

## Minimum thirty days to be provided to reply to a GST SCN

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By: Team Tax Connect

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Going to Tribunal under GST requires 30% pre-deposit. Moving to High Court in each case requires hefty charges which may be affordable in some cases but not in all cases. It seems that due to the said reasons taxpayers have now surrendered to the fact that in many cases and in many states ADT-02 and DRC-01A and thereafter DRC-01 is issued within a gap of one week sometimes in one day also!... However if an Order is also issued without providing opportunity of being heard, then the back of the taxpayer is against the wall and he has to move forward and approach High Court. The question thus arises that what should be the reasonable time limit to be granted to reply to a SCN under GST. Section 73 does not provide the same and hence would it be left to the discretion of the officers? Let us therefore read Section 73(8) & 73(9), which state as follows -

*(8) Where any person chargeable with tax under sub-section (1) or subsection (3) pays the said tax along with interest payable under section 50 within **thirty days** of issue of show cause notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.*

*(9) The proper officer shall, **after considering the representation**, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to ten per cent. of tax or ten thousand rupees, whichever is higher, due from such person and issue an order.*

From the language employed in Section 73, it is obvious that Section 73(1) affords opportunity to notice. Though no time period is stipulated in Section 73 for the notice to respond but it is obvious that the statute contemplates affording of reasonable opportunity to reply to show cause notice. The concept of reasonable

opportunity demands that reasonable period of time to reply to the notice should be not less than 15 days, if not more. However, since the time period provided for paying tax, interest and penalty specified in the show cause notice is statutorily prescribed to be thirty days in Section 73(8), the reasonable period within which show cause notice is to be responded to, ought to be treated as thirty days.

In case, the time gap provided between show cause notice and order falls short of satisfying the concept of reasonable opportunity of being heard, the show cause notice will fall short of the minimum period of 30 days to afford reasonable opportunity to notice to respond.

This was held in the case of RAYMOND LIMITED Vs UNION OF INDIA [2023-VIL-806-MP] and the petitioner was also considered as entitled for the cost of the petition quantified at Rupees Ten Thousand which was to be paid by respondents by depositing the same in the bank account of petitioner.

Another important point is that as per Section 73(9) the proper officer shall, after considering the representation, made by the taxpayer issue an order. Hence in case the Order is not a "Speaking Order" in as much as it does not consider the reply filed by the taxpayer, then it would be a violation of Section 73(9) and the Courts are bound to provide relief.

## LET'S DISCUSS FURTHER!

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