

No Hearing for SCN under GST and Order passed... Section 75(4) comes to the rescue

By: Team Tax Connect

Consider a case – A SCN in DRC 01 was issued and the taxpayer was asked to submit reply in one week. Taxpayer does not respond. Order is issued in DRC-07 confirming the demand. Hence, a short time was provided to reply to SCN and as mandated u/s 75(4) of CGST Act 2017, an opportunity of hearing has not been granted where an adverse decision is contemplated against the taxpayer. Section 75(4) states as follows –

(4) An **opportunity of hearing shall be granted** where a request is received in writing from the person chargeable with tax or penalty, or **where any adverse decision is contemplated** against such person.

Section 75(4) is on the basis of the principle of 'Audi Alteram Partem', which being one of the basic principles of natural justice, as enshrined in Article 14 of The Constitution of India and shall come to rescue in such cases. On the same basis it was held in the case of **DIGANTA KUMAR DEKA Vs THE STATE OF ASSAM [2025-VIL-1089-GAU]**.

The failure to provide a hearing, even when no reply is filed by the assessee, violates the second limb of Section 75(4) which requires a hearing to be granted when an adverse decision is contemplated. This renders the order passed without a hearing as violative of both the statutory mandate and the principles of natural justice. The impugned order was set aside.

However, to reduce litigation it is to be understood that not replying to SCN may not be a very good ploy as the entire procedure is not quashed, but only is adjudicated de-novo. In the same judgement it was held that the respondents were granted liberty to initiate de novo proceedings under Section 73, if considered appropriate, with the period

between the issuance of the Summary of Show Cause Notice and the date of the judgment being excluded from the computation of the limitation period under Section 73(10). Section 73(9) & (10) provides as follows –

"(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.

(10) The proper officer shall issue the order under sub-section (9) within three years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within three years from the date of erroneous refund."

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OUR OFFICES:

MUMBAI

Unit No. 312, Omega Business Park, Near Kaamgar Hospital, Road No. 33, Wagle Industrial Estate, Thane West, Maharashtra- 400604

Contact Person: Prashant Kumar Jha

Email:prashant.jha@taxconnect.co.in

BENGALURU

951, 24th Main Road, J P Nagar, Bengaluru, Karnataka – 560078.

Contact Person: Anil Pal

Email:anil.pal@taxconnectdelhi.co.in

DELHI (NCR)

B-139, 2nd Floor, Transport Nagar, Noida-201301 (U.P)

Contact Person: Poonam Khemka

Email:poonam.khemka@taxconnect.co.in

KOLKATA

6, Netaji Subhas Road, 3rd Floor, Royal Exchange Building, Kolkata - 700001

Contact Person: Sandeep Mandal

Email:sandeep.mandal@taxconnect.co.in

KOLKATA

R No 119; 1st Floor; Diamond Arcade; 1/72, Cal Jessore Road, Kolkata – 700055

Contact Person: Uttam Kumar Singh

Email:uttam.singh@taxconnect.co.in

DUBAI

Azizi Feirouz, 803, 8th Floor, AL Furjan, Opposite Discovery Pavillion, Dubai, UAE

Contact Person: Rohit Sharma

Email:rohit.sharma@taxconnect.co.in

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