

GST -Scrutiny Parameter and Reconciliations based Assessment!

Pimpri Chinchwad Branch of WIRC

CA Vaishali Kharde

(17.06.2023)

Overview

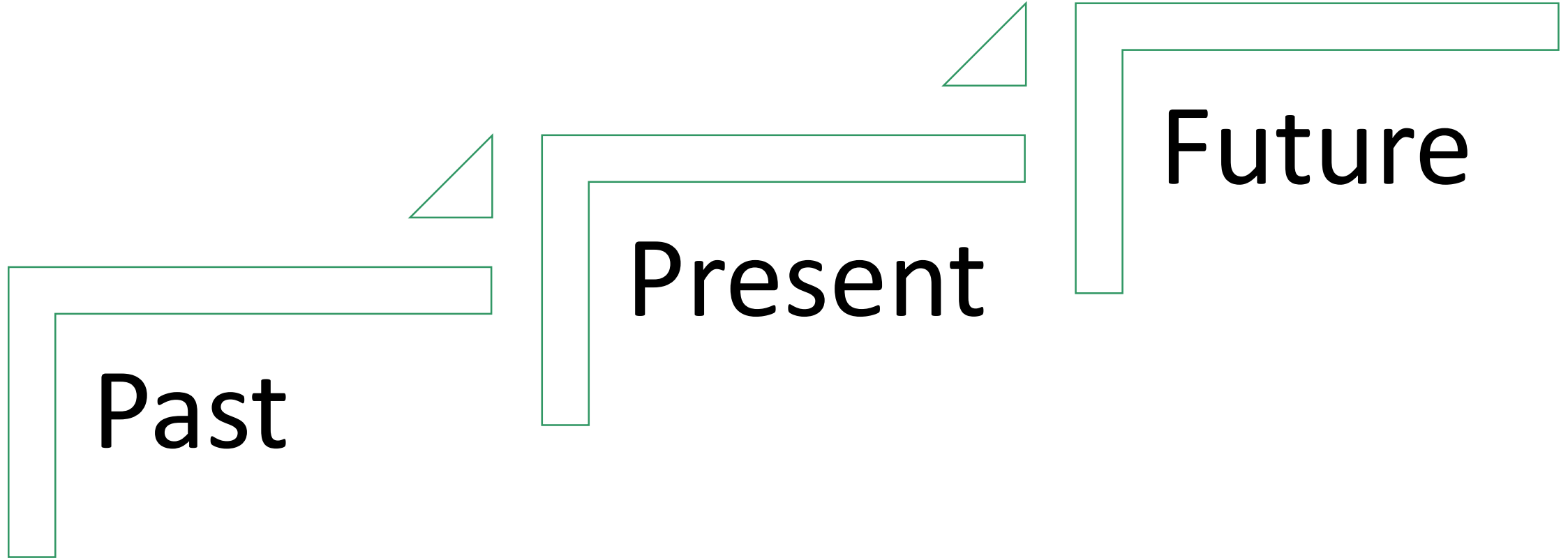
Pre-GST

- Offline
- No Departmental Integration
- Reference of Pronouncements
- Limited Knowledge Dissemination

Post GST

- Online
- Departmental Integration
- No reference or minimal reference
- Unlimited Knowledge Dissemination

Overview



Legal Trend

Verification

- Trans-01
- Refund

Assessment and Scrutiny
of returns

GST Departmental Audit

Inspection. Search and
Seizer



Key Legal Provisions

Section 59 to Section 64

- Assessment

Section 65 and Section 66

- GST Audit by the Authorities

Section 67 to Section 72

- Inspection of goods in movement

Section 73 to Section 84

- Demand and Recovery

Section 95 to Section 106

- Advance Ruling

Section 107 to Section 121

- Appeals and Revision

Section 122 to Section 138

- Offences and Penalties

Key Legal Provisions – Assessment

Section 59

- Self-assessment

Section 60

- Provisional assessment

Section 61

- Scrutiny of returns

Section 62

- Assessment of non-filers of returns.

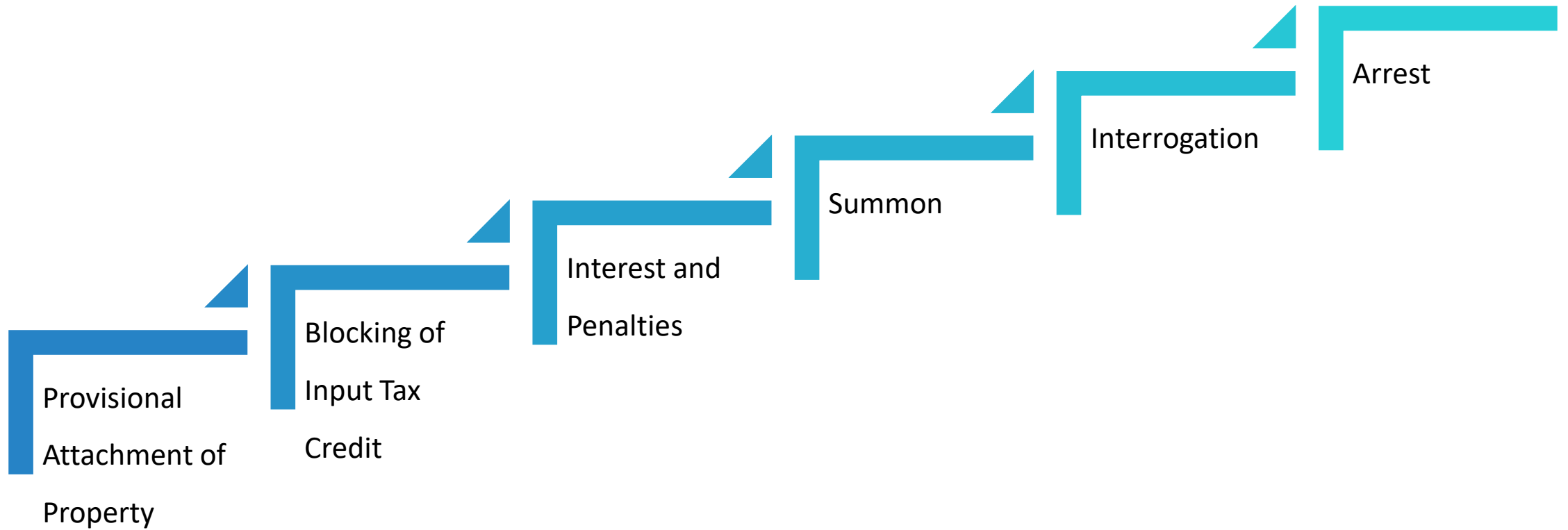
Section 63

- Assessment of unregistered persons.

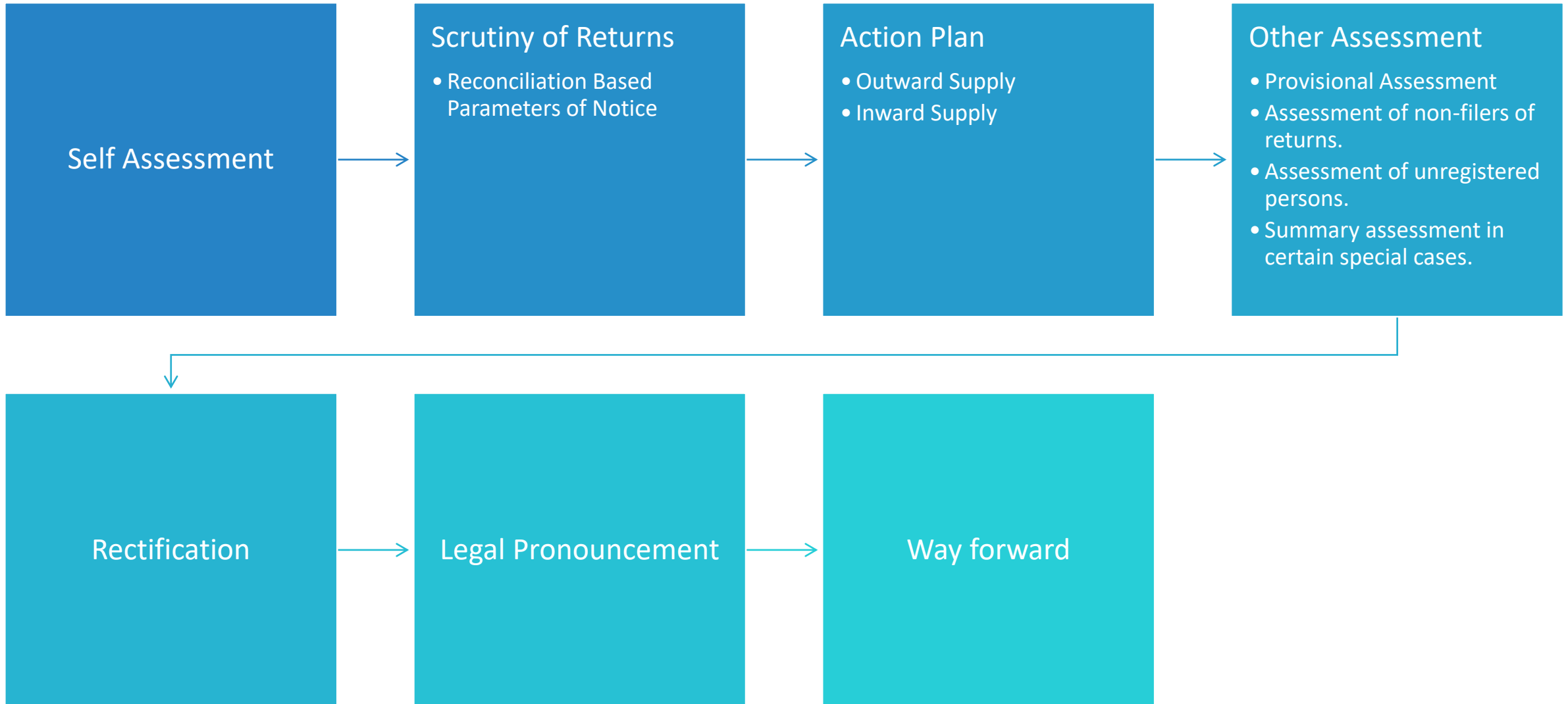
Section 64

- Summary assessment in certain special cases.

Risk

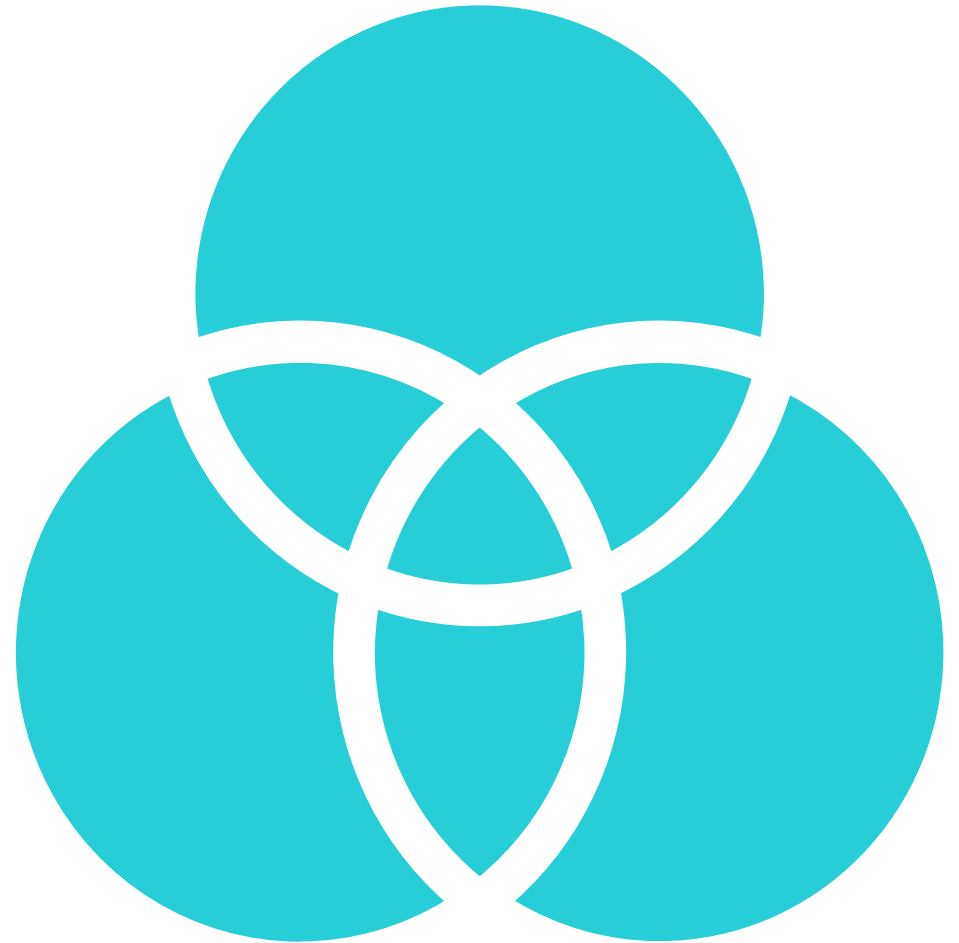


To Discuss



Section 59

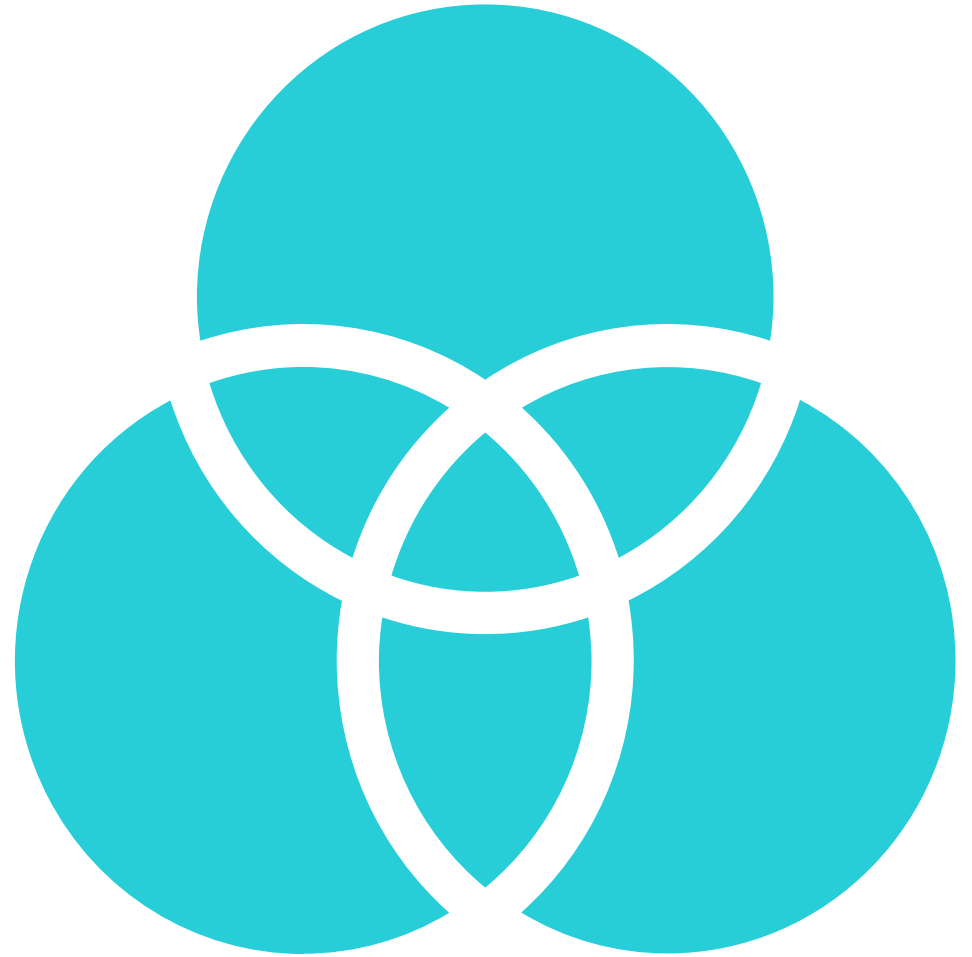
Self-assessment.



Legal Provision – Section 61 of the CGST Act

- * *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 61- Scrutiny of returns



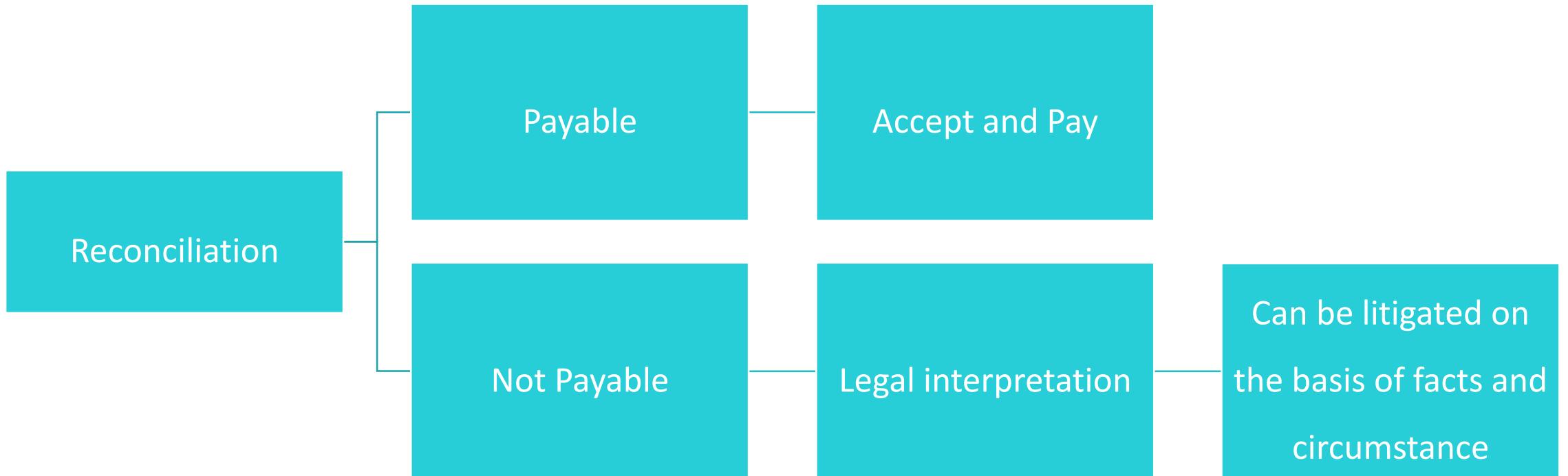
Legal Provision – Section 61 of the CGST Act

- 61. (1) The **proper officer** may **scrutinize the return and related particulars furnished by the registered person to verify the correctness of the return and inform him of the discrepancies noticed**, if any, in such manner as may be prescribed and seek his explanation thereto.
- (2) In case the explanation **is found acceptable**, the registered person shall be informed accordingly and no further action shall be taken in this regard.
- (3) In case no satisfactory explanation is furnished **within a period of thirty days of being informed by the proper officer** or such **further period as may be permitted by him** or where the registered person, after accepting the discrepancies, **fails to take the corrective measure** in his return for the month in which the discrepancy is accepted, the proper officer may **initiate appropriate action including those under section 65 or section 66 or section 67**, or proceed to determine the tax and **other dues under section 73 or section 74**.

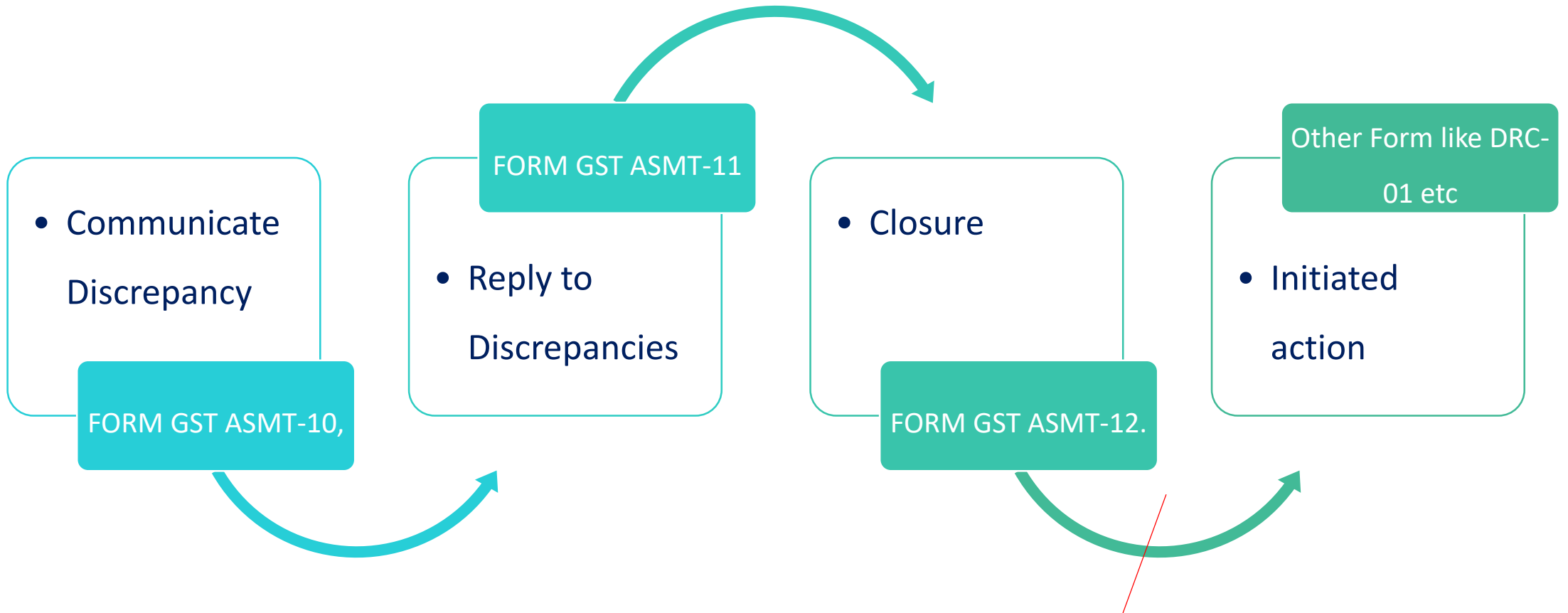
Key Aspects of Section 61

Scrutinize the return	<ul style="list-style-type: none">• Section gives power to the officer to scrutinize the return and related particulars furnished
Communication	<ul style="list-style-type: none">• If any discrepancy then communicate to respective person as prescribed under Rule
No further Action	<ul style="list-style-type: none">• Explanation is found acceptable, or accepted and Paid• No further action
Further Action	<ul style="list-style-type: none">• No satisfactory explanation within 30 days or extended period or after accepting the discrepancies, fails to take the corrective measure<ul style="list-style-type: none">• Department Audit (65)• Special Audit (66)• Inspection, Search and Seizure (67)• Determination of tax and SCN other than fraud (73)• Determination of tax and SCN with fraud (74)

Procedure



Procedure Overview – Rule 99 of the CGST Rule



Procedure – Section Vs Rule

Section 61 of the CGST Act -Scrutiny of returns.	Rule 99 - Scrutiny of returns
<p><i>(3) In case no satisfactory explanation is furnished within a period of thirty days of being informed by the proper officer or such further period as may be permitted by him or where the registered person, after accepting the discrepancies, fails to take the corrective measure in his return for the month in which the discrepancy is accepted, the proper officer may initiate appropriate action including those under section 65 or section 66 or section 67, or proceed to determine the tax and other dues under section 73 or section 74.</i></p>	<p><i>(1) Where any return furnished by a registered person is selected for scrutiny, the <u>proper officer</u> shall srutinize the same in accordance with the provisions of <u>section 61</u> with reference to the information available with him, and in case of any discrepancy, he shall issue a notice to the said person in <u>FORM GST ASMT-10</u>, informing him of such discrepancy and seeking his explanation thereto within such time, not exceeding thirty days from the date of service of the notice or such further period as may be permitted by him and also, where possible, quantifying the amount of tax, interest and any other amount payable in relation to such discrepancy.</i></p>

Whether Notice Issued are Valid- Key Contentions – Procedure Irregularities

Whether Notice issued by Proper Officer

- CIR-3/3/2017 - “Superintendent of Central Tax” has been assigned the functions as the proper officer in relation to section 61(3) and 61(1) of the CGST Act.

What can be the scope of scrutiny

- Scrutinize the return and related particulars furnished by the registered person

What is discrepancies?

- Inform him discrepancies noticed

Whether Notice Issued are Valid- Key Contentions – Procedure Irregularities

No machinery available to implement proceeding u/s 61(3),

- *after accepting the discrepancies, fails to take the corrective measure in his return for the month in which the discrepancy is accepted [Section 61]*

Rule 99 should not override Section 61

- time period of less than 30 days can be given for reply as per section 61. However, rule empowers proper officer to allow 30 days

1. Reconciliation Based Parameters of Notice

(SOP) for Scrutiny of returns for FY 2017-18 and 2018-19

dated 22nd March 2022

[Instruction No. 02/2022-GST]

- Issued by CBIC
- 15 para's for risk

Mismatches Parameter

69 to 83		• Para Nos.
14		• Total Parameter
4		• Outward Supply
7		• ITC
2		• RCM
1		• Interest

Key Mismatches – Outward Supply

70

- Excess outward tax in GSTR 1 compared to GSTR 9/GSTR 3B

71

- Excess outward tax in E-way bills compared to GSTR-3B

75

- Less turnover shown in GSTR-1 compared to GSTR-8 (TCS)

76

- Less turnover shown in GSTR-3B compared to GSTR-7 (TDS)

Key Mismatches -ITC

69

- In-eligible ITC claimed from non-genuine taxpayers (NGTPs) whose RC is cancelled abinitio

72

- In-eligible ITC claimed from GSTR 3B Non-filers

73

- Excess ITC claimed in GSTR 3B/9 which is not confirmed in GSTR 2A or 8A of GSTR 9

74

- In-eligible ITC claimed from RC is cancelled suppliers

Key Mismatches -ITC

78

- ITC claims after the last date of availment of ITC as per section 16(4)- GSTR 3B

81

- Excess IGST on Imports shown in GSTR9_6E Vs. ICEGATE data
- ITC on import of goods to be verified with 2A

82

- Excess ISD ITC availed in GSTR9_6G Vs GSTR 2A_ISD

Key Mismatches -RCM

77

- RCM Liability disclosed in GSTR 9/3B/4 than shown by suppliers in GSTR-1

83

- Excess RCM ITC in GSTR9_6CDF than liability shown in GSTR 9 _4G
- RCM liability paid to be reconciled with ITC availed in Table 4(A)(2) and Table 4(A)(3) of FORM GSTR-3B.

Key Mismatches

80

- Interest on delayed payments made with
GSTR - 3B
- Whether the registered person has paid
interest liability in terms of section 50.

Key Mismatches –CBIC Circular

Whether the registered person has made reversals of ITC as per rule 42 and rule 43 of the CGST Rules.

Whether the registered person has paid late fee in terms of section 47 in respect of returns/statements.

Reason- Key Mismatches

GSTR-1 Vs GSTR-3B

- Disclosed in GSTR-1 but not paid
- E-way bill generated but not transited
- Incorrect disclosure / Error

ITC Availed Vs 2A/2B

- Supplier disclosed in URD instead B2B
- Incorrect GSTIN disclosed by the supplier
- Unable to correct before due date of correction
- Supplier not paid GST



What is Future?
Action Plan

Outward Supply

Outward Supply Reporting – 6 to 7 times



Reconciliations -

Online Data

- GSTR-1 Vs GSTR-3B
- E-way bill Vs GSTR-1
- E-Invoice Data Vs E-way bill
- E-Invoice Data Vs GSTR-1
- E-Invoice Data Vs E-way bill Vs GSTR-1
- Turnover of books Vs GSTR-3B
- E-Invoice raised with turnover as per books

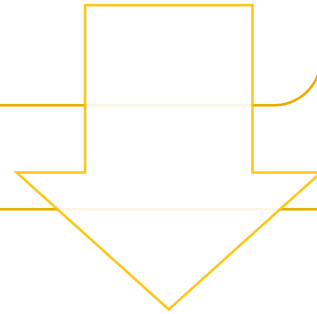
Amendment – Section 75 (12) – Inserted

- *(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**.*
- *‘Explanation.—For the purposes of this sub-section, the expression "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.’*

[Inserted (w.e.f. 1st January, 2022 vide [Notification No. 39/2021-C.T.](#), dated 21st December, 2021) by s. 114 of The Finance Act, 2021 (No. 13 of 2021) dated 28th March, 2021.]

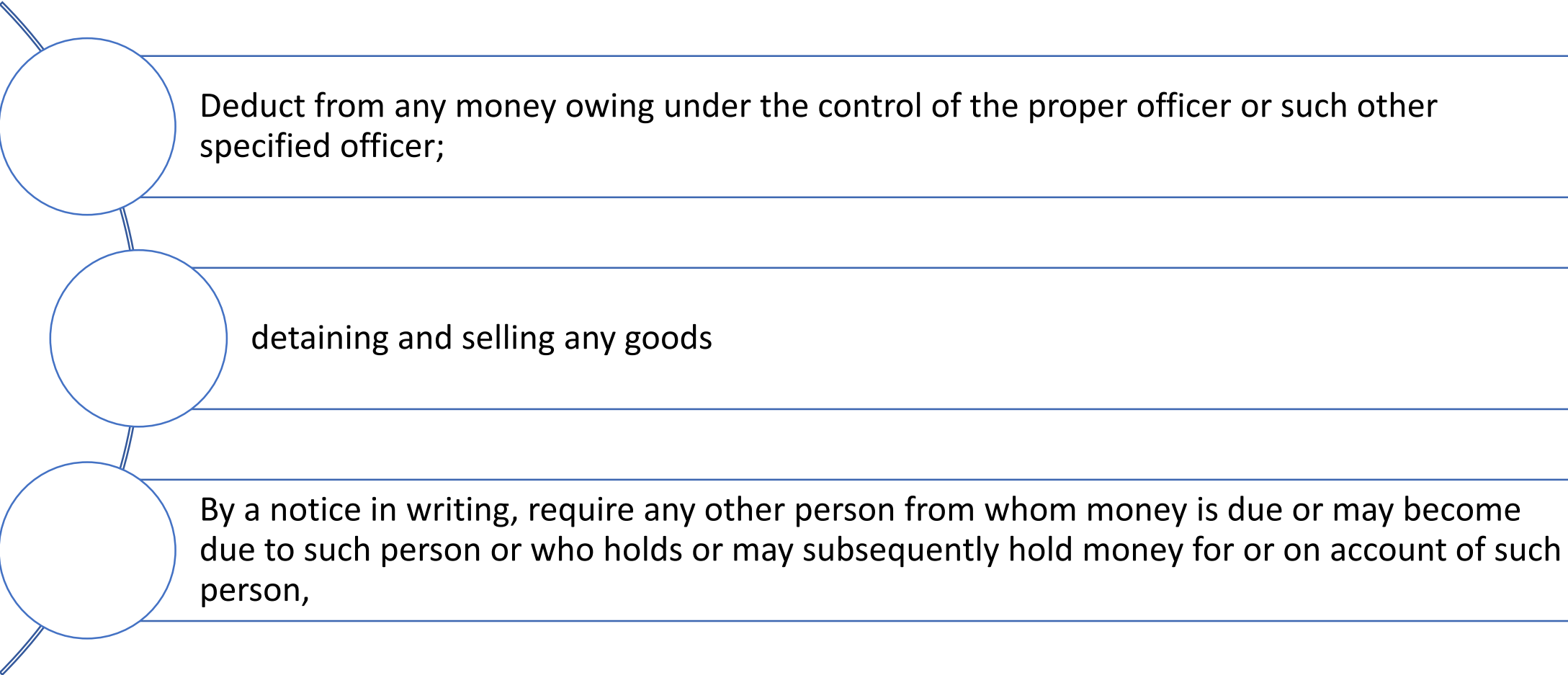
Analysis of amendment

Self Assessment Tax can be recovered in the u/s 75



Tax disclosed payable in GSTR-1 but not paid in GSTR-3B (i.e.
GSTR-1 is higher than GSTR-3B) can be recovered u/s 79

Modes of Recovery As Per Section 79

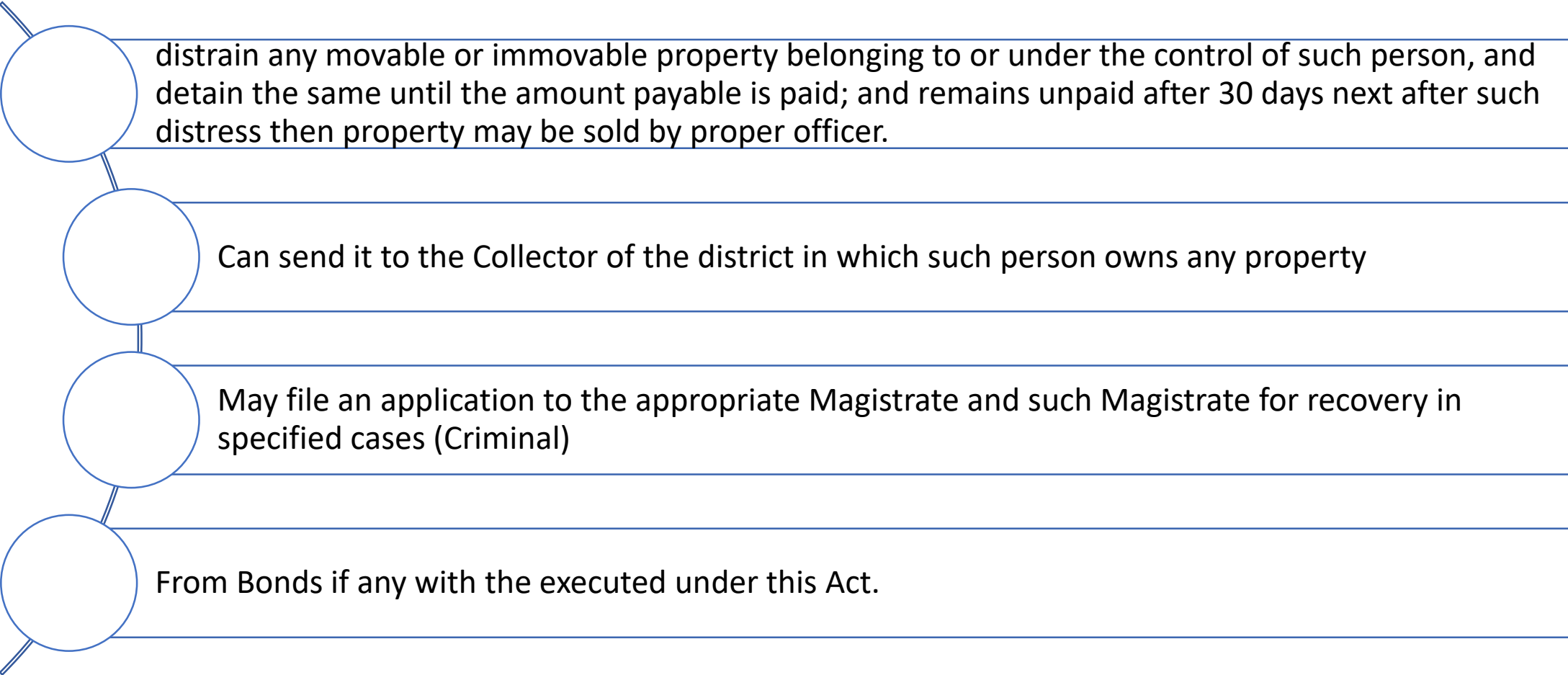


Deduct from any money owing under the control of the proper officer or such other specified officer;

detaining and selling any goods

By a notice in writing, require any other person from whom money is due or may become due to such person or who holds or may subsequently hold money for or on account of such person,

Key Modes of Recovery As Per Section 79



distrain any movable or immovable property belonging to or under the control of such person, and detain the same until the amount payable is paid; and remains unpaid after 30 days next after such distress then property may be sold by proper officer.

Can send it to the Collector of the district in which such person owns any property

May file an application to the appropriate Magistrate and such Magistrate for recovery in specified cases (Criminal)

From Bonds if any with the executed under this Act.



What is the future?
Reply to notices should
be within time
[Not. No. 26/2022-CT]

Differences to be Communicated on Online Portal

Rule 88C and FORM GST DRC-01B to be
inserted in CGST Rules, 2017 from 26th Dec
2022

*88C. Manner of dealing with difference in
liability reported in statement of outward
supplies and that reported in return*

Differences to be Communicated on Online Portal

Amendment

- Intimation to the taxpayer, by the common portal and via email, about the difference between liability reported in GSTR-1 and in GSTR-3B for a tax period, where such difference exceeds a specified amount and/ or percentage,
- The taxpayer either required to pay or explain the difference.
- Restriction on furnishing of FORM GSTR-1 for a subsequent tax period if neither paid nor replied

Impact

- Prompt reply to notices related to discrepancies will be required

Differences to be Communicated on Online Portal

Part A of FORM GST DRC-01B

- GSTR-1 and 3B difference to be Communicated

Modes of Communication

- Online Portal
- Email

Action within 7 days via Part B of DRC-01B

- Accept and Pay
- Reply to explain difference

Modes of Reply

- Online Portal

Consequences of non reply or reply not acceptable by the Officer

- Recovery under Section 79

Differences to be Communicated on Online Portal

Legal Provision

- Rule 59(6)(d) - . Inserted vide [Notification No. 26/2022-CT](#) dated 26.12.2022.
- *“(d) a registered person, to whom an intimation has been issued on the common portal under the provisions of sub-rule (1) of rule 88C in respect of a tax period, **shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in FORM GSTR-1 or using the invoice furnishing facility for a subsequent tax period, unless he has either deposited the amount specified in the said intimation or has furnished a reply explaining** the reasons for any amount remaining unpaid, as required under the provisions of sub-rule (2) of rule 88C.”*

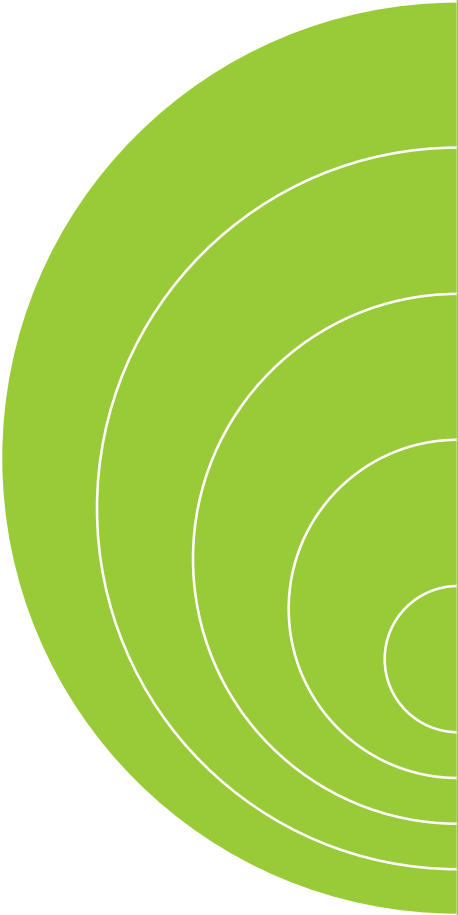
Challenges

What if inadvertent
error in GSTR-1 ?

Any error in GSTR-1
may lead to recovery

It will lead to violation
of Article 19(1)(g)

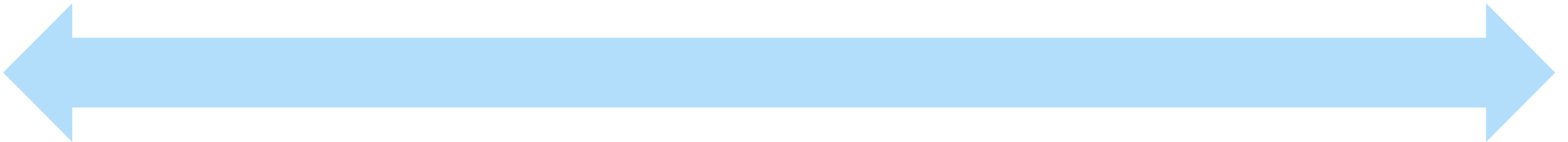
GST Return – Action Plan



Reconciliation on real time
Correct disclosure is must to avoid litigation
Internal control and SOP for data disclosure
Immediate Email and/or grievance in case of error
GSTR-9C reporting in case of error during the Year



2. Input Tax Credit



CGST ACT : 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***

ITC Availability

Up to Oct 2019

- Contention
- Circular

April 2019 to Jan
2022

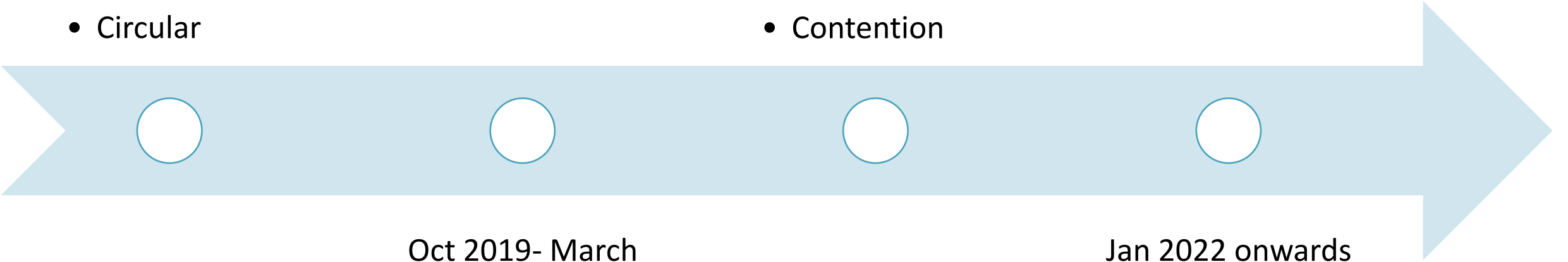
- Contention

Oct 2019- March
2019

- Contention
- Circular

Jan 2022 onwards

- ?



Key Contentions – Specific Issue -ITC Availd Vs 2A/2B –

Doctrine of Impossibility

GSTR-2A not available at initial period

Tax Paid status was not available in
GSTR-2A

The return system as prescribed under
GST law never introduced
GSTR-1, GSTR-2, GSTR-3

Rule 36(4) has been inserted from 9th
Oct 2019, however changes in the Act
from 01.01.2022

Rule can not override GST Act
Once 4 conditions mentioned in
Section 16 (2) satisfied then the same
can be denied.

Key Contentions – Specific Issue - ITC Availd Vs 2A/2B

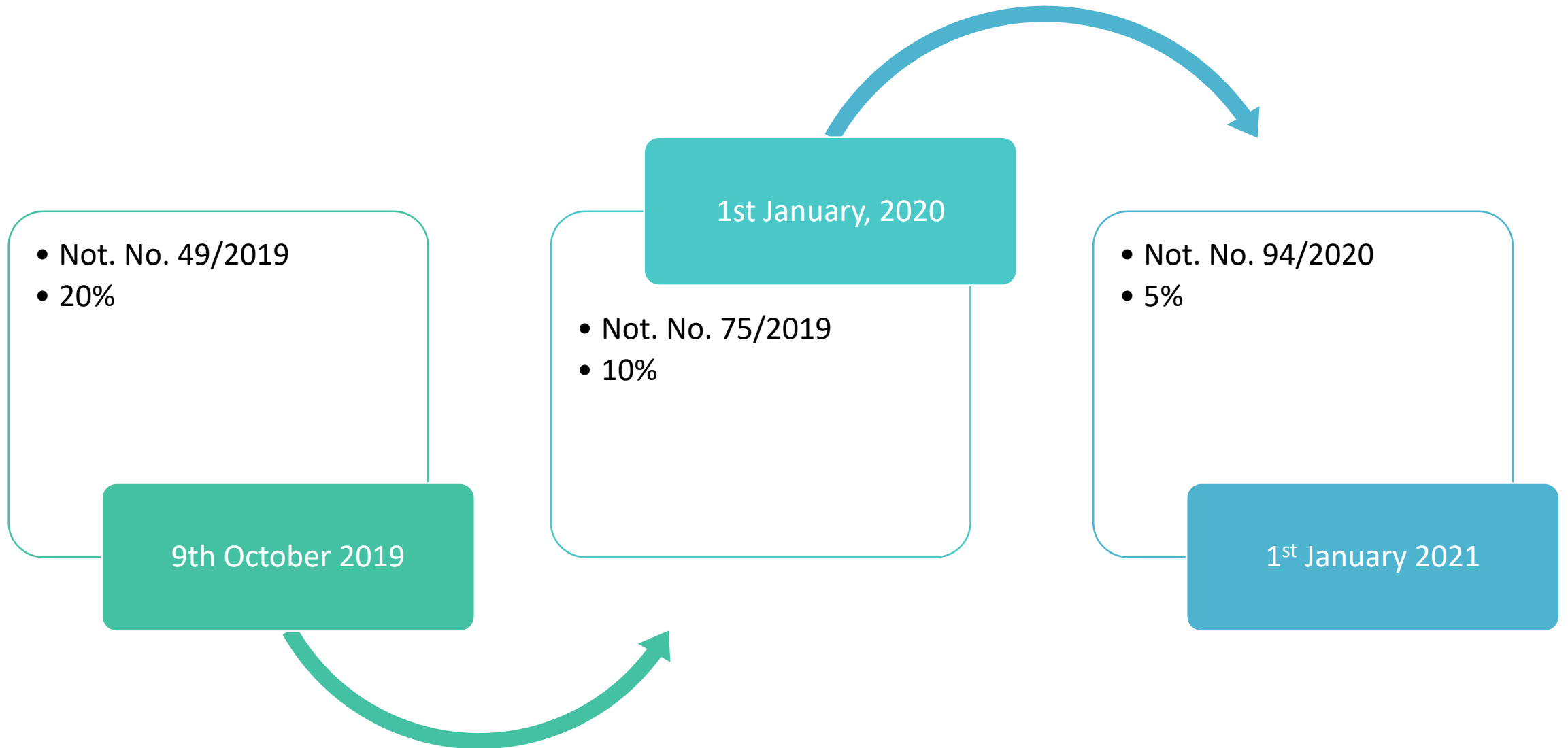
Section 41 amended w.e.f. 1st October, 2022. Thus before that said section allows to claim ITC provisionally

There is no relevance for 2A and 2B

Apex Court held that Form GSTR-2A is only a facilitator for taking an informed decision while doing such self-assessment
Refer BHARTI AIRTEL LTD. [2021 (54) G.S.T.L. 257 (S.C.)]

Interest should not be Applicable on ITC
Reversal and not utilised

Path to trade – ITC applicability – Rule 36(4)



Rule 36(4) challenged

M/s Gr Infra-projects Limited
[TS-614-HC-2020(RAJ)-NT-Gr]

Sales tax Bar Association &
Anr. [TS-1152-HC-2019(DEL)-
NT]

Society For Tax Analysis And
Research [TS-1151-HC-
2019(GUJ)-NT]

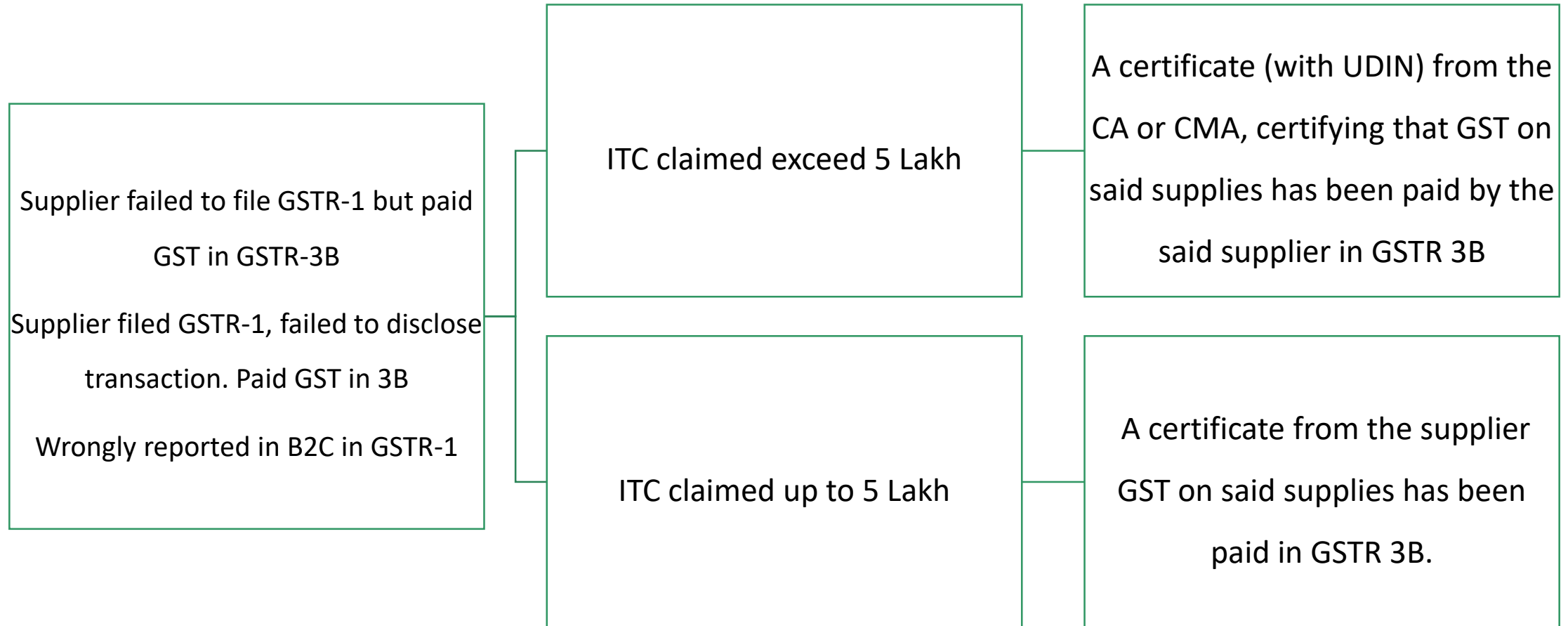
- Rule 36(4) Is ultra-virus of Sections 38(1) and 42(3) of the CGST
- Rule is discriminatory as it fails to differentiate between the genuine tax payers (who are filing FORM GSTR-1 on quarterly basis in accordance with law) vis-à-vis fraudulent persons (who are intentionally evading taxes and avoiding filing of returns);
- Rule is also contrary to the provisions of Section 16 and 38 of CGST Act to the extent it disallows ITC for taxes already deposited with the exchequer

Clarifications w.r.t. availability of ITC not reflected in GSTR-2A

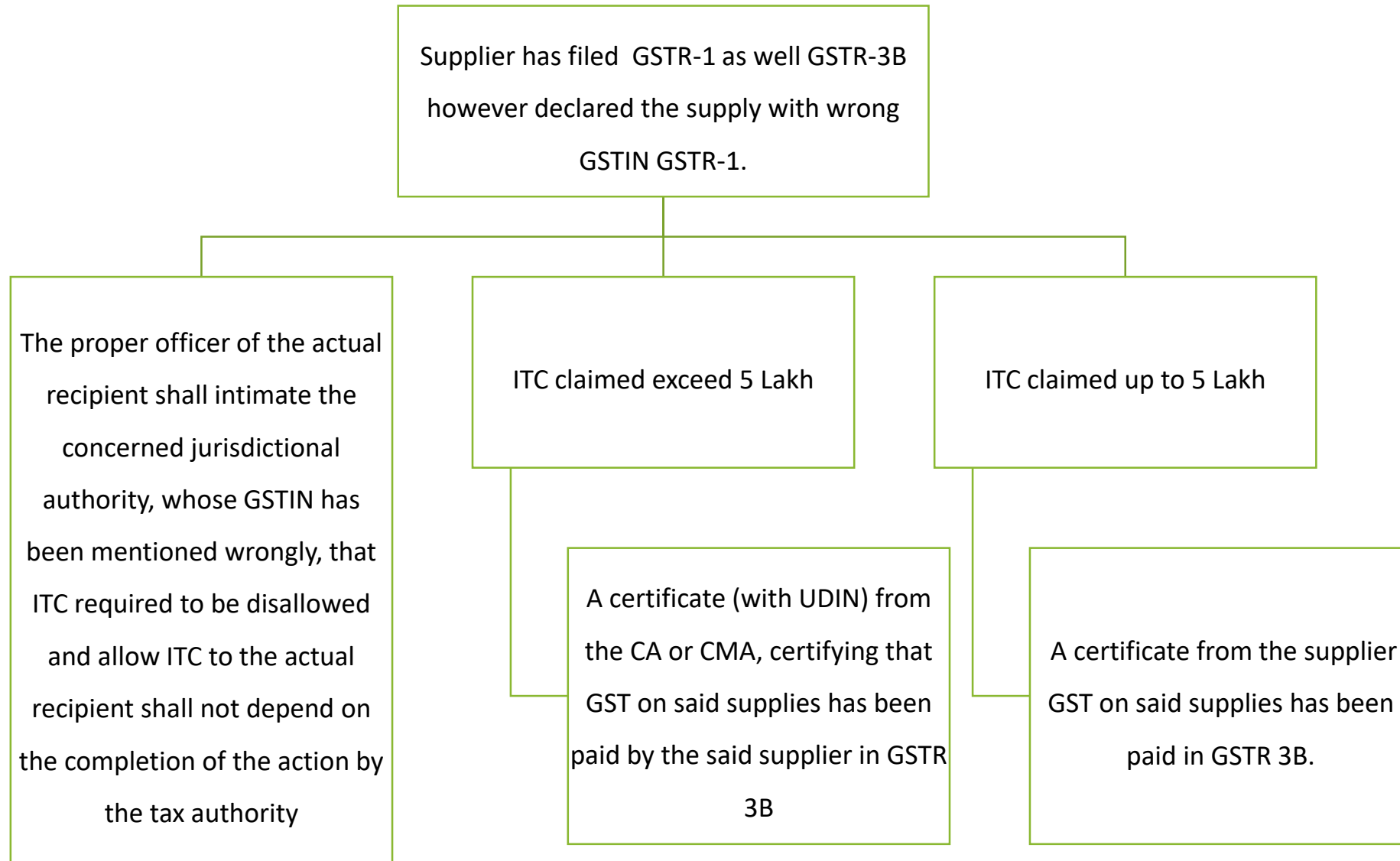
Applicable for the period [Circular No. 183/15/2022-GST]

- Financial years 2017-18 and 2018-19

Clarifications w.r.t. availability of ITC not reflected in GSTR-2A



Clarifications w.r.t. availability of ITC not reflected in GSTR-2A



Clarifications w.r.t. availability of ITC not reflected in GSTR-2A

What about applicability of circular for FY 2019-20?

Though the Circular refers only to the years 2017-18 and 2018-19, since there are identical errors committed by the petitioner not only in respect of the assessment years 2017-18 and 2018-19 but also in relation to the assessment year 2019-20 also, Bench is of the view that by adopting a justice oriented approach, the petitioner would be entitled to the benefit of the Circular for the year 2019-20 also

Wipro Ltd India [[2023-TIOL-84-HC-KAR-GST](#)]

Path towards restrictions

January 2022 onwards

- Available only if reflected in GSTR-2B

1. Methodology of ITC Availment

Amendment – Section 16 - Inserted

*“(aa) the details of the invoice or debit note referred to in clause (a) has been **furnished by the supplier in the statement of outward supplies** and such **details have been communicated to the recipient of** such invoice or debit note in the manner specified under section 37;”* [Inserted (w.e.f. 1.01.2022 vide Notification No. 39/2021-C.T. by s. 109 of The Finance Act, 2021 (No. 13 of 2021))].

(ba) the details of input tax credit in respect of the said supply communicated to such registered person under section 38 has not been restricted;] [Inserted (w.e.f. 1.10.2022 vide Notification No. 18/2022 - CT by s. 100 of The Finance Act 2022 (No. 6 of 2022))].

Analysis of amendment

Two more condition for eligibility of ITC – Section 16(2)

- a. Possession of Tax Invoice or debit note
 - aa. Detail of Invoice or debit note has been furnished by supplier in GSTR-1 and Communicated
- b. Goods or Services or both should be received.
 - (ba) ITC communicated to such registered person under section 38 has not been restricted
- c. GST paid to the Government
- d. Furnished Return.

Insertion of Section 38

Amendment

- *Insertion of Section 38*

Amendments in Section 38

- *(1) The details of outward supplies furnished by the registered persons under sub-section (1) of section 37 and of such other supplies as may be prescribed, and an auto generated statement containing the details of input tax credit shall be made available electronically to the recipients of such supplies in such form and manner, within such time, and subject to such conditions and restrictions as may be prescribed.*
- (2) The auto-generated statement under subsection (1) shall consist
 - (a) details of inward supplies in respect of which credit of input tax may be available to the recipient; and

Insertion of Section 38

Amendments in
Section 38

- *(b) details of supplies in respect of which such credit cannot be availed, whether wholly or partly, by the recipient, on account of the details of the **said supplies** being furnished under sub-section (1) of section 37,—*
- *(i) by any registered person within such period of taking registration as may be prescribed; or*
- *(ii) by any registered person, who has defaulted in payment of tax and where such default has continued for such period as may be prescribed; or*
- *(iii) by any registered person, the output tax payable by whom in accordance with the statement of outward supplies furnished by him under the said subsection during such period, as may be prescribed, exceeds the output tax paid by him during the said period by such limit as may be prescribed; or*

Insertion of Section 38

Amendment
s in Section
38

- *(iv) by any registered person who, during such period as may be prescribed, has availed credit of input tax of an amount that exceeds the credit that can be availed by him in accordance with clause*
- *(a), by such limit as may be prescribed; or*
- *(v) by any registered person, who has defaulted in discharging his tax liability in accordance with the provisions of sub-section (12) of section 49 subject to such conditions and restrictions as may be prescribed; or*
- *(vi) by such other class of persons as may be prescribed.”*

Key Highlights

ITC is not available if

- For certain period if Supplier is newly registered. (Period to be prescribed)
- defaulted the tax payment for continuous period as prescribed in rules
- who has paid less GST in GSTR-3B than disclosed in GSTR-1
- who has availed ITC more than allowed limits under section 38(2)(a).
- who defaulted in complying mandatory payment of tax liability in cash if applicable
- Other conditions as may be prescribed in rules

Key Highlights

New Section 38 is inserted so that to prescribe the condition when ITC is available and when same can't be claimed

Sub-section (2) to restrict the ITC availment to the recipient through the auto generated statement.

ITC not available, wholly or partially, on account of the situations specified in sub-clause (i) to (vi) of section 38(2)(b)

Key Highlights

Thus, now even the registration time period of supplier is required to be tracked

How, recipient can get details that supplier has paid less GST in GSTR-3B

What about inadvertent error in GSTR-1

How to track supplier has availed correct ITC as required under GST Act

Way Forward



Whether 2A or 2B to refer?



What is the difference between 2A and 2B?

2. Last date for availment of ITC for FY 2022-23

3. Amendment in Section 16 (4)

At Present

- (4) A registered person shall not be entitled to take 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 debit note pertains or furnishing of the relevant annual return, whichever is earlier:

Amended Provision

- (4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after due date of furnishing of the return under section 39 for the month of September following the **end of financial year the thirtieth day of November following the end of financial year to which such invoice or debit note** pertains or furnishing of the relevant annual return, whichever is earlier
- ***Substituted w.e.f. 1.10.2022 vide Notification No. 18/2022 - CT by s. 100 of The Finance Act 2022 (No. 6 of 2022)***

3. What if GST is not paid by the vendor

Whether ITC is available? Scenario Analysis

Sr. No.	Vendor return filing status		Whether ITC Availed ?
	GST-1	GSTR-3B	
1.	Filed before October 23	Not filed	?
2.	Filed before October 23	Filed before October 23	?
3.	Not Filed	Not filed	?
4.	Filed before October 23	Filed after October 23	?
5.	Filed after October 23	Filed after October 23	?

Amendment in Section 41

Amendment

- Section 41 (1) and Section 41(2) substituted

Earlier

- *(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to take the credit of eligible input tax, **as self-assessed**, in his return and such amount shall be credited **on a provisional basis** to his electronic credit ledger.*
- *(2) The credit referred to in sub-section (1) shall be utilised only for payment of self-assessed output tax as per the return referred to in the said sub-section.*

Amendment in Section 41

Amended
Section

- (1) Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to avail the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited ~~on a provisional basis~~ to his electronic credit ledger.
- (2) The credit of input tax availed by a registered person under sub-section (1) in respect of such supplies of goods or services or both, the tax payable **whereon has not been paid by the supplier, shall be reversed along with applicable interest**, by the said person in such manner as may be prescribed:
- Provided that where the **said supplier makes payment of the tax payable in respect of the aforesaid supplies, the said registered person may re-avail** the amount of credit reversed by him in such manner as may be prescribed.”.
- Substituted (w.e.f. 1st October, 2022 vide Notification No. 18/2022 - CT) by s. 106 of The Finance Act 2022 (No. 6 of 2022)

Key Highlights

New section for section 41 of the CGST Act so as to do away with the concept of “claim” of eligible input tax credit on a “provisional” basis and to provide for availment of self-assessed input tax credit.

ITC claimed in monthly return would be considered as final ITC

ITC is liable to be reversed along with applicable interest if tax payable thereon has not been paid by the supplier.

ITC can be re-availed once the supplier pays the tax

ITC reversal – Non Payment by Vendor

Insertion of Rule 37A



Reversal of input tax credit in the case of non-payment of tax
by the supplier and reavailment thereof

ITC reversal – New Rule 37A inserted

- **[Rule 37A. Reversal of input tax credit in the case of non-payment of tax by the supplier and re-availment thereof.-**
- *Where input tax credit has been availed by a registered person in the return in **FORM GSTR-3B** for a tax period in respect of such invoice or debit note, the details of which have been furnished by the supplier in the statement of outward supplies in **FORM GSTR-1** or using the invoice furnishing facility, but the return in **FORM GSTR-3B** for the tax period corresponding to the said statement of outward supplies has not been furnished by such supplier till the 30th day of September following the end of financial year in which the input tax credit in respect of such invoice or debit note has been availed, the said amount of input tax credit shall be reversed by the said registered person, while furnishing a return in **FORM GSTR-3B** on or before the 30th day of November following the end of such financial year:*
- ***Provided that where the said amount of input tax credit is not reversed by the registered person in a return in **FORM GSTR-3B** on or before the 30th day of November following the end of such financial year during which such input tax credit has been availed, such amount shall be payable by the said person along with interest thereon under **section 50**.***
- ***Provided further that where the said supplier subsequently furnishes the return in **FORM GSTR-3B** for the said tax period, the said registered person may re-avail the amount of such credit in the return in **FORM GSTR-3B** for a tax period thereafter.]***

ITC reversal – New Rule 37A inserted

Applicability-

- A Register Person avails ITC based on GSTR-1 filed by vendor however GSTR-3B has not been filed till the 30th day of Nov following the end of FY

Consequences

- the ITC is liable to be reversed on or before the 30th day of November following the end of such financial year and if not reversed same is payable with interest afterward

Re-availment

- where the said supplier subsequently furnishes the return in FORM GSTR-3B for the said tax period, the said registered person may re-avail the amount of such credit in the return in FORM GSTR-3B for a tax period thereafter.”

Action Plan

Online Data Vs Books Vs Return

- GSTR-2B Vs GSTR-3B Vs books reconciliation should be on Monthly
- ITC not reflected can lapse if not availed at all
- ITC required to be re-availed to be disclosed properly while filing of GSTR-3B
- Working of ITC re-availment should be maintained along with rational
- Reconciliation of balance as per Electronic credit ledger with Books is essential

4. What if after due care still vendor has defaulted?

Case Law

Case Law	Observations
M/s Onyx Designs Vs ACCT (Karnataka High Court)	In case of It was held that benefit of Input tax Could not be deprived to the purchaser, dealer if purchaser dealer satisfactory demonstrated that while purchasing goods, he had paid amount of tax to the selling dealers
Tarapore and Company (Jharkhand High Court)	Similarly in case of ITC can not be denied for default by selling agent

Key Highlights

Where buyer has discharged GST to vendor and again recovered by the Government it could substantially affect the business where profit is below 18% . Thus it violate Article 19(1)(g)

Key Highlights

Para 18.3 of 28th GST Council meeting

- *This would reduce the number of pending invoices for which input tax credit is to be taken. There would be no automatic reversal of input tax credit at the recipient's end where tax had not been paid by the supplier. **Revenue administration shall first try to recover the tax from the seller and only in some exceptional circumstances like missing dealer, shell companies, closure of business by the supplier, input tax credit shall be recovered from the recipient by following the due process of serving of notice and personal hearing.** He stated that though this would be part of iT architecture, in the law there would continue to be a provision making the seller and the buyer jointly and severally responsible for recovery of tax, which was not paid by the supplier but credit of which had been taken by the recipient.*

4. Care should be taken for ITC related to Import

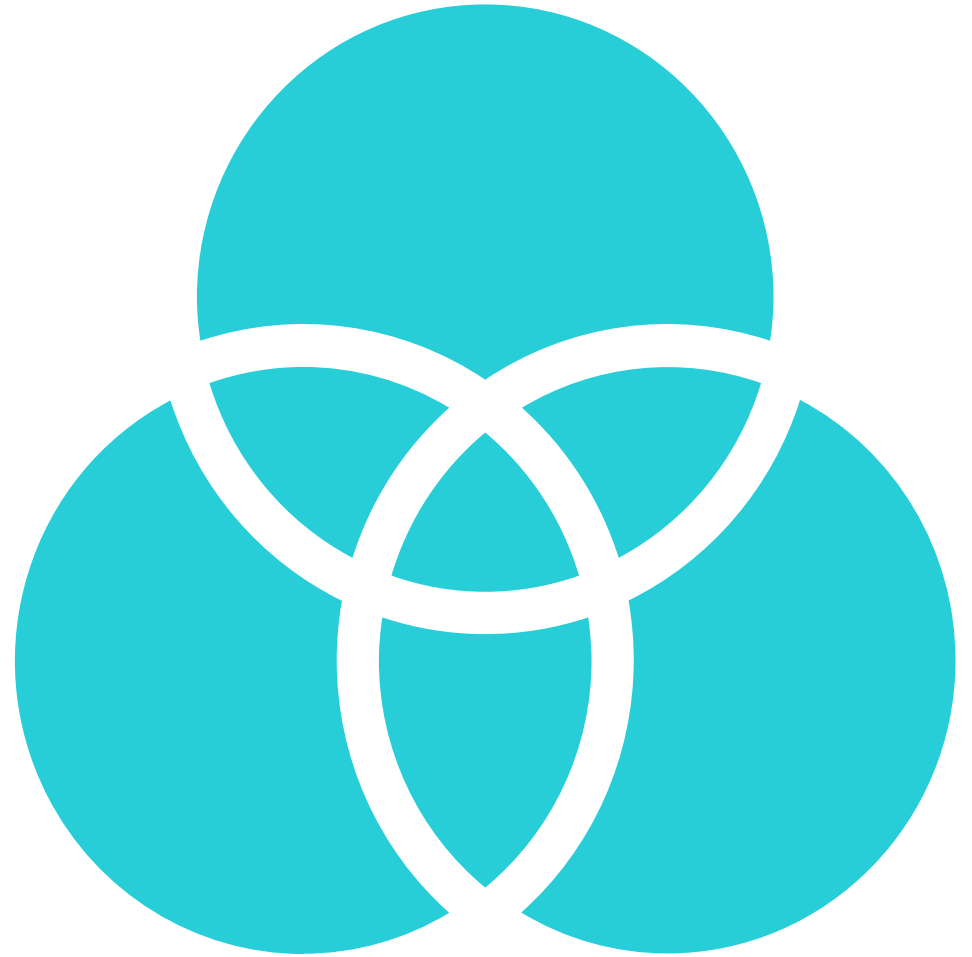
ITC – Import of Goods

Ensure that all Import ITC is reflected in
GSTR 2A/2B

If any of Import ITC is not getting reflected, then details of the same can be pulled from below functionality.

Home Screen on GST Portal after login →
Services → User Services → Search BOE

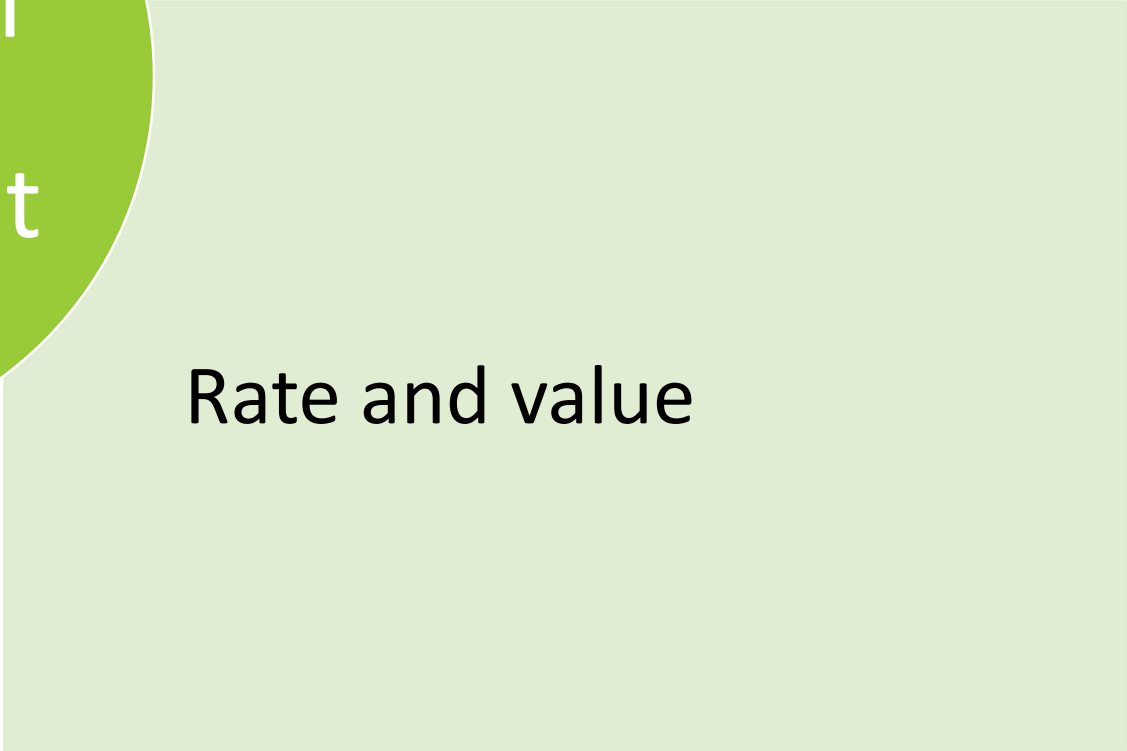
Section 60 - Provisional assessment



Key Highlights



Provisional
Assessment



Rate and value

Procedure


Request the proper officer in writing giving reasons for payment of tax on provisional basis



Proper officer shall pass an order, within a period not later than ninety days from the date of receipt of such request, allowing payment of tax on provisional basis at such rate or on such value as may be specified by him.

Procedure

Taxable person executes a bond in such form as may be prescribed, and with such surety or security as the proper officer may deem fit, binding for payment of the difference between the amount Finally assessed and provisionally assessed.

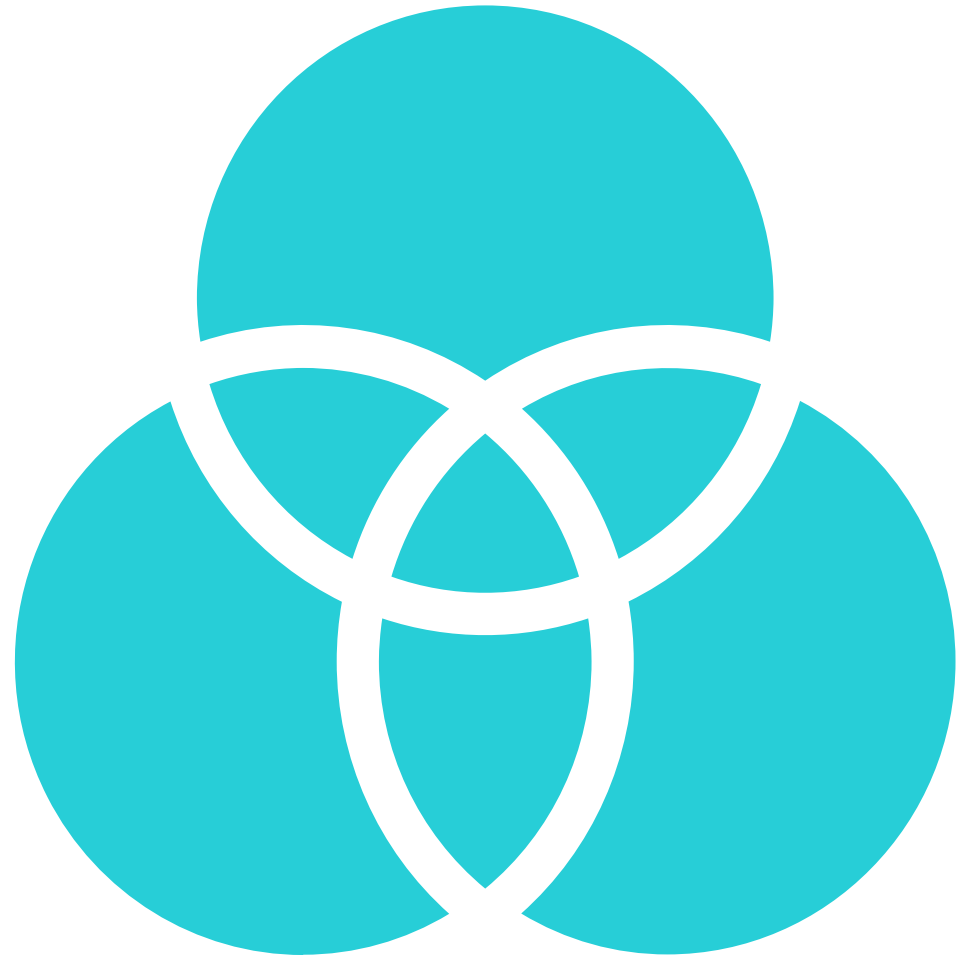


Proper officer within a period not exceeding six months pass the final assessment order. Time period can be extended. [Further 6 month and then even for 4 years]



Interest is liable to be paid @18% on balance. Whereas 6% in case refund by the Department.

Section 62- Assessment of non-filers of returns



Section 62. Assessment of non-filers of returns.-

(1) Notwithstanding anything to the contrary contained in section 73 or section 74, where a registered person fails to furnish the return under section 39 or section 45, even after the service of a notice under section 46, the proper officer may proceed to assess the tax liability of the said person to the best of his judgement taking into account all the relevant material which is available or which he has gathered and issue an assessment order within a period of five years from the date specified under section 44 for furnishing of the annual return for the financial year to which the tax not paid relates.

(2) Where the registered person furnishes a valid return within thirty days of the service of the assessment order under sub-section (1), the said assessment order shall be deemed to have been withdrawn but the liability for payment of interest under sub-section (1) of section 50 or for payment of late fee under section 47 shall continue.

Section 46. Notice to return defaulters. -

*Where a registered person fails to furnish a return under section 39 or section 44 or section 45, a notice shall be issued requiring him to furnish such return **within fifteen days in such form and manner** as may be prescribed.*

Tax Period : OCT 2022 - OCT 2022

F.Y : 2022-2023

Return Type : R3B

Notice Reference No : ZA271122219618M

Date : 26/11/2022

Act/ Rules Provisions :	
62 (1) of MGST & CGST Act, 2017	

Assessment order under section 62

The Notice referred to above was issued to you under section 46 of the Act for failure to furnish the return for the said tax period. From the record available with the department, it has been noticed that you have not furnished the said return till date.

Therefore, on the basis of information available with the department, the amount assessed and payable by you is as under:

Amount assessed and payable :

(Amount in Rs.)

Sr. No	Tax Rate(%)	Turnover	Tax Period		Act	POS (Place of Supply)	Tax	Interest	Penalty	Fee	Others	Total
			From	To								
1	0	0.00	OCT 2022	OCT 2022	CGST	NA	95,82,818.00	2,87,485.00	0.00	0.00	0.00	98,70,303.00
2	0	0.00	OCT 2022	OCT 2022	SGST	NA	95,82,818.00	2,87,485.00	0.00	0.00	0.00	98,70,303.00
Total							1,91,65,636.00	5,74,970.00	0.00	0.00	0.00	1,97,40,606.00

[Details of the introduction; submissions, if any; discussions and findings, conclusion and preamble etc. are attached as annexure]

1. An amnesty Scheme – Best Judgment Assessment

Not. No. 06/2023 – CT

Amnesty Scheme - Not. No. 06/2023 – CT

Applicable to a Person

- the registered persons who failed to furnish a valid return within a period of thirty days from the service of the assessment order issued on or before the 28.02.2023 [U/s 62(1) of the CGST Act.]

Amnesty Scheme - Not. No. 06/2023 – CT

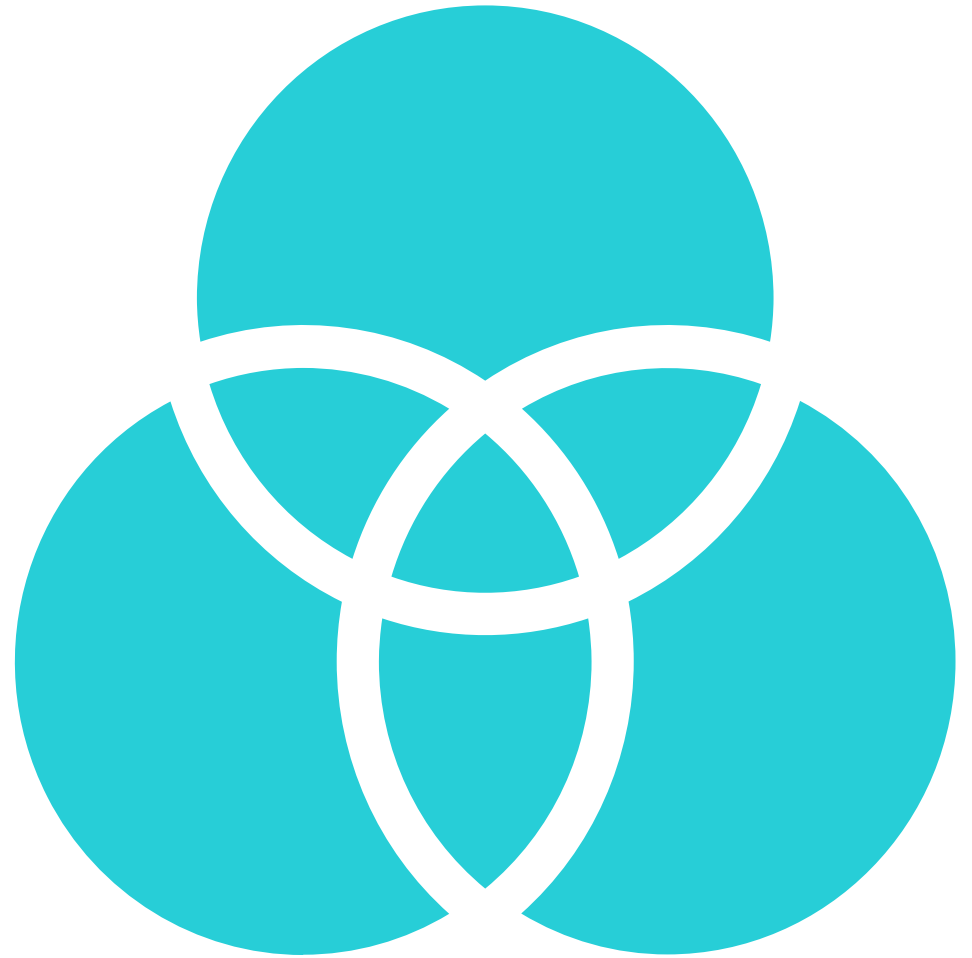
Best judgment assessment order deemed to be withdrawn irrespective of whether appeal has been filed or not against the assessment order if

- Furnish the said return on or before the 30.06.2023;
- Return should be filed along with due interest and late fee up to a specified date.

Key Highlights

Whether interest and late fee is required to pay to drop the OIO ?

Section 63- Assessment of unregistered persons



Whether GST can be recovered if registrations are cancelled by the GST authorities?

Section 63. Assessment of unregistered persons

- ***Notwithstanding anything to the contrary contained in section 73 or section 74, where a taxable person fails to obtain registration even though liable to do so or whose registration has been cancelled under sub-section (2) of section 29 but who was liable to pay tax, the proper officer may proceed to assess the tax liability of such taxable person to the best of his judgment for the relevant tax periods and issue an assessment order within a period of five years from the date specified under section 44 for furnishing of the annual return for the financial year to which the tax not paid relates:***
- ***Provided that no such assessment order shall be passed without giving the person an opportunity of being heard.***

Key Highlights

Applicable if

- *person fails to obtain registration even applicable*
- *whose registration has been cancelled under section 29 (2) but who was liable to pay tax*

Assessment

- Best Judgement

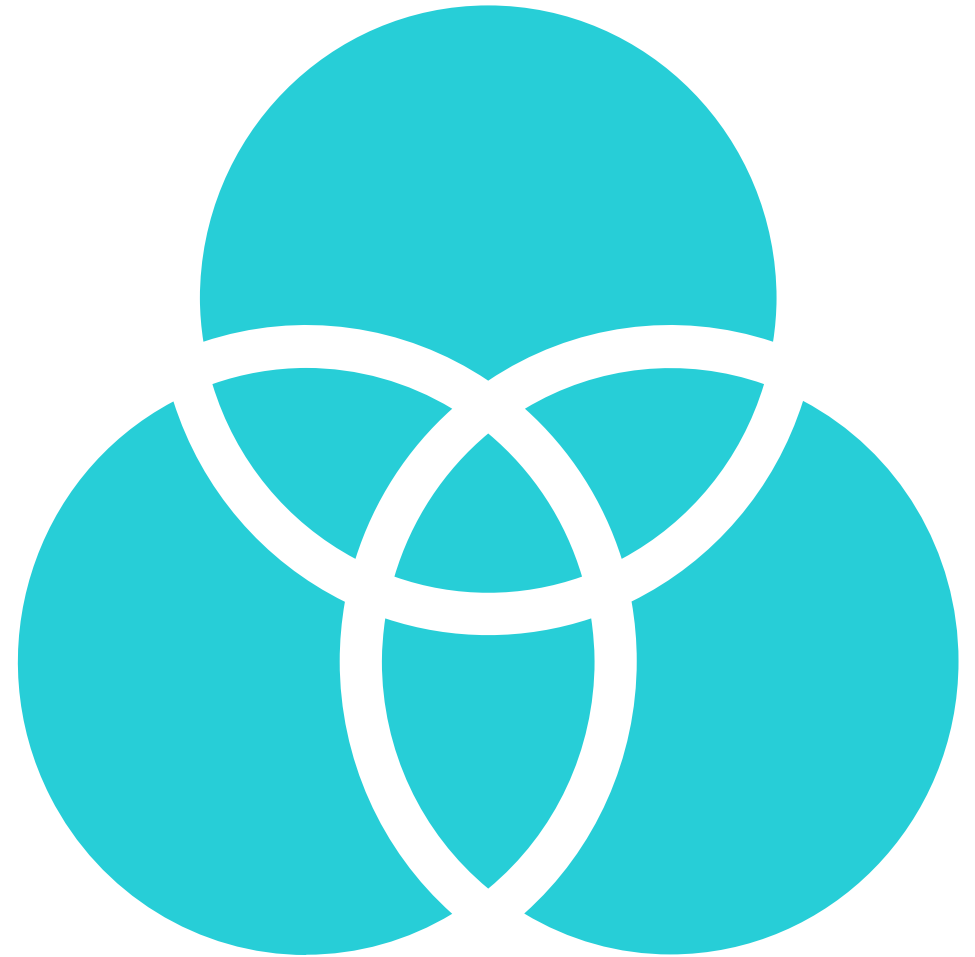
PH

- Mandatory before assessment
OIO

Period

- 5 Years from the date of Annual Return

Section 64- Summary assessment in certain special cases



Section 64. Summary Assessment in Certain Special Cases. -

- (1) The proper officer may, **on any evidence showing a tax liability of a person coming to his notice**, with the previous permission of Additional Commissioner or Joint Commissioner, proceed to assess the tax liability of such person to protect the interest of revenue and issue an assessment order, if he has sufficient grounds to believe that any delay in doing so may adversely affect the interest of revenue:
- Provided that where the taxable person to whom the liability **pertains is not ascertainable and such liability pertains to supply of goods**, the person in charge of such goods shall be deemed to be the taxable person liable to be assessed and liable to pay tax and any other amount due under this section.
- (2) On an **application made by the taxable person within thirty days from the date of receipt of order passed under sub-section (1)** or on his own motion, if the Additional Commissioner or Joint Commissioner considers that **such order is erroneous**, he may withdraw such order and follow the procedure laid down in section 73 or section 74

Rectification



Rectification of errors apparent on the face of record.

- 161. *Without prejudice to the provisions of section 160, and notwithstanding anything contained in any other provisions of this Act, any authority, who has passed or issued any decision or order or notice or certificate or any other document, **may rectify any error which is apparent on the face of record** in such decision or order or notice or certificate or any other document, either on its own motion or where such error is brought to its notice by any officer appointed under this Act or an officer appointed under the State Goods and Services Tax Act or an officer appointed under the Union Territory Goods and Services Tax Act or by the affected person **within a period of three months from the date of issue of such decision or order or notice or certificate or any other document, as the case may be:***

Rectification of errors apparent on the face of record.

- *Provided that no such rectification shall be done after a period of six months from the date of issue of such decision or order or notice or certificate or any other document:*
- *Provided further that the said period of **six months shall not apply in such cases where the rectification is purely in the nature of correction of a clerical or arithmetical error, arising from any accidental slip or omission:***
- Provided also that where such rectification adversely affects any person, the principles of natural justice shall be followed by the authority carrying out such rectification.

Key Provisions – Key Legal precedents

Rectification

- **TS-676-HC-2020(KER)-NT-Pee Bee Enterprises**
- Holds Assessment orders against Assessee valid, remedy can be sought only by way of appeal (Via online portal issue of OIO is valid)

Key Legal Pronouncement and Way Forward



Whether is it Necessary to serve ASMT-10?

Whether SCN issued is valid and as per law?

Key Pronouncements

Case	Facts	Observation
<p>Nkas Services Pvt Ltd</p> <p>[2021-TIOL-2079-HC-JHARKHAND-GST]</p>	<p>SCN issued u/s 74 of the JGST Act has been challenged by the petitioner along with the consequential challenge to summary of show-cause notice in FORM DRC-01 - Petitioner assails the Show Cause Notice (SCN) dated 7th June 2021 as being vague; without jurisdiction and that the proceeding initiated without service of FORM GST-ASMT-10 is void ab-initio.</p>	<p><i>In absence of clear charges which the person so alleged is required to answer, the noticee is bound to be denied proper opportunity to defend itself. + This would entail violation of principles of natural justice which is a well-recognized exception for invocation of writ jurisdiction despite availability of alternative remedy.</i></p> <p><i>Impugned notice completely lacks in fulfilling the ingredients of a proper SCN u/s 74 of the Act.</i></p> <p><i>Impugned notice and the summary of show-cause notice in Form GST DRC-01 are quashed.</i></p> <p><i>Respondents are at liberty to initiate fresh proceedings in accordance with law within a period of four weeks.</i></p>

Key Pronouncements

CaseZZ	Facts	Observation
<p>S.P.Y. AGRO INDUSTRIES LTD.</p> <p>[2021 (45) G.S.T.L. 127 (A.P.)]</p>	<p>ASMT-10 under Section 61(1) of CGST Act issued on 26.07.2020</p> <p>Reply filed on dated 26.08.2020</p> <p>Another notice, for another period dated 21-7-2020, requiring to reply within 15 days</p> <p>On failure to file the returns, the 2nd Respondent passed an Assessment Order and initiated recovery</p>	<p><i>Notice intimating the discrepancy in the return came to be issued in Form GSTR ASMT-10, on 28-7-2020, wherein, the Petitioner was directed to explain the reasons for the discrepancies contained therein, on or before 27-8-2020. Even before waiting till 27-8-2020, the Garnishee Notice, for the said period, came to be issued, on 26-8-2020.</i></p> <p><i>Therefore, initiating recovery proceedings even before the period given for filing reply is over, is in contravention of principles of natural justice.</i></p> <p><i>The OIO to the extent of which the valid return is filed is deemed to be withdrawn and only the liability of payment of interest shall continue and not the penalty pertaining to such valid return.</i></p>



Whether provisional attachment of bank account is valid course of action?

Whether bank can be attached of other person's assuming that funds belong to taxable person?

Key Pronouncements

Case	Facts	Observation
M/s. Radha Krishan Industries [2021-TIOL-179- SC-GST]		the power to order a provisional attachment of the property, including a bank account, is draconian in nature and the conditions which are prescribed by the statute for a valid exercise of the power must be strictly fulfilled
SPNN Business Services (P.) [[W.P.(C) NO. 2435 OF 2021]	Writ for interim directions for lifting the provisional attachment so that the subject bank accounts could become operable, and able to pay the salaries	The Hon'ble Delhi High Court directed the Respondent to permit the Petitioner to collect a sum of Rs. 2 crores from bank accounts provisionally attached by the GST Dept, to pay salaries of employees.

Key Pronouncements

Case	Facts	Observation
Fine Exime Pvt Ltd [2021-TIOL-1703-HC-MUM-GST]	Petitioner had invoked the writ jurisdiction of this Court for quashing of order dated December 1, 2020 on the ground that the condition precedent for provisional attachment of a bank account was non-existent	<i>The order of provisional attachment was made not during pendency of any proceedings under Sections 62 or 63 or 64 or 67 or 73 or 74 of the CGST Act but was made in view of contemplation of proceedings under Section 73 thereof.</i>
M/s S S OFFSHORE PVT LTD [2021-TIOL-1641-HC-MUM-GST]	No proceedings are pending under Sections 62 or 63 or 64 or 67 or 73 or 74 of the CGST Act and, therefore, the jurisdictional fact for invocation of the power conferred by Section 83 of the CGST Act read with Rule 159(1) of the CGST Rules did not exist;	No proceedings under Sections 62 or 63 or 64 or 67 or 73 or 74 of the CGST Act were pending against the petitioner and, therefore, the order of provisional attachment of its bank account is illegal.

Recent Legal Trend

The Joint Commissioner while ordering a provisional attachment under section 83 was acting as a delegate of the Commissioner in pursuance of the delegation effected under Section 5(3) and an appeal against the order of provisional attachment was not available under Section 107 (1);

The writ petition before the High Court under Article 226 of the Constitution challenging the order of provisional attachment was maintainable

The High Court has erred in dismissing the writ petition on the ground that it was not maintainable;

Key Observations of the Court

The power of provisional attachment entrusted only during Pendency of proceedings under any one of six specified provisions: (i. e. Sections 62, 63, 64, 67, 73 or 74)

The Commissioner must be of the opinion that '*for the purpose of protecting the interest of the government revenue, it is **necessary so to do***

The order for attachment must be in writing

Way forward

As per Rule 159(5) of CGST Rules mandatory requirements are

- An entitlement to submit objections on the ground that the property was or is not liable to attachment; and
- An opportunity of being heard;

After final order u/s 74(9), the proceedings
U/s 74 are no longer pending, thus the
provisional attachment must come to an
end;

Power to **order** a **provisional attachment** of
the property including **bank account** of the
taxable person is draconian in nature and
must be based on tangible material.

Guidelines issued for provisional attachment
of property under section 83 of the CGST
Act, 2017 via CBEC-20/16/05/2021-GST/359
dated 23.03.2021 can be useful along with
the Apex Court's observations

Key Highlights

Section 83 (1) is Substituted in Budget 2021

- **Earlier**

- ~~1) Where during the pendency of any proceedings under section 62 or section 63 or section 64 or section 67 or section 73 or section 74, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue, it is necessary so to do, he may, by order in writing attach provisionally any property, including bank account, belonging to the taxable person in such manner as may be prescribed.~~

- **Amendment**

- “(1) Where, after the initiation of any proceeding under Chapter XII, Chapter XIV or Chapter XV, the Commissioner is of **the opinion that for the** purpose of protecting the interest of the Government revenue it is necessary so to do, he may, by **order in writing, attach provisionally, any property, including bank account, belonging to the taxable person or any person specified in sub-section (1A) of section 122,** in such manner as may be prescribed

Key Highlights

Widen	Widen the ambit of provisional attachment
Section	Earlier section provisional attachment was prescribed only for specified section (i.e. Section 62, 63, 64 67, 73,74)
Empower	Empower the officer to attach bank or property in case of proceeding under any sections of Chapter XII, Chapter XIV or Chapter XV.

Way forward

Rule 147 - **Recovery by sale of movable or immovable property**

- (1) *The proper officer shall prepare **a list of movable and immovable property belonging to the defaulter**, estimate their value as per the prevalent market price and issue an order of attachment or distraint and a notice for sale in FORM GST DRC- 16 **prohibiting any transaction with regard to such movable and immovable property as may be required for the recovery of the amount due:***

Key Highlights

Section 122 (1A)

- *[(1A) Any person who **retains the benefit of a transaction** covered under clauses (i), (ii), (vii) or clause (ix) of sub-section (1) and **at whose instance such transaction is conducted**, shall be liable to a penalty of an amount equivalent to the tax evaded or input tax credit availed of or passed on.]*

Legal Pronouncements

Case Law

- Sakshi Bahl & Anr. vs. The Principal Additional Director General
- [TS-113-HC(DEL)-2023-GST]

Fatcs

- he and his wife, were partners in M/s Shankar/Shankar Trading Company and were authorised to operate the bank account.
- Bank attached in view of the statement made by one Shri Rajiv Chawla during the course of investigation

Legal Pronouncements

Facts

- However, he used to sign his cheque books in blank and hand over the same to one Shri Sumit Maggo and Shri Rajiv Chawla, for payment of funds. He would receive a minor commission for the same.

Legal Pronouncements

Observations

- It is not open for the respondent to attach the bank accounts of other persons on a mere assumption that the funds therein are owned by any taxable person.”, Clarifies that “The power under Section 83 of the Act, to provisionally attach assets or bank accounts is limited to attaching the bank accounts and assets of taxable persons and persons specified under Section 122(1A) of the Act.”;

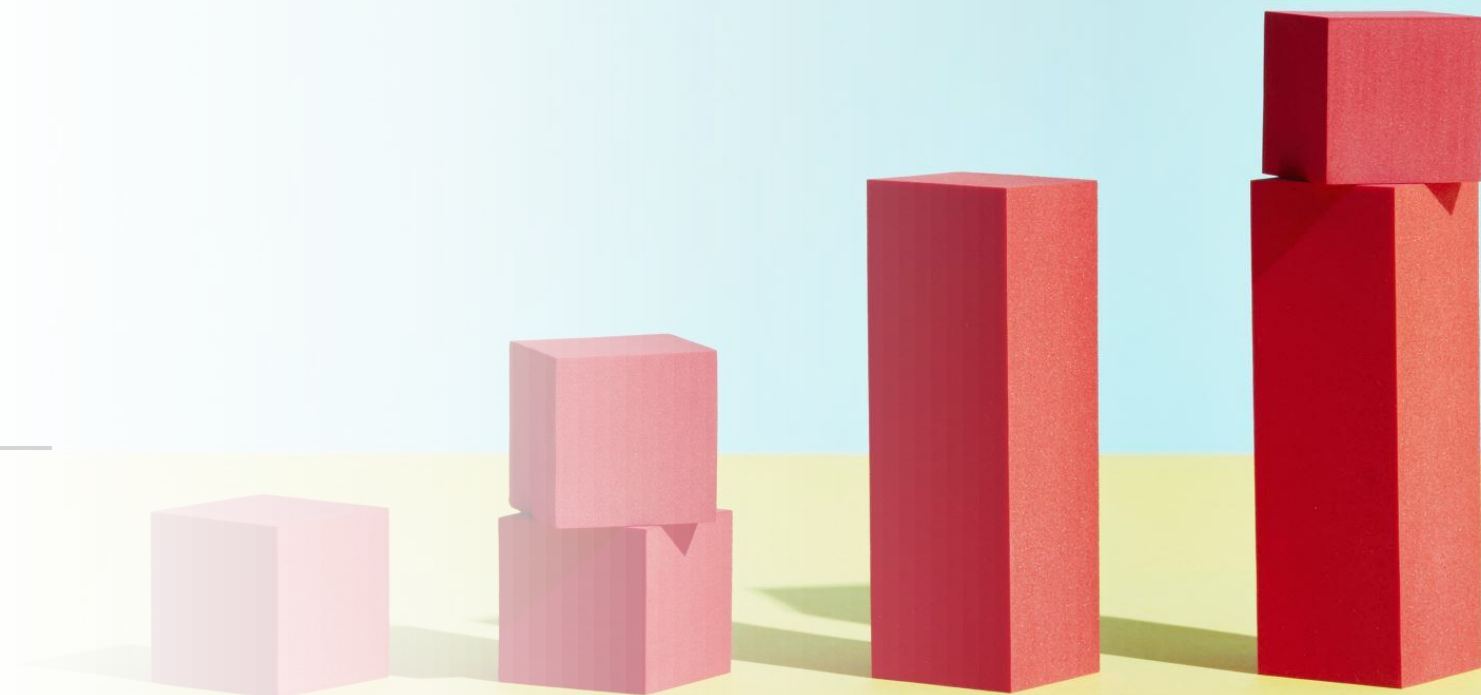
Legal Pronouncements

Decision

- *HC stated that it was not open for Revenue to attach the bank accounts of other persons on a mere assumption that the funds therein were owned by any taxable person.*



Way Forward





Recommended to pay under protest even don't want to litigate in case of GSTR-2A and 3B



Mention of wrong Section, Wrong Classification, No Computation invalidate SCN



At initial stage of litigation, detailed legal reply may not required



Reply should be well drafted, having paragraph, summary and include key pronouncements

Way Forward



Amount of tax can be paid under Protest and keep pending with appellate Authorities. Wait for Judgements



Any notice or communication should be within the Jurisdiction and/or from proper officer



Read and Understand Allegation thoroughly



Ensure to take key contention during SCN reply. Addition afterward could lead to remand back to the respective authorities

Way Forward

ATTENTION !



Join our WhatsApp Group for Updates via link below

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[WJ3](#)

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