

I/84204/2024



F. No. 220/Misc-Issues(States)/GSTC/2021-Part(2)

Government of India
Ministry of Finance
Department of Revenue
GST Council Secretariat

New Delhi, dated 01-03-2024

OFFICE MEMORANDUM

Subject: Advisory on exercising due diligence for issuance of notices under Section 73/74 of CGST/SGST/UTGST Act and timely completion of adjudication thereof – reg.

As per the data made available by GSTN, a large number of demand show cause notices in **FORM DRC-01** have been issued under section 73/ 74 of CGST Act/ SGST Act, 2017 by the proper officers under various State and Central tax administrations during the period January 2023 to December 2023. The state-wise details of issuance of **FORM DRC-01** notices during this period by both Central Tax and State Tax authorities have been given in the **Annexure A**.

2 . From the perusal of the details in **Annexure A**, it is noticed that in respect of some of the State tax authorities, the number of demand notices issued as well as the amount of demand raised during the above mentioned period is exceptionally high. **In case of two States, the number of demand notices issued is more than 3 lakh each. Further, in respect of two States, the amount of demand raised in the notices issued during the said period is more than Rs 7.5 Lakh Crore each.**

3. In the interest of revenue, it is necessary to issue demand notices in cases involving short payment or non-payment of tax/ wrong availment of input tax credit/ evasion of tax, etc. However, issuance of demand notices, without considering full facts and without proper examination of the relevant documents and explanation submitted by the taxpayers, may not only lead to avoidable litigation in future causing inconvenience to the taxpayers but may also result in increased burden on the adjudicating officers as well as appellate authorities. Issuance of demand notices in large number may also adversely affect the quality of subsequent adjudication and appellate orders. The Chief Commissioners/ Commissioners of State Tax and Principal Chief Commissioners/ Chief Commissioners of CGST Zones are, therefore, advised to ensure that the number of cases for scrutiny/ audit/ inspections/ investigation are selected based on the capacity of tax administration to handle such cases. Further, as the last date of issuance of demand notices under section 73 of CGST Act/ SGST Act for FY 2019-20, being 31st May 2024, is fast approaching, the Chief Commissioners/ Commissioners of State Tax and Principal Chief Commissioners/ Chief Commissioners of CGST Zones may also keep a close watch on the pending investigations, scrutiny, audit etc. to ensure that the said proceedings are completed well in time and any

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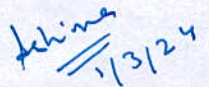
decision to issue demand notice is taken only after providing an opportunity to the taxpayers to explain their case by giving them sufficient time and after full appreciation of the facts of the case taking into consideration the explanation/ response of the taxpayers, if any. It may also be ensured that the demand notices, where ever required, for FY 2019-20 and subsequent financial years are issued well in advance, so as to provide adequate time for adjudication of the said notices.

4. Your attention is also invited to the provisions of sub section (10) of Section 73 of SGST Act, 2017 as per which the proper officer is mandatorily required to issue the order under sub-section (9) of CGST Act/ SGST Act within three years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilized related to or within three years from the date of erroneous refund. The said time limits for issuance of adjudication orders for FY 2017-18, 2018-19 and 2019-20 have expired/ are expiring on 31.12.2023, 30.04.2024 and 31.08.2024 respectively.

5. Therefore, the adjudication orders in respect of demand notices issued for the said financial years are required to be mandatorily issued by the proper officer before the expiry of the said time lines. Considering such large number of demand notices being issued during Year 2023, especially for FY 2017-18, FY 2018-19 and FY 2019-20, field officers need to be sensitized to dispose of these demand notices by way of issuance of adjudication orders in a timely manner. Principles of natural justice should be duly followed and quality of the adjudication orders should also be ensured so that they can sustain judicial review at the higher fora. The supervisory officers need to ensure timely issuance of adjudication orders, while at the same time, maintaining quality of orders with due adherence to the legal processes established by law.

6. Necessary instructions may be passed on to the field officers accordingly.

Encl : Annexure A


ASHIMA BANSAL
JOINT SECRETARY,
GST Council Secretariat

All the Chief Commissioners/ Commissioners of States/ UTs

All the Principal Chief Commissioners/ Chief Commissioners of CGST Zones