

## To club or 'de'-club- Legality of clubbing Show Cause Notices -An Analysis

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## Introduction

A Show Cause Notice (“**SCN**”) marks the initiation of the adjudication process, which is a quasi-judicial function performed by tax authorities. It contemplates an action that could be prejudicial to the assessee, and hence demands utmost caution in its drafting, issuance, communication, etc. to ensure fairness in assessments. Lately in the Goods and Services Tax (“**GST**”) regime, one of the trends observed in the drafting and issuance of SCN is the clubbing of such notices pertaining to multiple financial years into a single SCN.

Under the Central Goods and Services Tax Act, 2017 (“**CGST Act**”), SCNs can be issued in multiple scenarios – in cases of cancellation of registration, denial of refund claim, denial of option to pay tax under composition scheme, etc. For the present discussion, it is relevant to refer to the issuance of SCN where short payment/non-payment of tax is suspected or where tax is erroneously refunded or ITC wrongly availed or utilized. The legal basis for issuing SCNs in such scenarios is enshrined under Section 73, Section 74 and Section 74A of the CGST Act:

Reference	Section 73	Section 74	Section 74A
	<b>(Upto FY 2023-24)</b>	<b>(Upto FY 2023-24)</b>	<b>(FY 2024-25 Onwards)</b>
<b>Scope</b>	Determination of tax not paid or short paid or erroneously refunded or ITC wrongly availed or utilised for any reason other than fraud or wilful-misstatement or suppression of facts (Bona fide)	Determination of tax not paid or short paid or erroneously refunded or ITC wrongly availed or utilised by reason of any or any misstatement or suppression of facts (Mala fide)	Determination of tax not paid or short paid or erroneously refunded or ITC wrongly availed or utilised for any reason other than fraud or willful-(Bona fide or mala fide) or suppression of facts (Mala fide)
<b>Time limit to issue SCN</b>	At least 3 months prior to the time limit for issuing the order	At least 6 months prior to the time limit for issuing the order	Within 42 months from the due date of the annual return or

	erroneous refund		
<b>Time limit to pass</b>	Within 3 years from the due date of filing annual return erroneous refund	Within 5 years from the due date of filing or annual return erroneous refund	Within 12 months from the date of SCN, further extendable by 6 months
<b>Order</b>			

### Legality of Bunching SCNs

A literal perusal of the section notes to the provisions (Section 73 or Section 74 or Section 74A of the CGST Act) gives no indication of whether a separate or a consolidated SCN is to be issued for each financial year. However, the limitation period to issue an SCN or pass an order is fixed from the due date for filing the annual return to which the demand relates. Evidently, annual return relates to a financial year, which, by extension, would indicate that demand pertaining to each financial year is also to be raised separately. Further, notifications issued during and after the COVID-19 pandemic to extend due dates for filing annual returns and the time limit for passing orders for each financial year also indicates that the law is structured in a manner that the issuance of SCN is based on the financial year to which the demand pertains. In this connection, the discussions in GST Council Meeting<sup>[1]</sup> while extending the due dates to issue SCNs, point towards the position that each financial year should be viewed as a separate tax period and there should not be bunching of last dates for different financial years.

To contribute further to this understanding, sub-sections 3 and 4 of Section 73, Section 74, and Section 74A of the CGST Act provide that for periodical demands, i.e., where the grounds remain the same for subsequent tax periods, a statement may be served instead of a detailed SCN, which shall be deemed to be a notice for all practical purposes. Thus, it appears that Section 73, Section 74 and Section 74A of the CGST Act were envisaged for issuing one SCN for each assessment (financial) year, and for subsequent periods wherein subject to the condition “that the grounds relied upon for such tax periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice”, a statement may be issued. Notably, the provision for issuing statements, use the word “may”, which ordinarily denotes that the provisions to issue statement are not required to be mandatorily adhered to, and the proper officer is free to issue separate SCNs. A similar concept of issuance statements, in lieu of a complete SCN, prevailed<sup>[2]</sup> under the erstwhile Service Tax regime. The rationale behind bestowing the power to issue statements deemed as SCN appears to be the intention of administrative efficiency, maintenance of consistency and judicial discipline.

At this juncture, reference can be made to the settled proposition<sup>[3]</sup> under Income Tax law that each assessment year is a distinct and separate event. The absence of one consolidated assessment was addressed by the Finance (No. 2) Act, 2024, which introduced Chapter XIV-B comprising of 11 sections<sup>[4]</sup> especially to govern “block assessment” only in case of search under Section 132 and Section 132A of the Income Tax Act, 1961<sup>[5]</sup>. Thus, the statute itself provided for one consolidated assessment for the block period covering 6 assessment years. Unlike the Income Tax Act, 1961, there is no specific provision or scenario under the CGST Act, or the rules made thereunder for a consolidated assessment.

Evidently, in the GST regime, the practice of issuing a bunched SCN, lacks a clear legislative backing. Otherwise as well, bunching poses hardship to the assessee while filing a reply to the SCN in Form GST DRC-06, where the common portal requires the taxpayer to populate the financial year to which the demand pertains.

### Bunching of SCNs to Bypass the Limitation Period

While the provisions do not clearly state whether SCNs can be bunched or not, the problem arises when bunching of SCNs is done to circumvent the statutory period of limitation for issuing SCNs in relation to a financial year. In this connection, the Madras High Court, in **Titan Company Ltd. vs. Joint Commissioner of GST & Central Excise**,<sup>[6]</sup> has adopted a view on the issue of bunching SCNs is based on the separate statutory limitation period prescribed for each financial year. In this case, the taxpayer made a representation before the tax authorities to split the SCNs and to independently adjudicate assessment for each tax period. The Court relied upon the decision in **State of Jammu and Kashmir vs. Caltex (India) Ltd.**<sup>[7]</sup> to support that each and every assessment year will have a separate period of limitation, and the limitation period will start independently. Therefore, it was observed that by bunching SCNs, the tax authorities are trying to do certain things indirectly, which they

are not permitted to do directly. Accordingly, it was directed that the representation of the taxpayer be considered and that the SCN be split for each financial year; limitation is calculated independently and then adjudicated upon. Relying on Titan Company [supra], Karnataka High Court in of **M/s Veremax Technologie Services Limited vs. Assistant Commissioner of Central Tax, Bengaluru**[\[8\]](#) and **Bangalore Golf Club vs. Assistant Commissioner of Commercial Taxes, Bengaluru** [\[9\]](#) quashed bunched SCNs.

Further, in the case of **Uno Minda Ltd. vs. Joint Commissioner of GST** [\[10\]](#) the Madras High Court has observed that the practice of bunching of SCNs would also be incompatible with the procedures prescribed under GST amnesty scheme.

## **Conclusion**

Be that as it may, the dispute over whether or not a bunched SCN can be issued under the CGST Act appears far from resolved. **Titan Company [supra]** cannot be viewed as a guaranteed win for taxpayers to pursue setting aside demand in all the cases where SCNs have been bunched. It is never encouraged to view a judicial decision in isolation without appraising the facts in which it was rendered. It is safe and appropriate to say that the ruling must be considered with a pinch (or even fistful) of salt. However, given the ease of administration in consolidated adjudication, taxpayers might have to accept a spin on the issue by way of future legislative amendments. Nonetheless, bunching of SCNs ought to be viewed as an exception and not the rule, only being relevant in cases where the same grounds permeate different financial years, all falling within the limitation period.

In a similar vein, it would be interesting to see developments on the practice of tax authorities to issue separate SCNs on different issues, for a single financial year. It should be mentioned that Circular No. 31/05/2018-GST dated 09.02.2018 assigns monetary limits for which different ranks of tax officers can issue SCNs and pass orders. Proper officers, in some instances, skillfully circumvent the binding CBIC Circular and remain within their pecuniary jurisdiction by issuing SCNs that are split issue-wise for the same fiscal year.

*[The views expressed are strictly personal].*

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[\[1\]](#) Agenda item 4(vii) to the Minutes of 49th GST Council meeting held on 18.02.2023.

[\[2\]](#) Section 73(1A) of the Finance Act, 1994.

[\[3\]](#) Prem Kumar Chopra vs. Assistant Commissioner of Income Tax [\[TS-284-HC-2023\(DEL\)\]](#); Radhasoami Satsang vs. CIT [\[TS-12-SC-1991\]](#); Deputy Commissioner of Income Tax vs. ACE Multi Axes Systems Ltd. [\[TS-571-SC-2017\]](#) 158].

[\[4\]](#) Section 158B to Section 158BI of the Income Tax Act, 1961.

[\[5\]](#) IT Act.

[\[6\]](#) [\[TS-707-HC\(MAD\)-2023-GST\]](#)

[\[7\]](#) AIR 1966 SC 1350.

[\[8\]](#) 2024 KHC 36293.

[\[9\]](#) 2024

[\[10\]](#) [W.P.No.27776 of 2024]