 25 w.e.f. July 2017:**
 - **Person making supplies of services through E-Commerce Operator having aggregate turnover not exceeding INR 20L in a FY**
 - Person supplying handicraft goods having aggregate turnover not exceeding INR 20L in a FY
 - Person making inter-state supplies of taxable services having aggregate turnover not exceeding INR 20 Lakhs in a FY
- **Time limit on application for revocation of cancelled registration**
 - The time period has now been **increased to 90 days from the date of order of cancellation** or such further period as may be allowed by the commissioner but not exceeding **180 days** as prescribed under Rule 23 of the CGST Rules.
- **Limitation of 3 years on filing of returns**
 - The Registered person will not be allowed to furnish belated returns in **Form GSTR-1, GSTR-3B, GSTR-8, GSTR-9 and GSTR-9C after the expiry of three years** from the due date of furnishing the relevant returns.

Changes Effective from 1st Oct 2023

- **Section 56 of CGST Act: Refunds and Interest on delayed refunds**
 - The government will be empowered to prescribe the mechanism, computation, manner, and restrictions for payment of interest on delayed refunds beyond 60 days from the date of receipt of refund application until the date of refund.
- **Section 62(2) of the CGST Act: Assessment of unregistered persons**
 - The time period for furnishing Form GSTR 3B or Form GSTR 10 (Final Return) under the Best Judgment Assessment, **for the deemed withdrawal of the best judgment order, will increase from 30 days to 60 days.** The period of 60 days may further be extended to **120 days on the payment of additional late fees over above the standard late fee.**
- **Section 122(1B) of the CGST Act: Penalty for certain offences**
 - Introduction of a penal provision applicable to ECO subject to a ***penalty of INR 20,000 (CGST + SGST) or the tax amount involved in such supply, whichever is higher,*** in cases where there is a violation of specified provisions relating to supplies of goods made through ECO by unregistered person or composition taxpayers.

Changes Effective from 1st Oct 2023

- **The Government has introduced Rule 88D CGST Rules vide Notification No. 38/2023 - Central Tax applicable from 04-08-2023.**
- By virtue of this notification the registered dealer shall be intimated through **DRC-01C** if there is **difference between ITC available as per auto populated GSTR-2B and ITC availed by the registered person through GSTR-3B** in a particular return.
- The New Electronic Credit Ledger “**Electronic Credit Reversal and Re-claimed Statement**” has been opened in the portal so that the Taxpayer may fill the unmatched entries in table 4

ECRAS

Electronic Credit Reversal and Re-claimed Statement –

This ledger shall inform that amount which the Taxpayer has reversed temporary through **Table 4(B)(2)**.

This temporary reversal may be availed in subsequent tax periods when condition for availing the ITC has been fulfilled. Such temporary reversal may be happened on account of following transactions:

- 1. ITC populated in GSTR-2B but conditions for availing the ITC stipulated in section 16(2) are not fulfilled. i.e. payment was not made within 180 days.**
- 2. When the Tax Payer shall avail such ITC report in Table 4(A)(5) and Table 4(D)(1).**

- Such type of pending ITC yet to be reclaimed (Accumulated unclaimed ITC balance in the books) shall be reported by the Taxpayer as opening balance by **31.01.2024**.
- If any mistake is done while reporting the opening balance the mistake can be rectified. Maximum **three chance shall be available to the Taxpayer to rectify such mistake.**
- The mistake can be rectified maximum by **29.02.2024**

Important Case Laws

Penalty imposed on GST collected but not deposited to Government even after-Tax payment within 30 days from Notice

- The Hon'ble Kerala High Court in the case of **M/S. GLOBAL PLASTO WARES VERSUS ASSISTANT STATE TAX OFFICER, THRISSUR, THE STATE TAX OFFICER, THE JOINT COMMISSIONER, THRISSUR - 2023 (11) TMI 93 - KERALA HIGH COURT** held as under:
- Observed the central issue that arises before the Court is whether the Petitioner is liable to pay the amount of penalty when the Petitioner has already paid the **GST amount along with interest within 30 days of receiving the notice.**
- Noted that, the demand raised for payment of GST is on account of not crediting the amount of GST received by the supplier from the recipient to the government.
- Opined that, as per sub-section 6, 8 and 9 of Section 73 of the CGST Act, the Petitioner is liable to pay the amount of penalty as the amount of GST collected by the Petitioner has not been deposited with the government, within 30 days from the due date of payment of GST.
- **Section 73(11) of the CGST Act would be applicable in the present case as the Petitioner has collected the GST from the recipient but not credited it to the Government,** and therefore, the Petitioner is liable to pay a penalty under Section 73(9) of the CGST Act.
- Held that, the Respondent has taken the correct view, and no error of law has been committed which requires the interference of the Court. Hence, the writ petition is dismissed.

Difference between GSTR 2A and GSTR 3B not a valid ground for disallowing ITC

- **The Hon'ble Kerala High Court in *M/S. HENNA MEDICALS VERSUS STATE TAX OFFICERS, DEPUTY COMMISSIONER (ARREAR RECOVERY) OFFICE OF THE JOINT COMMISSIONER, STATE GOODS AND SERVICE TAX KANNUR, UNION OF INDIA, CENTRAL BOARD OF INDIRECT TAXES & CUSTOMS, STATE OF KERALA - 2023 (10) TMI 98 - KERALA HIGH COURT , held as under:***
- Relying upon the judgement of the Hon'ble Supreme Court in the case of **THE STATE OF KARNATAKA VERSUS M/S ECOM GILL COFFEE TRADING PRIVATE LIMITED - 2023 (3) TMI 533 - SUPREME COURT** and the **judgement of Hon'ble Calcutta High Court in the case of SUNCRAFT ENERGY PRIVATE LIMITED AND ANOTHER VERSUS THE ASSISTANT COMMISSIONER, STATE TAX, BALLYGUNGE CHARGE AND OTHERS - 2023 (8) TMI 174 - CALCUTTA HIGH COURT** , wherein Court observed that the claim of ITC should not be denied only on the ground that there is a difference between GSTR 2A and GSTR 3B.
- Directed that, the matter be remitted back to Respondent for the purpose of examination of the evidence of the Petitioner for claiming ITC and after examination of evidence, the Respondent passes fresh orders in accordance with law.
- Further Directed that, the Petitioner shall appear before the Respondent Officer with all the evidence to support his claim for ITC.

Appellate Authority should provide sufficient reasons for not considering Appeals filed after the limitation period

- The Hon'ble Bombay High Court in the case of **IMS SHIP MANAGERMENTS PVT. LTD. VERSUS STATE OF MAHARASHTRA AND ORS. - 2023 (10) TMI 1331** - BOMBAY HIGH COURT held as under:
- Opined that, **the Impugned Order passed by the Respondent is devoid of proper reasoning and has not taken into consideration the written submissions filed by the Petitioner.** The Respondent should have given proper reasoning on the issue raised by the Petitioner in the written statement pertaining to the limitation in the Impugned Order. The Respondent failed to do so and therefore the Impugned Order suffers from infirmity and is liable to be quashed and set aside. Held that, the Impugned Order is quashed and set aside, and the appeal filed by the Respondent on September 26, 2022, is restored. Hence, the Writ Petition is allowed.
- Directed that, **the Respondent shall grant a personal hearing to the Petition, and after taking into consideration the submissions made by the Petitioner, the Respondent shall pass a speaking order,** taking consideration the issues raised by the Petitioner. The Respondent should, thereafter, adjudicate on the merits of the case if it is of considered view that there is no delay in filing the appeal.

Reply filed by Assessee be taken into consideration while passing Impugned Order

- The Hon'ble Madras High Court in the case **M/S. THE CHENNAI SILKS VERSUS THE ASSISTANT COMMISSIONER (ST) (FAC) , TIRUPUR SOUTH ASSESSMENT CIRCLE, TIRUPUR - 2023 (11) TMI 205 - MADRAS HIGH COURT** held as under:
- The said order passed cannot be equated with the order passed by the Assessing Officer who would pass the order after taking into consideration the reply/objection and evidence provided by the Petitioner pursuant to the SCN. Thereby, the Petitioner would lose the opinion of the Assessing Officer, to which the Petitioner is legally entitled under the provisions of law.
- Noted that, once *the Assessee has filed the reply/objections to the SCN issued, the Assessing Officer is bound to pass the speaking order providing reasons for rejection of the reply/objections raised by the Assessee.* It would cause prejudice to the Assessee and huge loss to the revenue if cryptic orders are passed without taking into consideration the queries/contentions of the Assessee.
- Held that, the Impugned Order is set aside and directed the Respondent Assessing Officer to pass a detailed order after taking into consideration the reply filed by the Petitioner. Hence, the writ petition is allowed.

Granting short period of time for filing reply violates the legal right of assessee

- The Hon'ble Madras High Court in the case of **STAR HEALTH AND ALLIED INSURANCE COMPANY LTD., REP. BY AUTHORIZED SIGNATORY, MR. NITESH KAMBLI VERSUS THE COMMISSIONER OF ST, DEPUTY COMMISSIONER (ST) -II, THE JOINT COMMISSIONER (GST APPEALS) , CHENNAI - 2023 (11) TMI 95 - MADRAS HIGH COURT** held as under:
- Observed that, no notice was served in physical mode as the notice was uploaded through online mode only. The Petitioner was granted limited time for filing of reply which cannot be considered a fair opportunity of hearing.
- Noted that, the Petitioner should not be directed to file the reply **within a short period of 2 days as it would violate the object of the provisions of fair opportunity to the assessee and would lead to depriving the legal right of the Petitioner to defend.**
- Opined that, the **Impugned Order is untenable on the ground that the Impugned Order is a non-speaking order and violates the principles of natural justice.** Hence, the Court is inclined to set aside the Impugned Order. Held that, the Impugned Order is set aside, and the matter is remanded back to the Respondent for fresh consideration. Hence, the writ petition is allowed.
- Directed that, the Respondent shall grant the Petitioner one more opportunity for personal hearing to the Petitioner and Petitioner shall file the reply along with all the documents required by the Respondent and thereafter, the Respondent shall peruse the documents and after conducting the full-fledged hearing, the Petitioner shall pass fresh assessment orders, which shall be a speaking order, touching upon all the issues raised by the Petitioner.

Cash cannot be considered as Goods for seizure proceedings under GST Law

- The Hon'ble Gujarat High Court in the case of **BHARATKUMAR PRAVINKUMAR AND CO. VERSUS STATE OF GUJARAT - 2023 (11) TMI 401 - GUJARAT HIGH COURT** held as under:
 - Observed that, the CGST Act, is an act for levy and collection of tax on intra-state supply of goods or services or both by the Central Government, and as per Section 67(2) of the CGST Act, the Proper Officer when confiscating any goods, documents, books or things, must have a reason to believe that it would be useful or relevant to any proceedings initiated under the Act.
 - Opined that, as per Section 67(7) of the CGST Act, the goods shall be returned to the person for whose possession the goods were seized, **when no SCN is given within six months of the seizure of goods.**
 - Held that, the Petitioner is entitled to the amount of cash seized which is to be returned forthwith to the Petitioner, hence the writ petition is allowed.
 - Directed that, the Respondent shall return the amount of cash seized to the Petitioner, and it is open for the Respondent to return and transmit the amount through digital mode of payment.

No recovery to be effected based on difference in GSTR-1 and GSTR-3B without complying with Rule 88C of the CGST Rules

- The Hon'ble Madras High Court, in the case of **CATERPILLAR INDIA PRIVATE LIMITED, REPRESENTED BY ITS AUTHORISED SIGNATORY, MR. G. SRIVATHSAN VERSUS THE ASSISTANT COMMISSIONER, OFFICE OF THE DEPUTY/JOINT COMMISSIONER OF CGST AND CENTRAL EXCISE, THE ADDITIONAL COMMISSIONER, OFFICE OF THE COMMISSIONER OF GST AND CENTRAL EXCISE, AUDIT II COMMISSIONERATE, CHENNAI** AND THE GOODS AND SERVICES TAX COUNCIL, NEW DELHI - 2023 (10) TMI 1072 - MADRAS HIGH COURT held as under:
 - Noted that, Instruction No. 01/2022 dated January 7, 2022, pertaining to **Guidelines for recovery proceedings under the provisions of section 79 of the CGST Act, in cases covered under explanation to 75(12) of the CGST Act, is a predecessor to Rule 88C of the CGST Rules.**
 - Opined that, no recovery can be effected directly based on differences in Form GSTR-1 and Form GSTR-3B without complying with the requirements stated in Rule 88C of the CGST Rules.
 - Held that, **the Impugned Notice issued under Rule 79 of the CGST Rules is quashed and liberty is granted to the Respondent to issue appropriate notice in Form GST DRC-01B before proceeding to recover any amount based on the difference in Form GSTR-1 and Form GSTR-3B.** Hence the writ petition is allowed.

Refund allowed in case of inverted duty structure on account of Multiple Input having higher GST rate than output

- The Hon'ble Rajasthan High Court (Jaipur Bench) in the case of **M/S NAHAR INDUSTRIAL ENTERPRISES LIMITED VERSUS UNION OF INDIA, PRINCIPAL COMMISSIONER OF CENTRAL GOODS AND SERVICES TAX, ADDITIONAL COMMISSIONER (APPEALS) , CENTRAL GOODS AND SERVICES TAX, ASSISTANT COMMISSIONER, CENTRAL GOODS AND SERVICES TAX, STATE OF RAJASTHAN - 2023 (11) TMI 209 - RAJASTHAN HIGH COURT**, held as under:
- Noted that, as per clause (ii) of the proviso to Section 54(3) of the CGST Act, the statutory scheme of refund of unutilised ITC would apply provided it fulfils statutory precondition that the accumulation of unutilised ITC is due to the rate of GST on input exceeds the rate of GST on output supplies, despite multiple input and output supplies. Therefore, the scheme of refund based on inverted duty structure would be applicable in the present case.
- Relying upon the Circular No. 79/53/2018-GST dated December 31, 2018, and Circular No. 125/44/2019-GST dated November 18, 2019, it is further noted that, the scheme of inverted duty structure and refund would be applicable even when there are multiple inputs having a higher rate of GST than the GST rate on output supplies.
- Held that, the Impugned Orders are set aside and directed the Respondent to freshly consider the Petitioner's claim for refund as per the observations made by the Court. Hence Writ Petition is allowed.

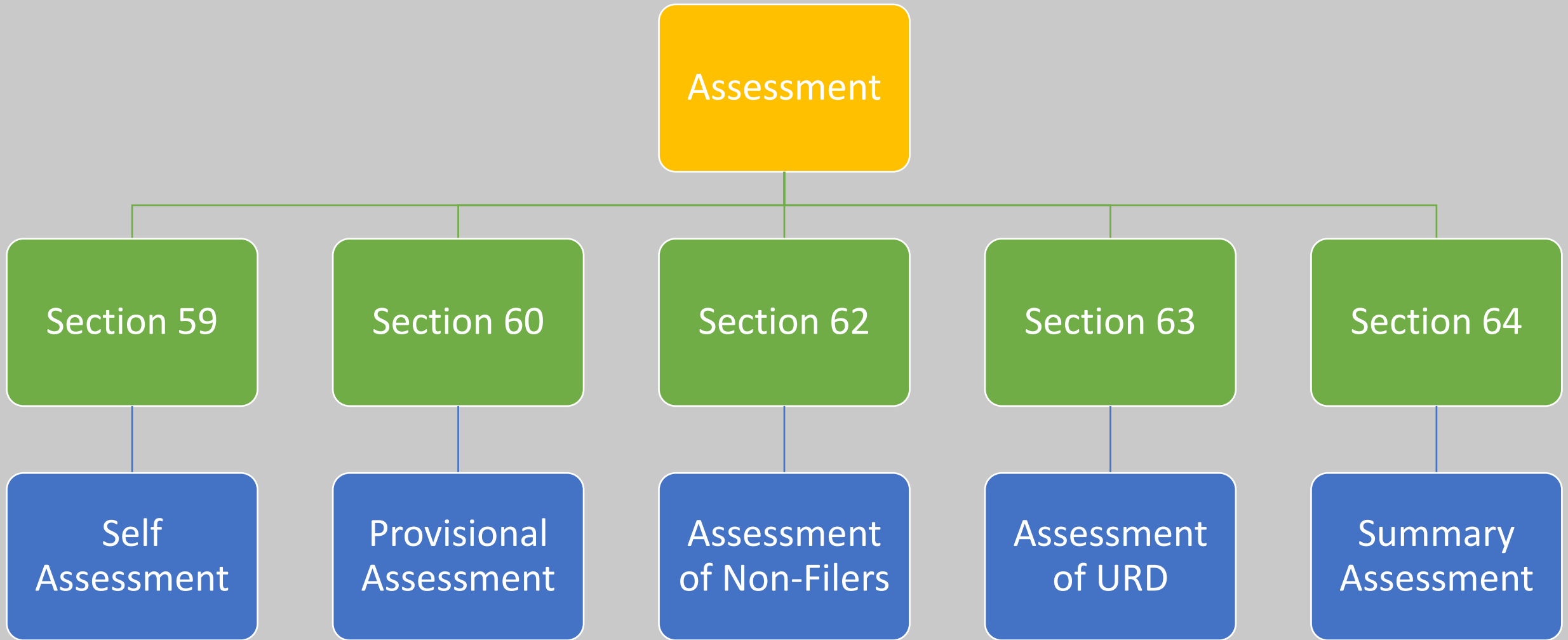
Assessment Order is void when the Notice is not served by the GST Department

- **The Hon'ble Madras High Court (Madurai Bench) in the case of *M/s. Tvl. Diamond Shipping Agencies Pvt. Ltd. v. Assistant Commissioner, Tuticorin [2023 (9) TMI 1050 - MADRAS HIGH COURT]* allowed the writ petition and held that:**
 - **Opined that, the Impugned Order is passed without serving notice under Section 169(1)(b) of the CGST Act and without considering the fact that the Petitioner has three business verticals.**
 - **Held that, the Impugned Order is quashed, hence Writ Petition is allowed.**
 - Directed that, the Respondent shall grant opportunity for personal hearing to the Petitioner and Petitioner shall produce the evidence and required documents. Thereafter, the Respondent officers shall pass the required orders.
 - Further Directed that, the Respondent shall complete the assessment proceedings within eight weeks from the date of receipt of the order of the Court.

Tax Invoices, E-way bills, and Goods Receipts are not sufficient proof to avail ITC

- The **Hon'ble Allahabad High Court in *M/S MALIK TRADERS VERSUS STATE OF U.P. AND 2 OTHERS - 2023 (10) TMI 947 - ALLAHABAD HIGH COURT*** held as under:
- Observed that, the scheme of ITC was introduced to avoid cascading effect of tax and to avoid double taxation. As per Section 16(2) of the UPGST Act, the registered dealer can avail ITC only when the conditions under Section 16 are fulfilled. The proceedings can be initiated against the Petitioner for ITC wrongly availed or utilised by any reason or willful misstatement or suppression of fact.
- Relying upon the judgment of **the Hon'ble Supreme Court in the case of THE STATE OF KARNATAKA VERSUS M/S ECOM GILL COFFEE TRADING PRIVATE LIMITED - 2023 (3) TMI 533 - SUPREME COURT** the court noted, the primary burden is upon Petitioner to prove beyond reasonable doubt that the actual transaction and physical movement of goods have taken place. The Petitioner is required to furnish the details of the selling dealer, vehicle number, payment of freight charges, acknowledgment of taking delivery of goods, Tax Invoices and payment particulars, etc. to prove and establish the actual physical movement of the goods. Furnishing details of the Tax Invoice, E-Way bill, and Goods Receipt are not sufficient to prove the genuineness of the transaction beyond a reasonable doubt, for availing ITC.
- Opined that, the facts of the aforementioned case would be applicable in the present case and proceedings have rightly been initiated by the Respondent against the Petitioner.

Demand and Recovery





73/74

Sec. 61 - Scrutiny

Sec. 64 - Summary

Sec. 65 - Audit

Sec. 67 - Inspection

Sec. 73

Sec. 74

Sec. 61 – Scrutiny of Returns

Discrepancy
Notice

Max < 30
days TP to
Reply

If Acceptable,
ASMT-12 by
Officer

Sec. 65 - Audit

ADT-01

ADT-02

DRC-01A

Sec. 67 Inspection, Search & Seizure

- Section 67 - Reason to Believe
- Approval by JC or above Authority
- Place of Business
- Records, Data & Information
- Inventory
- Summon
- Statement
- Seizure
- Determination of Tax liability

Sec. 68 - Inspection of Goods in Movement



Validity of
Movement

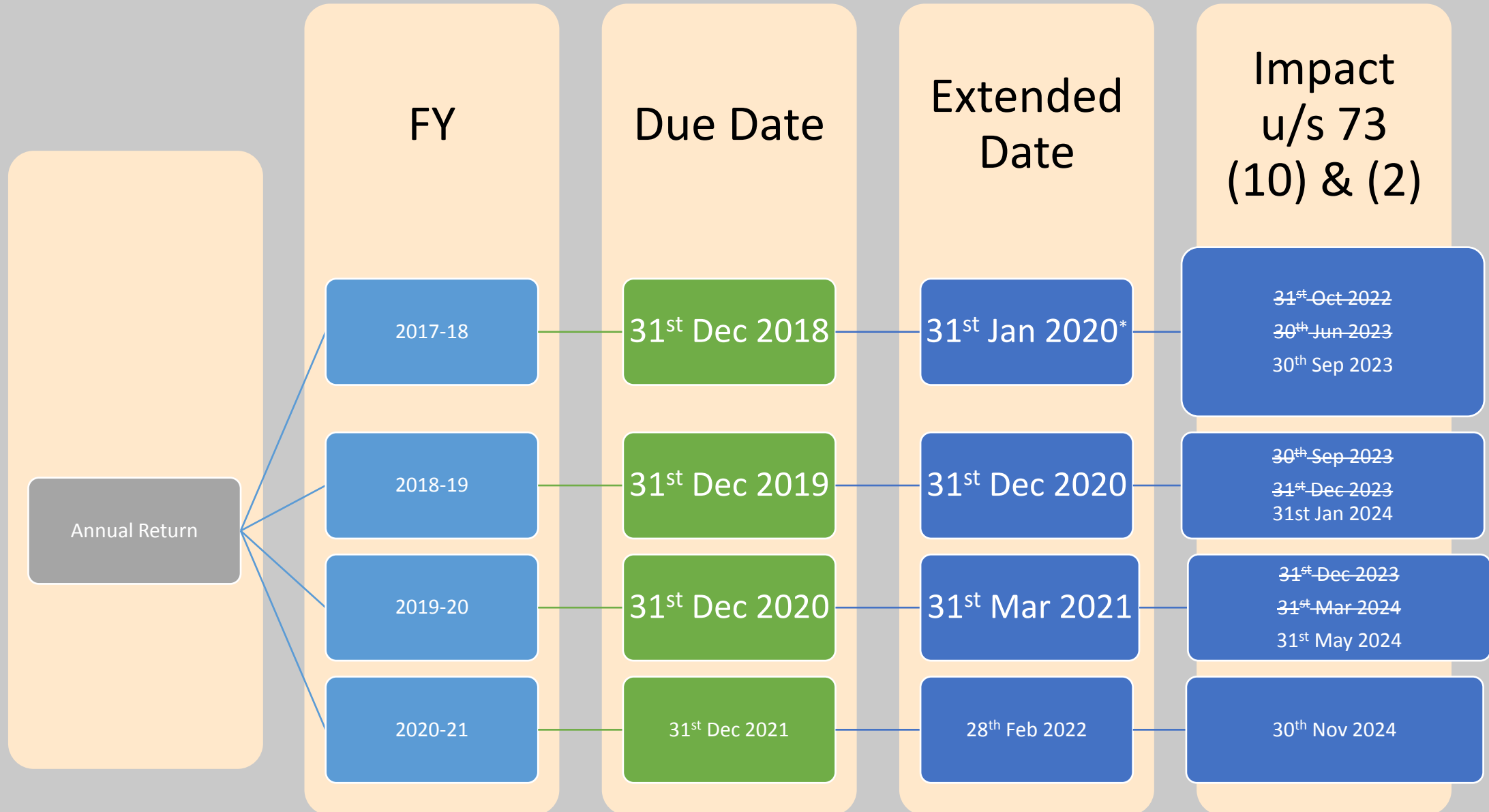


Validity of
Documents

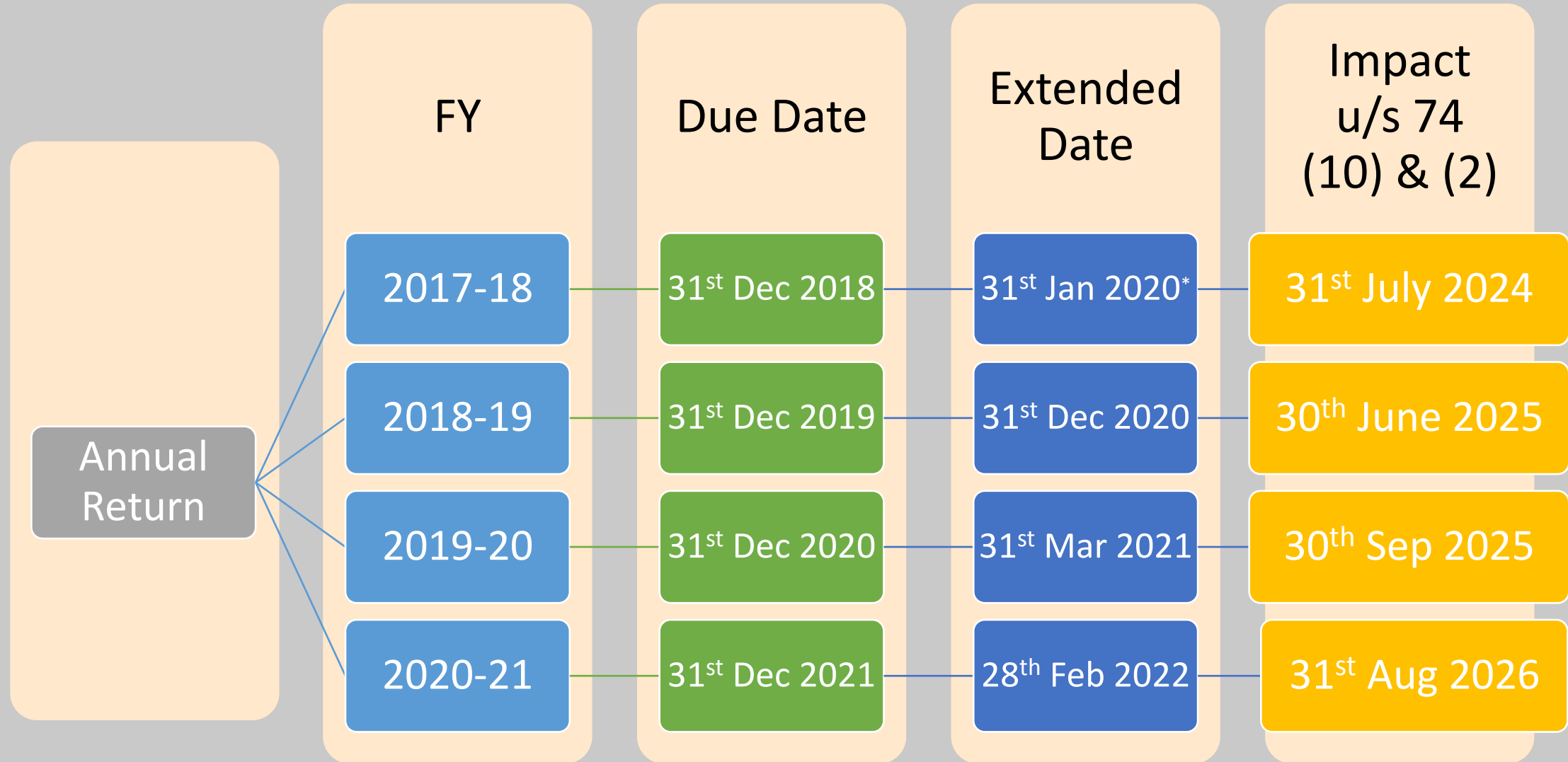


Compliance of
Tax framework

Time Limit for SCN u/s. 73



Time Limit for SCN u/s. 74



Demand & Recovery – Section 73 & 74 – Rule - 142

Before Notice u/s
73 (1) / 74 (1)
COMMUNICATE
Liability
in **DRC-01A Part-
A**

Reply &/or partial
payment against
DRC-01A in Part-B
of DRC-01A

Notice u/s 73 (1)
or 74 (1) or 76 (2)
– Summary of
Payable in
GST DRC-01

Statement u/s 73
(3) / 74 (3) –
Summary of
Payable other
than DRC-01 in
DRC-02

Before above
Notice or
Statement –
Taxable Person
pays u/s 73 (5) or
74 (5) in
DRC-03

Officer to
acknowledge in
DRC-04

Demand & Recovery – Section 73 & 74 – Rule - 142

Taxable Person pays u/s 73 (8) or 74 (8) {within 30 days of NOTICE} in **DRC-03**

Officer to acknowledge in **DRC-05** concluding the proceedings

Representation by the Taxable Person in Form **GST DRC-06** {S.73(9)}

DRC-07 is the NOTICE of RECOVERY

Any Rectification Order u/s 161 (error apparent on the record) shall be by PO in **DRC-08**

Remedies under GST

Appeal
(Sec 107)

Revision
(Sec 108)

Rectification
(Sec 161)

107(1)

Appeal by Aggrieved person
against the order of Adjudicating
Authority

107(2)

Commissioner by order direct any officer
subordinate to him to appeal to Appellate
Authority


“Review Appeal”

Upon Issuance of Adjudication Order

First Appellate Authority u/s 107 of CGST Act Read with Rule 108,109 and 112 Within 3+1 months



Appeal to Tribunal u/s 112 of CGST Act. Read with Rule 110,111 and 112 Within 3+3 months



Appeal to High Court Read with Rule 114 u/s 117 of CGST Act Within 180 days + as may be allowed by high court



Appeal to Supreme Court u/s 118 of CGST Act Read with Rule 115 Within 60 days from date of grant of certificate by HC

Decoding SCNs

Common Disputes in SCN



Background

- Normal Process Flows:

- ASMT-10 >> DRC-01A >> DRC-01 (SCN) >> First Appeal >> GSTAT ??
- ADT-01 >> SCN >> First Appeal >> GSTAT ??
- AAR >> AAAR >> ??
- MOV-07 >> MOV-09 >> First Appeal >> GSTAT ??

- Specific Process Flows:

- Registration >> Cancellation >> Revocation
- Investigation/Search >> ??
 - Provisional Attachment
 - Blocking of ITC
 - Repetitive Summons and Coerction

Approaching Writ Court – Not possible in all cases

Output Tax related Issues:

- GSTR-1 Vs GSTR-3B
- GSTR-1 Vs GSTR-9 and GSTR-9C
- GSTR-9 Vs Profit and Loss Account

- GSTR-7/8 Vs GSTR-1

- Outward E-way Bill Vs GSTR-3B

- E-invoices Vs GSTR-3B

Output Tax related Issues:

- Tax @ 18% on “Other Income”
- Tax @ 18% on Discount/Incentives via Financial credit notes
- Tax @ 18% on “Creditors Write off”
- Tax on Export of goods without LUT

- Tax on Sale of Fixed assets based on values reported in FA Schedule

- Classification related notices (Section 76) based on HSN reporting

- ASMT-10 Notice after giving reply for DRC-01B

Input Tax related Issues:

- GSTR-2A Vs GSTR-3B
- Inward E-way Bill Vs GSTR-2A and Inward E-way Bill Vs GSTR-3B
 - $3B > 2A$ – Reversal stating that tax is not paid u/s. 16(2)(c)
 - $3B < 2A$ – Deemed as Purchase Suppression and GP% is added to arrive Turnover
- Ineligible/Blocked Credit extracted from Car dealers/Jewellers etc.
- Reversal of ITC for Creditors Balance outstanding in Balance Sheet
- Reversal of ITC for secondary discounts received
- Table No. 8D of GSTR-9 – Negative values – Notice for Reversal of ITC
- Demanding tax on depreciation for violation of Sec. 16(3) of CGST Act, 2017
- Notice for Rule 42/43 reversal by application of formula on total ITC availed in GSTR-3B

Input Tax related Issues:

- RCM ITC for expenses incurred in FY 2018-19 paid in FY 2019-20 via GSTR-3B not accepted
- Reversal of ITC availed citing section 16(4) of CGST Act, 2017
- Registration of the Supplier is cancelled and therefore demanding the recipient to reverse ITC as per Rule No. 37A of CGST Rules
- Blocking of Electronic Credit Ledger under Rule No. 86A of CGST Rules, 2017
- Demanding Tax again for violation of Rule No. 86B of CGST Rules, 2017

Refund related Issues:

- Demand of tax for violation of Rule 96B of CGST Rules, 2017
- Demand of tax for violation of Rule No. 96(10) of CGST Rules, 2017

RCM related Issues:

- Demanding tax all expenses in P&L account @ 18% on RCM
- Demanding RCM payment on the entire amount of Lorry freight before 18.07.2022

Interest and Penalty:

- Interest on gross liability for tax paid through GSTR-3B
- Interest at 24% for ITC reversals
- Issue notice u/s. 73/74 only for payment of interest
- Issue of notice u/s. 73 and demanding payment of penalty u/s. 74 or 76
- Issue of notice for payment of late fees
- Notice for Penalty u/s. 125 for Non-filing or belated filing of returns

Common Mistakes in Notices

- Late fees Notice
- Stand-alone interest notice
- Penalty Notices:
 - Sec.125 – General penalty for Non-filing/Belated filing
 - Sec. 73(11) – For collected taxes paid belatedly beyond 30 days
- DRC-01B intimation for GSTR-1 Vs 3B differences after GSTR-9 is filed with rectifications
- Notices demanding tax on summary values based on lateral comparisons of various forms
- Notices based on reporting errors in GSTR-9 and GSTR-9C
- Notices based on ledger heads in financials
 - RCM on legal & professional charges, Freight & Transportation
 - Incentives and Discounts
 - Sundry Creditors closing balances
- Notices demanding tax on Exports without LUT

Reply to SCNs – Suggestions

Sale of Fixed Assets

- ITC availed on FA (Including Motor Vehicles)
 - Section 18(6) of CGST Act, 2017 is applicable

- ITC NOT availed on FA
 - Motor Vehicles (HSN 87) – Refer Notification 8/2018
 - All Others – GST on Sale Value

- Notification 8/2018 – Special valuation for Motor Vehicles
 - Date of Sale after 25.01.2018:
 - Sale value – Income Tax WDV
 - Profit – GST is payable @ 18%
 - Loss – GST is not payable

Zero Rated Supplies

- Exports:
 - With payment of IGST
 - Without payment of IGST/LUT
- SEZ:
 - With payment of IGST
 - Without payment of IGST/LUT
- LUT:
 - Export of Goods – It will exported out of India within 3 months of invoice
 - Export of Services – Forex will be realised within 1 year of invoice

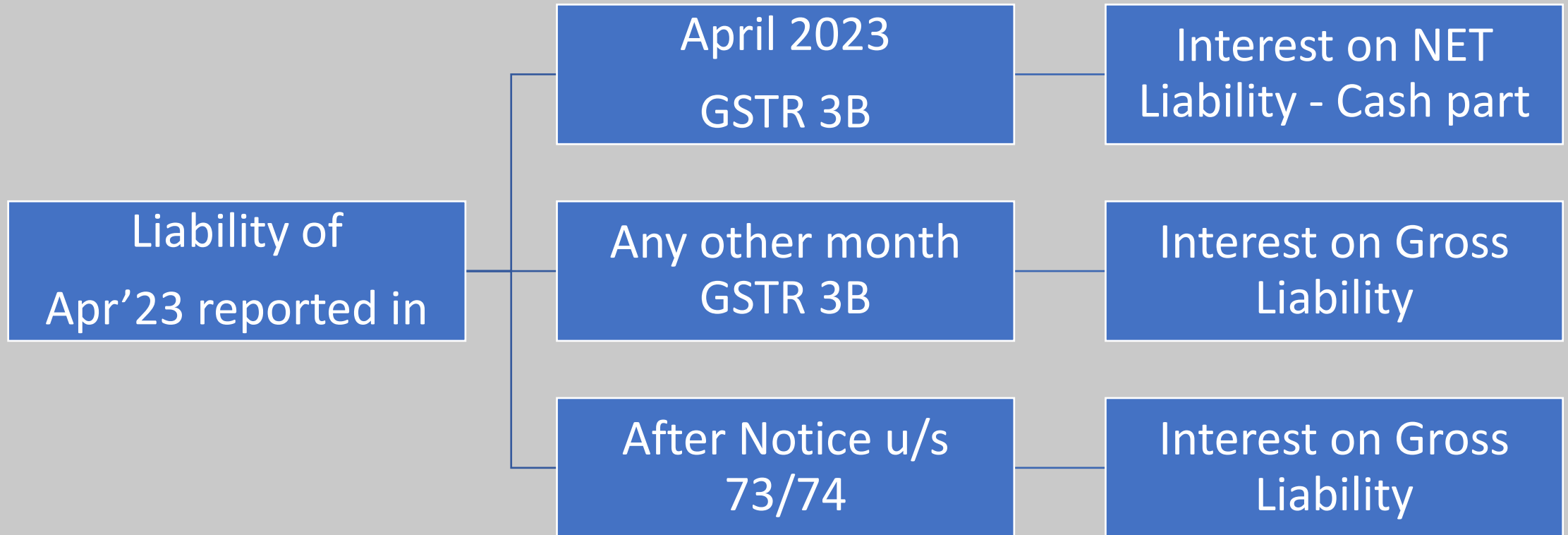
Rule 96B

- Exports of Goods with payment of IGST or LUT
 - Refund is obtained – Forex realisation is mandatory
 - Refund is not obtained – Forex realisation is NOT mandatory

Rule 96 (10) – Export with payment of IGST

- Should NOT have
 - Availed Not. No. 48/2017 – Deemed exports except EPCG
 - Availed Not. No. 40/2017 – Merchant Trader 0.1%
 - Availed Not. No. 78/79-2017 Customs - Import without Duty (Except when IGST is paid, and BCD exemption is only claimed)

Interest u/s. 50(1)



Sec. 50 (3) vide Sec. 116 of the Finance Act 2022

ITC Wrongly availed and Utilised

18% Interest (earlier 24%)



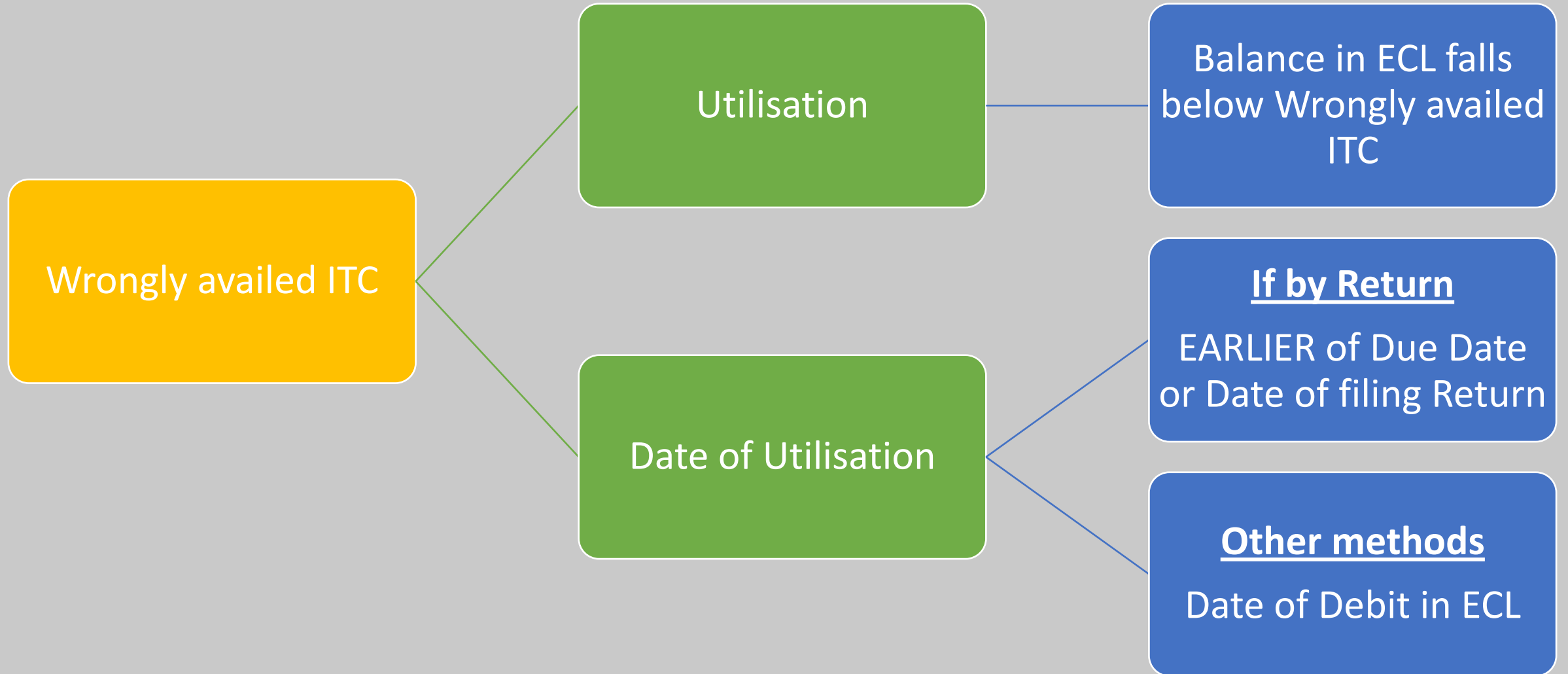
ITC Wrongly availed but NOT Utilised

No Interest

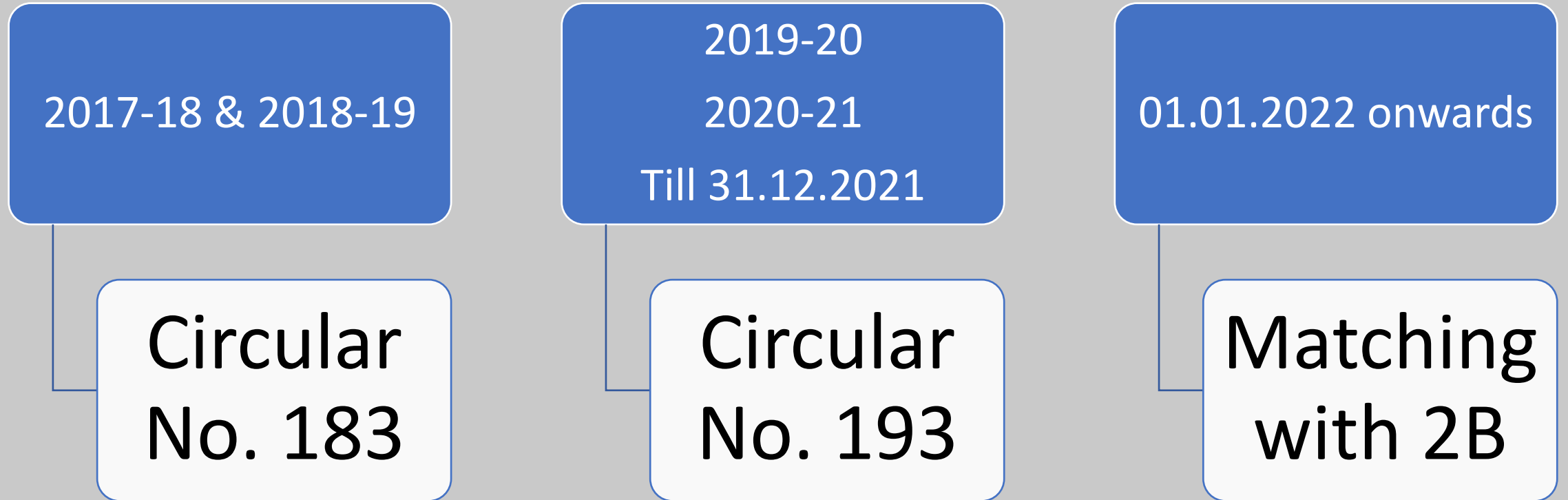


Head Interchange – Rule 88B

Rule 88B – Sec 50 (3) r/w Circular No. 192/2023



ITC Legal Scenario



Circular No. 183/193 - Effect

- Not filed GSTR-1 but filed GSTR-3B
- In GSTR-1
 - Not Reported
 - Wrongly Reported
 - To Other GSTIN
 - B2C

Up to Rs. 5 lakhs
(per Supplier per Year)
Certificate from Supplier

More than Rs. 5 lakhs
(per Supplier per Year)
Certificate from CA / CMA

Precautions – Way Forward

- Periodic reconciliations of returns vs books vs e-invoices and e-way bills
- Prompt reply to notices from departments such as DRC-01B and DRC-01C
- Periodic review of contracts with supplies and customers
- Review of HSN Codes – Whether correct or not?
- Maintenance of accounts and records for receipt of good/services
- Contracts for supplies between related persons and methodology of valuation



Any Questions



Selva's GST Updates

WhatsApp group



Thank You!

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