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## **Internship Report**

**On**

**‘STATUTORY AND ADMINISTRATIVE POWERS OF GST  
OFFICERS- LIMITS & LIMITATIONS’**

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## Certificate

This internship report titled "*Statutory and Administrative Powers of GST Officers- Limits & Limitations*" is a report on the study taken up at the Fiscal Policy Institute (FPI) in 2020-21.

The internship report is prepared by Niveditha M studying at Bangalore Institute of Technology, Bengaluru under the mentorship of Shi H. N. Srikanta Murthy, Deputy Advisor & Faculty, Fiscal Policy Institute.

All opinion and conclusions expressed in the internship report are of the Intern and usual disclaimer applies.



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## **ABSTRACT**

The purpose of this study is to give a clear picture of changes in the new tax regime, the need to understand and learn concepts within it and the objectives of the new tax regime. It also discusses the old and new tax regimes which in turn facilitates tax administrators to have a clear perception towards the powers that they are vested with so that they cannot abuse their powers.

This study explains three chapters viz., scrutiny of returns, show cause notice and speaking order. Every chapter comprehensively discusses the sections pertaining to it, various definitions of terminology used in it and actions to be followed and not to be followed by the tax administrators, flowcharts and checklist. This is to conclude that this study emphasizes protecting the interests of both administrators and taxpayers.

## INTRODUCTION

There are many new procedures in the GST law that taxpayers as well as tax administrators need to accept to proceed in this new law. Old practices that were long-standing are gone. Old procedures that were effective in collecting revenue have been deleted. The KGST Act now contains many procedures borrowed from the Central tax legislation that are complicated and appear to be unnecessary to do something that can easily be done in shorter and smarter ways. But the GST Council has taken a collective decision that 'One Nation, One Tax' requires oneness in rules of procedure also. Therefore, there is a need to understand what is 'new' in the GST and accept this new way of tax administration.

The Constitution of India needed to be amended to introduce GST in India.

This itself shows that even the Constitution (before amendment) was not sufficient to levy the GST. That should give an idea of the kind of tax that the GST is and that is the extent to which the GST is different from earlier tax regimes. If the Constitution needed to be changed, tax administrators and taxpayers cannot escape change. To understand the change required, deep study of the Karnataka Goods and Services Tax Act, 2017 (KGST Act) and the Karnataka Goods and Services Tax Rules, 2017 (KGST Rules) are required.

Administrators of this new law need to specifically consider the exact provisions of the KGST Act that deal with tax administration and relearn the administration of this law by comparing the differences that the GST has introduced to reflect the pitfalls that need to be brought to the attention of the GST Officers for hassle-free implementation of GST procedures.

To usher the need to understand the new tax regime by tax administrators and support the taxpayers and provide a brief transcript for tax administrators which guides them regarding their powers & limitations. The inadvertent continuation of practices and procedures under earlier laws are not to be continued by force of habit as the GST has made sweeping changes "due process of law".

Here in this report, it is observed and suggested what a proper officer has to do as per the GST Law and to avoid the conventional practice followed by the earlier Tax regime. This report is based on the observations made by the experienced up-front practitioners in the field (*with whom the Intern constantly interacted*) who are in constant interaction with the Officers and have perceived the casual attitude of the officers. These professionals have put in not less than 20 years of practising experience who are experienced in both direct and indirect taxation and these

professionals have observed the officers attitude by executing the law involving both statutory and administrative aspects and have given a clear visual idea to prepare this report. This report will bring forward the things that are needed to be followed by the Law executing authorities in the interest of Revenue and to lessen the litigations.

This report is the output of the Intern as per the understanding of the Law and its execution by the authorities, based on the continuous discussion had with the practitioners who have shared their experience openly.

The report may come in handy to the proper officers while performing their legitimate function. However, it is the view of the intern, based on the remarks of the learned sincere practitioners.

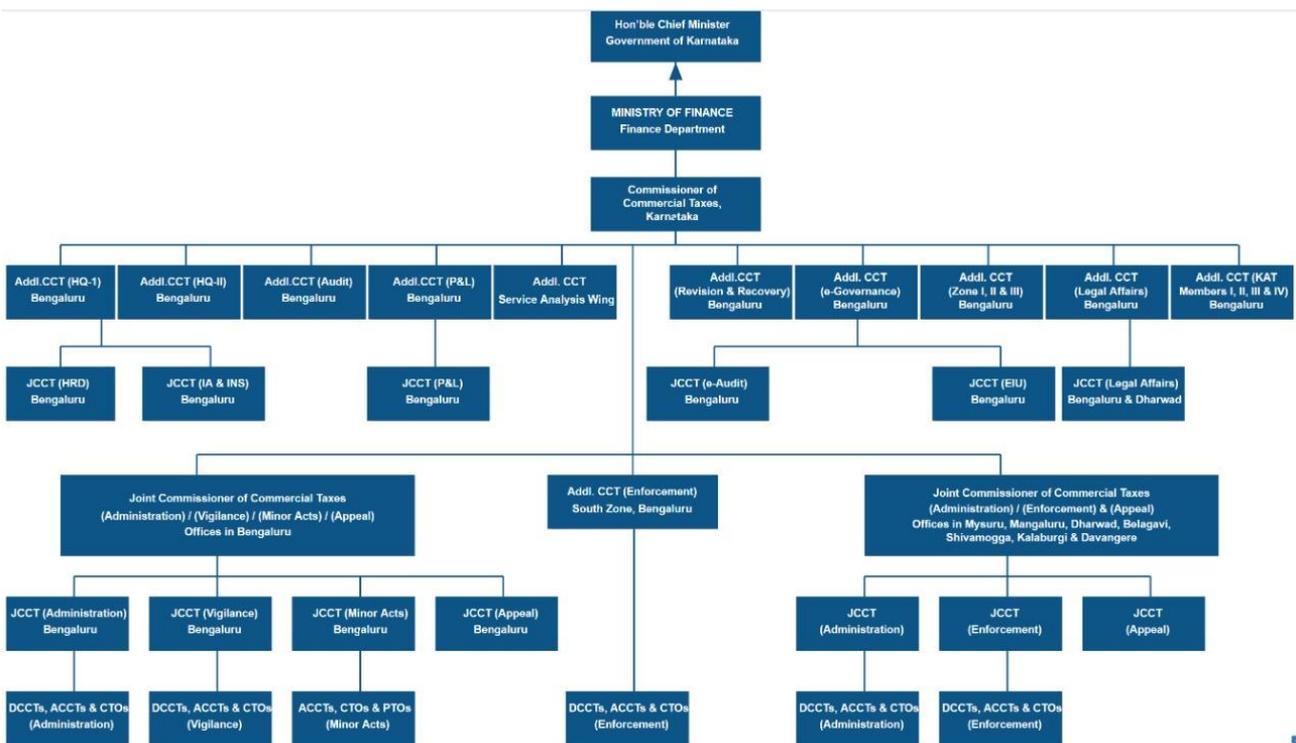
**DISCLAIMER: This report is prepared based on observation and understanding of the GST provisions by the intern (including suggestions, checklist, flowchart, format, etc.) are not authorised and formal recommendation to be followed by the reader, but conclusion derived during the course of project work by the intern may be considered after the independent consideration of applicable GST provisions though responsibility is assured for any action based on least observation by the intern during project work.**

## CHAPTER 2

### Administrative structure

All power is vested by the Constitution in Parliament and State Legislature to make laws. The GST Council has been made a new authority for deliberation and consensus building among all States, UTs and the Centre as a pre-legislative step so that once a decision is taken in the Council, law-making will be uniform or at least, as agreed jointly. This will preserve the concept of 'One Nation, One Tax'.

The following is the organizational hierarchy of the State where the Chief Minister is the Constitutional Head of the State.



[www.gst.kar.nic.in/Whoswho.aspx](http://www.gst.kar.nic.in/Whoswho.aspx)

## CHAPTER 3

### Section 61 – Scrutiny of Returns

What the Proper Officer has to follow while administering the GST Law-

[Refer rule 99 and form ASMT10, 11 and 12]

[KGST RULES.pdf](#)

1. This section permits ‘scrutiny of returns’ by the Proper Officer. The Proper Officer is the one to whom the GSTIN is linked on the portal. Scrutiny is NOT to be undertaken by every GST officer (State or Centre). Only the jurisdictional Proper Officer can undertake scrutiny. As per the GSTN portal, returns filed by a registered person will appear in the login of the jurisdictional Proper Officer. Action under this section is applicable only in cases where the taxable person is ‘registered’ and no action under this section can be initiated if the taxable person is ‘liable’ to be registered.
2. Returns – means returns actually filed in FORM GSTR 1, 3B and 9. All other forms like GSTR 2A or GSTR 9C are not ‘returns’. Returns actually filed may be taken up for scrutiny. Reference may be had to section 46 of the KGST Act to know which are the returns that come within the scope of this chapter.
3. Discrepancy – means questions that arise from an examination of said ‘return’. Doubts arising in the mind of the Proper Officer is NOT a discrepancy. Discrepancy is defined to mean “the difference between things that should be the same” in the Oxford English dictionary. Notice of discrepancy calling for an explanation must be issued in ASMT 10 by stating the discrepancy in simple and plain language without a lengthy discussion about it. Format provided on the GSTN portal must be used. Discrepancy includes clerical as well as analytical errors, but does NOT include:
  - a. Queries about classification, exemption or valuation;
  - b. Comparative differences such as 2A v. 3B which requires reference to GSTR 2A which is not a return but an additional document. There is no scope for such comparative verification in this section;
  - c. Logical investigation of non-payment of tax on reverse charge basis by the taxpayer when freight charges are found to be incurred. Logically this may be true, but raising this question amounts to ‘looking for something that should have been in there’. That is not scrutiny but investigation; or

- d. Intelligence gathered about bogus invoices which are appearing in GSTR 2A which are taken up for verification. That too is not a case of scrutiny of returns.
4. Explanation – The registered person is required to explain the discrepancy. It is important to note that by accepting the notice issued, the registered person would have indirectly admitted to the ‘discrepancy’. This fact (of admitting discrepancy) would be very helpful in later proceedings (under other sections). An explanation is to be given by the registered person in ASMT 11. Further, it is not stated that a ‘satisfactory’ explanation should be provided. The Proper Officer is free to be dissatisfied with the explanation and proceed with further course of action. If the explanation is satisfactory, then the proceedings will be closed by passing an order in ASMT 12;
  5. Resolution – to the notice issued will either lead to admission and payment of dues (tax or credit or interest) and closure of scrutiny. Admitting but not discharging dues would lead to action under Section 79 based on principles laid down in section 75(12) of the KGST Act. There may also be non-admission of discrepancy by the registered person indicating that the Proper Officer may put up the file to JCCT/ADC for initiating further action under Sections 65, 66 or 67 or even proceed to issue a notice under Sections 73 or 74 of the KGST Act.
  6. Actions to be followed:
    - a. One ASMT 10 for one or multiple returns. It is advisable to issue one ASMT 10 per return and further ASMT 10s may be issued if the same discrepancy is continuing;
    - b. All discrepancies need not be raised in one ASMT 10. Each discrepancy may be raised completely and properly in separate ASMT 10 without duplication or overlap or repetition;
    - c. The time limit for issuing ASMT 10 is effectively 33 months from the date of filing of said return. This date emerges from the last date by when the show-cause notice may be issued under Section 73(2) of the KGST Act.
  7. Actions **NOT** to be followed:
    - a. Follow-up scrutiny is not admissible. Once ASMT 11 is filed by the registered person, it must conclude with ASMT 12. Another round of ASMT10 is not advisable;
    - b. Detailed discussions about discrepancy involving personal hearing with the

- registered person or an authorised representative are to be avoided;
- c. Spot recovery of dues is not permitted under this section. Only if a reply by the registered person in ASMT 11 admits liability, dues may be deposited through GSTR 3B;
  - d. Payment of due in DRC 3 could raise doubts about voluntary payment;
  - e. Demand of dues in DRC 7 is not applicable under this section;
  - f. The document titled 'endorsement' is not to be issued. Formats prescribed in rules only are to be followed for taking action. No legal value is there in using any additional wordings.
8. This section is not a substitute for 'assessment' of the registered person. The GST being a self-assessment-based tax system, the revenue authorities are required to ensure minimal intervention in the examination of records. For this reason, various provisions are enacted and each provision is applicable in specific situations only. A general inquiry is not to be undertaken under this section.
9. Format - Key Points in ASMAT 10, 11, 12 will be Highlighted
10. Checklist - Key Points in ASMAT 10, 11, 12 will be Highlighted

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## CHAPTER 4

### Show Cause Notice

*[Refer Sections 73, 74 and 76, Rule 142 and Forms DRC 1 and 2]*

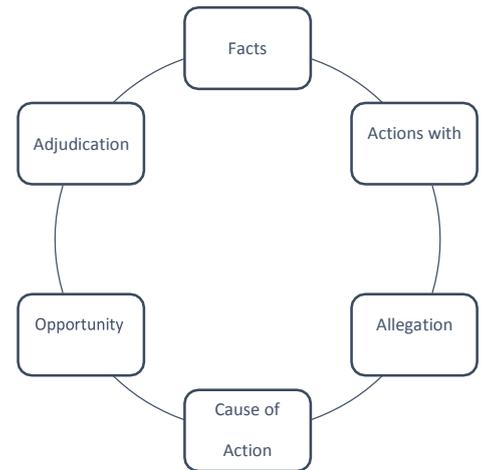
KGST ACT 2017 (English Version).pdf

KGST RULES.pdf

1. Every demand for tax or other sums under the KGST Act MUST be accompanied by a 'show cause notice'. Various sections prescribe that a show-cause notice is to be issued. When the GSTN portal prescribes a format of notice, generally, it DOES NOT refer to the show cause notice. If prescribed notice is applicable then the notice may be issued in that format. But, if the show cause notice is required to be issued, then the points discussed in this chapter will be very helpful. The show cause notice is compulsory even if the demand for dues is obvious and there is no requirement for detailed hearing or discussion. After completion of pre-notice consultation (refer chapter XV), the show cause notice is the first step to set the 'due process' of law into motion.
2. The show cause notice lays down the 'framework' for the rest of the life of that issue until it is finally resolved by the Supreme Court. No adjudicating authority or appellate authority or Court can 'fill in any blanks' in the show cause notice. If something important is missed out from the show cause notice, the demand must be dropped in adjudication or appeal and a fresh show cause notice will have to be issued, but time-limit prescribed may have passed and some part of the demand may become unrecoverable permanently.  
Statement of Demand: Where show cause notice is already issued for a certain period but the same violation has occurred in a subsequent period then, instead of issuing another show cause notice in full detail (as prescribed), there is a provision in Sections 73(3) and 74(3) to issue a 'statement'. This Statement of Demand only contains (i) details of tax, interest and penalty payable and (ii) new period for which this demand relates. By giving reference to the first show cause notice, this statement "imports" all the legal grounds and other aspects that need not be repeated. Such a Statement of Demand is a faster and efficient facility for the Proper Officer. Being an option, the Proper Officer can choose to avail it or not.

3. A taxable person has a legal right to be 'put at notice' about a violation of provisions of law. If a taxable person claims that allegations are made by the revenue authorities without being 'put at notice', all further proceedings are illegal in the eyes of law.
  
4. The notice is the first step for a taxable person to put forward a defense. Violations is conclusion by applying law to facts.  
So, the facts of the taxable person, as understood by the revenue authorities, must be explained. Then, the law applicable to the facts based on a certain way of interpreting the law must also be clearly put forward. This may give an idea about the 'ingredients' of a show cause notice. A show cause notice without all the necessary ingredients is liable to be quashed. Since an adjudicating authority or appellate authority or Court is barred from filling any blanks, the provisions of Section 160(1) of the KGST Act (refer chapter XV) also cannot come to the rescue of a show cause notice with 'fatal errors'. Hence, drafting the show cause notice is very important.
  
5. Relevant date – means 'start date' from when the demand relates to and 'end date' is 33 months from the start date (for normal demands) or 54 months from the start date (for demands involving fraud or willful misstatement or suppression). These time-limits are taken from Sections 73(2) and 74(2) of the KGST Act.
  
6. DRC 1/2 – is the summary prescribed in Rule 142 to 'accompany' a show cause notice. DRC 1/2 are not show cause notices. Show cause notice must be separately issued and this summary in DRC 1/2 must be attached. There is a reference number for the show cause notice and another reference number of this summary and both must be served (refer chapter XV) to the taxable person.
  
7. Structure of show cause notice – must include all 'ingredients' that will sufficiently be considered that a taxable person is 'put at notice'. The key ingredients required are:

- a. Facts are defined to be “a thing that is definitely the case” and only undisputed facts are to be stated as ‘fact’. Fact-in-issue is that fact which has a bearing on the issues involved in the show cause notice. Facts that are not relevant to the issues involved are not to be included in show cause notice. Undisputed facts do not require proof. But disputed facts or facts that are likely to be disputed need to be proved.



- b. Actions that result in violations must be stated very clearly. What exactly has been done by the taxable person must be specified so that the taxable person can reply in defence whether the said actions have been done or have not been done and submit evidence to establish innocence. It is not sufficient to state ‘tax has not been paid’, that would be the result of this action. The action itself needs to be proved. Duty to prove (also called onus of proof) lies on person making assertion. In other words, an allegation of violation of law requires revenue authorities to substantiate the allegation with proof. Higher the violation, greater is the required proof. Proof may be of different types depending on the source and quality. Proof varies in degree, but proof must establish allegation to the satisfaction of a court and not just in the opinion of the Proper Officer issuing the show cause notice.
- c. Allegations on the taxable person must also be specific. It is not sufficient to approximately lay the charges. That is, if the output tax is payable, the actions of the taxable person must be clearly specified in the show cause notice. It is not enough to state that ‘taxable person has made supply liable to tax’. It must go into more specific details about the ‘form’ of supply that is alleged to be made and explain how that particular form stands satisfied in the ‘facts’ of the case. From the actions, the violations by the taxable person will emerge. That is, whether the output tax is applicable which has not been discharged or whether output tax which is collected has not been deposited. A clue may be taken from the words stated in Section 73 and Section 122 to frame the exact nature of violations. General and unclear descriptions of violations are also not sufficient requirement in law.
- d. Cause of action refers to the exact provision of the law that has been contravened by

the violation and the course that the law prescribes to be taken in view of the said violation due to the actions of the taxable person. This is a very important ingredient in the show cause notice. If any cause of action is omitted, even if the demand is valid, it cannot be confirmed by an adjudicating authority or appellate authority or Court. If show cause notice omits to demand interest and only demands tax, then, even if it is finally decided that tax is payable, the interest which is automatically applicable cannot be demanded.

e. Opportunity for personal hearing is a very important Constitutional guarantee that must be allowed. Refusal to grant adjournment is not reasonable. 1, 2 or 10 days notice is not permissible nor reasonable. The notice must allow time for the party to reply as per the limit specified in the section or as considered reasonable. On reading Section 73(2) with Section 73(10), it can be understood that the time limit of 3 months is the statutory minimum time from the date of show cause notice till the date of order.

f. Adjudication must be by an authority empowered under Section 5 of the KGST Act. Hence, the show cause notice itself must state who will decide and adjudicate upon the said show cause notice. Normally, the person issuing the notice is NOT the person adjudicating the show cause notice. The reason for this principle is that the person issuing the notice is likely to be biased against the person and adjudication proceedings could be unfair. However, if the assignment itself is for adjudication then, the same officer can issue the notice and adjudicate. There are many decisions of the Apex Court in favour of the taxpayer because an allegation of bias or pre-decided mind is very serious and the Court has directed someone else in the tax department to adjudicate. Reference may be had to CBIC circular 31/5/2018-GST dated 9<sup>th</sup> February 2018 which states in Para 5 that Central Audit and Intelligence officers may issue a show cause notice but NOT adjudicate but, send that file to other officers as confirmed by the Commissioner to adjudicate. This is another reason why the show cause notice must be drafted with care with attention to all these legal principles.

8. Demand for tax on outward supply requires allegations to be specific not only regarding supply, but the exact form of supply involved. Refer Chart A for indicative steps on demand for output tax towards supply and Chart B for the demand for repayment of the input tax credit. Please note that these charts are not exhaustive, but only meant to be referred to as an example or illustration of the detailed drafting mandatorily required.

9. Limitation is the maximum time-limit or the 'end date' by when the show cause notice must be issued. If the show cause notice is issued late, then demand will not be legally possible. As well understood, there are two limitation periods prescribed:
- a. Normal period, for which the show cause notice may be issued under Section 73 of the KGST Act. Care must be taken that the show cause notice must be issued under Section 73 and not merely as 'show cause notice'. The 'substance and effect' may be that of a show cause notice, but unless stated to be under Section 73, not even Section 160(1) of the KGST Act can come to the department's rescue; and
  - b. Extended period, for which show cause notice may be issued under Section 74 of the KGST Act. Apart from the points under Section 74, please note that the show cause notice must also (i) allege and (ii) prove the 'special circumstances' required for a show cause notice under Section 74. These 'special circumstances' are (i) fraud or (ii) willful misrepresentation or suppression of facts to evade tax. If a show cause notice is issued under Section 74 (due to allegation of special circumstances) and later during adjudication or appeal, special circumstances are not proved by revenue then, such a show cause notice will be 'deemed' to be a show cause notice under Section 73. Refer Section 75(2) which makes this clear and demand to be now made will stand automatically readjusted to (i) reduced period of demand (ii) with the full extent of reduction of penalty in Section 73.
10. Summary of Demand is an additional document required to be issued under Rule 142 of the KGST Rules. From this provision, it will be clear that two documents are required (i) show cause notice and (ii) summary of demand. If any one of the notice issued is missing, the entire proceedings will fail and cannot be rectified.
11. Actions to be followed:
- a. Show cause notice PLUS DRC ½ to be issued. Only DRC ½ is not a show cause notice, it is only a summary (SHOW INSTANCE);
  - b. Sections of law under which action is proposed must be correctly referred without omission as it can adversely affect the final outcome;
  - c. All relevant evidence relied upon must be enclosed with show cause notice.

12. Actions NOT to be followed:

- a. ENDORSEMENT is not an accepted form of notice. Reference to Sections 73 or 74 or 76 of the KGST Act is important to make such endorsements a valid 'show cause notice'. Hence, it is suggested to call such notices as 'show cause notice' itself instead of 'endorsement'.
- b. 1, 2 or 10 days notice is not permissible nor reasonable. The notice must allow time for the party to reply as per the limit specified in the section or as considered reasonable. On reading Section 73(2) with section 73(10), it can be understood that a time limit of 3 months is the statutory minimum time from date of show cause notice till the date of order.

13. From the foregoing, the importance of show cause notice would be quite clear and care must be taken that the essential ingredients are not missed out.

14. Format –attached.

15. Checklist –attached.

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Chart A – Demand of Output Tax

- a. Step 1: If supply is alleged, then pick under which specific provision of the KGST Act does it amount to supply:

Section	Specified 'forms' of supply	Furtherance of Business	Existence of Consideration	Supply	
				'made'	'agreed to be made'
7(1)(a)	✓	✓	✓	✓	✓
7(1)(b) - sch I	✓	✓/x	✓	✓	x
7(1)(c)	✓	✓	✓/x	✓	x
19(3) or 19(6)	x	✓/x	x	✓	x
31(7)	✓	✓/x	✓/x	✓	x

- b. Step 2(a): If supply is under Section 7(1)(a), then pick which ‘form’ of supply is the allegation relating to and demonstrate how the ingredients in each form of supply are found to exist in the given transaction:

Forms of Supply	Two Capable Persons	Consideration in Money (Price)	Willingness to Contract		Delivery of Possession	Permanent alienation	Consensus	Object of Supply		
			Seller	Buyer				Identity of Object		
								Services	Movable	Immovable
Sale	✓	✓	✓	✓	✓	✓	✓	x	✓	NA
Transfer	✓	✓	x	✓	✓	✓	✓	x	✓	✓
Barter	✓	x	✓	✓	✓	✓	✓	✓	✓	x
Exchange	✓	x	✓	✓	✓	✓	✓	x	x	✓
License	✓	✓/x	✓	✓	x	x	✓	✓	✓	✓
Rental	✓	✓/x	✓	✓	✓	x	✓	x	✓	x
Lease	✓	✓/x	✓	✓	✓	x	✓	x	✓/x	✓
Disposal	✓	✓	✓	x/✓	✓	✓	x	x/✓	✓	x

If supply is alleged under any other provisions, say, 7(1)(b) or 19(3), please identify the ingredients specified under those provisions and list.

- c. Step 2(b): If supply is NOT as per above Table then, check if it is a deemed supply under Section 7(1)(b) which requires understanding sch I:

Description	Para	Involving		Accounting v. GST treatment		
		Goods	Services	Same	Reverse actual treatment	Apply fictional treatment
Credit-taken assets disposed-off	1	✓	x	x	✓	✓
Stock transfer	2	✓	✓	x	✓	✓
Principal-agent activities	3	✓	x	x	✓	✓
Overseas activities	4	x	✓	x	x	✓

From the above Table, it can be noticed that ‘goods only’ are involved in some cases and in some cases ‘service only’ are involved. The stock transfer is very interesting, as even services can be involved in the stock transfer. Refer Columbia Asia AAAR (Kar.)

..... for detailed understanding and importance of this concept.

- d. Step 2(c): If supply is under Section 19(3), then it is a deemed supply and the time of supply will be the date when the inputs/capital goods were first sent to job-worker;
- e. Step 2(d): If supply is under Section 31(7), then it is important to find out whether and when exactly the customer accepted the goods or customer has not accepted the goods and due to lapse of 6 months, it is treated to be a supply.
- f. Step 3: The exact nature of ‘supply’ will now be available and the same must be included in the show cause notice to determine the ‘taxable event’ for the demand of tax on outward supply.

## Chart B – Demand of Repayment of Input Tax Credit

- a. Step 1: If the object of supply is ‘goods’ or ‘services’ must be established.
- b. Step 2: If it is ‘goods’ then, it must be established whether it is to be ‘treated’ as a supply of goods or is there any fiction in **Sch II** to treat it as the supply of ‘services’ and vice versa. Please refer Sch II below where the basis for classification is listed along with an indication of ‘new’ fictional treatment in the GST and areas of ‘risk’ of possible misinterpretation:

Description	Para	Common understanding	Involving		Must have documented facts	
			Goods	Services	New fictional treatment	Risk of misinterpretation
Title in goods	1(a)	Sale	✓	✓	x	x
Right or share in goods	1(b)	Lease	✓	✓	✓	✓
Installment scheme for goods	1(c)	Hire-purchase	✓	✓	x	x
Rights-in-land	2(a)	Land	x	x	✓	✓
Rights-in-building	2(b)	Building	x	x	x	x
Treatment or processing goods	3	Jobwork	✓/x	✓	x	✓
Change of use of assets	4(a)	-	✓	x	✓	✓
Non-business use of assets	4(b)	-	✓	x	✓	✓
Stoppage of business	4(c)	-	✓	✓	✓	✓
Rent of immovable property (all)	5(a)	Rent	x	x	x	x
Construction	5(b)	-	✓	✓	x	x
Use of IPRs	5(c)	License	✓/x	✓/x	✓	✓
Software development services	5(d)	Customized	✓/x	✓	✓	✓
Accepting obligations	5 e	-	x	x	✓	✓
Right-to-use goods	5(f)	Lease	✓	x	✓	✓
Works contract	6(a)	-	✓	✓	x	x
Serving food-drink	6(b)	Eatery	✓	✓/x	x	x
Serving goods to members	7	Association	✓	x/✓	✓	✓

- c. Step 3: After it is determined that ‘goods’ or ‘services’ are involved, then HSN classification is required to be applied. It is very important to note:
- i) Goods, are always classified under HSN 1 to HSN 98. There is no HSN for goods under Chapter 99; and
  - ii) Services, are always classified under HSN 99. There is no other HSN chapter for goods.
- d. Step 4: HSN based classification must be verified by referring to [www.kar.nic.in](http://www.kar.nic.in).

## CHAPTER 5

### Speaking Order

[Refer Sections 73(9) or 74(9) and 76(6), Rule 142 and Form DRC 6, 7 and 8]

KGST ACT 2017 (English Version).pdf

KGST\_RULES.pdf

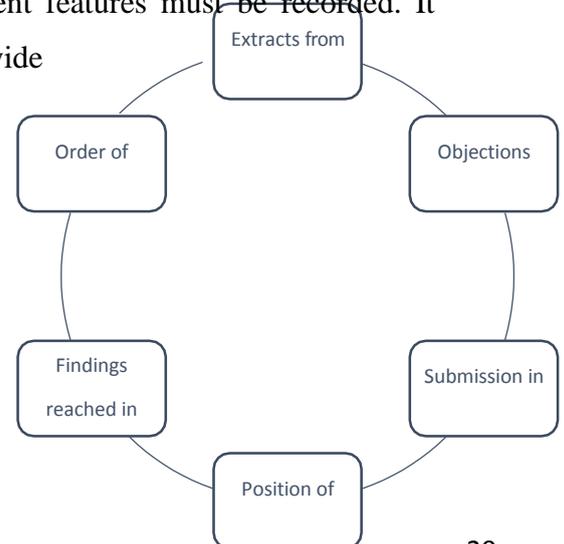
1. The order of adjudicating authority must be detailed as it is the start of a long journey to its destination where the interpretation of the law will be delivered through the process of appeal prescribed in the KGST Act. The order of adjudicating authority must carefully capture all the ingredients in the show cause notice, objections raised by the party, interpretation of the law by adjudicating authority to reach final findings on facts-in-issue and pass the orders. This process is referred to as ‘speaking order’ by the adjudicating authority. Some key aspects to reiterate before going into the components of a speaking order:
  - a. Show cause notice, which lays down the ‘framework’ of the entire demand must be discussed in the order with extracts. This will bring to the fore, the key issues that the adjudicating authority is called upon, to reach a finding on facts and make a determination. Without this groundwork, it would be impossible for appellate authorities to come quickly to the issues for their determination (in appeal, if any). It also requires that key ‘facts’ and ‘basis’ be recorded in the show cause notice along with the ‘grounds’ which make up the boundaries within which the adjudicating authority has to reach findings as per restriction placed in Sections 75(6) and 75(7) of the KGST Act. The adjudicating authority is barred from coming up with ‘new grounds’ for confirming demand. Grounds missed in the show cause notice CANNOT be introduced during adjudication proceedings to reach the final finding for supporting the demand. If the grounds have been poorly considered in show cause notice and demand cannot be confirmed based on those same grounds then, adjudication fails.
  - b. Adjudication authority CANNOT modify show cause notice even if the demand is obvious and there are very strong grounds including decisions of higher Courts on the point. That is the main purpose of stating that “**show cause notice contains the framework for demand**” and there is NO AUTHORITY in the KGST Act who has power to “fill in any blanks” in the show cause notice. There

is NO scope to expand or alter or correct any deficiencies in the show cause notice. Although this material does not cover activities of the FAA, it is important to bring to attention the *second proviso* to Section 107(11) of the KGST Act which states that not even the FAA can confirm additional demand that comes to knowledge during the course of appeal proceedings and even the FAA is required to send the discovery of additional demand for the issuance of a new show cause notice.

- c. If a show cause notice is quashed due to deficiencies, a new show cause notice may be issued after correcting the deficiencies, but the time limit or limitation for issuing the show cause notice would NOT exclude this time spent in pursuing ‘erroneous notice’ and demand for the period of ‘time lost’ will be lost irreversibly. This is the further implication for which it is stated that “grounds of show cause notice” must be carefully considered and should NOT be issued hurriedly without considering all these possibilities.

2. Order of adjudication may address the following aspects:

- a. Extracts from the show cause notice need to be referred in the adjudication orders so that it can be seen by every reader of the order that the adjudicating authority was fully aware of the facts, actions and violations, allegations and evidence, cause of action proposed to be taken against the taxpayer under specific provisions of law and the fact that the adjudicating authority has been identified in the said show cause notice to hear the case.
- b. Objections by the taxpayer (more correctly called ‘Notice’) must be recorded. Not only the fact about whether the objections ‘were/ were not’ filed, but also in case it was filed, details of objections must be recorded. Entire objections need not be reproduced in the adjudication order, but salient features must be recorded. It would be helpful if the taxpayer is asked to provide ‘Summary’ of objections. This summary is not a substitute but only an assistance to the adjudicating authority for drafting the speaking order. Objections may include decisions of Tribunal or courts also, treatment of the same will be discussed shortly. Reply by the taxpayer containing objections must



be filed in DRC 6 under Rule 142(4) of the KGST Rules.

- c. A hearing must be granted to the taxpayer as per Section 75(4), either in person or through authorised representative as per Section 116 of the KGST Act. During the hearing, the taxpayer may provide the Summary of Objections already submitted or provide an addendum to the objections raised earlier. Refer format of 'record of personal hearing' attached for reference. The adjudicating authority is expected to allow a fair hearing and give full attention to the arguments being made. There is no requirement for adjudicating authority to reply or counter the objections raised but only hear the taxpayer or representative. However, please note that the adjudication authority is free to ask questions to clarify the objections being conveyed or bring up points where objections are unsubstantiated and hearsay. Please note that all objections need not be accepted but are still points that are being raised. Questioning is not barred, although such questioning should not become investigative. The powers of the adjudicating authority are not listed in the KGST Act, but the duty of the adjudicating authority may be found in the show cause notice itself. It may be seen from Sections 75(6) and 75(7) of the KGST Act that the result to be achieved by the adjudicating authority is to make a determination of the allegations made in the show cause notice and based only on the grounds raised in such show cause notice. A departmental representative may also be present during the hearing to counter the objections raised by the taxpayer if instructions are issued by Commissioner in this regard to the Proper Officer issuing the show cause notice. The adjudicating authority is not to speak for the tax department but remains objective and unbiased. If a departmental representative is present and submits any counter-objections, the same may also be recorded in the record of personal hearing. Both sides must be heard together and not separately, this is an important aspect to be kept in mind about the hearing. Record of personal hearing may be signed and copies are delivered to all parties present against acknowledgement.
- d. Position of law must be discussed in the adjudication order making regular reference to provisions referred in the show cause notice. A discussion is required as to the legal interpretation that the adjudicating authority considers relevant on the issue involved to support the findings reached in the next part of the adjudication order. Care must be taken NOT to refer to circulars issued under

Section 168 of the KGST Act for the reason that the Commissioner’s circulars are binding on departmental officers and if an adjudicating authority ‘relies’ on the circular, it would mean that the decision is given to the circular and the adjudicating authority is merely making a show of a fair hearing. If adjudicating authority agrees with the reasoning or interpretation provided in the circular, then that reasoning or interpretation can be reproduced and the adjudication is carried out. Case laws referred in the objections may be listed with the ratio of those decisions stated. It must be examined if those decisions are overruled by later decisions of higher Courts and discussed in this part of the order. Any additional decisions relevant to the case may be introduced in the order at this point which provides the correct position of law applicable to the present case.

- e. Findings of adjudicating authority are where ‘conclusion is reached’ about the **“facts”** of the case, **“basis”** on which allegations were made in the show cause notice and **“grounds”** raised for the cause of action under the specified provisions of law. Findings by the adjudicating authority are on (i) facts, (ii) basis and (iii) grounds. Please note that if facts of the case are correct but the basis on which conclusions reached in show cause notice is not correct, then the adjudicating authority CANNOT make corrections, improvements or adjustments to support the demand. If facts and basis are agreeable by the adjudicating authority but grounds in show cause notice are not agreeable, then a demand cannot be confirmed.

Show cause notice		
Facts	Basis	Grounds
✗	✗	✗
✗	✗	✓
✗	✓	✓
✓	✓	✓

- f. From the foregoing, please note that only if the adjudicating authority is agreeable on all the factors in the show cause notice can demand raised be confirmed in the order. Once the adjudicating authority accepts that all the facts are agreeable, then these factors (facts, basis and grounds) become the view of the adjudicating authority for purposes of later proceedings in appeal or review. Utmost care must be taken to ensure that the adjudicating authority records ‘findings’ on all these

factors in reaching a conclusion and if the adjudicating authority is not in a position to agree with these factors in the show cause notice, demand in the show cause notice must be DROPPED, even if there are “**other grounds**” which may support the demand. That is the main purpose of stating that “**show cause notice contains the framework for demand**” and the adjudicating authority must pass orders containing all these aspects and that makes up the ‘speaking order’.

- g Based on all the above, the adjudicating authority is required to pass ‘orders’ determining whether the demand raised in the show cause notice is payable by the taxpayer or is dropped in favour of the taxpayer.

This statement must be made in a clear and short paragraph which is the conclusion of the adjudication process. It must cover tax or credit, interest and penalty.

3. The taxpayer must be served this order (Refer chapter XII regarding Communication and services of notice) along with demand in the final determination of liability in DRC 7 under Rule 142(5) of the KGST Rules to be uploaded online along with the reference number of adjudication order. Please note that summary in DRC 7 will be automatically considered as per Rule 142(6), a notice for recovery under Section 79 of the KGST Act. Please note that even if interest is missed out in the order, interest is still payable as per Section 75(9) of the KGST Act. In other words, if any other amount is missed out in the order, the taxpayer is NOT liable to pay other than that demanded. Please note that Section 78 allows 3 months from date of order for any recovery action to be initiated under Section 79 of the KGST Act. That is the time for the taxpayer to file an appeal under Section 107(1) or for rectification under Section 161 of the KGST Act. Before any recovery action is initiated (without any further notice to the taxpayer), care must be taken that Section 107(4) allows 1 month for condonation of delay, if allowed by the FAA, for filing an appeal. Hence, any recovery action within 3 months is not admissible, but recovery action in the 4<sup>th</sup> month must be taken with due care about an appeal being filed by the taxpayer. Please also note that in order to file an appeal, the taxpayer is required to submit a ‘certified copy of order’ under Rule 108(3) of the KGST Rules. Hence, application for issue for a certified copy of order may be received by the adjudicating authority and this may indicate that appeal is ‘under process’. In any case, recovery efforts may be ineffective if an appeal is filed and for this reason, the finality of demand must be ensured by the adjudicating authority.

4. In case there is any ‘mistake apparent on record’, then on a request by the taxpayer or voluntarily, the adjudicating authority may rectify the mistakes within 3 months under Section 161 (and not beyond 6 months) from date of such order and upload a revised summary in DRC 8 under Rule 142(8) of the KGST Rules. It is important to note that a ‘mistake apparent on record’ DOES NOT refer to ‘reconsideration of the facts or law’ to change the conclusions reached in the adjudication order. That would be a review of the decision taken which is not permitted and the remedy for the aggrieved taxpayer is to file an appeal under Section 107 of the KGST Act. However, if there is a mistake apparent on record, the adjudicating authority may take that into consideration and pass the correction by a supplement and upload the revised demand in DRC 8 on the portal.
  
5. While confirming demand, interest and penalty may be applicable, care must be taken to apply the appropriate provisions of the KGST Act:
  - a. Interest is payable under Section 50(1) for non-payment of tax and Section 50 (3) for erroneous credit. *Proviso* to Section 50 (1) [NOT YET NOTIFIED] states that interest is payable on ‘net tax’ and not ‘gross tax’. That is, tax liability after adjusting available input tax credit is ‘net tax’, whereas before the adjustment is ‘gross tax’ liability. Please note that ineligible credit taken may be liable for repayment before utilization or after utilization. When ineligible credit is demanded before its utilization, Section 50(3) DOES NOT apply as Section 42 is NOT NOTIFIED. But, if ineligible credit is demanded but has already been utilized, demand must be made for the output tax ‘unpaid’ by utilization of such ineligible credit. Care must be taken to demand interest on the right amount under the right section of the KGST Act.
  - b. The penalty is applicable under several sections of the KGST Act. It is not the purpose of this material to list all the provisions but it is sufficient to bring attention to this fact. Care must be taken to confirm demand for penalty under the right section of the KGST Act. Here, it is important to refer to Section 126 which provides a ‘general discipline’ about imposing penalty. Although show cause notice may propose the imposition of penalty, the adjudication order must consider the guidelines in Section 126 and reach a finding based on “**degree and severity**” of the violation. NO PENALTY in case of minor breaches and voluntary compliance by the taxpayer. Section 126(4) states that the adjudicating authority

must also pass 'speaking order' for the purpose of imposing a penalty after showing that the 'mitigating factors' have been applied and still imposing of penalty is justified.

6. Actions to be followed:

- a. Reply to show cause notice to be received in DRC 6;
- b. Hearing must be granted and adjournments must also be granted for *bona fide* reasons, as these are rights of the taxpayer in adjudication;
- c. Order of adjudication to be passed with summary in DRC 7;
- d. Speaking order must discuss demand and separately also discuss reasons for imposing penalty also;

7. Actions NOT to be followed:

- a. Repeated adjournments are NOT to be entertained where sufficient reasons for seeking adjournment are not provided;
- b. Empty non-speaking orders are NOT admissible as such orders are considered incomplete;
- c. Order of adjudication confirming demand must NOT be based on new grounds other than those in show cause notice;

8. Whenever the rights of a person are being affected by the passing of order, the principles of natural justice must be followed (refer chapter XV regarding this concept). Administration without following these principles will leave the demand unrecoverable as the proceedings are illegal. The GST requires Officers to accept this new way of administration, even though actions of tax authorities is in the interests of the Nation. That alone does not justify or allow disregard to the principles required to be followed. Following the procedures in the KGST Act and Rules are necessary and once prescribed procedures are followed, the taxpayer cannot claim that the demand is illegal. Principles of natural justice are in-built in the above procedures of adjudication and passing 'speaking order'.

9. Formats attached may be referred.

\* \* \* \* \*

## **CONCLUSION**

It can be concluded that the new tax system (GST) is more refined, customised for removing hassles in procedural aspects and aims at novel aspiration, i.e., “One Nation – One Tax”.

The main idea of the GST is to subsume all Indirect taxes into one single tax, thus facilitating Taxpayers to claim Input Tax credits without any confusion for assesses distributed all over the country. There are a considerable amount of additions, alterations/modifications which are impeccable to date compared to the older tax system (VAT) which were outdated and impractical.

With respect to the powers of GST officers, there are systematic steps to be followed to exercise powers and legal implications at every step, assuring no abuse of powers by Tax Administrators and security to Taxpayers.

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Central Board of Indirect Taxes and Customs Goods and Service Tax

[www.cbic-gst.gov.in](http://www.cbic-gst.gov.in)

# APPENDIX

## FORMAT

(minimum requirements suggested)

### Show Cause Notice under section 73 or 74 or 76 of KGST Act

*(Strike out whichever is not applicable)*

Assignment No. and date.....

SCN No. and date.....

DRC 1/2 No. and date.....

DRC 1A No. and date.....

Tax period from ..... to .....

WHEREAS you M/s ..... having your place of business at ..... is an individual / firm / company and registered with GSTIN No..... under the jurisdiction of ....., Karnataka GST authority.

WHEREAS it has come to the knowledge of undersigned that you have undertaken ..... transactions which are liable to GST under Section 9 of the KGST Act being a .....taxable supply under Section 7(1)(a) of the KGST Act.....

WHEREAS based on the inquiry conducted, it is reliably learnt that the said taxable supply is a 'lease' transaction. Lease is a lawful contract for permitting the right to use goods for a finite duration of time. It is found that your contracts with various customers as per Annexure A contains arrangements involving lease and the consideration for the same as per the contracts referred to in said Annexure A is to the turn of Rs.....

WHEREAS extracts of your audited financial statements entitled ‘schedule to profit and loss account’ reflects the said amount of turnover in respect of lease as ‘income from lease contracts’ provided by you during the inquiry duly self-attested is enclosed as Annexure B.

WHEREAS the said amount of turn over transaction involving in respect of lease as ‘income from lease contracts’ provided by you is not included in your monthly GSTR 3B returns filed for the tax period(s) April 20XX to March 20XX. On verification, you have informed vide your letter dated..... in Annexure C, that only ‘turnover of sales’ is reported in GSTR 3B is reported by you as advised by your consultants.

WHEREAS GST being a self-assessment tax under Section 59, it is incumbent upon every taxable person to determine the taxability of any transaction, compute applicable tax, discharge such tax applicable and report the same without any interjection by revenue authorities. Further, in terms of explanation to Section 74 of the KGST Act, “suppression” is defined to be “.....”. Self-assessment responsibility under Section 59 read together with statutory of suppression, it appears that tax is liable to be demanded under the extended period of limitation due to presence of special circumstances prescribed in Section 74 of the KGST Act.

WHEREAS pre-notice consultations were held with you by the undersigned as a summary of demand in FORM GSTR DRC 1A as required under Section 74(5) of the KGST Act read together with Rule 142(1A) of the KGST Rules was served on you vide DCR 1A

No.....dated.....

Which was received by you on.....

WHEREAS the facility allowed in law under Section 74(5) was turned down by you vide your letter of rejection dated ..... and the same was received by the undersigned on ..... As a result, you have opted to forfeit the concession available thereunder.

WHEREAS the omission to report tax in respect of tax period(s) April 20XX to March 20XX is not in accordance with extant provisions of the KGST Act, you are hereby called upon to show cause before the Deputy Commissioner of Goods and Services Tax, VTK-1, Gandhinagar, Bangalore 560 002, why:

- a. GST on the turnover of lease transactions amounting to supply under Section 9 read with Section 7(1)(a) of the KGST Act in the amount of Rs... should not be demanded under Section 74 of KGST Act;
- b. Interest on the said turnover as applicable under Section 50(1) of the KGST Act; and
- c. Penalty under Section 122(2)(b) of the KGST Act should not be demanded from you in accordance with the law.

If no reply is received in FORM GST DRC 6 within ..... days from the date hereof or no appearance is entered by you or your duly authorized representative under Section 116 of the KGST Act when the case is posted for hearing, the case will be decided based on merits and records available without any further opportunity.

Issued by:.....

Name and Signature.....

Enclosed Annexure A, B and C

## CHECKLIST

(minimum requirements suggested)

- a. Section under which show cause notice is issued
- b. Reference numbers:
  - a. Assignment note
  - b. DRC 01A no. and date
  - c. SCN No. and date
  - d. DRC 1 no. and date
- c. Disclose manner of gathering intelligence about actions and violations
- d. State details of opportunity of pre-notice resolution given and turned down
- e. Specify sections of law under which allegations are made along with evidence to support those allegations based on interpretation of the law
- f. State clearly all causes of action proposed to be taken against the party
- g. Inform rights of hearing, name and address of adjudicating authority and fact that opportunity to be heard is available in person or through an authorized representative
- h. Allow reasonable date for replying to the show cause notice
- i. Enclose all evidence relied upon in support of allegations made
- j. Signed by the authority issuing show cause notice which will tally with assignment note issued and referred

-Author's own source in consultation with professional

FORMAT

(minimum requirements suggested)

**Office of Deputy Commissioner of Goods and Services Tax Government of  
Karnataka  
Sections 73(9) or 74(9) and 76(6), Rule 142 and Form DRC 6, 7 and 8**

**Record of Personal Hearing**

Assignment No. and date.....

SCN No. and date.....

DRC 1/2 No. and date.....

DRC 1A No. and date.....

Tax period from ..... to .....

Personal hearing intimation No. and date .....

M/s ..... appeared in person through Mr  
....., proprietor / partner / director or through authorized representative Mr  
....., Chartered Accountant / Advocate, duly authorized vide letter of  
authorization /vakalath dated ..... in  
respect of personal hearing scheduled today.....at..... am / pm.

WHEREAS written objections dated ..... were filed [OR objections were NOT

filed] in reply to the above-referred show-cause notice. Further, summary of objections and additional objections dated ..... were Submitted today.

WHEREAS demand was / was not admitted and all objections were reiterated and more particularly, the following points were argued:

a.....

b.....

There being nothing further to add, request for early disposal of the above-referred show cause notice was made. Copy of this record was delivered to the parties present which was received and acknowledged.

Before me

Deputy Commissioner of GST

Jurisdiction.....

Date and seal

Appeared by

Name and dated signature

Designation and contact no.

(in acknowledgement of receipt of signed copy)

-Author's own source in consultation with professional

FORMAT

(minimum requirements suggested)

**Sections 73(9) or 74(9) and 76(6), Rule 142 and Form DRC 6, 7 and 8**  
**Office of Deputy Commissioner of Goods and Services Tax Government of**  
**Karnataka**  
**Order of Adjudication**

*(passed under Section..... of the KGST Act)*

**General notes:**

Copy of this order is issued free of cost to Noticee is served electronically by registered email / on portal of registered person / by post / in person

Any person aggrieved against this order may appeal before First Appellate Authority within 3 months from date of this order under Section 107 of KGST Act.

First Appellate Authority is Joint Commissioner / Additional Commissioner at .....ADDRESS.....

Certified copy of this order may be applied immediately in order to avoid delay in filing statutory appeal as required under Rule 108(3) of the KGST Act.

In case of any mistakes apparent on record, the same may be brought to attention of undersigned within 3 months under Section 161 of the KGST Act.

Assignment No. and date.....

SCN No. and date.....

DRC 1/2 No. and date.....

DRC 1A No. and date.....

DRC 7 No. and date.....

Tax period from ..... to .....

Personal hearing intimation No. and date .....

WHEREAS above-referred show cause notice was served that was duly acknowledged, detailed objections dated.....was filed on..... and argued in-person / authorized representative on hearing granted on.....

WHEREAS show cause notice observed following non-compliance: a.....

b.....

And called upon Noticee to show cause why:

a. CGST in the amount of Rs..... should not be demanded under

Section 73/74/76 of CGST Act;

b. CGST in the amount of Rs..... should not be demanded under

Section 73/74/76 of KGST Act;

c. Interest on above demand at the rate applicable should not be demanded under

Section 50(1) of the KGST Act;

d. Penalty should not be demanded under Sections 122, 125, ..... and

..... of the KGST Act;

e. Ineligible amount of input tax credit claimed of Rs.....

should not be demanded under Section 73/74 of the KGST Act;

f. Interest on above demand at the rate applicable should not be demanded under Section 50(3) of the KGST Act;

g. Penalty should not be demanded under Sections 122, 125, ..... and

..... of the KGST Act; and

h. ANY OTHERS

Discussion on facts:

.....

Discussion on position of law:

.....

Discussion on objections filed:

.....

Findings:

.....

ORDER

In view of the foregoing, I hereby confirm the demand under Section  
..... in respect of..... confirm interest thereon  
under Section..... of ..... and confirm penalty thereon  
under Section .....

Further, I drop demand under Section ..... in respect of .....

By me

Deputy Commissioner of GST

Jurisdiction.....

Date and seal

Copy to:

1. Additional Commissioner of GST.....
2. Revisionary Authority of GST.....
3. Commissioner of GST.....

\* \* \* \*

-Author's own source in consultation with professional

## Section 61 – Scrutiny of Returns in Flowchart

-Author's own source in consultation with professional

