

GST Investigations

A Guide to Understand Taxpayer's Rights and Responsibilities



Introduction

The introduction and implementation of Goods and Services Tax (GST) significantly reshaped the entire Indian indirect tax landscape by replacing multiple indirect taxes with a unified tax system. GST intends to streamline the tax administration, promote economic integration, and ultimately create a more transparent tax system and reduce the tax burden on consumers by eliminating the cascading effect of taxes. GST operates under a dual structure, comprising of Central GST (CGST) and State GST (SGST), along with Integrated GST (IGST) to tax interstate transactions. The GST Council oversees the key decision-making process under GST by promoting and fostering coordination between the Central and State Governments.

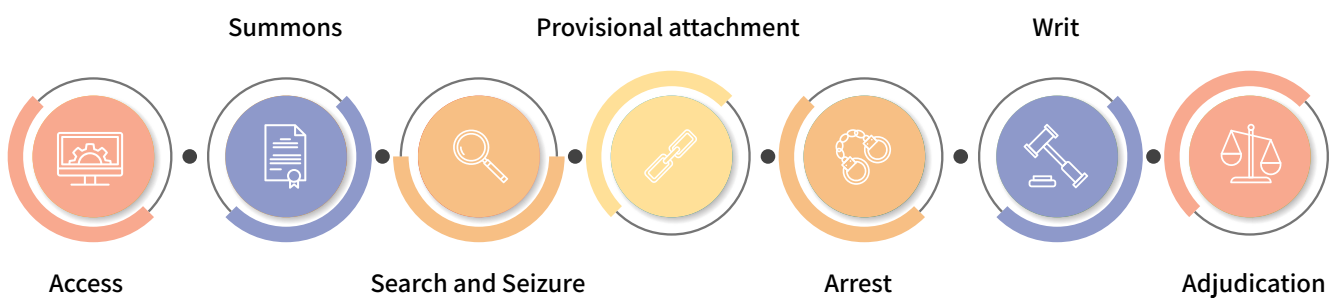
As a crucial arm of the Ministry of Finance, the Central Board of Indirect Taxes and Customs (CBIC) plays a pivotal role in formulating policies and administering GST, customs, excise, and related matters. Its responsibilities include ensuring compliance, preventing smuggling, and managing revenue collection. All tax laws include various measures to prevent tax evasion and ensure compliance. The law grants various powers to the administrative authorities appointed to enforce it. One such power widely wielded by the tax authorities under GST, is the power to investigate. This is probably one of the most feared avatars of the tax authorities as such investigations are known to be very tempestuous for the taxpayers, sometimes causing colossal disruptions for businesses.

GST investigations are conducted to enforce compliance with GST laws and regulations. Businesses suspected of underreporting sales, overstating input tax credits, or engaging in fraudulent activities such as fake invoicing are typically the focus of the scrutiny. Cross-border transactions are also monitored to ensure adherence to import/export regulations. Investigations may be triggered owing to various reasons, such as reporting by whistleblowers, data anomalies, compliance checks, or intel from disgruntled employees/associates.

Non-compliance with GST laws can lead to severe penalties, including fines, interest charges, and even criminal prosecution. It is imperative for businesses to maintain accurate records, adhere to GST regulations, and cooperate with authorities during investigations to mitigate risks and avoid legal repercussions.

Thus, navigating GST investigations requires vigilance, compliance, a proper understanding of law, and last but not least, effective cooperation with investigating authorities to help conclude investigations. By understanding their obligations, maintaining accurate records, and adhering to GST laws, businesses can mitigate business disruptions and unforeseen risks, ensure compliance with law, and contribute to the integrity of the tax system.

Section 67 of the CGST Act contains the provision for the power of the GST authorities to investigate. The various stages of investigation are as under¹:



1. Section 67 provides for the powers of inspection, search and seizure if officer has reasons to believe for evasion of taxes by the taxpayer.



Information gathering powers under GST

Access to business premises

Under the GST law, authorized officer, authorized by a proper officer not below the rank of Joint Commissioner, have the authority to access any place of business of a registered person. This access is granted to inspect various items including:



Books of accounts



Documents



Computers



Computer programs



Computer software

The purpose of such access is to carry out audits, scrutiny, verification, and checks necessary to safeguard the interests of revenue. It's important to note that Section 71, which grants this authority, is not independent of other provisions in the law. It serves as a machinery provision to aid and assist the proper officers or auditors in accessing books and records.

While Section 67 doesn't explicitly provide for access to books and records, it empowers the proper officer to grant authorization to conduct inspections of premises. When read with Section 71, such authorized officers are empowered to inspect books and records as well. Therefore, Section 71 cannot be invoked independently of other substantive provisions such as Sections 65², 66³, or 67⁴.

Power to Summon Persons to Give Evidence and Produce Documents under GST

In the course of inquiries conducted under the CGST Act, proper officers are empowered to summon individuals deemed necessary to provide evidence or produce documents. This authority is exercised in a manner akin to civil court proceedings under the Code of Civil Procedure 1908. It's crucial to note that such proceedings are considered 'judicial proceedings' under Indian Penal Code sections 193⁵ and 228⁶.

The persons summoned are required to attend or appear before the summoning authorities in compliance with the notice of summons either in person or through their authorized representatives. Further, such person [taxpayer or authorized representative] is bound to state the truth during

the examination, make statements or produce documents as required by the officer.

Even though, the law mandates the appearance of a person summoned, the tax authorities are duty bound to respect the constitutional rights of the persons being summoned, particularly Article 20(3), which prohibits compelling individuals to be witnesses against themselves. While avoiding the service of summons is unlawful, individuals summoned are not obliged to provide self-incriminating statements. The scope of summons under section 70 is broad, encompassing any inquiry, but officers aren't empowered to retain documents beyond the inquiry's scope.

2. Section 65 provides for the GST Audit by authorities

3. Section 66 provides the special audit by chartered accountant or cost accountant as appointed by the officer

4. Section 67 provides for the powers of inspection, search and seizure if officer has reasons to believe for evasion of taxes by the taxpayer

5. Section 193 of the Indian Penal Code: Whoever intentionally gives false evidence in any of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Explanation 1. A trial before a Court-martial is a judicial proceeding.

Explanation 2. An investigation directed by law preliminary to a proceeding before a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

6. Section 228 of the Indian Penal Code: Whoever intentionally offers any insult, or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.



The GST investigation wing has issued guidelines (**instruction no. 03/2022-23 dated 17 August 2022**) to ensure the judicious exercise of summoning powers. Some key points include:

- Consideration of issuing letters of requisition instead of summons.
- Requirement of prior written permission for summons issuance by Superintendents, with reasons recorded.
- Avoidance of repeated summons without ensuring service.
- Preference for digital/online statutory document access rather than summoning.
- Avoidance of summoning senior management unless clear indications of involvement exist.
- Ensuring summoning officer’s presence during scheduled summons.

Authorisation for Inspection under GST

A Joint Commissioner is required to issue authorization to subordinate officers for inspecting any place of business if the proper officer has “**reasons to believe**” that there is a contravention of the GST law leading to gross tax evasion and fraud. The following criteria need to be fulfilled to establish “**reason to believe**”:

For the Taxable Person:

1. Suppression of any transaction of supply of goods or services.
2. Suppression of information relating to stock in hand.
3. Claiming input tax credit in excess of entitlement.
4. Contravention of any provision of GST law to evade taxes.

For Any Person Engaged in the Business of Transporting Goods or Operating a Warehouse:

1. Keeping goods that have escaped tax payment.
2. Maintaining accounts or goods in a manner likely to cause tax evasion.

The phrase “reasons to believe” implies that the belief must be that of an honest and reasonable person based on reasonable grounds. Courts have distinguished the phrase from “reasons to suspect,” emphasizing that it requires a genuine belief supported by evidence, not mere suspicion. Thus, inspections are permissible based on such belief, however, they can be challenged later if the reasons provided are found to be lacking or insufficient.



Any “palpable absence” of reasons can be challenged during adjudication and even call for judicial intervention.



Search and Seizure under GST:

A Joint Commissioner or higher authority may issue an authorization to subordinate officers to conduct search and seizure operations when they have reasons to believe that goods, documents, books, or other items relevant to proceedings under GST law are secreted in any place. Here are some important points regarding search and seizure:

a. Seizure of Goods:

In case of seizure of goods, authorities issue an order of seizure. The owner or custodian of the goods may be entrusted with the custody of such goods for safekeeping.

b. Prohibition Order:

If it is impractical to seize the goods, a prohibition order is served on the person or custodian, prohibiting them from moving, parting with, or otherwise dealing with the goods without prior permission from the officer.

c. Seizure of Accounts, Registers, or Documents:

- If the proper officer has reasons to believe that a person has evaded or is attempting to evade taxes, they may seize the accounts, registers, or documents produced before them.
- The officer must record the reasons for seizure in writing and provide a receipt to the person from whom the items are seized.
- The seized accounts, registers, or documents can be retained for any period during proceedings for prosecution.

Important Points Regarding Seized Goods, Documents, Books, or Things

d. Retention:

The officer retains seized items as necessary for examination and proceedings under GST law, particularly relied-upon documents.

e. Power to Seal/Break Upon (Where Access is Denied):

If denied access to premises or receptacles suspected to contain goods or documents, the officer may seal or break open doors or containers to access them.

f. Inventory of Seized Goods:

The seizing officer prepares an inventory of seized items, including description, quantity, and make/model (where applicable), signed by the person from whom seized.

g. Copies or Extract of Seized Documents:

The person from whom documents are seized is entitled to make copies or take extracts in the presence of an authorized officer unless it prejudicially affects the investigation.

h. Provisional Release of Seized Goods:

Seized goods can be provisionally released upon execution of a bond for their value and furnishing security in the form of a bank guarantee or payment of applicable tax, interest, and penalty. Failure to produce goods as scheduled results in encashment of security and adjustment against liabilities.

i. Release of Perishable or Hazardous Goods or Things:

Perishable or hazardous goods may be released upon payment of market price or tax, interest, and penalty, whichever is lower. Failure to pay may lead to disposal by the proper officer.

j. Return of Seized Goods:

If no notice is issued within six months (extendable for another six months), seized goods must be returned to the person from whom seized.

k. Disposal of Seized Goods:

The government may specify, via notification, the disposal of seized goods, particularly those perishable, hazardous, or depreciating in value. The proper officer maintains an inventory of such specified goods. There are 17 categories of goods/ class of goods specified in this regard vide Notification No. 27/2018 Central Tax dated 13 June 2018.

l. Applicability of Code of Criminal Procedure 1973

Provisions of the Code of Criminal Procedure, 1973 ('CrPC') regarding search and seizure are applicable to GST laws. This means that the procedures outlined in the CrPC for search and seizure would also apply to cases related to GST.



Section 165(5)⁷ of the CrPC, which pertains to the presence of witnesses during search operations, specifies the term “Magistrate.” In the context of GST laws, this term should be interpreted as “Commissioner” instead.

CBIC has issued guidelines through Instruction No. 1/2020-21/GST – Investigation, dated 2 February 2021, detailing the procedure to be followed during search operations under GST. The key guidelines outlined in the provided information are:

- Search operations should be conducted with proper authorization from the Competent Authority, who must record valid and justifiable reasons in the file.
- Officers authorizing the search should follow specific instructions related to generating a document

identification number.

- Searches should only be conducted with a valid search warrant.
- A female officer should be included in searches conducted at residences.
- Searches should be conducted in the presence of two or more individual witnesses.
- A panchnama, detailing the search and listing the documents/goods/things recovered, should be prepared.
- In sensitive premises, videography of the search proceedings may be conducted.

These guidelines ensure that search operations under GST are conducted lawfully, transparently, and with due regard to the rights of the individuals involved.

Surprise Check

The Commissioner or an officer authorised by him can further authorise any other person to purchase any goods and/ or services from the business premises of any taxable person to check the manner of issuance of tax invoices/bills of supply.

The taxable person or any person in charge of the business premises shall refund the tax paid thereon when the goods so purchased are returned (no time limit prescribed in this regard) after cancelling the tax invoice or any bills of supply issued earlier in this regard.

Provisional attachment to protect revenue

The provisional attachment of the property can be executed by the Commissioner based on his opinion to protect the interest of the government revenue. The Bank account of the taxable person can also be attached if it is in the interest of the revenue. Provisional attachment can be ‘during investigation’ whereas recovery can only be after ‘final adjudication’ arising out of the order. Provisional attachment prohibits the use and access to the property by the taxpayer

by the ‘Order of Attachment’. On the other hand, confiscation involves taking away the property and vesting the same to the government. So, provisional attachment is not akin to confiscation as the property never vests in the government. The following are the key factors of provisional attachment of the property:

- Provisional attachment is valid for one year from the date of order of the Commissioner.

7. Section 165 of CrPC:

1. Whenever an officer in charge of police station or a police officer making an investigation has reasonable grounds for believing that anything necessary for the purposes of an investigation into any offence which he is authorised to investigate may be found in any place within the limits of the police station of which he is in charge, or to which he is attached, and that such thing cannot in his opinion be otherwise obtained without undue delay, such officer may, after recording in writing the grounds of his belief and specifying in such writing, so far as possible, the thing for which search is to be made, search, or cause search to be made, for such thing in any place within the limits of such station.
2. A police officer proceeding under Sub-Section (1), shall, if practicable, conduct the search in person.
3. If he is unable to conduct the search in person, and there is no other person competent to make the search present at the time, he may, after recording in writing his reasons for so doing, require any officer subordinate to him to make the search, and he shall deliver to such subordinate officer an order in writing, specifying the place to be searched, and so far as possible, the thing for which search is to be made; and such subordinate officer may thereupon search for such thing in such place.
4. The provisions of this Code as to search-warrants and the general provisions as to searches contained in section 100 shall, so far as may be, apply to a search made under this section
5. Copies of any record made under Sub-Section (1) or Sub-Section (3) shall forthwith be sent to the nearest Magistrate empowered to take cognizance to the offence, and the owner or occupier of the place searched shall, on application, be furnished, free of cost, with a copy of the same by the Magistrate.



- A person whose property is attached can file the objection for the provisional attachment. The Commissioner is required to afford the opportunity of being heard before continuing the attachment or release of the property.

Taxpayers who endeavour to provide the undertaking discharging the liability when a lawful demand is made, provisional attachment may be uplifted by the authority.

CBIC has issued guidelines [Letter No. CBEC-20/16/05/2021-GST/359, Dated 23 February 2021] for the department officers for exercising the powers of provisional attachment of property under section 83, certain key guidelines are provided below:

- A remedy to be resorted with utmost circumspection, care, and caution.
- Only to be resorted in cases of evasion of tax or wrongly of input tax credit is availed or utilised or passed on.
- Formation of opinion for attachment must be exercised diligently considering all the factors such as nature, amount of revenue involved and business etc.

The power to provisionally attach the property, including the bank account is very drastic in nature. It hampers the working of the business, especially where there is no mala fide intention.

In a nutshell, the proper officer can:



Inspect

Any place of business of the taxable person who has evaded the tax or is attempting to evade the tax or of the transporter who transported such tax evading goods or godown/ warehouse operator in which such tax evading goods or accounts relating thereto have been stored



Search & seizure

The goods or any documents or books or things which are liable for confiscation, and which will be instrumental in the proceedings under this act during the enquiry period



Seal or break

Open the door of any premises, storage, electronic devices, box or receptacle where goods, books of accounts etc. are suspected to be concealed when access of the same is denied to the said officer



Prosecution in case of grave offences

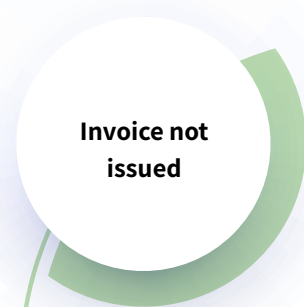
Arrest

The Commissioner is vested with the power to authorise, by an order, any Officer of the central tax to arrest a person, where he has reasons to believe that such person has fulfilled the conditions specified in section 132 (1) and (2).

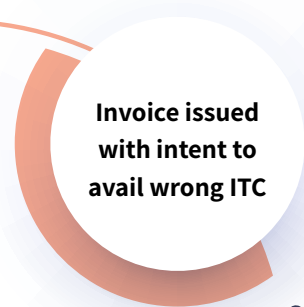
Offence under section 132

• Whoever commits, or causes to commit and retain the benefit arising out of, any of the following offences, namely-

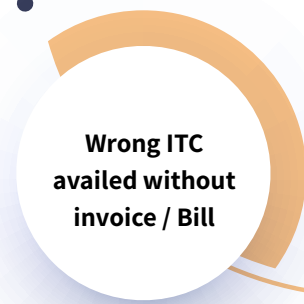
• Supplies any goods or services or both without issue of any invoice, in violation of the provisions of GST Act or rules made thereunder, with intention to evade tax



• Issues any invoice or bill without supply of goods or services or both in violation of GST Act or rules thereunder, leading to wrongful availment or utilisation of input tax credit or refund of tax



• Avails input tax credit using the invoice or bill or fraudulently avails input tax credit without any invoice or bill.



• Collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due



• In cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken:

Exceeds INR 500 Lakhs [Supply of goods or services without issuance of invoice]

• Imprisonment for a term of 5 years with fine

Exceeds INR 250 Lakhs but does not excess INR 500 Lakhs

• Imprisonment for a term of 3 years with fine

CBIC vide Instruction No. 02/2022-23 [GST Investigation] dated 17 August 2022, issued guidelines for arrest and bail in relation to offences punishable under the CGST Act.



Formalities pre-arrest and post-arrest



Pre-Arrest

- Commissioner must possess the 'reasons to believe' based on a credible material to issue an order for arrest.
- Determination of necessity to arrest based on factors like seriousness of the offense and potential tampering with evidence or witness.
- Assessment of cooperation in investigation, compliance with summons and other relevant factors



Arrest procedure

- Recording the reasons for arrest and authorise the designated officer.
- Prepare the arrest memo in the prescribed format clearly mentioning the provisions invoked.
- Medical examination of the individual must be done during arrest.
- Inform the nominated person of the arrested individual about the arrest.
- Document the date and time of the arrest



Post-Arrest

- Release on bail against bail bond in case of bailable offences and inform the conditions to the arrested and nominated person.
- Produce the arrested person before Magistrate within 24 hours if bail conditions are not met.
- Filing of the prosecution complained within the specified time

Do's and Don'ts during inspection and summons

Do's

- Full cooperation
- Check jurisdiction
- Provide accurate and truthful information and records
- Seek legal advice from a qualified professional if required
- Accompany the CA or lawyer during Summon proceedings.
- Object the recovery of taxes during the investigation proceedings
- Communicate with GST authorities through official channels such as email or letters

Dont's

- Do not ignore summons issued by GST authorities.
- Do not provide false or misleading information to authorities during investigation
- Do not tamper with evidence related to investigation
- Do not delay in appearing before the authorities or furnishing the response to the inquiry notices
- Do not pay the tax liability determined by the officer during the investigation – insist on following due process of law



Culmination of summons, inspections etc.

Issuance of show cause notice and adjudication thereof

GST law provides that whenever there is an inspection, search, audit, scrutiny or any other investigation proceedings, it is pre-emptive for an officer to issue a show cause notice containing the allegations of the demand, to the taxpayer to put forth their stance/submissions against such alleged demand. Once the demand is crystalised in the adjudication proceedings, the department can only recover such demand after three months of serving the order to the taxpayer, i.e., after the lapse of the appeal filing period. Meanwhile, taxpayers also have the statutory remedy to file an appeal against such order before the first appellant authority on payment of a fixed pre-deposit [with an automatic stay for the balance demand].

In fact, now before issuance of the show cause notice, the law prescribes for the issuance of a pre-show cause notice (pre-intimation), where the proper officer is permitted a notice containing quantified demand notice containing quantified demand which the taxable person may accept and avail the relief of no payment of penalty. The purpose of issuing a pre-

intimation is to provide an opportunity to the taxable person to assess their liability as quantified by the proper officer and take a reasoned call on whether they wish to proceed to litigate the issue after proper consideration of the merits of the matter. This stage also provides a prudent taxpayer to discharge any unpaid / missed tax liabilities with no penalty or reduced penalties.

The provisions for issuing the show cause notice are contained in section 73 [in case of emands not involving fraud, wilful misstatement or suppression of facts] and section 74 [for cases involving fraud, wilful misstatement or suppression of facts] of the CGST Act and are applicable for the demand pertaining to the period July 2017 to March 2024. Post this, the new provision contained under section 74A, will govern the adjudication proceedings for both scenarios. Certain key amendments in the said provision in comparison to the erstwhile Section 73 and Section 74 has been tabulated below.

Particulars	Matters not involving fraud, wilful misstatement and suppression of facts	Matters involving fraud, wilful misstatement and suppression of facts
Time limit to issue SCN		
A. As per Section 73 / 74	2 years 9 months from the due date of filing annual return [effectively 3 years and 6 months from the end of a financial year]	4 years 6 months from the due date of filing annual return. [effectively 5 years and 3 months from the end of a financial year]
B. As per Section 74A	42 months from the due date of filing annual return. [effectively 51 months from the end of a financial year]	42 months from the due date of filing annual return. [effectively 51 months from the end of a financial year]
Time limit to pass demand order		
A. As per Section 73 / 74	3 years from the due date of filing annual return [effectively 3 years and 9 months from the end of a financial year]	5 years from the due date of filing annual return [effectively 5 years and 9 months from the end of a financial year]
B. As per Section 74A	1 year from the due date of issuance of SCN which may be extended to further 6 months [effectively 5 years and 9 months from the end of a financial year]	1 year from the due date of issuance of SCN which may be extended to further 6 months. [effectively 5 years and 9 months from the end of a financial year]



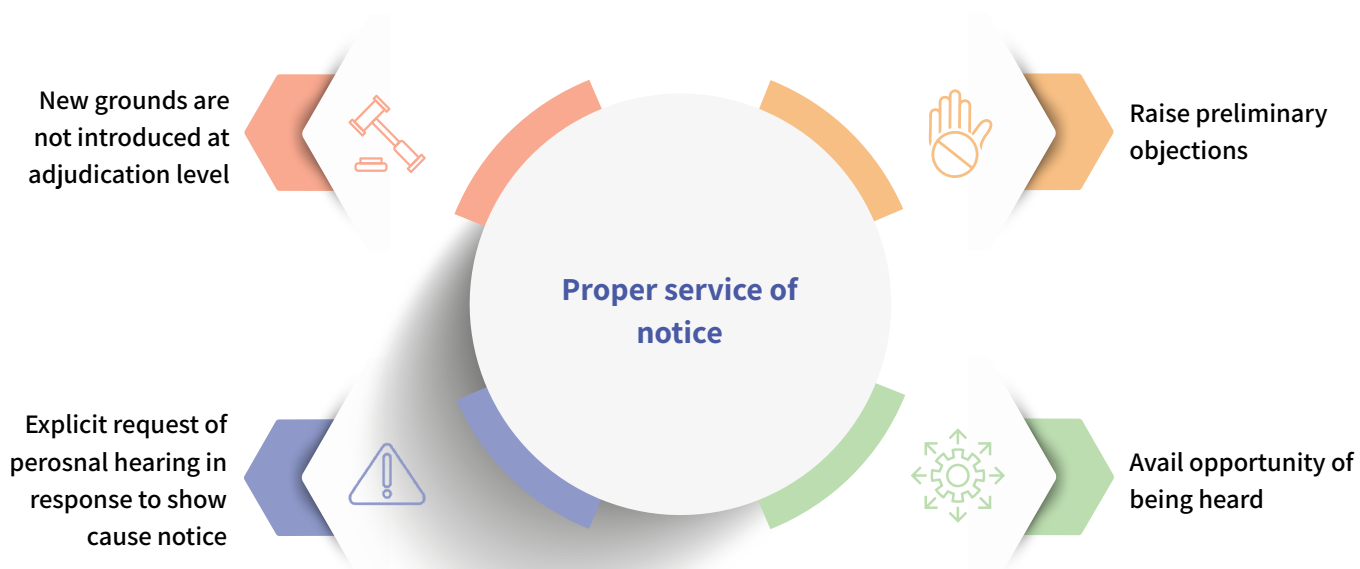
Particulars	Matters not involving fraud, wilful misstatement and suppression of facts	Matters involving fraud, wilful misstatement and suppression of facts
Applicable penalties	10% of tax due or INR 20,000 (CGST & SGST) whichever higher.	Amount equivalent to tax due
Waiver of penalty as per section 73/ 74 / 74A	Pay tax plus interest <ul style="list-style-type: none"> – on the basis of own ascertainment or the tax as ascertained by the proper officer Before issuance of SCN – within 60 days of issuance of show cause notice [30 days under Section 73 and Section 74] 	Pay tax plus interest and <ul style="list-style-type: none"> – 15% of the tax as penalty on the basis of own ascertainment or the tax as ascertained by the proper officer before issuance of notice – 25% of tax as penalty within 60 days of issuance of SCN [30 days Section 73 and Section 74] or – 50% of tax as penalty within 60 days of communication of order [30 days under Section 73 and Section 74]

There are monetary limits prescribed vide Circular No. 31/05/2018-GST dated 9 February 2018 for officers of different designations to function as the proper officers in relation to the issuance of the show cause notice and orders under section 73 or 74 as the case may be:

Designation of the officer	Monetary limit of the amount of CGST	Monetary limit of the amount of IGST	Monetary limit of the amount of CGST and IGST
Superintendent	Up to INR 10 Lakhs	Up to INR 20 Lakhs	Up to INR 20 Lakhs
Deputy or Assistant Commissioner	Above INR 10 Lakhs upto INR 1 Crore	Above INR 20 Lakhs upto INR 2 Crores	Above INR 20 Lakhs upto INR 2 Crores
Additional or Joint Commissioner	Above INR 1 Crore	Above INR 2 Crores	Above INR 2 Crores

Given circular has been amended to provide powers to Additional Commissioners/ Joint Commissioners of Central Tax of specified Central Tax Commissionerate with All India Jurisdiction for adjudication of show cause notices issued by DGGI.

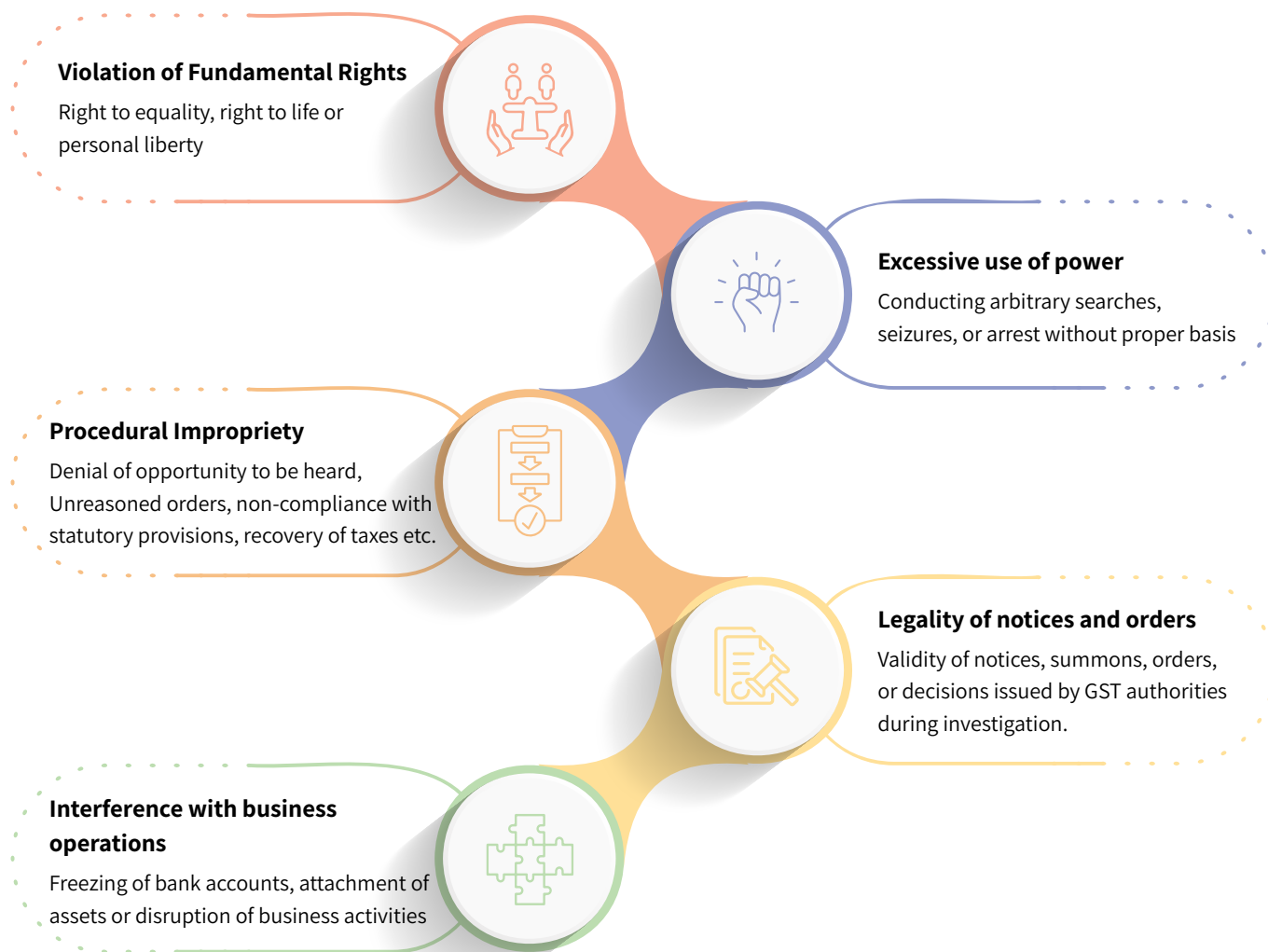
Factors to be kept in mind post issuance of a Show Cause Notice



Writ jurisdiction during investigation proceedings

During GST investigation proceedings, the writ jurisdiction can be invoked in certain circumstances to seek relief from the courts. Writ jurisdiction refers to the authority of higher

courts to issue writs, which are orders directing a person or entity to do or refrain from doing something. Here's how writ jurisdiction may apply during GST investigation proceedings:



Violation of Fundamental Rights: If the actions of the GST authorities during the investigation violate the fundamental rights of the taxpayer, such as the right to equality, right to life and personal liberty, or right to freedom of trade and profession, the affected party can approach the courts through writ petitions seeking protection and remedy.

Excessive Use of Power: If the GST authorities exceed their jurisdiction or misuse their powers during the investigation, such as conducting arbitrary searches, seizures, or arrests without proper legal basis or authorisation or procedural irregularities, recovery of taxes during investigation, the affected party can seek judicial review through writ petitions to challenge such actions. For instance, if cash is seized,



which does not fall into the purview of goods, books or things, the taxpayer may take recourse of writ petition for release of such cash.

Procedural Impropriety: If there are procedural irregularities or violations of natural justice principles during the investigation proceedings, such as denial of opportunity to be heard, failure to provide reasons for actions taken (unreasoned orders), or non-compliance with statutory provisions, the affected party can approach the courts through writ petitions seeking appropriate relief.

Legality of Notices and Orders: If the legality or validity of notices, summons, orders, or decisions issued by the GST authorities during the investigation is in question, the affected party can seek judicial intervention through writ petitions to challenge or quash such notices or orders.

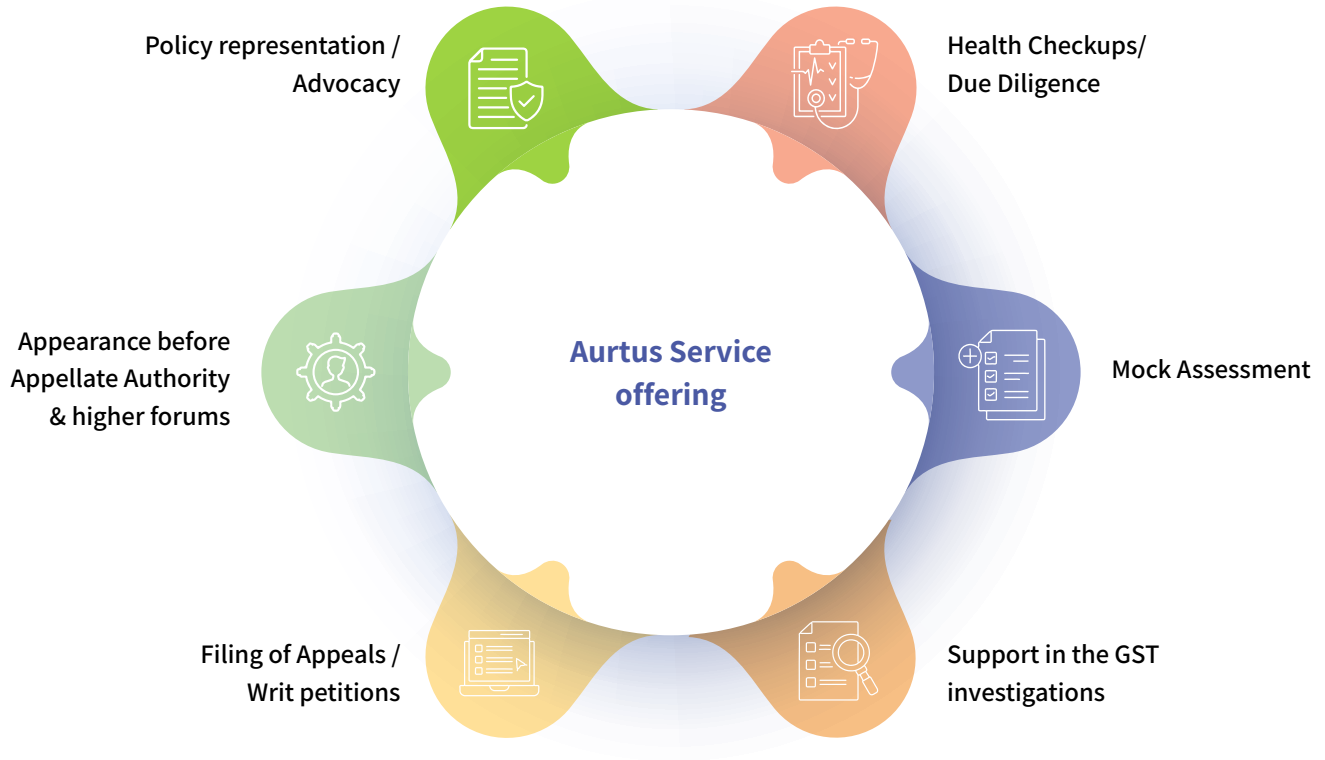
Interference with Business Operations: If the investigation proceedings adversely affect the business operations or financial interests of the taxpayer, such as freezing of bank accounts, attachment of assets, or disruption of business activities, the affected party can seek relief from the courts through writ petitions to protect their rights and interests.



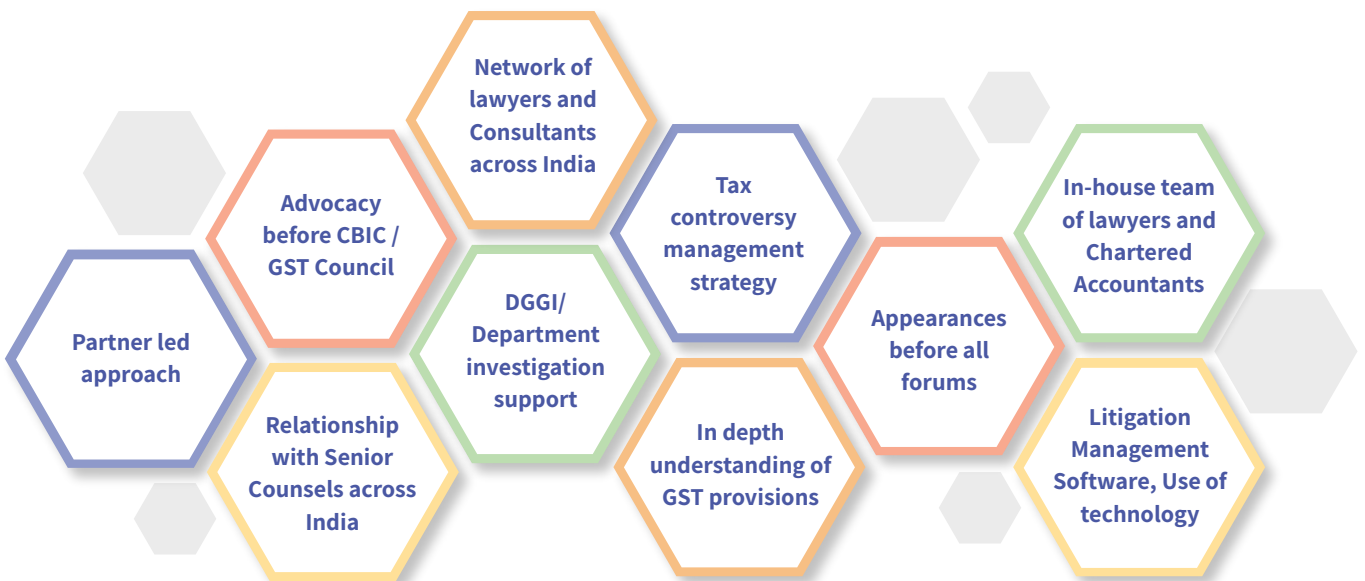
Our offerings

Our Service offerings

We at Aurtus assist the taxpayers to assess the risk and mitigate it within the precincts of the GST law. We provide the following services:



Key Differentiators



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